



Home of the Tualatin River National Wildlife Refuge

URBAN RENEWAL AGENCY MEETING PACKET

FOR

Tuesday, September 18, 2012

**Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon**

6:30pm URA Board of Directors Meeting

(Followed by a City Council Work Session and Regular Meeting)

URA Board of Directors Meeting

(Following the City Council Meeting)

**SHERWOOD URBAN RENEWAL AGENCY BOARD OF DIRECTORS
MEETING AGENDA**

Tuesday, September 18, 2012, 6:30pm

City of Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon

REGULAR URA MEETING

1. CALL TO ORDER

2. ROLL CALL

3. CONSENT

- A. Approval of August 7, 2012 URA Board Meeting Minutes**
- B. Approval of September 4, 2012 URA Board Meeting Minutes**

4. NEW BUSINESS

- A. URA Resolution 2012-018 A Resolution of the Sherwood Urban Renewal Agency approving the Sixteenth Amendment to the Sherwood Urban Renewal Plan, dated August 29, 2000 to amend Plan Goals and Objectives (Tom Pessemier, Community Development Director)**
- B. URA Resolution 2012-019 A Resolution of the Urban Renewal Agency of the City of Sherwood, directing the Agency Manager to sign the amended and restated Development Services Agreement for the Cannery Development (Tom Pessemier, Community Development Director)**
- C. URA Resolution 2012-020 A Resolution of the Urban Renewal Agency of the City of Sherwood, directing the Agency Manager to sign the amended and restated Purchase and Sale Agreement for the Cannery Development (Tom Pessemier, Community Development Director)**
- D. URA Resolution 2012-021 A Resolution of the Urban Renewal Agency of the City of Sherwood, directing the Agency Manager to sign the amended and restated Site Development Agreement for the Cannery Development (Tom Pessemier, Community Development Director)**

Amended Agenda, Items B-E added

- E. URA Resolution 2012-022 A Resolution of the Urban Renewal Agency of the City of Sherwood, directing the Agency Manager to sign the Letter of Agreement for the Cannery Development (Tom Pessemier, Community Development Director)**

5. STAFF REPORTS

6. ADJOURN

**SHERWOOD URBAN RENEWAL AGENCY BOARD OF DIRECTORS
MEETING MINUTES
Tuesday, August 7, 2012
22560 SW Pine Street, Sherwood, Oregon 97140**

REGULAR SESSION

1. **CALL TO ORDER:** Chair Mays called the meeting to order at 8:55 pm.
2. **URA BOARD PRESENT:** Chair Keith Mays, Dave Grant, Linda Henderson, Matt Langer, Robyn Folsom, Bill Butterfield and Krisanna Clark.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Joe Gall, Community Development Director Tom Pessemier, Finance Director Craig Gibons, Accounting Manager Julie Blums, Police Chief Jeff Groth, Community Services Director Kristen Switzer, Public Works Director Craig Sheldon, City Engineer Bob Galati, Administrative Assistant Kirsten Allen and Agency Recorder Sylvia Murphy. City Attorney Paul Elsner.

Chair Mays addressed the Consent Agenda and asked for a motion.

4. **CONSENT AGENDA:**
 - A. **Approval of June 5, 2012 URA Board Meeting Minutes**
 - B. **Approval of June 19, 2012 URA Board Meeting Minutes**

MOTION: FROM LINDA HENDERSON TO APPROVE THE CONSENT AGENDA, SECONDED BY ROBYN FOLSOM, ALL MEMBERS VOTED IN FAVOR.

Chair Mays addressed the next agenda item.

5. **NEW BUSINESS:**
 - A. **URA Resolution 2012-017 of the Urban Renewal Agency of the City of Sherwood, Oregon approving refinancing of previously approved indebtedness to obtain debt service savings**

Finance Director Craig Gibons came forward and explained the resolution is the authorization of the URA to redo the financing and the commitment by the URA to pay the debt service.

Chair Mays stated he appreciated staff efforts to lower the cost of doing business.

Chair Mays asked for questions from the Board, with none received he asked for a motion.

MOTION: FROM ROBYN FOLSOM TO ADOPT URA RESOLUTION 2012-017, SECONDED BY LINDA HENDERSON, ALL MEMBERS VOTED IN FAVOR.

Chair Mays addressed the next agenda item.

6. STAFF REPORTS

Tom Pessemier reported on the water feature at the Cannery Plaza and thanked everyone for their patience as staff addressed issues with valves and were able to replace them this last week and said the fountain is operating at near full capacity.

Chair Mays commended staff for addressing the issue in a timely fashion and said families and businesses are benefiting from the attraction.

Linda Henderson stated its been a great venue for the Library story time with the larger space.

Krisanna Clark commented she drive by today and saw at least three time the people and commented regarding the library story time being intergenerational with seating areas and shady areas for people

With no other business to address, Chair Mays stated the URA Board will be meeting in an Executive Session pursuant to ORS 192.660 (2)(e) and 192.660 (2)(f) and would reconvene the regular session following the executive session.

7. ADJOURN to EXECUTIVE SESSION: Adjourned at 8:58 pm.

EXECUTIVE SESSION:

1. **CALL TO ORDER:** Chair Mays called the meeting to order at 9:00 pm and asked the Agency Recorder to read the executive session statement.
2. **URA BOARD PRESENT:** Chair Keith Mays, Dave Grant, Linda Henderson, Matt Langer, Robyn Folsom, Bill Butterfield and Krisanna Clark.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Joe Gall, Community Development Director Tom Pessemier, Finance Director Craig Gibons, Accounting Manager Julie Blums, Community Services Director Kristen Switzer, City Engineer Bob Galati and Agency Recorder Sylvia Murphy. City Attorney Paul Elsner.

4. TOPICS

- A. **Cannery Project.** City Attorney Elsner provided a document (exempt public record, pursuant to ORS 192.660 (2)(F)). Discussion followed.
5. **ADJOURN:** Chair Mays adjourned the URA Board executive session at 9:30 pm and reconvened to the regular Board meeting at 9:35 pm.

REGULAR SESSION:

1. **URA BOARD PRESENT:** Chair Keith Mays, Dave Grant, Linda Henderson, Matt Langer, Robyn Folsom, Bill Butterfield and Krisanna Clark.

2. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Joe Gall, Community Development Director Tom Pessemier, Finance Director Craig Gibons, Accounting Manager Julie Blums, Community Services Director Kristen Switzer, City Engineer Bob Galati and Agency Recorder Sylvia Murphy. City Attorney Paul Elsner.

3. **TOPICS:**

A. **Cannery Project Agreements with Capstone Partners.** Chair Mays stated the URA Board is reconvening from an Executive Session and stated the following motion.

MOTION: FROM CHAIR MAYS TO DIRECT STAFF TO ENTER INTO NEGOTIATIONS WITH CAPSTONE TO CONSIDER REVISIONS TO OUR AGREEMENTS WITH THEM, SECONDED BY BILL BUTTERFIELD. ALL MEMBERS VOTED IN FAVOR.

4. **ADJOURN:** Chair Mays adjourned at 9:39 pm.

Submitted by:

Sylvia Murphy, CMC, Agency Recorder

Keith S. Mays, Chair

**SHERWOOD URBAN RENEWAL AGENCY BOARD OF DIRECTORS
MEETING MINUTES
Tuesday, September 4, 2012
22560 SW Pine Street, Sherwood, Oregon 97140**

URA BOARD EXECUTIVE SESSION

1. **CALL TO ORDER:** Dave Grant called the meeting to order at 5:40 pm.
2. **BOARD PRESENT:** Mr. Dave Grant, Bill Butterfield, Matt Langer, Robyn Folsom, Linda Henderson and Krisanna Clark. Chair Keith Mays arrived at 5:50 pm.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Joe Gall, Community Development Director Tom Pessemier, Finance Director Craig Gibons, Agency Recorder Sylvia Murphy and City attorney Paul Elsner.
4. **TOPIC DISCUSSED:** Cannery Square property and agreements pursuant to ORS 192.660(2)(e) Real Property Transactions and ORS 192.660(2)(f) Exempt Public Records. City Attorney Elsner provided the Board a memo (Exh. A, exempt public record).
5. **ADJOURN:**

Chair Mays adjourned the Executive Session at 7:20 pm.

Submitted by:

Sylvia Murphy, CMC, Agency Recorder

Keith S. Mays, Chair

TO: Sherwood Urban Renewal Agency Board

FROM: Tom Pessemier, Community Development Director
Through: City Attorney, Courtney Lords, Beery Elsner & Hammond

SUBJECT: URA RESOLUTION 2012-018 OF THE SHERWOOD URBAN RENEWAL AGENCY APPROVING THE SIXTEENTH AMENDMENT TO THE SHERWOOD URBAN RENEWAL PLAN, DATED AUGUST 29, 2000 TO AMEND PLAN GOALS AND OBJECTIVES

Issue

Should the URA adopt a Resolution to revise sections in the Plan relating to Land Uses and Goals and Objectives?

Background

In 2000 the Urban Renewal Plan addressed Land Uses and Goals and Objectives to promote economic development within the district. Since that time zoning changes in regard to densities in Residential zones were adjusted. In addition the Plan did not account for residential density transfers inside of Planned Unit Developments (PUD).

The Plan also did not specifically address the purchase and sale of property to encourage development through new construction.

These proposed changes will further the Urban Renewal Agencies ability to promote private development of housing and mixed uses in the renewal area. This will also allow the Urban Renewal Agency to dispose of assets that will benefit the Urban Renewal Agency.

Financials

The sale of existing assets in the Urban Renewal District will not count towards Maximum Indebtedness and will allow for more projects on the prioritized project list to be funded.

Recommendation

Staff respectfully recommends approval of URA Resolution 2012-018 to amend the Urban Renewal Plan to revise sections in the Plan relating to Land Uses and Goals and Objectives.



URA RESOLUTION 2012-018

A RESOLUTION OF THE SHERWOOD URBAN RENEWAL AGENCY APPROVING THE SIXTEENTH AMENDMENT TO THE SHERWOOD URBAN RENEWAL PLAN, DATED AUGUST 29, 2000 TO AMEND PLAN GOALS AND OBJECTIVES

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 was approved by the City Council (“Council”) on August 29, 2000 by Ordinance No. 2000-1098; and

WHEREAS, the Plan requires, under Section 503(A)(1), that the Council ratify certain minor amendments to the Plan adopted by the Agency, including amendments authorizing the assembly of land for redevelopment; and

WHEREAS, the Plan’s goals and objectives include the promotion of private development; and

WHEREAS, the Agency’s Fifth Amendment to the Plan authorized the acquisition of property known as the “Old Cannery Site” for the purposes of eliminating blight and promoting economic development through the promotion of private development; and

WHEREAS, the Plan has not been updated to reflect current zoning in the renewal area, specifically zoning for the area of the Old Cannery Site; and

WHEREAS, the Agency has identified a need to amend the Plan’s Proposed Land Uses and Goals and Objectives to further encourage economic development by promoting private development of housing and mixed uses in the renewal area, especially the area known as “Old Town.”

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

Section 1. The Sherwood Urban Renewal Agency does hereby approve the following minor amendments to the Plan (added language in **bold font**, deleted language indicated by ~~strikethrough~~):

302. RENEWAL PLAN GOALS AND OBJECTIVES

The goals of this Plan are:

A. Promote Private Development

Goal: To promote private development, redevelopment, and rehabilitation in both Old Town and Six Corners to help create jobs, tax revenues, and self-sustaining, vital, and vibrant commercial, **mixed use and residential** districts.

Objectives:

1. Enhance the environment for development and investment through improvements to streets, streetscapes, parks, and public buildings and spaces.
2. Assist property owners in rehabilitating buildings so they can accommodate more intensive and dynamic commercial activity.
3. Help create economic vitality by creating activities and encouraging uses that bring a significant number of potential shoppers and investors to each district.
4. Develop a strategy to make sports tournaments a contributor to economic revitalization of Old Town.
 - a. Construct recreational facilities that attract sports tournaments to Sherwood.
 - b. Develop a business strategy that encourages sports clubs to use recreational facilities for sports tournaments.
5. **Support and promote private mixed-use and residential housing development through the acquisition and disposition of real property in the renewal area, especially Old Town.**

400. PROPOSED LAND USES

A. Land Use Plan

The Comprehensive Plan and Zoning applying to the Renewal Area are:

Residential Zones

The Low Density Residential (LDR) zoning district provides for single-family housing and other related uses with a density not to exceed five dwelling units per acre. Other uses include: manufactured homes; agricultural uses such as truck farming and horticulture; home occupations; group homes not exceeding five persons in residence, family day care providers, government assisted housing or residential care facilities; and public recreational facilities such as parks, playfields, sports and racquet courts.

The Medium Density Residential, Low (MDRL) zoning district provides for single-family and two-family housing, manufactured homes on individual lots and in parks, and other related uses, with a density not to exceed eight dwelling units per acre, while the Medium Density Residential, High (MDRH) district provides for a variety of medium density housing, including single-family, duplexes, and manufactured housing on individual lots, multi-family housing and other related uses, with a density not to exceed eleven dwelling units per acre. The High Density Residential (HDR) zoning district provides for higher density multi-family housing and other related uses, with a density ~~not to exceed sixteen~~ **range of 16.8 to 24** dwelling units per acre. **The Retail Commercial (RC) zoning district also allows residential development with the appropriate process. The Planned Unit Development (PUD) chapter of the Zoning and Community Development Code, which applies through an overlay to specified properties within the renewal area, further allows for flexibility and efficiency of land uses by permitting transfers of residential density within an approved PUD.**

501. Redevelopment through New Construction

Redevelopment through new construction may be achieved by public or private property owners, with or without financial assistance by the Renewal Agency. To encourage redevelopment through new construction, the Renewal Agency is authorized to set guidelines, establish loan programs and provide below-market interest rate and market rate loans and provide such other forms of financial assistance to property owners and those desiring to acquire and redevelop property, as it may deem appropriate in order to achieve the objectives of this Plan. **The Agency is also authorized, in accordance with law, to acquire and dispose of property in the renewal area in order to promote and encourage redevelopment through new construction.**

Section 2. This Resolution shall be effective upon its approval and adoption. This Sixteenth Amendment to the Sherwood Urban Renewal Plan shall be effective upon its ratification by the City Council.

Duly passed by the Sherwood Urban Renewal Agency Board this 18th day of September, 2012.

Keith S. Mays, Chair

Attest:

Sylvia Murphy, CMC, Agency Recorder

TO: Sherwood Urban Renewal Agency Board

FROM: Tom Pessemier, Community Development Director
Through: Paul Elsner, Beery Elsner & Hammond

SUBJECT: A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD, DIRECTING THE AGENCY MANAGER TO SIGN THE AMENDED AND RESTATED DEVELOPMENT SERVICES AGREEMENT FOR THE CANNERY DEVELOPMENT

Issue

Should the URA Board amend and restate the Development Services Agreement with Capstone Partners, LLC pertaining to the development for the Cannery project?

Background

In 2000 the Urban Renewal Plan addressed development within the Urban Renewal District including the cannery property. In 2005 the purchase of the Cannery Property was added to the plan and Leland Consultants prepared the Sherwood Cannery Development Strategy. In 2007 the URA prepared a Request for Proposal (RFP) to select a development partner to develop the Cannery consistent with the Development Strategy. In 2008 Capstone partners was selected as the development partner and entered into a memorandum of understanding (MOU) with the Urban Renewal Agency. In late 2008 the Urban Renewal Agency and Capstone entered into three agreements to document to roles and responsibilities of the URA and Capstone. The three agreements were the Purchase and Sale Agreement, the Site Development Agreement and the Development Services Agreement. The Development Services agreement defined the responsibilities for development and construction management services related to the items defined in the Site Development Agreement.

In late 2009 the timelines for the project became more evident and market conditions had changed significantly so the URA and Capstone decided together to amended the agreement.

The amended agreement is in place today and the URA and Capstone have worked together in a good faith effort to further amend the agreement to account for timing and responsibilities related to the development of the Infrastructure Improvements. In order to be easier to interpret in the future, the agreement proposed is amended and restated so that multiple documents do not need to be reviewed. This means that the original agreement and the amendments would become null and void with the execution of this agreement.

Attached is a red-lined copy of the proposed changes to the original agreement as amended so that the changes are apparent. Please note that the resolution for this item will have a clean copy of the amended and restated agreement in its entirety.

There are many changes to this document and all are related to finishing the responsibilities assigned in this document so the agreement will be essentially finished.

The major change in this agreement is to address the removal of the Machine Works building in the Site Development Agreement. This change necessitates certain responsibilities be modified.

Section 1.9 is where most of the changes are noted so that there can be certainty for both sides of what tasks are needed to be finished.

Section 4.1 and 4.2 were added to finalize payments related to this contract and will be discussed in the Financial section below.

Section 4.3 has been added since there will be transitional services required relative to the Machine Works Building and a separate agreement outlining those will be completed but are not necessary to be completed with this agreement.

Financials

Changes to the General Description of Infrastructure Improvements in the Development Services agreement made adjustment to payments in this agreement necessary. The original agreements were set up so that Capstone would be paid the bulk of their fees during construction. However as Capstone was able to demonstrate much of their work has already occurred and construction has not. Therefore the proposal in this agreement is to pay \$80,000 for the work that Capstone has done to date and has not been adequately compensated for.

In addition it was noted that a large number of items Capstone was doing for the URA were not specifically identified in any of the agreements and it is noted in this agreement that another agreement that is mutually beneficial to both parties will be negotiated such that these services are adequately defined, accounted for and compensated as appropriate. That agreement will be done at a future date as it is not necessary to be completed with this agreement.

Recommendation

The City's attorneys have thoroughly reviewed and prepared the recommended amended and restated agreement. In addition Capstone and their attorney have thoroughly reviewed the amended and restated agreement.

Staff respectfully recommends approval of URA Resolution 2012-019 to amend and restate the Development Services Agreement.

AMENDED AND RESTATED DEVELOPMENT SERVICES AGREEMENT

OLD CANNERY SITE, SHERWOOD, OREGON

This Agreement ("~~the~~"Agreement") is effective as of this day of , ~~2008~~September, 2012, between Sherwood URD Urban Renewal District ("Sherwood URD"), and Capstone Partners LLC ("~~the~~"Development Manager").

RECITALS

A.

Sherwood URD owns certain real property commonly known as the Old Cannery Site located in Sherwood, Washington County, Oregon described in Exhibit B-1 (the "Property"). Purchaser desires to purchase from Seller a portion of the Property depicted as Lot 1 (West Phase"), Lot 4 ("East Phase"), Lot 3 ("South Phase"), Lot 9 ("West Residential Phase"), Lot 10 ("East Residential Phase"), and Lots 5 - 8 ("NE Phase") collectively the "Land". The legal description of the Land is as set forth on the Sherwood Cannery Square Plat No. 2011-089523. Washington County, Oregon plat records.

Sherwood URD desired to construct: (i) ~~thea~~ public plaza ~~containing not less than 10,000 square feet nor more than 20,000 square feet~~ (currently ~~contemplated and~~ depicted ~~herein~~ to be approximately 12,004 square feet as ~~Tract A on Exhibit B-1~~) at the southeast corner of the intersection of SW Pine Street and the Southern Pacific Railroad tracks (the "~~Plaza~~"); (ii) new public rights of way, including streets, sidewalks, utilities, and storm water treatment facilities, for the proposed SW Columbia Street east of Pine Street and the proposed SW Highland Drive north of Willamette Street ~~per Exhibit B-1~~; (iii) ~~the improvement~~improvements on the north side of SW Willamette Street adjacent to the West Residential ~~Phase~~ and the East Residential ~~Phase~~Phases of the ~~Conveyed Property, the Land~~, improvement of SW Pine Street between the railroad and Willamette Street, ~~the~~ improvement (including approximately 17 angle parking stalls) of SW Columbia Street west of Pine Street, ~~the~~improvement of the east side of SW Washington Street between the railroad and SW Columbia Street, ~~the improvement of approximately one half of the shared surface parking lot on the southeast corner of SW Washington Street and the railroad tracks, and the improvement of the existing gravel parking lot along the south side of the railroad, west of SW Washington Street, that the City of Sherwood leases from the Southern Pacific Railroad~~all per Exhibit B-1; (iv) a storm water treatment facility located on the west side of the existing Machine Works building (~~the~~ "~~Storm Water Garden~~"); ~~(v) the grading~~ on Tract E per Exhibit B-1); and ~~gravel base on the Conveyed Property~~; (vi) ~~the shell and structural renovation of the existing Machine Works building located on the northwest corner of SW Pine and SW Columbia Streets, and~~(vii) (v) work required to mitigate the impact on the existing wetlands buffer pursuant to the June 8, 2009 Service Provider Letter provided by Clean Water Services ~~issued as of June 8, 2009~~, all collectively the "Project".

B.

Development Manager is a professional in the area of development of public improvements.

C.

Sherwood URD has requested and Development Manager has agreed to provide ~~Sherwood URD with comprehensive~~ services for managing, planning, developing and ~~construction of the~~constructing Project.

~~Capstone_Sherwood_~~

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Amended and Restated Development_ Services_ Agreement. ~~Clean Final~~—081308

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NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, it is mutually agreed as follows:

1. Amendment and Restatement. Sherwood URD and Development Manager entered into that certain Development Services Agreement dated September 3, 2008 as amended by that certain First Amendment to Development Services Agreement dated as of October 2009 (the "Original Development Services Agreement") pursuant to which Development Manager agreed to perform service development services for the Sherwood URD. This Amended and Restated Development Services Agreement amends and restates the Original Development and Services Agreement in its entirety and the Original Development Services Agreement shall be null and void and of no further force and effect as of the date of the mutual execution of this Agreement.

~~1.2.~~ Development Management Technical Services. Development Manager agrees to provide ~~comprehensive~~ specific development services for ~~the Plaza and Street Improvements such that the Project will be completed on time (subject to Force Majeure events)~~, substantially in accordance with specifications, in compliance with all applicable permits and governmental regulations, and within the Project budget (as may be amended by Sherwood URD). Such services include the following:

2.1. Supervising the Project's architect and/or engineer in the preparation of plans and specifications and related documents for the Project (the "Contract Documents" or "~~CD~~CDs") that shall provide for the development and construction of the Project consistent with City of Sherwood standards and within the limits of Project budget. The ~~CD~~CDs shall include:

- (a) Plans, specifications and related documents that fully describe the Project.
- (b) An itemized cost breakdown for the Project, including both "hard costs" (construction) and "soft costs" (engineering fees, construction permits, etc).
- (c) A proposed development schedule.

2.2. Subject to Sherwood URD's procurement process, recommend to the Sherwood URD such third party contractors and/or professionals for retention by Sherwood URD in connection with and required for the implementation of the Project, and negotiate on behalf of Sherwood URD the terms of the agreements with such third party contractors and/or professionals.

2.3. Supervise the performance of the services provided by third party contractors and professionals.

2.4. Recommend for approval all payments to contractors, professionals and/or vendors, and prepare draw requests for authorizing payments by Sherwood URD of such amounts.

2.5. Represent Sherwood URD at Project meetings.

~~Capstone_Sherwood_~~

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Amended and Restated Development Services Agreement: ~~CleanFinal-081308~~

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2.6. Coordinate the application for, and securing, all necessary permits, approvals for zoning, surveying, environmental and other governmental matter(s), permit(s) and/or compliance(s) required to proceed with the Project.

2.7. Provide the following construction management services:

- (a) Notice To Proceed: Development Manager will issue various limited Notices To Proceed or unlimited Notices To Proceed as necessitated by the contract negotiation, execution and required time of commencement in order to meet the Project schedule.
- (b) Project Control Procedures: Prior to Project commencement, Development Manager will establish standard procedures concerning correspondence distribution, change order format, Project schedule updating, pay request flow, progress meeting protocol and punch list inspections to implement a smooth flow of the administration of the Project.
- (c) Representatives: Throughout the Project duration, Development Manager will act as Sherwood URD's representative in regard to daily interactions with the design and construction teams and coordinate the work of all testing laboratories and other consultants in accordance with the Contract Documents. Sherwood URD retains control over final approval for all Contract Documents.
- (d) Project Meetings: Development Manager will conduct regular project coordination meetings throughout design and construction phases of the Project. Sherwood URD will be provided with notice and minutes of Project meetings.
- (e) Contract Administration: Development Manager will administer all aspects of the construction contracts including scheduling of all work in accordance with the Project schedule, review of claims for additional services and change orders. All Contract Documents are subject to the approval of Sherwood URD. Any proposed contract changes to the work, time for performance or contract sums that would extend the scheduled completion date or exceed the Project budget must be approved in advance in writing by Sherwood URD. Development Manager shall have the authority to reject work not conforming to the CDs. Development Manager shall advise Sherwood URD if it appears that total construction costs will exceed the accepted bids, and make recommendations for corrective action.
- (f) Punch-List Items: Development Manager shall determine when the Project or a designated portion thereof is substantially complete, shall cause to be prepared a list of incomplete or unsatisfactory items ("punch list items"), and shall then coordinate the correction and completion of the punch list items by the responsible contractors.

2.8 Both parties agree that from September 1, 2012 forward, Sherwood URD will assume the obligations of Sections 2.1 through 2.7 above.

~~Capstone_Sherwood_~~

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~~Amended and Restated Development_Services_Agreement.CleanFinal-081308~~

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2.9 After September 1, 2012, Development Manager agrees to perform the following:

- (a) Complete minor portions of the work on the Project as approved in writing and in advance by Sherwood URD;
- (b) Provide Sherwood URD with all Contract Documents, tests, investigations, studies and other information that is in the possession of or was compiled by the Development Manager, its contractors or sub-contractors for this Agreement and/or to meet the obligations listed herein;
- (c) Prepare draw requests for each publicly-funded phase of the Project documenting all remaining costs incurred prior to September 1, 2012 to be paid by Sherwood URD (the "September 1 Draws").
- (d) Certify in writing that to the best of Development Manager's knowledge and except as set forth out in the four (4) bulleted points below, there are no outstanding obligations, debts or expenses owed any contractor, subcontractor or other party in connection with the Project beyond those included in the September 1 Draws, including work done on the Machine Works building (aka "Community Center" on Lot 2, Exhibit B-1).
 - R&H preconstruction services fee;
 - Design fees incurred by R&H's design/build subs (MVAC, plumbing, & electrical);
 - work done for refining work scope & cost (roof, site, floor slab removal primarily); and
 - Plan check & permit fees

Development Manager hereby agrees to indemnify, save and hold Sherwood URD, its officials, directors, officers and employees and agent harmless for any loss, claim or damage arising from Development Manager's breach of the certification set out in the foregoing paragraph;

- (e) Assist Sherwood URD with transition services as described in Section 4.3 below; and
- (f) Coordinate with Sherwood URD on additional work to be done on the Community Center pursuant to a mutually agreed upon contract to be negotiated in good faith by Development Manager and Sherwood URD at a future date.

3. Sherwood URD Role and Responsibilities. Sherwood URD agrees to oversee ~~the~~ Development Manager regarding the managing, planning, developing and construction of the Project. Specifically, Sherwood URD will coordinate with the Development Manager to:

~~Capstone_Sherwood_~~

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Amended and Restated Development_Services_Agreement: ~~CleanFinal_081308~~

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- 3.1. Provide architect and engineering services to prepare plans and specifications and related documents for the Project consistent with City of Sherwood standards.
 - 3.2. Prepare a Project budget which will include an itemized cost breakdown for the Project, including both "hard costs" (construction) and "soft costs" (engineering fees, construction permits, etc).
 - 3.3. Create a development schedule.
 - 3.4. Retain third party contractors and/or professionals to implement the Project.
 - 3.5. Approve final agreements with third party contractors and/or professionals.
 - 3.6. Provide payments to contractors, professionals and/or vendors for costs related to the Project upon receiving draw requests and detailed invoices from the Development Manager.
 - 3.7. Attend Project meetings when necessary.
 - 3.8. Approve all Contract Documents before implementation.
4. Development Services Fee. ~~For the~~ services provided by Development Manager under this Agreement, Development Manager shall be paid by Sherwood URD a development services fee based on the actual bids utilized for ~~the~~ construction of the Project, which fee shall be determined by Development Manager (~~but is~~ subject to the approval of Sherwood URD, ~~(which approval shall not to be unreasonably withheld, conditioned or delayed and in no event is)~~) to be no less than five percent (5%) or more than eight (8%) of ~~the~~ total Project costs for the Project). ~~The Development Services Fee shall be payable monthly.~~
- 4.1 Development Manager agrees and acknowledges that as of September 1, 2012, Sherwood URD neither owes nor is obligated to pay any development services fees to it for work on the Project and Community Center beyond the contingent Final Payment described in Section 4.2 below.
 - 4.2 Sherwood URD shall make a final \$80,000.00 payment to Development Manager ("Final Payment") contingent upon Development Manager's satisfactory completion of the requirements described in Sub-Sections 2.9(b)-(d) above within thirty (30) days of said satisfactory completion.
 - 4.3 Sherwood URD (in its sole discretion) may request Development Manager provide additional services for the Project or the Community Center at an hourly rate mutually agreed to by both parties pursuant to a separate written agreement.
5. Independent Agent. Sherwood URD and Development Manager agree ~~that~~ Development Manager is an independent agent and ~~Development Manager's~~its employees and agents are not employees of Sherwood URD. ~~Development Manager is retained by Sherwood URD~~only for the express purposes and to the

extent set forth in this Agreement. This Agreement does not create a partnership, joint venture or any other legal business relationship between the parties except contractual in the nature of a consulting relationship.

~~5.~~ 6. Actions By Development Manager On Behalf of Sherwood URD. ~~Until written notice to the contrary, all reasonable~~ Any actions taken by Development Manager, ~~after September 1, 2012 must be in accordance with the terms of this Agreement~~ written and ~~with final Project budget, shall be deemed to be made with~~ approved by Sherwood URD's consent.

Completion URD which approval is in Sherwood URD's sole and ~~Cost,~~ absolute discretion; provided, however, no approval of Sherwood URD shall be required for any action Development Manager ~~shall not be deemed,~~ is required to perform pursuant to ~~this Agreement, to be guaranteeing the availability of financing, the feasibility or success of the Project, nor the ultimate cost of the Project. However, the foregoing shall not discharge Development Manager from performing its obligations hereunder~~ Section 2.9.

7. Relationship To Third Parties. Nothing contained herein shall be deemed to create any contractual relationship between Development Manager and any of the contractors, subcontractors, material suppliers or consultants on the Project; nor shall anything contained herein be deemed to give any third party any claim or right of action ~~directly~~ against Development Manager ~~which does not otherwise exist~~ existing without regard to this Agreement.

8. Lead Representative. Sherwood URD shall appoint a lead representative ~~who is~~ authorized to act on behalf of ~~and make decisions that bind~~ Sherwood URD in connection with any matter pertaining to the Project. ~~Development Manager shall be allowed to rely on all decisions or information received from the lead representative.~~ Such person shall be named early in the design process and shall remain in such position for the duration of the Project.

9. Response. Both Parties, ~~subject to the provisions of this paragraph,~~ shall respond promptly to any written request submitted ~~by either~~ by either Party, and make all necessary decisions called for in such requests as soon as possible following receipt of such request taking into account the subject matter of such request.

10. Defaults. It shall be an event of default hereunder if:

~~10.1— Either party fails to perform any of its material obligations under this Agreement (except for Sherwood URD's payment of money as provided below), and such failure to perform under this Agreement continues for a period of thirty (30) days after written notice of such failure to the defaulting party from the other party hereto; provided that such thirty (30) day period shall be extended for such time as is necessary to effectively cure such default, if the defaulting party has commenced the curing of such default within such thirty (30) day period and is diligently pursuing the completion of such cure.~~

~~10.2— Sherwood URD fails to make any payment required herein and such failure continues for a period of ten (10) days after written notice of such failure from Development Manager to Sherwood URD.~~

10.1 Sherwood URD fails to timely make the Final Payment described and conditioned in subsection 4.2 above after written notice of entitlement to said being made by Development Manager.

10.2 Development Manager ~~shall:~~ (i) ~~fail~~ fails to exercise the level of development skill, knowledge, judgment and practices ~~which are~~ commonly expected with respect to the development of similar projects, it being understood that should the Development Manager not perform to this standard, Sherwood URD shall provide Development Manager with ~~a~~ written notice related to such failure of performance and Development Manager shall have thirty (30) days to cure such failure; or (ii) commit an act or omission of gross negligence or willful misconduct while carrying out its obligations and duties hereunder.

~~11.~~ **11. Termination.** This Agreement ~~shall terminate upon~~ *terminates on the occurrence of any of the following events:*

~~The~~ date ten (10) days after notice of termination from the non-defaulting party to the defaulting party under the provisions of Section ~~9 above.~~ 10 above or the day after payment of the sum noted in Section 4.2 above, whichever shall occur first.

~~11.2 In the event a termination occurs, Development Manager shall be paid fees and expenses due it under the terms hereof earned or accrued through the date of termination which shall include any retention being held.~~

12. **Notices.** Any notice required or permitted by this Agreement to be given shall be in writing and shall be addressed to:

SHERWOOD URD: Sherwood URD Urban Renewal District
22560 SW Pine Street
Sherwood, OR -97140
ATTN: ~~Jim Patterson~~
Tom Pessemier
Fax: (503) 625-5524

With a copy to: ~~Pamela J. Beery~~
Beery, Elsner & Hammond, LLP
Attn: Pamela J. Beery

1750 SW Harbor Way, Suite 380
Portland, OR 97201
~~DEVELOPER~~ Fax: (503) 226-2348

DEVELOPMENT
MANAGER: Capstone Partners LLC

~~Capstone_Sherwood_~~

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Amended and Restated Development Services Agreement. ~~Clean Final~~ - 081308

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1015 NW 11th Avenue, Suite 243

Portland, Oregon 97209

~~ATTN:~~

Attn: Chris Nelson

Fax No. ~~+~~: (503) 226-1973

With a copy to:

Ball Janik LLP

Attn: ~~-~~Bradley S. Miller

101 SW Main St., Suite 1100

Portland, OR -97204

Fax No. ~~+~~: (503) 295-1058

or such other address and to such other parties and/or attorneys as either party may designate in writing. Any such notice shall be sent by registered or certified US Mail, postage prepaid, return receipt requested and shall be deemed to have been given on the date of delivery at the address to which such notice is so directed as reflected by such return receipt. The parties agree to use their best efforts to accompany any written notice with actual notice by telephone whenever possible.

13. Force Majeure. For ~~all~~ purposes of this Agreement, the term "Force Majeure" ~~shall mean~~ means any failure, prevention, delay or stoppage due to strikes, lockouts, acts of God, inability to obtain labor or material or reasonable substitutes therefor, enemy or hostile government action, civil commotion, failure of a governmental entity to issue governmental permits within a reasonable time period, fire or other casualty and other causes (other than financial) beyond the reasonable control of the party obligated to perform. Neither party shall be responsible for failure, prevention, delay or stoppage in performing any obligations hereunder (other than the payment of money) to the extent such failure or delay results solely from a Force Majeure.
14. Enforceability. The enforceability and validity of this Agreement, in whole or in part, shall not be affected by the unenforceability or invalidity of any particular provision of this Agreement.
15. Entire Agreement. This Agreement, together with other writings signed by the parties expressly stated to be supplementary hereto and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writing, and may be changed only by a writing signed by the parties hereto.
16. Applicable Laws. This Agreement shall be construed under the laws of the State of Oregon.

~~Capstone_Sherwood_~~

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Amended and Restated Development ~~_~~ Services ~~_~~ Agreement: ~~CleanFinal~~—081308

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17. **Successors and Assigns.** All of the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.
18. **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit such party's party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.
19. **Amendment.** This Agreement may not be modified or amended except by the written agreement of the parties.
20. **Time of Essence.** Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.
- ~~21. **Attorney's Fees.** *In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the US Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', in-house counsel, 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.*~~
21. **Authority of Parties.** Sherwood URD represents and warrants that it has full right and authority to enter into this Agreement and to perform all of Sherwood URD's URD's obligations hereunder. Development Manager represents and warrants that it has full right and authority to enter into this Agreement and to perform all of Development Manager's Manager's obligations hereunder.

IN WITNESS WHEREOF, Sherwood URD and Development Manager have caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

~~Sherwood URD Urban Renewal District~~

By: _____
Jim Patterson, District Manager

~~Capstone Partners LLC, an Oregon limited liability company~~

By: _____
Chris Nelson, Member

By: _____
Triangle Development Company, an Oregon corporation, Member

Jeffrey M. Sackett, President

<p>Sherwood Urban Renewal District</p> <p>By: _____</p> <p>Joe Gall District Manager</p>	<p>Capstone Partners LLC, an Oregon limited liability company</p> <p>By: _____</p> <p>Chris Nelson, Member</p> <p>By: Triangle Development Company, an Oregon corporation, Member</p> <p>By: _____</p> <p>Jeffrey M. Sackett, President</p>
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EXHIBIT B-1
PROPERTY

~~Capstone_Sherwood_~~

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Amended and Restated Development Services Agreement: ~~CleanFinal~~ 081308

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URA RESOLUTION 2012-019

A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD, DIRECTING THE AGENCY MANAGER TO SIGN THE AMENDED AND RESTATED DEVELOPMENT SERVICES AGREEMENT FOR THE CANNERY DEVELOPMENT

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") as amended which Plan was originally 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 approximately 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. The legal description of land is set forth on the Sherwood Cannery Square Plat No. 2011-089523, Washington County, Oregon plat records; 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 Agency approved a Development Services Agreement with Capstone Partners, LLC to develop the property on August 19, 2008; and

WHEREAS, the Agency approved the First Amendment to the Development Services Agreement with Capstone Partners, LLC to develop the property on November 3, 2009; and

WHEREAS, changes in timing, responsibilities and market conditions have warranted changes to that agreement; and

WHEREAS, the attached Amended and Restated Development Services Agreement (Attachment 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 Amended and Restated Development Services Agreement with Capstone Partners, LLC., attached as Exhibit A.

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

Duly passed by the Sherwood Urban Renewal Agency Board this 18th day of September, 2012.

Keith S. Mays, Chair

Attest:

Sylvia Murphy, CMC, Agency Recorder

AMENDED AND RESTATED DEVELOPMENT SERVICES AGREEMENT
OLD CANNERY SITE, SHERWOOD, OREGON

This Agreement ("Agreement") is effective as of this ____ day of September, 2012, between Sherwood URD Urban Renewal District ("Sherwood URD"), and Capstone Partners LLC ("Development Manager").

RECITALS

Sherwood URD owns certain real property commonly known as the Old Cannery Site located in Sherwood, Washington County, Oregon described in Exhibit B-1 (the "Property"). Purchaser desires to purchase from Seller a portion of the Property depicted as Lot 1 (West Phase"), Lot 4 ("East Phase"), Lot 3 ("South Phase"), Lot 9 ("West Residential Phase"), Lot 10 ("East Residential Phase"), and Lots 5 - 8 ("NE Phase") collectively the "Land". The legal description of the Land is as set forth on the Sherwood Cannery Square Plat No. 2011-089523. Washington County, Oregon plat records.

Sherwood URD desired to construct: (i) a public plaza (currently depicted to be approximately 12,004 square feet as Tract A on Exhibit B-1) at the southeast corner of the intersection of SW Pine Street and the Southern Pacific Railroad tracks (the "Plaza"); (ii) new public rights of way, including streets, sidewalks, utilities and storm water treatment facilities for the proposed SW Columbia Street east of Pine Street and the proposed SW Highland Drive north of Willamette Street per Exhibit B-1; (iii) improvements on the north side of SW Willamette Street adjacent to the West Residential and East Residential Phases of the Land, improvement of SW Pine Street between the railroad and Willamette Street, improvement (including approximately 17 angle parking stalls) of SW Columbia Street west of Pine Street, improvement of the east side of SW Washington Street between the railroad and SW Columbia Street, all per Exhibit B-1; (iv) a storm water treatment facility located on the west side of the existing Machine Works building ("Storm Water Garden" on Tract E per Exhibit B-1); and (v) work required to mitigate the impact on the existing wetlands buffer pursuant to the June 8, 2009 Service Provider Letter provided by Clean Water Services, all collectively the "Project".

Development Manager is a professional in the area of development of public improvements.

Sherwood URD has requested and Development Manager has agreed to provide services for managing, planning, developing and constructing Project.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, it is mutually agreed as follows:

1. Amendment and Restatement. Sherwood URD and Development Manager entered into that certain Development Services Agreement dated September 3, 2008 as amended by that certain First Amendment to Development Services Agreement dated as of October 2009 (the "Original Development Services Agreement") pursuant to which Development Manager agreed to perform service development services for the Sherwood URD. This Amended and Restated Development Services Agreement amends and restates the Original Development and Services Agreement in its entirety and the Original Development Services Agreement shall be null and void and

of no further force and effect as of the date of the mutual execution of this Agreement.

2. Development Management Technical Services. Development Manager agrees to provide specific development services for the Project substantially in accordance with specifications, in compliance with all applicable permits and governmental regulations, and within the Project budget (as may be amended by Sherwood URD). Such services include the following:
 - 2.1. Supervising the Project's architect and/or engineer in the preparation of plans and specifications and related documents for the Project (the "Contract Documents" or "CDs") that shall provide for the development and construction of the Project consistent with City of Sherwood standards and within the limits of Project budget. The CDs shall include:
 - (a) Plans, specifications and related documents that fully describe the Project.
 - (b) An itemized cost breakdown for the Project, including both "hard costs" (construction) and "soft costs" (engineering fees, construction permits, etc).
 - (c) A proposed development schedule.
 - 2.2. Subject to Sherwood URD's procurement process, recommend to the Sherwood URD such third party contractors and/or professionals for retention by Sherwood URD in connection with and required for the implementation of the Project and negotiate on behalf of Sherwood URD the terms of the agreements with such third party contractors and/or professionals.
 - 2.3. Supervise the performance of the services provided by third party contractors and professionals.
 - 2.4. Recommend for approval all payments to contractors, professionals and/or vendors, and prepare draw requests for authorizing payments by Sherwood URD of such amounts.
 - 2.5. Represent Sherwood URD at Project meetings.
 - 2.6. Coordinate the application for, and securing, all necessary permits, approvals for zoning, surveying, environmental and other governmental matter(s), permit(s) and/or compliance(s) required to proceed with the Project.
 - 2.7. Provide the following construction management services:
 - (a) Notice To Proceed: Development Manager will issue various limited Notices To Proceed or unlimited Notices To Proceed as necessitated by the contract negotiation, execution and required time of commencement in order to meet the Project schedule.
 - (b) Project Control Procedures: Prior to Project commencement, Development Manager will establish standard procedures concerning

correspondence distribution, change order format, Project schedule updating, pay request flow, progress meeting protocol and punch list inspections to implement a smooth flow of the administration of the Project.

- (c) Representatives: Throughout the Project duration, Development Manager will act as Sherwood URD's representative in regard to daily interactions with the design and construction teams and coordinate the work of all testing laboratories and other consultants in accordance with the Contract Documents. Sherwood URD retains control over final approval for all Contract Documents.
 - (d) Project Meetings: Development Manager will conduct regular project coordination meetings throughout design and construction phases of the Project. Sherwood URD will be provided with notice and minutes of Project meetings.
 - (e) Contract Administration: Development Manager will administer all aspects of the construction contracts including scheduling of all work in accordance with the Project schedule, review of claims for additional services and change orders. All Contract Documents are subject to the approval of Sherwood URD. Any proposed contract changes to the work, time for performance or contract sums that would extend the scheduled completion date or exceed the Project budget must be approved in advance in writing by Sherwood URD. Development Manager shall have the authority to reject work not conforming to the CDs. Development Manager shall advise Sherwood URD if it appears that total construction costs will exceed the accepted bids, and make recommendations for corrective action.
 - (f) Punch-List Items: Development Manager shall determine when the Project or a designated portion thereof is substantially complete, shall cause to be prepared a list of incomplete or unsatisfactory items ("punch list items"), and shall then coordinate the correction and completion of the punch list items by the responsible contractors.
- 2.8 Both parties agree that from September 1, 2012 forward, Sherwood URD will assume the obligations of Sections 2.1 through 2.7 above.
- 2.9 After September 1, 2012, Development Manager agrees to perform the following:
- (a) Complete minor portions of the work on the Project as approved in writing and in advance by Sherwood URD;
 - (b) Provide Sherwood URD with all Contract Documents, tests, investigations, studies and other information that is in the possession of or was compiled by the Development Manager, its contractors or sub-contractors for this Agreement and/or to meet the obligations listed herein;

- (c) Prepare draw requests for each publicly-funded phase of the Project documenting all remaining costs incurred prior to September 1, 2012 to be paid by Sherwood URD (the "September 1 Draws").
- (d) Certify in writing that to the best of Development Manager's knowledge and except as set forth out in the four (4) bulleted points below, there are no outstanding obligations, debts or expenses owed any contractor, subcontractor or other party in connection with the Project beyond those included in the September 1 Draws, including work done on the Machine Works building (aka "Community Center" on Lot 2, Exhibit B-1).
- R&H preconstruction services fee;
 - Design fees incurred by R&H's design/build subs (MVAC, plumbing, & electrical);
 - work done for refining work scope & cost (roof, site, floor slab removal primarily); and
 - Plan check & permit fees

Development Manager hereby agrees to indemnify, save and hold Sherwood URD, its officials, directors, officers and employees and agent harmless for any loss, claim or damage arising from Development Manager's breach of the certification set out in the foregoing paragraph;

- (e) Assist Sherwood URD with transition services as described in Section 4.3 below; and
- (f) Coordinate with Sherwood URD on additional work to be done on the Community Center pursuant to a mutually agreed upon contract to be negotiated in good faith by Development Manager and Sherwood URD at a future date.

3. Sherwood URD Role and Responsibilities. Sherwood URD agrees to oversee Development Manager regarding the managing, planning, developing and construction of the Project. Specifically, Sherwood URD will coordinate with the Development Manager to:
- 3.1. Provide architect and engineering services to prepare plans and specifications and related documents for the Project consistent with City of Sherwood standards.
- 3.2. Prepare a Project budget which will include an itemized cost breakdown for the Project, including both "hard costs" (construction) and "soft costs" (engineering fees, construction permits, etc).
- 3.3. Create a development schedule.
- 3.4. Retain third party contractors and/or professionals to implement the Project.
- 3.5. Approve final agreements with third party contractors and/or professionals.

- 3.6. Provide payments to contractors, professionals and/or vendors for costs related to the Project upon receiving draw requests and detailed invoices from the Development Manager.
- 3.7. Attend Project meetings when necessary.
- 3.8. Approve all Contract Documents before implementation.
4. Development Services Fee. For services provided by Development Manager under this Agreement, Development Manager shall be paid by Sherwood URD a development services fee based on the actual bids utilized for construction of the Project, which fee shall be determined by Development Manager (subject to the approval of Sherwood URD (which approval shall not to be unreasonably withheld, conditioned or delayed)) to be no less than five percent (5%) or more than eight (8%) of total Project costs for the Project.
 - 4.1 Development Manager agrees and acknowledges that as of September 1, 2012, Sherwood URD neither owes nor is obligated to pay any development services fees to it for work on the Project and Community Center beyond the contingent Final Payment described in Section 4.2 below.
 - 4.2 Sherwood URD shall make a final \$80,000.00 payment to Development Manager ("Final Payment") contingent upon Development Manager's satisfactory completion of the requirements described in Sub-Sections 2.9(b)-(d) above within thirty (30) days of said satisfactory completion.
 - 4.3 Sherwood URD (in its sole discretion) may request Development Manager provide additional services for the Project or the Community Center at an hourly rate mutually agreed to by both parties pursuant to a separate written agreement.
5. Independent Agent. Sherwood URD and Development Manager agree Development Manager is an independent agent and its employees and agents are not employees of Sherwood URD. Development Manager is retained by Sherwood URD for the express purposes and to the extent set forth in this Agreement. This Agreement does not create a partnership, joint venture or any other legal business relationship between the parties except contractual in the nature of a consulting relationship.
6. Actions By Development Manager On Behalf of Sherwood URD. Any actions taken by Development Manager after September 1, 2012 must be in writing and approved by Sherwood URD which approval is in Sherwood URD's sole and absolute discretion; provided, however, no approval of Sherwood URD shall be required for any action Development Manager is required to perform pursuant to Section 2.9.
7. Relationship To Third Parties. Nothing contained herein shall be deemed to create any contractual relationship between Development Manager and any of the contractors, subcontractors, material suppliers or consultants on the Project; nor shall anything contained herein be deemed to give any third party any claim or right of action against Development Manager not otherwise existing without regard to this Agreement.

8. Lead Representative. Sherwood URD shall appoint a lead representative authorized to act on behalf of Sherwood URD in connection with any matter pertaining to the Project. Such person shall be named early in the design process and shall remain in such position for the duration of the Project.
9. Response. Both Parties shall respond promptly to any written request submitted by either Party, and make all necessary decisions called for in such requests as soon as possible following receipt of such request taking into account the subject matter of such request.
10. Defaults. It shall be an event of default hereunder if:
 - 10.1 Sherwood URD fails to timely make the Final Payment described and conditioned in subsection 4.2 above after written notice of entitlement to said being made by Development Manager.
 - 10.2 Development Manager (i) fails to exercise the level of development skill, knowledge, judgment and practices commonly expected with respect to the development of similar projects, it being understood that should the Development Manager not perform to this standard, Sherwood URD shall provide Development Manager with written notice related to such failure of performance and Development Manager shall have thirty (30) days to cure such failure or (ii) commit an act or omission of gross negligence or willful misconduct while carrying out its obligations and duties hereunder.
11. Termination. This Agreement terminates on the date ten (10) days after notice of termination from the non-defaulting party to the defaulting party under the provisions of Section 10 above or the day after payment of the sum noted in Section 4.2 above, whichever shall occur first.
12. Notices. Any notice required or permitted by this Agreement to be given shall be in writing and shall be addressed to:

SHERWOOD URD: Sherwood URD Urban Renewal District
22560 SW Pine Street
Sherwood, OR 97140
ATTN: Tom Pessemier
Fax: (503) 625-5524

With a copy to: Beery, Elsner & Hammond, LLP
Attn: Pamela J. Beery
1750 SW Harbor Way, Suite 380
Portland, OR 97201
Fax: (503) 226-2348

DEVELOPMENT
MANAGER: Capstone Partners LLC
1015 NW 11th Avenue, Suite 243
Portland, Oregon 97209
Attn: Chris Nelson
Fax No: (503) 226-1973

With a copy to: Ball Janik LLP
 Attn: Bradley S. Miller
 101 SW Main St., Suite 1100
 Portland, OR 97204
 Fax No: (503) 295-1058

or such other address and to such other parties and/or attorneys as either party may designate in writing. Any such notice shall be sent by registered or certified US Mail, postage prepaid, return receipt requested and shall be deemed to have been given on the date of delivery at the address to which such notice is so directed as reflected by such return receipt. The parties agree to use their best efforts to accompany any written notice with actual notice by telephone whenever possible.

13. Force Majeure. For purposes of this Agreement, the term "Force Majeure" means any failure, prevention, delay or stoppage due to strikes, lockouts, acts of God, inability to obtain labor or material or reasonable substitutes therefor, enemy or hostile government action, civil commotion, failure of a governmental entity to issue governmental permits within a reasonable time period, fire or other casualty and other causes (other than financial) beyond the reasonable control of the party obligated to perform. Neither party shall be responsible for failure, prevention, delay or stoppage in performing any obligations hereunder (other than the payment of money) to the extent such failure or delay results solely from a Force Majeure.
14. Enforceability. The enforceability and validity of this Agreement, in whole or in part, shall not be affected by the unenforceability or invalidity of any particular provision of this Agreement.
15. Entire Agreement. This Agreement, together with other writings signed by the parties expressly stated to be supplementary hereto and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writing, and may be changed only by a writing signed by the parties hereto.
16. Applicable Laws. This Agreement shall be construed under the laws of the State of Oregon.
17. Successors and Assigns. All of the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.
18. Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.
19. Amendment. This Agreement may not be modified or amended except by the written agreement of the parties.

20. Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.
21. Authority of Parties. Sherwood URD represents and warrants that it has full right and authority to enter into this Agreement and to perform all of Sherwood URD's obligations hereunder. Development Manager represents and warrants that it has full right and authority to enter into this Agreement and to perform all of Development Manager's obligations hereunder.

IN WITNESS WHEREOF, Sherwood URD and Development Manager have caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

<p>Sherwood Urban Renewal District</p> <p>By: _____</p> <p>_____ Joe Gall District Manager</p>	<p>Capstone Partners LLC, an Oregon limited liability company</p> <p>By: _____</p> <p>_____ Chris Nelson, Member</p> <p>By: Triangle Development Company, an Oregon corporation, Member</p> <p>By: _____ Jeffrey M. Sackett, President</p>
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EXHIBIT B-1
PROPERTY

TO: Sherwood Urban Renewal Agency Board

FROM: Tom Pessemier, Community Development Director
Through: Paul Elsner, Beery Elsner & Hammond

SUBJECT: A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD, DIRECTING THE AGENCY MANAGER TO SIGN THE AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT FOR THE CANNERY DEVELOPMENT

Issue

Should the URA Board amend and restate the Purchase and Sale Agreement with Capstone Partners, LLC pertaining to the purchase and development for the Cannery project?

Background

In 2000 the Urban Renewal Plan addressed development within the Urban Renewal District including the cannery property. In 2005 the purchase of the Cannery Property was added to the plan and Leland Consultants prepared the Sherwood Cannery Development Strategy. In 2007 the URA prepared a Request for Proposal (RFP) to select a development partner to develop the Cannery consistent with the Development Strategy. In 2008 Capstone partners was selected as the development partner and entered into a memorandum of understanding (MOU) with the Urban Renewal Agency. In late 2008 the Urban Renewal Agency and Capstone entered into three agreements to document to roles and responsibilities of the URA and Capstone. The three agreements were the Purchase and Sale Agreement, the Site Development Agreement and the Development Services Agreement. The Purchase and Sale agreement determined how the transfer of Property was to occur and the obligations and conditions for the Seller (URA) and Purchaser (Capstone).

In late 2009 the timelines for the project became more evident and market conditions had changed significantly so the URA and Capstone decided together to amended the agreement.

The amended agreement is in place today and the URA and Capstone have worked together in a good faith effort to further amend the agreement to account for timing, responsibilities and market conditions that exist today. In order to be easier to interpret in the future, the agreement proposed is amended and restated so that multiple agreements do not need to be reviewed. The original

agreement and the amendments will become null and void with the execution of this agreement.

Attached is a red-lined copy of the proposed changes to the original agreement as amended so that the changes are apparent. Please note that the legislation for this item will have a clean copy of the amended and restated agreement in its entirety.

Below are the major items that have changed and a brief explanation of the changes:

- The majority of changes in the document reflect that much of the work completed by the URA and Capstone. The URA has finished almost all of the obligations and the Infrastructure improvements and Capstone has finished the PUD, Subdivision and many of their obligations. With those items completed a number of items are easier to identify and have been updated throughout the agreement.
- Phases, Property and Land have all been redefined throughout the document. The recordation of the plat which was an obligation for the project was completed and allowed each of these items to be more concise and have been changed throughout the agreement.
- Infrastructure Improvements Completion Date has been defined as the date of the recordation of the Plat. December 16, 2011. There were a couple of different terms used to mean the same thing and they have been changed to be consistent throughout the agreements. There were also many items tied to this date and the dates have been changed since the date is now known.
- The First Takedown Date and Last Takedown Date have been calculated from the date of the recordation of the Plat and the names have been changed to take out the word Outside which was not necessary.
- The ability to purchase individual phases as they are ready to build on was defined throughout the agreement. Previously there were only two phases of purchase which meant significant portions of land would have been outside of the control of the URA while still vacant. Potentially for many years.
- Section C to the recitals was added to document the work done by the Seller (URA) so that it was clear in the document that those items have been completed.
- Delay events were expanded to include a recession as defined by two quarters of negative Gross Domestic Product (GDP) growth but a cap of 270 days was added for all Delay events.

- There were numerous changes in the document to allow Lot 1 to be a shared facility between the Community Center and the Private Development.
- The proposed schedule was largely completed and was modified to show the best estimate of the developer for when future phases may be purchased.
- The Statutory Disclaimer section was modified to be consistent with State Law.
- The three exhibits were combined into one and simplified by utilizing the Plat for the Property as recorded by Washington County.

Financials

The base sale price for all of the Lots remains the same with the exception of Lot's 9 and 10. The existing amended agreement does not require purchase of the property until years after the construction and occupancy of the building. The amended agreement will allow the URA will sell these properties years earlier than anticipated. Therefore, the price has been discounted to account for debt services that the URA will not need to occur for other projects since the URA will have the revenue from this sale available those projects. With the discount rate applied the square footage price changes from \$8.00 to \$7.11.

The Purchase and Sale agreement also clarifies the purchase of Lot 1 where Capstone may not purchase the entire lot. There will be a shared parking and access easement recorded over the property for the benefit of the Community Center and the privately developed building adjacent to the parking lot.

Recommendation

The City's attorneys have thoroughly reviewed and prepared the recommended amended and restated agreement. In addition Capstone and their attorney has thoroughly reviewed the amended and restated agreement.

Staff respectfully recommends approval of URA Resolution 2012-020 to amend and restate the Purchase and Sale Agreement.

AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

DATE: ~~July __, 2008~~ September __, 2012
(the "Effective Date")

BETWEEN: City of Sherwood Urban Renewal Agency _____
("Seller")
22560 SW Pine Street
Sherwood, OR 97140
ATTN: ~~Jim Patterson~~ Joe Gall
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.~~ A. Seller owns certain real property commonly known as the Old Cannery Site and consisting located in the City of Tax parcels R0555599, R0556017 and R0555615 in Sherwood, 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 portions of the Property from Seller ~~a portion of the Current Seller Property~~ depicted as Lot 1 (aka "West Phase ~~(Site A-1),~~"), Lot 4 (aka East Phase ~~(Site B-1),~~"), Lot 3 (aka "South Phase ~~(Site B-2),~~"), Lot 9 (aka "West Residential Phase ~~(Site C), and~~"), Lot 10 (aka "East Residential Phase ~~(Site D),~~"), and Lots 5 – 8 (aka "NE Phase") as shown on the attached Exhibit A-2 ~~(the "~~ (collectively "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.~~ is set forth on the Sherwood Cannery Square Plat No. 2011-089523, Washington County, Oregon plat records (per attached Exhibit A). As used in ~~this~~ the Agreement, "Property Land" 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~~ Land, any water or water rights benefiting such ~~land~~ Land and any stock evidencing any such rights, any easements benefiting such ~~land~~ Land and any strips and gores adjoining such ~~land~~ Land;
- (ii) ~~all~~ right, title and interest of Seller in permits or governmental approvals related to ~~the Property, Land~~ whether granted by governmental authorities or private persons (collectively, the "Rights"); and-

(iii) the tangible personal property located on ~~the Property~~ Land. "Tangible personal property ~~shall mean~~" means all tangible personal property located on or in ~~the real property~~ Land or structures ~~on the real property, and~~ thereon owned by ~~the Seller~~.

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

~~Agreement Terms and Conditions~~

C. Seller has:

(i) discharged all liens (including tax liens, liens for assessments and inchoate liens) encumbering Land or any part thereof;

(ii) cured all title objections Seller agrees to cure consistent with this Agreement including, but not limited to, vacation of the existing public right of way located between the West Phase (Lot 1) and the Machine Works to the west of SW Pine Street and to the east of SW Washington Street (on Lot 2);

(iii) provided Purchaser with all information and documents in Seller's possession pertaining to Land (including, without limitation, information pertaining to environmental matters, wetlands, soils, zoning, title and survey matters);

(iv) cooperated with Purchaser in facilitating all required land use approvals (excepting Final Development Approval for improvements on Lots 1 and 3 - 8) and other approvals necessary or advisable for the development of Land;

(v) funded construction of the public plaza and public streets and related infrastructure Seller constructed pursuant to the Development Services Agreement dated concurrently herewith between Seller and Purchaser (the "Development Services Agreement");

(vi) obtained 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 Land in a form and substance satisfactory to Purchaser; and

(vii) obtained a "service provider letter" from Clean Water Services in a form and content acceptable to Purchaser allowing for the proposed development of the Old Cannery Site.

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

Agreement Terms and Conditions

1. PURCHASE AND SALE

1.1. Seller and Purchaser entered into that certain Purchase and Sale Agreement dated September 3, 2008 as amended by that certain First Amendment to Purchase and Sale Agreement dated as of October, 2009 (the "Original Purchase and Sale Agreement") pursuant to which Seller agreed to sell to Purchaser and Purchaser agreed to buy from Seller Land. This Amended and Restated Purchase and Sale Agreement both amends and restates the Original Purchase and Sale Agreement in its entirety and the Original Purchase and Sale Agreement shall be null and void and of no further force and effect as of the date of the mutual execution of this Agreement.

~~1.1.~~1.2. Seller agrees to sell ~~the Property~~Land to Purchaser and Purchaser agrees to purchase ~~the Property~~Land from Seller, all on the terms and conditions set forth in this Purchase and Sale Agreement (the ~~"Agreement"~~).

~~1.2.~~1.3. It is contemplated ~~that the Property~~Land 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~~ Lots 9 and 10 (Phase I) will occur on or before December 16, 2013 (the "First Takedown Date") which 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 i.e., December 16, 2011) aka "Infrastructure Improvements have been completed."~~ Improvement Completion Date". The First Takedown ~~Outside~~ Date shall be extended for ~~"Delay Events"~~ subject to ~~Purchaser's~~Purchaser's written notice to Seller. In the event ~~the~~ Purchaser extends the First Takedown ~~Outside~~ Date beyond ~~two hundred seventy~~Two Hundred Seventy (270) days, Seller ~~retains~~has the right to terminate ~~the Purchase Agreement~~ this Agreement. After the Phase I Closing, other phases/sites may be purchased individually or in any combination and/or sequence. Purchaser agrees to diligently market and pursue financing for ~~the~~those 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 Purchaser's~~this Agreement at any time. The "Last Takedown Date" is the seventh (7th) anniversary of the Infrastructure Improvements Completion Date (i.e., December 16, 2018). Purchaser agrees that if Purchaser desires to purchase the remaining Phases, it shall purchase such remaining Phases between the First Takedown ~~Outside~~ Date (or earlier Phase I closing date, if any) 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.~~Date. The Last Takedown ~~Outside~~ Date shall be extended for ~~"Delay Events"~~ subject to ~~Purchaser's~~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.~~ two consecutive quarters of negative GDP growth. In the event Purchaser extends the Last Takedown Date beyond Two Hundred Seventy Days (270) days, Seller has the right to terminate this Agreement.

~~1.3.1.4.~~ 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.

~~SELLER DEVELOPMENT GOALS FOR THE PROPERTY.~~

2. Seller Development Goals for the Land. Seller desires in connection with Purchaser's ~~acquisition~~ acquisition and ~~development~~ Development of ~~the Property~~ Land that Purchaser use commercially reasonable efforts to develop the project ~~to be constructed on the Property~~ Land to be consistent with items 2.1 through 2.7 below. Purchaser shall be obligated to develop the ~~following~~ project to be constructed on Land consistent with item 2.8 below:

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~~ contributing to a "small town" feel with a unified architectural ~~character.~~ characteristics.

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.~~

2.5 It is contemplated that the West Phase (Site A-Lot 1) shall be developed as one (1) approximately ~~3,750~~ 4,000 square foot single story brick commercial building fronting on SW Pine Street; ~~provided however,~~ with an adjacent parking lot. Prior to Closing on Lot 1, the site will either be partitioned whereby Seller will retain a portion thereof or otherwise provide for shared use of the parking lot improvements to be constructed thereon by Seller and Purchaser ~~may change how Purchaser develops Site A-1 to allow for integrated and compatible master plan uses between the Property and.~~

~~2.6. 2.6 It is contemplated that the existing property located to the east of Site A-1 (the "Warehouse Property").~~

~~2.7. It is contemplated that Site B-1~~ East Phase (Lot 4) 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.~~ 2.7 It is contemplated ~~that Site C and Site D~~ the West and East Residential Phases (Lots 9 and 10 respectively) shall be developed as two approximately 50 unit three story apartment ~~buildings~~ with brick facades ~~on public streets~~—as may be approved by and through the City of Sherwood’s development process.

2.8 A development in compliance with the overlay district standards for the City of Sherwood's Old Town, the Sherwood Cannery PUD and the District’s Urban Renewal Plan as it exists as of the effective date of this Agreement.

~~3.~~ 3. PURCHASE PRICE AMOUNTS

~~3.1.~~ 3.1. The purchase price (the “Purchase Price”) for Site A-Lot 1 shall be an amount equal to the product of \$12.50 and multiplied by the square feetfoot amount of land in Site A-1.

~~The~~ Lot 1 purchased by Purchaser (refer to Section 2.6 above). It is understood that Seller intends to design and construct a parking lot on a portion of Lot 1 and that either Purchaser and Seller will negotiate an agreement to provide Seller with such rights with an appropriate reduction in the Purchase Price ~~for Site B-1 and Site B-2~~ (based on square footage) for Lot 1 or that a separate legal parcel will be created on a portion of Lot 1 for such parking lot with the total square footage thereof being determined by both parties at some future date (and Purchaser acquiring only the balance of Lot 1).

~~3.2.~~ 3.2. The Purchase Price for Lots 3 and 4 shall be an amount equal to the product of \$15.00 ~~and~~ multiplied by the square ~~feet~~foot amount of land in ~~Site B-1~~ Lots 3 and ~~Site B-2~~ 4.

~~3.3. 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.~~

3.3. The Purchase Price for Lots 9 and 10 shall be \$7.11 per square foot with 78,315 square feet and a total purchase price of Five Hundred Fifty-Six Thousand Eighty Hundred Twenty Dollars (\$556,820.00).

~~3.4.~~ 3.4. The Purchase Price for any Phase or lot within the NE Phase ~~shall be~~ (Lots 5 – 8) is \$16.00 per square foot of land ~~that comprises~~ comprising the Phase or lot ~~to be~~ acquired.

~~4.~~ 4. TIMING OF PAYMENT OF PURCHASE PRICE

4.1. The Purchase Price for ~~Site A~~ Lots 1, 3 and ~~Site B-1 and Site B-24~~ shall be paid in cash when Purchaser closes on purchase of any of said Lots which purchase(s) may occur simultaneously or in phases whereby each site may be purchased individually.

~~4.1.~~ 4.2. The Purchase Price for Lots 9 and 10 shall be paid in cash before or at 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 the earlier of (i) 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 of Lots 9 and paying rent, or (ii) the date that is the fifth anniversary of the date that both of the apartment buildings have been completed as determined by the receipt of all necessary final certificates of occupancy or similar permits related to the use and occupancy. ~~10.~~

~~4.3.~~ 4.3. The Purchase Price for the NE Phase (Lots 5 – 8) shall be paid in cash on the closing of the purchase by Purchaser of the ~~N-ENE~~ Phase or any portion thereof.

~~5.~~ 5. SELLER PRE-CLOSING OBLIGATIONS-

5.1. Prior to Closing (~~defined below~~), of any Phase Seller will:-

(i) discharge all liens (including tax liens, liens for assessments and inchoate liens) encumbering ~~the Property~~ that Phase or any ~~part of the Property~~; portion thereof;

(ii) cure all title objections ~~that~~ Seller agrees to cure ~~in accordance~~ consistent with this Agreement including, but not limited to, vacation of the existing public right of way located between the West Phase (~~Site A-Lot 1~~) and the Machine Works to the west of SW Pine Street and to the east of SW Washington Street; ~~– (on Lot 2);~~

(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~~ Purchaser's Title Policy; ~~;~~

(iv) within ten (10) days after the Effective Date, provide Purchaser with all information in ~~Seller's~~ Seller's possession pertaining to ~~the Property~~ Land (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, Land~~;

(vi) fund ~~the~~ construction of the public plaza and ~~all~~ public streets and related infrastructure ~~that~~ Seller is required to construct ~~pursuant to~~ under 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 (DEQ) with respect to Hazardous Materials ~~that~~ currently

and/or previously ~~were~~ present on ~~the Property~~ Land in a 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~~ Sherwood's land use regulations allowing Purchaser to transfer residential density from portions of ~~the Property~~ Land to ~~Sites C~~ Lots 9 and ~~D~~ 10 which text amendment shall be in a form and substance satisfactory to Purchaser~~;~~; and

~~5.1.~~ (ix) 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~~ on Land as described in Section 2 above.

5.2. Until either the Closing or termination of this Agreement by Purchaser or Seller, Seller will not, without ~~Purchaser's~~ 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~~ Land;

~~5.2.~~ (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~~ Land 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.~~ Land; or

~~PURCHASER'S~~

(iii) sell or otherwise transfer or dispose of all or any part of Land or enter into an agreement to sell or otherwise transfer or dispose of all or any part of Land.

~~6.~~ 6. PURCHASER'S DUE DILIGENCE CONDITIONS

~~6.1.~~ 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~~ Seller's possession or control pertaining to ~~the Property~~ Land including, without limitation, copies of all environmental reports and test results for ~~the Property~~ Land 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~~ Land and a topographical survey of ~~the Property~~ Land. Seller shall use commercially reasonable efforts to deliver to Purchaser a traffic study report for Old Town Sherwood as soon as reasonably possible. -

~~Purchaser's~~ 6.2. Purchaser's satisfaction with the condition of ~~the Property~~ Land and ~~Purchaser's~~ Purchaser's ability to develop ~~the Property~~ Land for ~~Purchaser's~~ Purchaser's intended purpose~~, as determined by Purchaser in Purchaser's sole discretion~~, and consistent with Section 2 above 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~~Purchaser's due diligence contingency has been satisfied (the ~~"Satisfaction Notice"~~). As used herein, the "Due Diligence Contingency Date" shall be ninety (90) days after the later to occur of:

(i) ~~Purchaser's~~Purchaser's receipt of the ~~"no further action letter"~~letter' from the Oregon Department of Environmental Quality; and-

~~6.2.~~ (ii) final binding approval in form acceptable to Purchaser of the preliminary PUD and Subdivision for ~~the~~proposed development of the Old Cannery Site.- If Seller does not timely receive the Satisfaction Notice or if Purchaser notifies Seller in writing that ~~Purchaser's~~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~~-Land.

~~6.3.~~ 6.3. During the term of this Agreement, Purchaser and its representatives shall, at reasonable times, be entitled to go upon ~~the Property~~Land for ~~the purpose of~~ making or conducting any inspection, investigation, test or survey reasonably related to the purchase of ~~the Property~~Land or to ~~Purchaser's~~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~~Land 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~~Purchaser's activities on ~~the Property~~Land 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~~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~~Land 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~~-Land.

~~6.4.~~ 6.4. For the purposes of this Agreement, ~~"Hazardous Materials"~~~~shall mean~~ means 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.~~ 6.5. As used in this Agreement, ~~“Title Company” shall mean~~ means 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, Land~~ 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~~ 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~~ Purchaser's failure to deliver a notice of Title Objections to Seller within such thirty (30) day period shall be deemed ~~Purchaser’s~~ Purchaser's acceptance of all title and survey matters. Seller shall have five (5) business days after receipt of ~~Purchaser’s~~ 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~~ 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~~ 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, Land~~ 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 7. PURCHASER'S AND SELLER'S CONTINGENCIES

~~7.1. Purchaser's obligations~~ 7.1 Purchaser's obligation to purchase Land under this Agreement ~~are~~ is contingent upon ~~the~~ satisfaction or waiver of ~~Purchaser's~~ Purchaser's due diligence and title contingencies set forth above within the time frames set forth above.

~~Purchaser's obligations~~

~~7.2. 7.2~~ 7.2 Purchaser's obligation to purchase Land under this Agreement ~~are~~ is contingent upon ~~the~~ mutual execution of this Agreement and approval of this Agreement by ~~Seller's board~~ Seller's Board.

~~Purchaser's obligations~~

~~7.3. 7.3~~ 7.3 Purchaser's obligation to purchase Land under this Agreement ~~are~~ is contingent upon all representations of Seller contained in this Agreement ~~are~~ being accurate and complete in all material respects at the time of a Closing as if made again at that time.

~~Purchaser's obligations~~

~~7.4. 7.4~~ 7.4 Purchaser's obligation to purchase Land under this Agreement ~~are~~ is contingent upon ~~Seller's~~ Seller's performance of all of ~~the~~ Seller's obligations ~~to be performed by Seller~~ under this Agreement at or before Closing.

~~Purchaser's obligations~~

~~7.5. 7.5~~ 7.5 Purchaser's obligation to purchase Land under this Agreement ~~are~~ is contingent upon the Title Company being prepared to issue the ~~Purchaser's~~ Purchaser's ALTA extended coverage Title Policy conforming to the requirements of this Agreement.

~~Purchaser's obligations~~

~~7.6. 7.6~~ 7.6 Purchaser's obligation to purchase Land under this Agreement ~~are~~ is contingent upon Purchaser obtaining final, binding approvals that are not subject to appeal for all governmental approvals required by Purchaser for ~~Purchaser's~~ Purchaser's proposed development of ~~the Property,~~ Land including, without limitation, all PUD, subdivision, public improvement, land use, building permit and other similar approvals.

~~Purchaser's obligations~~

~~7.7. 7.7~~ 7.7 Purchaser's obligation to purchase Land under this Agreement ~~are~~ is contingent upon ~~the~~ creation of separate legal lots for all portions of ~~the Property~~ Land to be purchased by Purchaser and which are to be retained by Seller: ~~until closing of same by Purchaser.~~

~~Purchaser's obligations~~

~~7.8. 7.8~~ 7.8 Purchaser's obligation to purchase Land under this Agreement ~~are~~ is contingent upon ~~the~~ receipt of a ~~binding~~ commitment from Seller to pay ~~for~~ the cost of development and construction of the public plaza and ~~adjacent~~ public rights of way- ~~and~~ /infrastructure ~~contiguous with the Property~~ located therein 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 upon such terms and from such lender as is reasonably acceptable to Purchaser.~~

~~Purchaser's obligations under this Agreement are~~

~~7.10. 7.9~~ 7.9 Purchaser's obligation to purchase Land under this Agreement is contingent upon obtaining pre-lease or pre-sale commitments for a minimum of 40% of the proposed retail, office and/or commercial buildings, if applicable, contemplated to

be developed on ~~the portion of the Property to be~~ Land acquired, or as may be required by ~~the~~ Purchaser's construction lender.

~~Purchaser's obligations~~

~~7.11.~~ 7.10 Purchaser's obligation to purchase Land under this Agreement ~~are~~ is 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~~ Land.

~~Purchaser's obligations~~

~~7.12.~~ 7.11 Purchaser's obligation to purchase Land under this Agreement ~~are~~ is 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.~~ that activity related to construction on any portion of Land purchased by Purchaser after said purchase will not then be subject to prevailing wage requirements under ORS 279C.800 to 279C.870.

~~Purchaser's obligations~~

~~7.13.~~ 7.12 Purchaser's obligation to purchase Land under this Agreement are contingent upon Seller not being in default of the Development Services Agreement.

7.13 Purchaser's obligation to Close on the purchase of Lot 1 is contingent on recordation of a mutually acceptable reciprocal access and parking easement in favor of City between Purchaser and Seller for the parking lot to be located on Lot 1.

~~7.14.~~ 7.14 Seller's ~~obligations~~ obligation to sell Land under this Agreement ~~are~~ is contingent upon Purchaser providing evidence, reasonably acceptable to Seller that Purchaser or the intended occupant of a specific Phase or Phases to be acquired has ~~obtained~~ the funds (either through equity or a loan ~~commitment for~~ or a combination of both) to complete construction of the development on ~~the~~ such specific Phase or Phases to be acquired, ~~which commitment shall include~~ including, in the event of a ~~typical~~ loan, a completion guarantee in favor of ~~the construction~~ any involved lender. In addition, in the event the intended occupant of a specific Phase or Phases wishes to have a ground lease with Purchaser, Seller's Obligation to sell Land under this Agreement will be contingent upon Purchaser providing evidence reasonably acceptable to Seller of said ground lease for the development.

~~PURCHASER'S~~

~~8.~~ 8. PURCHASER'S RESPONSIBILITIES

~~8.1.~~ 8.1 Purchaser shall submit a ~~preliminary proforma~~ pro-forma to Seller for its review (demonstrating ~~the~~ financial feasibility of the proposed development of ~~the Property to Seller for Seller's review~~ no any Phase of Land) not later than sixty (60) days following Purchaser's notice to Seller of its intent to purchase ~~a Phase or Phases of the Property~~ said Phase of Land. Purchaser agrees to provide a preliminary pro-forma with respect to each of the Phases of Land (other than Phase I) within 180 days after the Effective Date.

~~8.2.~~ 8.2 Purchaser shall provide Seller with quarterly updates on ~~Purchaser's~~ Purchaser's efforts with respect to ~~the~~ development of ~~the Property~~ Land. 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.~~ 8.3 Purchaser shall develop a proposed schedule of performance ~~with respect as~~ generally set out in the following Table relative to ~~the proposed~~ Purchaser's development of ~~the Property for review by Seller. Currently, it is contemplated that such~~ Land which schedule ~~of performance will~~ shall be ~~as follows, subject~~ reviewed by Seller and drafted to ~~force majeure delays:~~ allow Purchaser temporal flexibility in said Land development.

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)
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 December 16, 2013	Projected First Takedown Outside-Date (two 2 years following completion of public infrastructure)).

Initial Phase	
Subsequent Phase	
Fall 2017 December 16, 2018	Projected Last Takedown Outside Date (seven 7 years following completion of public infrastructure).

- ~~8.4.~~ 8.4 Purchaser shall develop a preliminary master plan for ~~the Property~~ Land.
- ~~8.5.~~ 8.5 Purchaser shall use commercially reasonable efforts to obtain a planned unit development (PUD) zoning designation for ~~the Property~~ Land.
- ~~8.6.~~ 8.6 Purchaser shall use commercially reasonable efforts to obtain all legal lot subdivisions to effectuate the transactions contemplated by this Agreement.
- ~~8.7.~~ 8.7 Purchaser shall provide Seller with schematic and design documents promptly following preparation by ~~Purchaser's~~ Purchaser's architect.
- ~~8.8.~~ 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~~ Land.
- ~~8.9.~~ 8.9 Purchaser shall develop a marketing program for the sale or lease of the buildings to be developed on ~~the Property~~ Land.
- ~~8.10.~~ 8.10 Purchaser shall participate in ~~Seller's~~ Seller's community outreach/public input process pertaining to the proposed development of ~~the Property~~ Land.
- ~~8.11.~~ 8.11 Purchaser agrees to ~~construct Project Improvements as defined and set forth~~ meet the remaining obligations for Purchaser in the Development Services Agreement and Site Development Agreement both being between ~~the Seller and Purchaser which is attached and incorporated herein.~~
- ~~8.12.~~ Purchaser agrees to assist Seller with Infrastructure Improvements as defined and set forth in the Development Agreement which is attached and incorporated herein.

~~9.~~ 9. CLOSING

The

- ~~9.1.~~ 9.1 Closing(s) of the purchase and sale of ~~the Property shall~~ Land may occur in multiple phases to allow for the purchase of any individual Phase or lot or combination of Phases, lots or ~~lots~~ portions thereof. 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.~~ 9.2 The Closing for ~~the first~~ Phase ~~purchased~~ I 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~~ dates selected by Purchaser on a date that is after the earlier of the First Takedown ~~Outside-Date~~ or Phase I closing date but before the Last Takedown ~~Outside-Date~~.-

~~9.3.~~ 9.3 On or before ~~the~~ applicable Closing Date~~,~~(s), Seller shall deposit into Escrow funds to pay ~~Seller's~~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~~Land as contemplated by this Agreement and to issue the ~~Purchaser's~~Purchaser's Title Policy with respect to the portion of ~~the Property~~Land purchased on such Closing Date.

~~9.4.~~ 9.4 On or before ~~the~~ applicable Closing Date~~,~~(s), Purchaser shall deposit into Escrow such funds (by certified check or wire transfer) ~~as are necessary~~needed to complete payment of the Purchase Price ~~that is payable~~ on such Closing Date(s) under the terms and provisions of this Agreement~~,~~ and ~~to pay~~Purchaser's 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~~Land as contemplated by this Agreement.

~~9.5.~~ 9.5 On ~~the any~~ applicable 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~~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.~~ 9.6 On ~~the any~~ applicable Closing Date, ~~the~~Title Company shall issue to Purchaser an extended ALTA ~~owner's~~owner's policy of title insurance (the "~~Purchaser's~~"Purchaser's Title Policy"), insuring Purchaser as the owner of the portion of ~~the Property~~Land acquired on such Closing Date subject only to non-delinquent real property taxes and assessments and the Permitted Exceptions. -The ~~Purchaser's~~Purchaser's Title Policy shall have a liability limit equal to the Purchase Price for the portion of ~~the Property~~Land acquired on such Closing Date. -Seller shall pay the premium for extended ALTA coverage and endorsements.-

~~9.7.~~ 9.7 On any applicable Closing Date, Purchaser shall pay one-half of ~~the~~Title Company'sCompany's escrow fee and all recording fees~~,~~ and Seller shall pay one-half of the Title Company'sCompany's escrow fee and ~~all any~~ transfer or similar ~~taxes~~.tax.

~~The~~

~~9.8.~~ 9.8 Title Company shall prorate, as of the applicable 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~~Land conveyed on the Closing Date is owned by the respective parties during such year. -If such portion of ~~the Property~~Land is subject to taxation for a prior tax year as a result of the transfer of such portion of ~~the Property~~Land from a public Seller to a taxable purchaser, Purchaser shall pay the taxes for such earlier tax years. -

~~9.9.~~ 9.9 Seller will deliver possession of the applicable portion of ~~the Property~~Land to Purchaser at ~~the applicable~~ Closing, free of all rights of possession of Seller or any third parties.

~~40.~~ 10. WARRANTIES

~~40.1.~~ 10.1 Seller hereby represents and warrants to Purchaser as follows:

~~41.~~ 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. ~~–~~

~~42.~~ 10.1.B This Agreement has been duly executed and delivered by Seller and constitutes a valid, binding and enforceable obligation of Seller.

~~43.~~ 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.

~~44.~~ 10.1.D There is no litigation, claim or arbitration pending or, to ~~Seller’s~~Seller's knowledge, threatened with respect to ~~the Property~~Land. There is no condemnation, environmental, zoning or other proceeding, either instituted or to ~~Seller’s~~Seller's knowledge, planned to be instituted, which could detrimentally affect the use, development or operation of ~~the Property~~Land or the value of ~~the Property~~Land nor has Seller received notice of any special assessment proceeding affecting ~~the Property~~Land.

~~45.~~ 10.1.E Except as disclosed to the Purchaser in writing, Seller has received no notice from any governmental entity that ~~the Property~~Land is in violation of any laws, ordinances, rules or regulations applicable to ~~the Property~~Land, including, without limitation, any such laws, ordinances, rules or regulations pertaining to Hazardous Materials. Neither Seller, nor, ~~(to Seller’s~~Seller's actual knowledge,) ~~has~~ any third party ~~has~~ used, generated, manufactured, produced, stored or disposed of on, under, or about ~~the Property~~Land or transported to or from ~~the Property~~Land any Hazardous Materials.

~~46.~~ 10.1.F Seller owns ~~the Property~~Land 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~~Land which would cause a construction or other lien to be filed against ~~the Property~~. ~~it~~. 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~~Land 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~~Land or become an obligation of the owner of ~~the Property~~Land. 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~~Land or become an obligation of the owner of ~~the Property~~Land.

~~17.~~ 10.1.G Seller knows of no defect in the physical condition of ~~the Property~~Land except for (i) the impact of wetlands buffer zones as identified by the 2009 wetlands delineation and (ii) environmental soil contamination for which the Seller ~~is in the process of cleaning up and is responsible for obtaining~~obtained a “no further action ~~letter~~”letter’ from the Oregon Department of Environmental Quality.

~~18.~~ 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~~Land after the closing of the sale of ~~the Property~~Land as contemplated by Purchaser.

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.

~~19.~~ 10.2.C Purchaser represents and warrants that Purchaser and each person or entity owning an interest in ~~Seller~~Purchaser is:

~~20.~~

(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

~~(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.~~

~~20.1. Purchaser hereby represents and warrants to Seller as follows:~~

~~20.1.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.~~

~~20.1.B. This Agreement has been duly executed and delivered by Purchaser and constitutes a valid, binding and enforceable obligation of Purchaser.~~

~~21. 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.

~~21.1.~~ 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~~ Purchaser's use of ~~the Property Land~~, 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~~ City's regulatory land use and building permit processes; (ii) the suitability of ~~the Property Land~~ for ~~Purchaser's~~ Purchaser's intended use; (iii) the physical condition of ~~the Property Land~~; (iv) the compliance of ~~the Property Land~~ 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 Land~~; or (vi) the presence of any material in, under, or on ~~the Property Land~~ which is regulated by any ordinance, regulation or law.

~~21.2.~~ 10.4 Purchaser will accept ~~the Property Land~~ 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~~ Purchaser acknowledges that Purchaser will ascertain for itself the value and condition of ~~the Property Land~~ 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 Land~~, except as set forth in this Agreement. ~~As part of Purchaser's~~ Purchaser's agreement to purchase ~~the Property Land~~ "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 Land~~, except for ~~Seller's~~ 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.~~

~~22.~~ 11. BROKERAGE COMMISSIONS

~~22.1.~~ 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~~ Seller's actions in connection with this Agreement.

~~22.2.~~ 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~~ Purchaser's actions in connection with this Agreement.

~~22.3.~~ 11.3 These indemnities shall survive the Closing or the termination of this Agreement.

~~23.~~ 12. BREACH

~~23.1.~~ 12.1 If a party (a " ~~Breaching Party~~") is in breach of such ~~party's~~ 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. -

~~23.2.~~ 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~~ 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~~ Purchaser's default, Seller shall be entitled to receive ~~Seller's~~ Seller's out of pocket third party costs incurred in connection with the transaction contemplated by this Agreement up to an amount equal to Fifty Thousand Dollars (\$50,000.00).

~~24.~~ 13. CONDEMNATION

If after the Effective Date, and prior to Closing, ~~the Property~~ Land 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).

~~25.~~ 14. DAMAGE OR DESTRUCTION

~~25.1.~~ All risk of damage or destruction of ~~the Property~~ Land after the Effective Date and prior to any applicable Closing shall remain with the Seller. -If ~~the Property~~ Land 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~~ 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~~ Land to ~~the~~ Purchaser for ~~Purchaser's~~ Purchaser's

use in making repairs, but ~~Seller's~~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~~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~~neither party shall have ~~no~~any further claim or remedy against the other ~~party~~as a result of the termination.

~~26.~~ 15. GENERAL PROVISIONS

~~26.1.~~ 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~~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. -

~~26.2.~~ 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.

~~26.3.~~ 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.

~~26.4.~~ 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.~~

~~26.5.~~ — 15.4 Governing Law

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

~~26.6.~~ — 15.5 Time of the Essence

- . Time is of the essence in this Agreement.

~~26.7.~~ — 15.6 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.

~~26.8.~~ — 15.7 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.

~~26.9.~~ — 15.8 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.

~~26.10.~~ — 15.9. 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, UNDER ORS 195,300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424 OREGON LAWS 2007 AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF~~

THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 1195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007 AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

~~26.11.~~ 15.10. 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.

~~26.12.~~ 15.11. Public Communications

- Whenever commercially practicable, all public communications concerning ~~the~~ **PropertyLand** (such as press releases or information provided to the media and all substantive discussions with public agencies having jurisdiction over ~~the~~ **PropertyLand**) 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.

~~26.13.~~ 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 Agency

By: _____

Jim Patterson

By: _____

Joe Gall , District Manager-

PURCHASER:

Capstone Partners LLC, an Oregon limited liability company

By: _____

Chris Nelson, Member

By: Triangle Development Company, an Oregon corporation, Member

By: _____

Jeffrey M. Sackett, President

EXHIBIT A

LEGAL

PROPERTY DESCRIPTION

FINAL DRAFT



URA RESOLUTION 2012-020

A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD, DIRECTING THE AGENCY MANAGER TO SIGN THE AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT FOR THE CANNERY DEVELOPMENT

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") as amended which Plan was originally 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 approximately 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. The legal description of land is set forth on the Sherwood Cannery Square Plat No. 2011-089523, Washington County, Oregon plat records; 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 Agency approved a Purchase and Sale Agreement with Capstone Partners, LLC to purchase and develop the property on August 19, 2008; and

WHEREAS, the Agency approved the First Amendment to the Purchase and Sale Agreement with Capstone Partners, LLC to purchase and develop the property on November 3, 2009; and

WHEREAS, changes in timing, responsibilities and market conditions have warranted changes to that agreement; and

WHEREAS, the attached Amended and Restated Purchase and Sale Agreement (Attachment 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 Amended and Restated Purchase and Sale Agreement with Capstone Partners, LLC., attached as Exhibit A.

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

Duly passed by the Sherwood Urban Renewal Agency Board this 18th day of September, 2012.

Keith S. Mays, Chair

Attest:

Sylvia Murphy, CMC, Agency Recorder

AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

DATE: September ____, 2012 (the "Effective Date")

BETWEEN: City of Sherwood Urban Renewal Agency ("Seller")
22560 SW Pine Street
Sherwood, OR 97140
ATTN: Joe Gall
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 known as the Old Cannery Site located in the City of Sherwood, Washington County, Oregon (the "Property"). Purchaser desires to purchase portions of the Property from Seller depicted as Lot 1 (aka "West Phase"), Lot 4(aka East Phase"), Lot 3 (aka "South Phase"), Lot 9 (aka "West Residential Phase"), Lot 10 (aka "East Residential Phase"), and Lots 5 - 8 (aka "NE Phase") as shown on the attached Exhibit A (collectively "Land"). The legal description of Land is set forth on the Sherwood Cannery Square Plat No. 2011-089523, Washington County, Oregon plat records (per attached Exhibit A). As used in the Agreement, "Land" includes:

(i) Land and improvements and all related rights and appurtenances, including all right, title and interest of Seller in and to the following: 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 Land whether granted by governmental authorities or private persons (collectively, the "Rights"); and

(iii) the tangible personal property located on Land. "Tangible personal property" means all tangible personal property located on or in Land or structures thereon owned by Seller.

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

C. Seller has:

(i) discharged all liens (including tax liens, liens for assessments and inchoate liens) encumbering Land or any part thereof;

(ii) cured all title objections Seller agrees to cure consistent with this Agreement including, but not limited to, vacation of the existing public right of way located between the West Phase (Lot 1) and the Machine Works to the west of SW Pine Street and to the east of SW Washington Street (on Lot 2);

(iii) provided Purchaser with all information and documents in Seller's possession pertaining to Land (including, without limitation, information pertaining to environmental matters, wetlands, soils, zoning, title and survey matters);

(iv) cooperated with Purchaser in facilitating all required land use approvals (excepting Final Development Approval for improvements on Lots 1 and 3 - 8) and other approvals necessary or advisable for the development of Land;

(v) funded construction of the public plaza and public streets and related infrastructure Seller constructed pursuant to the Development Services Agreement dated concurrently herewith between Seller and Purchaser (the "Development Services Agreement");

(vi) obtained 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 Land in a form and substance satisfactory to Purchaser; and

(vii) obtained a "service provider letter" from Clean Water Services in a form and content acceptable to Purchaser allowing for the proposed development of the Old Cannery Site.

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

Agreement Terms and Conditions

1. PURCHASE AND SALE

- 1.1. Seller and Purchaser entered into that certain Purchase and Sale Agreement dated September 3, 2008 as amended by that certain First Amendment to Purchase and Sale Agreement dated as of October, 2009 (the "Original Purchase and Sale Agreement") pursuant to which Seller agreed to sell to Purchaser and Purchaser agreed to buy from Seller Land. This Amended and Restated Purchase and Sale Agreement both amends and restates the Original Purchase and Sale Agreement in its entirety and the Original Purchase and Sale Agreement shall be null and void and of no further force and effect as of the date of the mutual execution of this Agreement.

- 1.2. Seller agrees to sell Land to Purchaser and Purchaser agrees to purchase Land from Seller all on the terms and conditions set forth in this Purchase and Sale Agreement (the "Agreement").
 - 1.3. It is contemplated Land will be purchased in multiple phases or "takedowns". Each Phase is depicted on the attached Amended Exhibit A. It is contemplated that purchase of Lots 9 and 10 (Phase I) will occur on or before December 16, 2013 (the "First Takedown Date") which date is the second anniversary of completion of the Old Cannery Site Infrastructure Improvements (i.e., December 16, 2011) aka "Infrastructure Improvement Completion Date". The First Takedown Date shall be extended for "Delay Events" subject to Purchaser's written notice to Seller. In the event Purchaser extends the First Takedown Date beyond Two Hundred Seventy (270) days, Seller has the right to terminate this Agreement. After the Phase I Closing, other phases/sites may be purchased individually or in any combination and/or sequence. Purchaser agrees to diligently market and pursue financing for those remaining Phases. If Seller reasonably determines Purchaser is not diligently marketing and/or pursuing financing for the remaining Phases, Seller may exercise the right to terminate this Agreement at any time. The "Last Takedown Date" is the seventh (7th) anniversary of the Infrastructure Improvements Completion Date (i.e., December 16, 2018). Purchaser agrees that if Purchaser desires to purchase the remaining Phases, it shall purchase such remaining Phases between the First Takedown Date (or earlier Phase I closing date, if any) and the Last Takedown Date. The Last Takedown 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 two consecutive quarters of negative GDP growth. In the event Purchaser extends the Last Takedown Date beyond Two Hundred Seventy Days (270) days, Seller has the right to terminate this Agreement.
 - 1.4. 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 Land. Seller desires in connection with Purchaser's acquisition and Development of Land that Purchaser use commercially reasonable efforts to develop the project constructed on the Land to be consistent with items 2.1 through 2.7 below. Purchaser shall be obligated to develop the project to be constructed on Land consistent with item 2.8 below:
- 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 contributing to a "small town" feel with unified architectural characteristics.

- 2.4. A development complementary to the investment the City of Sherwood has made in new streets, sidewalks and street improvements north of the railroad tracks.
- 2.5. It is contemplated that the West Phase (Lot 1) shall be developed as one (1) approximately 4,000 square foot single story brick commercial building fronting on SW Pine Street with an adjacent parking lot. Prior to Closing on Lot 1, the site will either be partitioned whereby Seller will retain a portion thereof or otherwise provide for shared use of the parking lot improvements to be constructed thereon by Seller and Purchaser.
- 2.6. It is contemplated that the East Phase (Lot 4) shall be developed as one approximately two-story 14,000 square foot brick mixed use commercial building located adjacent to the public plaza.
- 2.7. It is contemplated the West and East Residential Phases (Lots 9 and 10 respectively) shall be developed as two approximately 50 unit three story apartment with brick facades as may be approved by and through the City of Sherwood's development process.
- 2.8. A development in compliance with the overlay district standards for the City of Sherwood's Old Town, the Sherwood Cannery PUD and the District's Urban Renewal Plan as it exists as of the effective date of this Agreement.

3. PURCHASE PRICE AMOUNTS

- 3.1. The purchase price (the "Purchase Price") for Lot 1 shall be an amount equal to the product of \$12.50 multiplied by the square foot amount of land in Lot 1 purchased by Purchaser (refer to Section 2.6 above). It is understood that Seller intends to design and construct a parking lot on a portion of Lot 1 and that either Purchaser and Seller will negotiate an agreement to provide Seller with such rights with an appropriate reduction in the Purchase Price (based on square footage) for Lot 1 or that a separate legal parcel will be created on a portion of Lot 1 for such parking lot with the total square footage thereof being determined by both parties at some future date (and Purchaser acquiring only the balance of Lot 1).
- 3.2. The Purchase Price for Lots 3 and 4 shall be an amount equal to the product of \$15.00 multiplied by the square foot amount of land in Lots 3 and 4.
- 3.3. The Purchase Price for Lots 9 and 10 shall be \$7.11 per square foot with 78,315 square feet and a total purchase price of Five Hundred Fifty-Six Thousand Eighty Hundred Twenty Dollars (\$556,820.00).
- 3.4. The Purchase Price for any Phase or lot within the NE Phase (Lots 5 - 8) is \$16.00 per square foot of land comprising the Phase or lot acquired.

4. TIMING OF PAYMENT OF PURCHASE PRICE

- 4.1. The Purchase Price for Lots 1, 3 and 4 shall be paid in cash when Purchaser closes on purchase of any of said Lots which purchase(s) may occur simultaneously or in phases whereby each site may be purchased individually.
- 4.2. The Purchase Price for Lots 9 and 10 shall be paid in cash before or at the closing of the purchase of Lots 9 and 10.
- 4.3. The Purchase Price for the NE Phase (Lots 5 – 8) shall be paid in cash on the closing of the purchase by Purchaser of the NE Phase or any portion thereof.

5. SELLER PRE-CLOSING OBLIGATIONS

5.1. Prior to Closing of any Phase Seller will:

- (i) discharge all liens (including tax liens, liens for assessments and inchoate liens) encumbering that Phase or any portion thereof;
- (ii) cure all title objections Seller agrees to cure consistent with this Agreement including, but not limited to vacation of the existing public right of way located between the West Phase (Lot 1) and the Machine Works to the west of SW Pine Street and to the east of SW Washington Street (on Lot 2);
- (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 Land (including, without limitation, information pertaining to environmental matters, wetlands, soils, zoning, title and survey matters);
- (v) cooperate with Purchaser in facilitating required zoning approvals, design review approvals and other approvals for development of Land;
- (vi) fund construction of the public plaza and public streets and related infrastructure Seller is required to construct under 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 (DEQ) with respect to Hazardous Materials currently and/or previously present on Land in a form and substance satisfactory to Purchaser; and
- (viii) initiate and obtain approval of a text amendment to the City of Sherwood's land use regulations allowing Purchaser to transfer residential density from portions of Land to Lots 9 and 10 which text amendment shall be in a form and substance satisfactory to Purchaser; and
- (ix) obtain a "service provider letter" from Clean Water Services in form and content acceptable to Purchaser allowing for proposed development on Land as described in Section 2 above.

5.2. Until either 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 Land;

(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 Land 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 Land; or

(iii) sell or otherwise transfer or dispose of all or any part of Land or enter into an agreement to sell or otherwise transfer or dispose of all or any part of Land.

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 Land including, without limitation, copies of all environmental reports and test results for Land 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 Land and a topographical survey of Land. 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 Land and Purchaser's ability to develop Land for Purchaser's intended purpose and consistent with Section 2 above 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 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 proposed development of the Old Cannery Site. 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 Land.

6.3. During the term of this Agreement, Purchaser and its representatives shall, at reasonable times, be entitled to go upon Land for making or conducting any inspection, investigation, test or survey reasonably related to the purchase of Land 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 Land 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 Land 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 Land 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 Land.

- 6.4. For the purposes of this Agreement, "Hazardous Materials" means any substance, chemical, waste or other material 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" means 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 Land 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 Land 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 AND SELLER'S CONTINGENCIES

- 7.1 Purchaser's obligation to purchase Land under this Agreement is contingent upon 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 obligation to purchase Land under this Agreement is contingent upon mutual execution of this Agreement and approval of this Agreement by Seller's Board.
- 7.3 Purchaser's obligation to purchase Land under this Agreement is contingent upon all representations of Seller contained in this Agreement being accurate and complete in all material respects at the time of a Closing as if made again at that time.
- 7.4 Purchaser's obligation to purchase Land under this Agreement is contingent upon Seller's performance of all of Seller's obligations under this Agreement at or before Closing.
- 7.5 Purchaser's obligation to purchase Land under this Agreement is 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 obligation to purchase Land under this Agreement is 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 Land including without limitation, all PUD, subdivision, public improvement, land use, building permit and other similar approvals.

- 7.7 Purchaser's obligation to purchase Land under this Agreement is contingent upon creation of separate legal lots for all portions of Land to be purchased by Purchaser and which are to be retained by Seller until closing of same by Purchaser.
- 7.8 Purchaser's obligation to purchase Land under this Agreement is contingent upon receipt of a commitment from Seller to pay the cost of development and construction of the public plaza and adjacent public rights of way/infrastructure located therein pursuant to the terms the Development Agreement as well as for the dedication of land areas needed for such public rights of way.
- 7.9 Purchaser's obligation to purchase Land under this Agreement is contingent upon obtaining pre-lease or pre-sale commitments for a minimum of 40% of the proposed retail, office and/or commercial buildings, if applicable, contemplated to be developed on Land acquired or as may be required by Purchaser's construction lender.
- 7.10 Purchaser's obligation to purchase Land under this Agreement is contingent upon 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 Land.
- 7.11 Purchaser's obligation to purchase Land under this Agreement is contingent upon receipt of a confirmation from the State of Oregon Bureau of Labor and Industries that under the State of Oregon prevailing wage laws that activity related to construction on any portion of Land purchased by Purchaser after said purchase will not then be subject to prevailing wage requirements under ORS 279C.800 to 279C.870.
- 7.12 Purchaser's obligation to purchase Land under this Agreement are contingent upon Seller not being in default of the Development Services Agreement.
- 7.13 Purchaser's obligation to Close on the purchase of Lot 1 is contingent on recordation of a mutually acceptable reciprocal access and parking easement in favor of City between Purchaser and Seller for the parking lot to be located on Lot 1.
- 7.14 Seller's obligation to sell Land under this Agreement is contingent upon Purchaser providing evidence reasonably acceptable to Seller that Purchaser or the intended occupant of a specific Phase or Phases to be acquired has the funds (either through equity or a loan or a combination of both) to complete construction of the development on such specific Phase or Phases to be acquired including, in the event of a loan, a completion guarantee in favor of any involved lender. In addition, in the event the intended occupant of a specific Phase or Phases wishes to have a ground lease with Purchaser, Seller's Obligation to sell Land under this Agreement will be contingent upon Purchaser providing evidence reasonably acceptable to Seller of said ground lease for the development.

8. PURCHASER'S RESPONSIBILITIES

- 8.1 Purchaser shall submit a pro-forma to Seller for its review (demonstrating financial feasibility of the proposed development of any Phase of Land) not later than sixty (60) days following Purchaser's notice to Seller of its intent to purchase said Phase of

Land. Purchaser agrees to provide a preliminary pro-forma with respect to each of the Phases of Land (other than Phase I) within 180 days after the Effective Date.

- 8.2 Purchaser shall provide Seller with quarterly updates on Purchaser's efforts with respect to development of Land. 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 as generally set out in the following Table relative to Purchaser's development of Land which schedule shall be reviewed by Seller and drafted to allow Purchaser temporal flexibility in said Land development.

Date	Milestone
December 16, 2013	First Takedown Date (2 years following completion of public infrastructure).
Initial Phase	
Subsequent Phase	
December 16, 2018	Last Takedown Date (7 years following completion of public infrastructure).

- 8.4 Purchaser shall develop a preliminary master plan for Land.
- 8.5 Purchaser shall use commercially reasonable efforts to obtain a planned unit development (PUD) zoning designation for Land.
- 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 Land.
- 8.9 Purchaser shall develop a marketing program for the sale or lease of the buildings to be developed on Land.
- 8.10 Purchaser shall participate in Seller's community outreach/public input process pertaining to the proposed development of Land.
- 8.11 Purchaser agrees to meet the remaining obligations for Purchaser in the Development Services Agreement and Site Development Agreement both being between Seller and Purchaser.

9. CLOSING

- 9.1 Closing(s) of the purchase and sale of Land may occur in multiple phases to allow for the purchase of any individual Phase or lot or combination of Phases, lots or portions thereof. Each closing will occur in an escrow administered by the Title Company ("Escrow"). The parties agree to provide Title Company with escrow instructions consistent with the terms of this Agreement.
- 9.2 The Closing for Phase I shall occur on a date selected by Purchaser on or before the First Takedown Date. The Closing for the last Phase to be purchased shall occur on a date selected by Purchaser on or before the Last Takedown Date. All Closings related to other Phases shall occur on dates selected by Purchaser on a date that is after the earlier of the First Takedown Date or Phase I closing date but before the Last Takedown Date.
- 9.3 On or before applicable Closing Date(s), 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 Land as contemplated by this Agreement and to issue the Purchaser's Title Policy with respect to the portion of Land purchased on such Closing Date.
- 9.4 On or before applicable Closing Date(s), Purchaser shall deposit into Escrow such funds (by certified check or wire transfer) needed to complete payment of the Purchase Price payable on such Closing Date(s) under the terms and provisions of this Agreement and 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 Land as contemplated by this Agreement.
- 9.5 On any applicable 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, Title Company shall deliver to 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 any applicable Closing Date, 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 Land 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 Land acquired on such Closing Date. Seller shall pay the premium for extended ALTA coverage and endorsements.
- 9.7 On any applicable Closing Date, Purchaser shall pay one-half of Title Company's escrow fee and all recording fees and Seller shall pay one-half of the Title Company's escrow fee and any transfer or similar tax.
- 9.8 Title Company shall prorate, as of the applicable 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 Land conveyed on the Closing Date is

owned by the respective parties during such year. If such portion of Land is subject to taxation for a prior tax year as a result of the transfer of such portion of Land 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 Land to Purchaser at the applicable 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 Land. 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 Land or the value of Land nor has Seller received notice of any special assessment proceeding affecting Land.
- 10.1.E Except as disclosed to the Purchaser in writing, Seller has received no notice from any governmental entity that Land is in violation of any laws, ordinances, rules or regulations applicable to Land, including, without limitation, any such laws, ordinances, rules or regulations pertaining to Hazardous Materials. Neither Seller nor (to Seller's actual knowledge) has any third party used, generated, manufactured, produced, stored or disposed of on, under, or about Land or transported to or from Land any Hazardous Materials.
- 10.1.F Seller owns Land 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 Land which would cause a construction or other lien to be filed against it. 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 Land 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 Land or become an obligation of

the owner of Land. 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 Land or become an obligation of the owner of Land.

10.1.G Seller knows of no defect in the physical condition of Land except for (i) the impact of wetlands buffer zones as identified by the 2009 wetlands delineation and (ii) environmental soil contamination for which the Seller obtained a 'no further action letter' from the Oregon Department of Environmental Quality.

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 Land after the closing of the sale of Land as contemplated by Purchaser.

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 agent or representative of Seller concerning: (i) availability of any governmental permits or approvals obtained or to be obtained in connection with Purchaser's use of Land, 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 Land for Purchaser's intended use; (iii) the physical condition of Land; (iv) the compliance of Land 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 Land; or (vi) the presence of any material in, under, or on Land which is regulated by any ordinance, regulation or law.

10.4 Purchaser will accept Land 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 Land 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 Land, except as set forth in this Agreement. As part of Purchaser's agreement to purchase Land "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 Land, 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 Fifty Thousand Dollars (\$50,000.00).

13. CONDEMNATION

If after the Effective Date and prior to Closing Land 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

All risk of damage or destruction of Land after the Effective Date and prior to any applicable Closing shall remain with the Seller. If Land is or becomes damaged, Seller shall notify Purchaser of the extent of the damage and 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 terminate the Agreement. If the Purchaser elects to proceed to Closing, Seller shall assign any available insurance proceeds applicable directly to Land to 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 neither party shall have any further claim or remedy against the other 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 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
- 15.5 Time of the Essence. Time is of the essence in this Agreement.
- 15.6 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.
- 15.7 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.
- 15.8 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.
- 15.9. Statutory Disclaimer. **BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424 OREGON LAWS 2007 AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 1195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007 AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

- 15.10. 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.
- 15.11. Public Communications. Whenever commercially practicable, all public communications concerning Land (such as press releases or information provided to the media and all substantive discussions with public agencies having jurisdiction over Land) 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 Agency

By: _____
Joe Gall , 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

FINAL DRAFT

EXHIBIT A
PROPERTY DESCRIPTION

FINAL DRAFT

TO: Sherwood Urban Renewal Agency Board

FROM: Tom Pessemier, Community Development Director
Through: Paul Elsner, Beery Elsner & Hammond

SUBJECT: A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD, DIRECTING THE AGENCY MANAGER TO SIGN THE AMENDED AND RESTATED SITE DEVELOPMENT AGREEMENT FOR THE CANNERY DEVELOPMENT

Issue

Should the URA Board amend and restate the Site Development Agreement with Capstone Partners, LLC pertaining to the development for the Cannery project?

Background

In 2000 the Urban Renewal Plan addressed development within the Urban Renewal District including the cannery property. In 2005 the purchase of the Cannery Property was added to the plan and Leland Consultants prepared the Sherwood Cannery Development Strategy. In 2007 the URA prepared a Request for Proposal (RFP) to select a development partner to develop the Cannery consistent with the Development Strategy. In 2008 Capstone partners was selected as the development partner and entered into a memorandum of understanding (MOU) with the Urban Renewal Agency. In late 2008 the Urban Renewal Agency and Capstone entered into three agreements to document to roles and responsibilities of the URA and Capstone. The three agreements were the Purchase and Sale Agreement, the Site Development Agreement and the Development Services Agreement. The Site Development agreement defined many terms in the agreement and how the site was proposed to be developed. It outlined the development responsibilities of the URA and Capstone and how each party is to coordinate. It also defines the Infrastructure Improvements (public improvements) and Project Improvements (private improvements and development) and the maintenance responsibilities of those improvements.

In late 2009 the timelines for the project became more evident and market conditions had changed significantly so the URA and Capstone decided together to amended the agreement.

The amended agreement is in place today and the URA and Capstone have worked together in a good faith effort to further amend the agreement to account for timing, responsibilities and market conditions that exist today. In order to be easier to interpret in the future the agreement proposed is amended and restated

so that multiple documents do not need to be reviewed. The original agreement and the amendments will become null and void with the execution of this agreement.

Attached is a red-lined copy of the proposed changes to the original agreement as amended so that the changes are apparent. Please note that the legislation for this item will have a clean copy of the amended and restated agreement in its entirety.

Below are the major items that have changed and a brief explanation of the changes:

- The majority of changes in the agreement reflect that much of the work has been completed by the URA and Capstone. There are changes to definition regarding terms used in the agreement where items have been completed.
- Conveyed property was changed to refer to the recorded plat for the project and Lot number from the Plat were used to identify the conveyed properties..
- Substantial Completion of the Infrastructure Improvements has been defined as the date of the recordation of the Plat. December 16, 2011. There were a couple of different terms used to mean the same thing and they have been changed to be consistent throughout the agreements. There were also many items tied to this date and the dates have been changed since the date is now known.
- The Utility Facilities section was re-written to be more concise to the work to be completed and the responsibilities for each party.
- The General Description of Infrastructure Improvements was modified to remove the Machine Works Building and gravel and grading of conveyed property.
- Exhibit B-1 and B-3 were combined and references in the document changed. This exhibit is now the Plat as recorded with Washington County to be consistent with the rest of the documents.
- Section 2.4 was added to note that the changes to this and other agreements will require other agreements to be negotiated in good faith at a later date but which are not necessary to be done with these amended and restated agreements. There will be a letter agreement which is non-binding but will outline these changes in more detail.
- Most of the other changes were to make this agreement consistent with the other agreements.

Financials

Changes to the General Description of Infrastructure Improvements made significant changes to the way that Capstone was to be reimbursed for their work and to the work that was to be performed. The financial implications are in the Development Services Agreement and the Letter Agreement and will be discussed in the Staff Report for those two agreements.

Recommendation

The City's attorneys have thoroughly reviewed and prepared the recommended amended and restated agreement. In addition Capstone and their attorney have thoroughly reviewed the amended and restated agreement.

Staff respectfully recommends approval of URA Resolution 2012-021 to amend and restate the Site Development Agreement.

AMENDED AND RESTATED OLD CANNERY-
SITE DEVELOPMENT AGREEMENT

~~THIS OLD CANNERY SITE DEVELOPMENT AGREEMENT (this "~~

This Amended and Restated Old Cannery Site Development Agreement");
("Agreement") is made ~~as of~~ this ___-day of _____, ~~2008 (hereinafter referred to as~~
~~the "date of this Agreement")~~, September 2012, by and between the Sherwood URA
Urban Renewal Agency ("Sherwood URA"); and Capstone Partners, LLC
(("Developer").

NOW, THEREFORE, for and in consideration of the mutual covenants herein
contained, and ~~for and in consideration of Ten Dollars (\$10.00) and~~ other valuable
consideration in hand paid by each party hereto to the other ~~at or before the sealing~~
~~hereof,~~ (the receipt and sufficiency of ~~said consideration~~ which being hereby
acknowledged ~~by the parties hereto,~~), Sherwood URA and Developer ~~do~~ hereby agree
as follows:

ARTICLE I
DEFINITION

ARTICLE I
AMENDMENT AND RESTATEMENT/DEFINITIONS

Section 1.1. Amendment and Restatement. Sherwood URA and Developer
entered into that certain Old Cannery Site Development Agreement dated September
3, 2008 as amended by that certain First Amendment to Old Cannery Site
Development Agreement dated as of October 2009 (the "Original Site Development
Agreement") pursuant to which Sherwood URA and Developer agreed to coordinate
development and construction of Project Improvements and Infrastructure
Improvements. This Amended and Restated Old Cannery Site Development
Agreement amends and restates the Original Site Development Agreement in its
entirety and the Original Site Development Agreement shall be null and void and of
no further force and effect as of the date of the mutual execution of this Agreement.

~~Section 1.1~~ Section 1.2. Definition of Terms. Whenever used in this
Agreement, the following terms shall have the following meanings:

Business Day. Any Day excluding any Saturday, ~~any Sunday,~~ and ~~any~~
national holiday(ies) observed by the United States Government.

Closing. The meaning ascribed to such term in the Purchase and Sale
Agreement.

Conveyed Property. ~~Exhibit B-1—Depiction of Conveyed Property is deleted in~~
~~its entirety and replaced with the attached~~ Lots 1 and 3-10 as depicted on Revised
Exhibit B-1 (Sherwood Cannery Square Plat No. 2011-089523 Washington County,

Oregon plat records.) This term also is defined as "Land" in the Purchase and Sale Agreement referenced herein.

Construction. Any activity normally encompassed by any of the following terms: construction, reconstruction, demolition, excavation, building, rebuilding, renovation, restoration, or any similar term, ~~which is performed within the Conveyed Property or the Infrastructure Property or any portion thereof~~ at any time subsequent to the ~~date of this Agreement~~; date noted above.

Day. Any one (1) calendar day, unless specifically noted to the contrary.

Default. An occurrence of any event or omission which, with the giving of notice or passage of time or otherwise, may become an Event of Default.

Development Services Agreement. An agreement between Developer and Sherwood URA in the form attached as Amended Exhibit B-4, ~~pursuant to which~~ ³ whereby Sherwood URA ~~will contract~~ contracts with Developer to, among other things, provide development services in connection with the design and construction of the Infrastructure Improvements.

Event of Default. Any Event ~~of~~ Of Default as defined in Section 5.1 or 5.2 hereof, as applicable.

"Herein," "hereunder," "hereby," "hereto," "hereof" and any similar term shall mean and have reference to this Agreement as a whole.

Including. The term including shall mean and have reference to "including without limitation."

Infrastructure Improvements. ~~Exhibit B-2~~ General Description of Infrastructure Improvements is deleted in its ~~entirely~~ entirety and replaced with the attached Revised Exhibit B-2.

Infrastructure Property. ~~Exhibit B-3~~ Depiction of Infrastructure Improvements ~~is deleted in its entirety~~ that have been completed are the right of way improvements and ~~replaced with the~~ the plaza improvements on Tract A described in Sherwood Cannery Square Plat No. 2011-089523. Washington County, Oregon plat records attached ~~Revised~~ as Exhibit B-~~3~~-1.

Interference. A direct and physical encroachment or other incursion upon the Infrastructure Property or ~~the~~ Conveyed Property that causes a material construction delay or increase in costs or operation expenses, or an unreasonable disruption with respect to the use, construction or occupancy of either ~~the Infrastructure Property or the Conveyed Property for its intended use.~~

Laws. Any and all present and future statutes, ordinances, rules, regulations, or binding determinations by the United States ~~Government, the State of~~, Oregon, ~~the City Sherwood, Oregon, Washington County~~, or ~~any~~ other governmental authority having ~~power or~~ jurisdiction over Sherwood URA, Developer, the Conveyed Property, the Project Improvements, the Infrastructure Property or any of them.

Lien. With respect to any property, any security deed, mortgage, deed to secure debt, deed of trust, lien, pledge, assignment, charge, security interest, title retention agreement, levy, execution, seizure, attachment, garnishment, or other encumbrance of any kind in respect of such property, whether or not choate, vested, or perfected.

Machine Works. The existing concrete tilt, industrial manufacturing building ~~which is~~ located on the northwest corner of SW Pine and SW Columbia Streets (Lot 2 per Exhibit B-1) currently owned by Sherwood URA ~~proposed to be developed into a Community Center.~~

Notice of Noncompliance. The meaning ascribed to such term in Section 3.2 hereof.

Operations. Any and all operations, ~~construction,~~ occupation, maintenance, repair, and similar and related work performed on or in the Conveyed Property or any portion thereof or on or in the Infrastructure Property or any portion thereof at any time subsequent to the Closing.

Operative Agreements. The Purchase and Sale ~~Agreement, the Development Services Agreement~~, this Agreement and all easements or covenants granted or reserved at the time of conveyance of the Conveyed Property.

Person. Any natural person, corporation, partnership, limited liability company, business trust, ~~or~~ other legal entity.

Project Improvements. The buildings, structures, and ~~site~~ improvements, together with all fixtures and appurtenances attached or affixed thereto, required to be constructed, equipped and installed on the Conveyed Property by Developer pursuant to the Purchase and Sale Agreement.

Purchase and Sale Agreement. That certain ~~Amended and Restated Purchase and Sale Agreement of even date herewith~~, by and between Sherwood URA and Developer providing for the sale by Sherwood URA and the purchase by Developer of the Conveyed Property.

Substantial Completion of the Project Improvements. Such completion of Construction of the Project Improvements ~~as will make the Project Improvements sufficient, suitable, and ready for immediate occupancy for the use intended, which completion shall be deemed to have occurred when all necessary final certificates of~~

occupancy or similar permits related to the use and occupancy of the Project Improvements have been issued.

Substantial Completion of the Infrastructure Improvements. Such completion of Construction of the Infrastructure Improvements as will make the Infrastructure Improvements sufficient, suitable, and ready for immediate occupancy for the use intended; which completion ~~shall be deemed to have occurred when all necessary final certificates of occupancy or similar permits related to~~ December 16, 2011 upon the ~~use and occupancy~~ recordation of the ~~Infrastructure Improvements have been issued~~ above-mentioned Exhibit B-1.

~~Section 1.2~~ Section 1.3. Other Capitalized Terms. Capitalized terms not defined in this Article 1 shall have the meanings set forth for such terms in this Agreement.

ARTICLE II
COORDINATION OF CONSTRUCTION OF PROJECT IMPROVEMENTS AND
~~ARTICLE H~~ INFRASTRUCTURE IMPROVEMENTS

~~Section 2.1~~ Section 2.1. Work Groups to Coordinate Project Improvements and Infrastructure Improvements.-

(a) (a) Sherwood URA and Developer shall coordinate development and construction of the Project Improvements and the Infrastructure Improvements. Sherwood URA and Developer shall create a work group (hereinafter "Work Group") to, among other things, work collaboratively on:

(i)- communicating and cooperating in seeking approvals from the City of Sherwood for ~~the~~ construction of the Infrastructure Improvements and ~~the~~ Project Improvements;

(ii)-resolution of any inter-related civil engineering issues;

(iii)- development of tentative construction schedules for the Infrastructure Improvements and ~~the~~ Project Improvements; and

(iv) addressing site maintenance during the construction of ~~the~~ Infrastructure Improvements and ~~the~~ Project Improvements. -

~~(b)~~ (b) The ~~work group~~ Work Group shall consist of ~~those~~ representatives of Sherwood URA, Developer and such other persons who possess the information and skills needed to ~~achieve~~ the objectives of the Work Group. Developer and Sherwood URA each shall appoint a lead representative to the Work Group. ~~The~~ lead representative shall coordinate scheduling of ~~the~~ Work Group activity and be responsible for documenting the agreements reached by the Work Group as required herein. -

~~(e)~~ (c) Lead Representatives shall determine on behalf of the party he or she represents if the proposals from the Work Group are acceptable. If the Work Group fails to agree upon the specifications or other information necessary to undertake the Project Improvement or the Infrastructure Improvements by the agreed-upon deadlines or if an agreement ~~can not~~ cannot be reached regarding such deadlines, the party undertaking the impacted improvement shall have the right to propose such specifications or schedules to the other party. -The party receiving the specifications or schedules shall have ten (10) Business Days to provide comments on the proposal. -If comments are submitted, the party undertaking the Improvement shall notify the other party within ten (10) Business Days if the comments will be incorporated into the party's plan and, if so, in what manner. -The parties shall then proceed under the resulting plan or schedule.

~~(d)~~ (d) The Work Group shall document agreements, or alteration thereof, on the subjects listed in subsection 2.1 (a) herein in written reports to the parties.

~~Section 2.2~~ Section 2.2. Construction of the Project Improvements. Developer shall comply with all ~~of~~ the following covenants in connection with ~~the~~ Construction of the Project Improvements:

(a) — Developer shall keep Sherwood URA notified of all Construction scheduled for the Project Improvements on a monthly basis via the Work Group.

(b) Any and all Project Improvements shall be constructed at the sole cost ~~and~~ expense and control of Developer and Persons other than Sherwood URA; and Sherwood URA shall have no obligation to Developer or to any third party to construct, repair, maintain, or operate any Project Improvements. -This covenant shall survive the expiration or termination of this Agreement.

~~Section 2.3~~ Section 2.3. Construction of the Infrastructure Improvements. Sherwood URA shall comply with ~~all of~~ the following ~~covenants in connection with~~ ~~the~~ relative to Construction of ~~the~~ Infrastructure Improvements:

(a) — Sherwood URA and Developer shall enter into the Development Services Agreement and ~~will~~ abide by the terms and conditions therein.

(b) Sherwood URA shall keep Developer notified of all Construction scheduled for the Infrastructure Improvements on a monthly basis via the Work Group.

(c) — Any and all Infrastructure Improvements shall be constructed at the sole cost ~~and~~ expense and control of Sherwood URA and Persons other than Developer; and Developer shall have no obligation to Sherwood URA or to any third party to construct, repair, maintain; or operate any Infrastructure Improvements. This covenant ~~shall survive the~~ survives expiration or termination of this Agreement.

Section 2.4. Construction of Improvements on Conveyed Property. Sherwood URA and Developer agree to enter into a separate development agreement for improvements to portions of the Conveyed Property including Lots 1, 9 and 10 with the terms of such separate development agreement to be negotiated in good faith by both parties at a future date.

ARTICLE III

~~ARTICLE III~~ INTERFERENCE

~~Section 3.1~~ Section 3.1. No Interference. All Construction and Operations on the Conveyed Property and the Infrastructure Property and any work or activity connected therewith by or on behalf of Developer or Sherwood URA; shall be performed in such a manner so as not to constitute an Interference.-

~~Section 3.2~~ Section 3.2. Notice of Noncompliance. Prior to commencing any action to seek remedial activity under this Article, Sherwood URA or Developer, as applicable, shall raise the issue with the Work Group. ~~If the Work Group can~~ ~~not~~cannot resolve the dispute in a timely manner, Sherwood URA or Developer, as applicable, shall give written notice to the other describing with particularity the Interference (the "Notice of Noncompliance"). ~~The recipient of a Notice of Noncompliance shall be responsible for curing or correcting the Interference within a period of five (5) Business Days following receipt of such Notice of Noncompliance; provided, however, that if such cure or correction cannot reasonably be effected within said five (5) Business Day period, then the recipient of the Notice of Noncompliance shall be required to commence, within said five (5) Business Day period, action to effect such cure or correction and thereafter to prosecute diligently and continuously such action until such cure or correction has been effected.~~

ARTICLE IV

~~ARTICLE IV~~ ADDITIONAL COVENANTS

~~Section 4.1~~ Section 4.1. Management of Construction of Infrastructure Improvements. Sherwood URA shall contract with Developer to provide development services to Sherwood URA in connection with ~~the~~Construction of the Infrastructure Improvements pursuant to the terms and provisions of the Development Services Agreement. ~~Developer shall be paid a development services fee described in the Development Services Agreement.~~

~~Utility Facilities.~~ ~~Sherwood URA shall be wholly responsible for maintaining,~~

~~Section 4.2~~ Section 4.2. Utility Facilities. Sherwood URA shall be responsible for maintaining in good and operating condition and repair utility facilities it controls during Construction of the Project Improvements and Infrastructure Improvements located on the Infrastructure Property. Sherwood URA shall complete the construction of utility facilities it controls that are part of the Infrastructure Improvements necessary for construction of the Project Improvements prior to the

time Developer is scheduled to commence its construction of the Project Improvements. Developer shall be wholly responsible for maintaining in good and operating condition and repair, all utility facilities used during Construction of the Project Improvements and the Infrastructure Improvements (including, without limitation, the water, sewer, gas, and electrical facilities) ~~which are located on the Infrastructure Property. Sherwood URA shall complete the construction of all utility facilities that are part of the Infrastructure Improvements that are necessary for the construction of the Project Improvements prior to the date Developer is scheduled to commence construction of the Project Improvements. Developer shall be wholly responsible for maintaining, in good and operating condition and repair, all utility facilities used during Construction of the Project Improvements and the Infrastructure Improvements (including, without limitation, the water, sewer, gas, and electrical facilities) which are located on the Conveyed Property~~ located on the Conveyed Property. -In the case use of a -utility is shared by Sherwood URA and Developer during ~~Construction,~~ construction costs shall be allocated based on the relative usage of the utility by each party. In no event will Sherwood URA be responsible for any utilities located on the Conveyed Property after the Conveyed Property has been acquired by Developer.

Section 4.3 Section 4.3. Maintenance of Infrastructure Improvements. The parties may agree to share maintenance on some Infrastructure Improvements and Project Improvements jointly used by the parties notwithstanding obligations set forth in the Operative Agreements. ~~Further~~If the parties desire to enter into any such written ~~agreements~~agreement, such separate written agreement will detail the improvements being shared, maintenance responsibilities, and the cost allocation.-

ARTICLE V ~~ARTICLE V~~ DEFAULTS

Section 5.1 Section 5.1. Events of Default by Developer. An Event of Default by Developer shall be deemed to have occurred under this Agreement if Developer ~~shall fail~~fails or ~~refuse~~refuses to observe, perform, or comply with any of the other provisions of this Agreement, whether by neglect, inadvertence, intent, or otherwise within forty-five (45) Days after written notice is given by Sherwood URA to Developer (a "Developer Default Notice");" provided, however, that in the case of a failure which cannot reasonably be cured within the aforesaid forty-five (45) Day period, no Event of Default shall be deemed to exist and Sherwood URA may not exercise any of the remedies set forth in this Agreement, unless and until Developer shall have failed either (i) to commence action to effect such cure within such forty-five (45) Day period or (ii) to prosecute diligently and continuously such action until such failure has been cured. Any notice given pursuant to this Section shall identify the failure in question with reasonable particularity.

Section 5.2 Section 5.2. Events of Default by Sherwood URA. An Event of Default by Sherwood URA shall be deemed to have occurred under this Agreement if

Sherwood URA shall fail or refuse to observe, perform, or comply with any of the other provisions of this Agreement, whether by neglect, inadvertence, intent, or otherwise within forty-five (45) Days after written notice is given by Developer to Sherwood URA (a "Sherwood URA Default Notice"); provided, however, that in the case of a failure which cannot reasonably be cured within the aforesaid forty-five (45) Day period, no Event of Default shall be deemed to exist and Developer may not exercise any of the remedies set forth in this Agreement, unless and until Sherwood URA shall have failed either (i) to commence action to effect such cure within such forty-five (45) Day period or (ii) to prosecute diligently and continuously such action until such failure has been cured. Any notice given pursuant to this Section shall identify the failure in question with reasonable particularity.

~~Section 5.3~~ **Section 5.3. Remedies.** Upon the occurrence of an Event of Default, the non--defaulting party shall be entitled to exercise any and all remedies conferred by this Agreement or otherwise available to such non--defaulting party in law or in equity.-

~~Section 5.4~~ **Section 5.4. No Waiver of Rights.** No failure by a non--defaulting party to insist upon ~~the~~ strict performance of any of the terms of this Agreement or to exercise any right or remedy upon a Default hereunder, no acceptance by a non--defaulting party of partial performance, and no custom or practice of the parties hereto at variance with the provisions hereof ~~shall constitute~~ constitutes a waiver of any such Default or of ~~any of~~ the terms of this Agreement or a waiver of a non--defaulting ~~party's~~ party's right to demand ~~exact~~ compliance with ~~the provisions contained in~~ this Agreement. -None of the terms of this Agreement to be kept, observed, or performed by a defaulting party and no breach thereof shall be waived, altered, or modified except by a written instrument executed by ~~at~~ the non--defaulting party. -No waiver of any breach shall affect or alter this Agreement, but each of the terms of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach hereunder. -No waiver of any Default hereunder by a defaulting party shall be implied from any omission by a non defaulting party to take any action on account of such Default if such Default persists or is repeated, and no express waiver shall affect any Default other than the Default specified in the express waiver for the time and to the extent therein stated. One or more waivers shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

~~Section 5.5~~ **Section 5.5. Rights Are Cumulative.** All rights, powers, privileges, and remedies conferred by this Agreement upon Sherwood URA and Developer shall be cumulative and shall be deemed additional to any and all of the remedies to which either party may be entitled in law, in equity, or otherwise, unless specifically and expressly limited by the provisions of this Agreement. Either party shall have the right to restrain by injunction any violation or threatened violation of any of the terms, covenants, or conditions of this Agreement and by decree to compel performance of any such terms, covenants, or conditions, it being agreed by Developer and Sherwood URA that the remedy at law for any breach of such term,

covenant or condition (except those requiring the payment of a liquidated sum or damages in accordance with express provisions of this Agreement) is not adequate.

~~ARTICLE VI~~ ARTICLE VI
MISCELLANEOUS PROVISIONS

~~Section 6.1~~ **Section 6.1. No Joint Venture or Partnership.** Nothing contained in this Agreement shall be construed to create the relationship between Sherwood URA and Developer of principal and agent, of mortgagee and mortgagor, of partners, of joint venturers, or of any association with each other or, except as may be expressly provided in this Agreement, so as to render either of the parties liable for the debts or obligations of the other.

~~Section 6.2~~ **Section 6.2. Effect of Review, Objection, Failure to Object, Approval, Non-Approval or Consent.** In no event shall any review, objection, failure to object, approval, non-approval, or consent by Sherwood URA or Developer with respect to any act, plan, or proposal of the other made pursuant to any provision of this Agreement or otherwise be deemed (i) to constitute an assumption by Sherwood URA or Developer of responsibility or liability for the adequacy or suitability of any such act, plan, or proposal, (ii) to constitute a waiver of any claim or right that Sherwood URA or Developer might have against the other or any other person or entity by reason of or in connection with any act or omission of such other person pursuant to or in accordance with any act, plan, or proposal reviewed by Sherwood URA or Developer, or (iii) to result in Sherwood ~~URA's~~URA's or ~~Developer's~~Developer's being deemed a joint tortfeasor with the other.

~~Section 6.3~~—**Section 6.3. Notices.** Except as may be expressly set forth in this Agreement to the contrary, every notice, demand, request, submittal, consent, approval, or other communication required or permitted to be given to any party hereto pursuant to the terms of this Agreement shall be effective only if given in writing and personally delivered or mailed, postage prepaid, by certified United States mail, return receipt requested, addressed as follows:

~~SHERWOOD URA:~~ ~~Sherwood URA Urban Renewal Agency~~
~~22560 SW Pine Street~~
~~Sherwood, OR 97140~~
~~ATTN: Jim Patterson~~
~~Fax: (503) 625-5524~~

~~With a copy to:~~ ~~Pamela J. Beery~~
~~Beery, Elsner & Hammond~~
~~1750 SW Harbor Way, Suite 380~~
~~Portland, OR 97201~~

~~DEVELOPER: Capstone Partners LLC
1015 NW 11th Avenue, Suite 243
Portland, Oregon 97209
ATTN: Chris Nelson
Fax No.: (503) 226-1973~~

~~With a copy to: Ball Janik LLP
Attn: Bradley S. Miller
101 SW Main St., Suite 1100
Portland, OR 97204
Fax No.: (503) 295-1058~~

or to such other address as any such party may from time to time designate by notice to the other party in accordance with this Agreement. Every notice, demand, request, submittal, consent, approval, or other communication transmitted as aforesaid shall be deemed to have been given, or communicated, as the case may be, on the date of personal delivery or three (3) Business Days after the time that the same shall have been deposited, certified, in the United States mail from a United States post office or box.

SHERWOOD URA:	DEVELOPER:
Sherwood Urban Renewal Agency 22560 SW Pine Street Sherwood, OR 97140 Attn: Joe Gall Fax No: (503) 625-5524	Capstone Partners LLC 1015 NW 11 th Avenue, Suite 243 Portland, Oregon 97209 Attn: Chris Nelson Fax No: (503) 226-1973
With a copy to: Beery, Elsner & Hammond, LLP Attn: Pamela J. Beery 1750 SW Harbor Way, Suite 380 Portland, OR 97201 Fax No: (503) 226-2348	With a copy to: Ball Janik LLP Attn: Bradley S. Miller 101 SW Main St., Suite 1100 Portland, OR 97204 Fax No: (503) 295-1058

Section 6.4 Section 6.4. No Personal Liability. No director, commissioner, officer, official, or employee of Sherwood URA or Developer shall be personally liable to the other (i) on account of any default or breach by Sherwood URA or Developer under this Agreement; (ii) for any amount which may become due to the other under this Agreement; or (iii) with respect to any obligations under the terms of this Agreement. Neither Sherwood URA nor Developer shall collect or attempt to collect any money judgment for such matters from the personal assets of any of the directors, commissioners, officers, officials, partners, members or employees of the other on account of a failure by the other to comply with, observe, or perform any of the terms of this Agreement.

Section 6.5 Section 6.5. Headings. The headings of the various articles and sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions hereof.

Section 6.6 Section 6.6. Severability. If any provision of this Agreement or the application thereof to any person, business entity, public body, or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons, business entities, public bodies, or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.

Section 6.7 Section 6.7. Governing Law. This Agreement shall be governed by and interpreted and construed under the laws of the State of Oregon.

~~Section 6.8~~ **Section 6.8. Exhibits.** All Exhibits referred to herein and affixed hereto, i.e., B-1 (Depiction of Conveyed Property and Depiction of Infrastructure Improvements); B-2 (General Description of Infrastructure Improvements); and, B-3 (Amended and Restated Development Services Agreement) are deemed incorporated herein by reference ~~with the same force and effect as if at each place of reference, in lieu of such reference, such respective Exhibit were set forth in its entirety.~~

~~Section 6.9~~ **Section 6.9. Entire Agreement.** In the making, execution, and delivery of this Agreement, neither party has been induced by any representations, statements, covenants, or warranties made by the other party or its agents, other than as specifically set forth herein and in the other Operative Agreements. This Agreement and the other Operative Agreements constitute the full, complete, and entire agreement between and among the parties hereto with respect to the subject matters set forth herein and supersede all prior agreements between Sherwood URA and Developer on the subject matters set forth herein. ~~No agent, employee, officer, representative, or attorney of the parties hereto has the authority to make, or has made, any statement, agreement, representation, or contemporaneous agreement, oral or written, in connection herewith modifying, adding to, or changing the provisions of this Agreement. No amendment of this Agreement shall be binding or effective unless such amendment shall be in writing, signed by both Sherwood URA and Developer.~~

~~Section 6.10~~ **Section 6.10. Time Is Of Essence.** All time limits stated in this Agreement are of the essence of this Agreement.

~~Section 6.11~~ **Section 6.11. Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original instrument, and such counterparts together shall constitute one and the same instrument.

~~Section 6.12~~ **Section 6.12. Compliance.** No failure of either party hereto to exercise any right or power given hereunder or to insist upon strict compliance with any conditions and obligations specified herein, and no custom or practice of any of the parties hereto at variance with the terms of this Agreement, shall constitute a waiver of either party's right to demand exact compliance with the terms and conditions of this Agreement.

~~Section 6.13~~ **Section 6.13. Survival and Termination of Agreement.** This Agreement shall expire and terminate upon the termination of the Purchase and Sale Agreement; ~~or~~; if the Purchase and Sale Agreement is not terminated, upon ~~the later to occur~~ of the Substantial Completion of the Project Improvements or Substantial Completion of the Infrastructure Improvements in compliance with the requirements of this Agreement or the mutual agreement of Developer and Sherwood URA.

~~Section 6.14~~ **Section 6.14. No Third Party Beneficiary.** No individual or entity that is not a signatory to this Agreement (other than successors, successors-in-title and assigns of the parties to this Agreement) shall have any rights or privileges under or arising out of this Agreement, nor shall any person or entity that is not a signatory to this Agreement otherwise be deemed a third party beneficiary of this Agreement.

~~Section 6.15~~ **Section 6.15. Estoppel Certificates.** Sherwood URA and Developer shall execute, acknowledge and deliver to the other promptly upon written request a certificate certifying, among other things, any of the following as requested:

(a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the modifications);

(b) that no notice has been given by Sherwood URA to Developer or by Developer to Sherwood URA of any default under this Agreement that has not been cured and to the best of its knowledge and belief no default exists (or, if such exists, describing the same).

Certificates from Sherwood URA and Developer pertaining to the aforesaid matters may be relied upon by any existing or prospective lending institution and by any prospective assignee or successor of any interest under this Agreement. ~~No~~ certificate issued hereunder, however, shall be deemed to affect the rights and obligations of Sherwood URA and Developer between themselves under this Agreement.

IN WITNESS WHEREOF, ~~Sherwood URA has caused~~ The parties hereto have executed this Agreement ~~to be executed on its behalf by its duly authorized officers, and Developer has caused this Agreement to be executed on its behalf by its duly authorized officers, all on as of the day and year date first above set forth.~~ written.

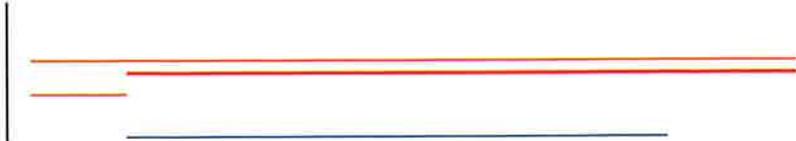
Sherwood URA Urban Renewal District

By: _____
~~Jim Patterson~~ By: _____
Joe Gall, District Manager-

Capstone Partners LLC,
an Oregon limited liability company

By: _____
Chris Nelson, Member

By: Triangle Development Company, an Oregon corporation, Member



Jeffrey M. Sackett, President

REVISED EXHIBIT AB-1

Depiction of Conveyed Property and

Depiction of Infrastructure Improvements

REVISED EXHIBIT B-2

General Description of Infrastructure Improvements

The Infrastructure Improvements consists of ~~a~~(i) the public plaza containing ~~not less than 10~~approximately 12,000 -square feet ~~nor more than 20,000 square feet (currently contemplated and depicted herein to be approximately 15,700 square feet)~~ on Tract A of Exhibit B-1 at the ~~northeast~~southeast corner of the intersection of ~~SE~~SW Pine Street and the Southern Pacific Railroad tracks, ("Cannery Square"); (ii) the construction of new public rights of way, including streets, sidewalks, utilities, and storm water treatment facilities, for the proposed ~~SE~~SW Columbia Street ~~northeast~~ of Pine Street and the proposed ~~SE~~SW Highland Drive ~~west~~north of -Willamette Street; (iii) the improvement of ~~SE~~the north side of SW Willamette Street adjacent to ~~Sites C and D~~the West Residential Phase and the East Residential Phase of the Conveyed Property, ~~and the improvement, if any required to~~ of SW Pine Street between the railroad and Willamette Street.

EXHIBIT C

Depiction of Infrastructure Improvements

EXHIBIT D

Development, the improvement, including approximately 17 angle parking stalls, of SW Columbia Street west of Pine Street, the improvement of the east side of SW Washington Street between the railroad and SW Columbia Street; (iv) the storm water treatment facility located on the west side of the existing Machine Works building on Tract E of Exhibit B-1 (the "Storm Water Garden");, and (v) work required to mitigate the impact on the existing wetlands buffer pursuant to the Service Provider Letter provided by Clean Water Services **Agreement** issued as of June 8, 2009.

The

REVISED EXHIBIT B-3

Amended and Restated Development Services Agreement ~~is that separate agreement between the parties as defined in Section 1.1 herein. It is attached here as Exhibit B-4 for clarity.~~



URA RESOLUTION 2012-021

A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD, DIRECTING THE AGENCY MANAGER TO SIGN THE AMENDED AND RESTATED SITE DEVELOPMENT AGREEMENT FOR THE CANNERY DEVELOPMENT

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") as amended which Plan was originally 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 approximately 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. The legal description of land is set forth on the Sherwood Cannery Square Plat No. 2011-089523, Washington County, Oregon plat records; 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 Agency approved a Site Development Agreement with Capstone Partners, LLC to develop the property on August 19, 2008; and

WHEREAS, the Agency approved the First Amendment to the Site Development Agreement with Capstone Partners, LLC to develop the property on November 3, 2009; and

WHEREAS, changes in timing, responsibilities and market conditions have warranted changes to that agreement; and

WHEREAS, the attached Amended and Restated Site Development Agreement (Attachment 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 Amended and Restated Site Development Agreement with Capstone Partners, LLC., attached as Exhibit A.

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

Duly passed by the Sherwood Urban Renewal Agency Board this 18th day of September, 2012.

Keith S. Mays, Chair

Attest:

Sylvia Murphy, CMC, Agency Recorder

AMENDED AND RESTATED OLD CANNERY
SITE DEVELOPMENT AGREEMENT

This Amended and Restated Old Cannery Site Development Agreement ("Agreement") is made this ___day of September 2012, by and between the Sherwood URA Urban Renewal Agency ("Sherwood URA") and Capstone Partners LLC ("Developer").

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and other valuable consideration in hand paid by each party hereto to the other (the receipt and sufficiency of which being hereby acknowledged), Sherwood URA and Developer hereby agree as follows:

ARTICLE I
AMENDMENT AND RESTATEMENT/DEFINITIONS

Section 1.1. Amendment and Restatement. Sherwood URA and Developer entered into that certain Old Cannery Site Development Agreement dated September 3, 2008 as amended by that certain First Amendment to Old Cannery Site Development Agreement dated as of October 2009 (the "Original Site Development Agreement") pursuant to which Sherwood URA and Developer agreed to coordinate development and construction of Project Improvements and Infrastructure Improvements. This Amended and Restated Old Cannery Site Development Agreement amends and restates the Original Site Development Agreement in its entirety and the Original Site Development Agreement shall be null and void and of no further force and effect as of the date of the mutual execution of this Agreement.

Section 1.2. Definition of Terms. Whenever used in this Agreement, the following terms shall have the following meanings:

Business Day. Any Day excluding any Saturday, Sunday and national holiday(ies) observed by the United States Government.

Closing. The meaning ascribed to such term in the Purchase and Sale Agreement.

Conveyed Property. Lots 1 and 3-10 as depicted on Revised Exhibit B-1 (Sherwood Cannery Square Plat No. 2011-089523 Washington County, Oregon plat records.) This term also is defined as "Land" in the Purchase and Sale Agreement referenced herein.

Construction. Any activity normally encompassed by any of the following terms: construction, reconstruction, demolition, excavation, building, rebuilding, renovation, restoration or any similar term performed within the Conveyed Property or Infrastructure Property at any time subsequent to the Agreement date noted above.

Day. Any one (1) calendar day unless specifically noted to the contrary.

Default. An occurrence of any event or omission which, with the giving of notice or passage of time or otherwise may become an Event of Default.

Development Services Agreement. An agreement between Developer and Sherwood URA in the form attached as Amended Exhibit B-3 whereby Sherwood URA contracts with Developer to, among other things, provide development services in connection with the design and construction of the Infrastructure Improvements.

Event of Default. Any Event Of Default as defined in Section 5.1 or 5.2 hereof as applicable.

"Herein", "hereunder", "hereby", "hereto", "hereof" and any similar term shall mean and have reference to this Agreement as a whole.

Including. The term including shall mean and have reference to "including without limitation."

Infrastructure Improvements. General Description of Infrastructure Improvements is deleted in its entirety and replaced with the attached Revised Exhibit B-2.

Infrastructure Property. Depiction of Infrastructure Improvements that have been completed are the right of way improvements and the plaza improvements on Tract A described in Sherwood Cannery Square Plat No. 2011-089523. Washington County, Oregon plat records attached as Exhibit B-1.

Interference. A direct and physical encroachment or other incursion upon the Infrastructure Property or Conveyed Property that causes a material construction delay or increase in costs or operation expenses or an unreasonable disruption with respect to the use, construction or occupancy of either.

Laws. Any and all present and future statutes, ordinances, rules, regulations, or binding determinations by the United States, Oregon, Sherwood or other governmental authority having jurisdiction over Sherwood URA, Developer, the Conveyed Property, the Project Improvements, the Infrastructure Property or any of them.

Lien. With respect to any property, any security deed, mortgage, deed to secure debt, deed of trust, lien, pledge, assignment, charge, security interest, title retention agreement, levy, execution, seizure, attachment, garnishment, or other encumbrance of any kind in respect of such property, whether or not choate, vested, or perfected.

Machine Works. The existing concrete tilt, industrial manufacturing building located on the northwest corner of SW Pine and SW Columbia Streets (Lot 2 per

Exhibit B-1) currently owned by Sherwood URA proposed to be developed into a Community Center.

Notice of Noncompliance. The meaning ascribed to such term in Section 3.2 hereof.

Operations. Any and all operations, construction, occupation, maintenance, repair, and similar and related work performed on or in the Conveyed Property or any portion thereof or on or in the Infrastructure Property or any portion thereof at any time subsequent to the Closing.

Operative Agreements. The Purchase and Sale Agreement, the Development Services Agreement, this Agreement and all easements or covenants granted or reserved at the time of conveyance of the Conveyed Property.

Person. Any natural person, corporation, partnership, limited liability company, business trust or other legal entity.

Project Improvements. The buildings, structures, and site improvements, together with all fixtures and appurtenances attached or affixed thereto, required to be constructed, equipped and installed on the Conveyed Property by Developer pursuant to the Purchase and Sale Agreement.

Purchase and Sale Agreement. That certain Amended and Restated Purchase and Sale Agreement by and between Sherwood URA and Developer providing for the sale by Sherwood URA and the purchase by Developer of the Conveyed Property.

Substantial Completion of the Project Improvements. Such completion of Construction of the Project Improvements as will make the Project Improvements sufficient, suitable, and ready for immediate occupancy for the use intended, which completion shall be deemed to have occurred when all necessary final certificates of occupancy or similar permits related to the use and occupancy of the Project Improvements have been issued.

Substantial Completion of the Infrastructure Improvements. Such completion of Construction of the Infrastructure Improvements as will make the Infrastructure Improvements sufficient, suitable, and ready for immediate occupancy for the use intended which completion occurred on December 16, 2011 upon the recordation of the above-mentioned Exhibit B-1.

Section 1.3. Other Capitalized Terms. Capitalized terms not defined in this Article 1 shall have the meanings set forth for such terms in this Agreement.

ARTICLE II
COORDINATION OF CONSTRUCTION OF PROJECT IMPROVEMENTS AND
INFRASTRUCTURE IMPROVEMENTS

Section 2.1. Work Groups to Coordinate Project Improvements and Infrastructure Improvements.

(a) Sherwood URA and Developer shall coordinate development and construction of the Project Improvements and the Infrastructure Improvements. Sherwood URA and Developer shall create a work group (hereinafter "Work Group") to, among other things, work collaboratively on:

(i) communicating and cooperating in seeking approvals from the City of Sherwood for construction of the Infrastructure Improvements and Project Improvements;

(ii) resolution of any inter-related civil engineering issues;

(iii) development of tentative construction schedules for the Infrastructure Improvements and Project Improvements; and

(iv) addressing site maintenance during the construction of Infrastructure Improvements and Project Improvements.

(b) The Work Group shall consist of representatives of Sherwood URA, Developer and such other persons who possess the information and skills needed to achieve the objectives of the Work Group. Developer and Sherwood URA each shall appoint a lead representative to the Work Group. The lead representative shall coordinate scheduling of Work Group activity and be responsible for documenting the agreements reached by the Work Group as required herein.

(c) Lead Representatives shall determine on behalf of the party he or she represents if the proposals from the Work Group are acceptable. If the Work Group fails to agree upon the specifications or other information necessary to undertake the Project Improvement or the Infrastructure Improvements by the agreed-upon deadlines or if an agreement cannot be reached regarding such deadlines, the party undertaking the impacted improvement shall have the right to propose such specifications or schedules to the other party. The party receiving the specifications or schedules shall have ten (10) Business Days to provide comments on the proposal. If comments are submitted, the party undertaking the Improvement shall notify the other party within ten (10) Business Days if the comments will be incorporated into the party's plan and, if so, in what manner. The parties shall then proceed under the resulting plan or schedule.

(d) The Work Group shall document agreements, or alteration thereof, on the subjects listed in subsection 2.1 (a) herein in written reports to the parties.

Section 2.2. Construction of the Project Improvements. Developer shall comply with all the following covenants in connection with Construction of the Project Improvements:

(a) Developer shall keep Sherwood URA notified of all Construction scheduled for the Project Improvements on a monthly basis via the Work Group.

(b) Any and all Project Improvements shall be constructed at the sole cost expense and control of Developer and Persons other than Sherwood URA and Sherwood URA shall have no obligation to Developer or to any third party to construct, repair, maintain, or operate any Project Improvements. This covenant shall survive the expiration or termination of this Agreement.

Section 2.3. Construction of the Infrastructure Improvements. Sherwood URA shall comply with the following relative to Construction of Infrastructure Improvements:

(a) Sherwood URA and Developer shall enter into the Development Services Agreement and abide by the terms and conditions therein.

(b) Sherwood URA shall keep Developer notified of all Construction scheduled for the Infrastructure Improvements on a monthly basis via the Work Group.

(c) Any and all Infrastructure Improvements shall be constructed at the sole cost expense and control of Sherwood URA and Persons other than Developer and Developer shall have no obligation to Sherwood URA or to any third party to construct, repair, maintain or operate any Infrastructure Improvements. This covenant survives expiration or termination of this Agreement.

Section 2.4. Construction of Improvements on Conveyed Property. Sherwood URA and Developer agree to enter into a separate development agreement for improvements to portions of the Conveyed Property including Lots 1, 9 and 10 with the terms of such separate development agreement to be negotiated in good faith by both parties at a future date.

ARTICLE III INTERFERENCE

Section 3.1. No Interference. All Construction and Operations on the Conveyed Property and the Infrastructure Property and any work or activity connected therewith by or on behalf of Developer or Sherwood URA shall be performed in such a manner so as not to constitute an Interference.

Section 3.2. Notice of Noncompliance. Prior to commencing any action to seek remedial activity under this Article, Sherwood URA or Developer, as applicable, shall raise the issue with the Work Group. If the Work Group cannot resolve the dispute in a timely manner, Sherwood URA or Developer, as applicable, shall give written notice to the other describing with particularity the Interference (the "Notice of Noncompliance"). The recipient of a Notice of Noncompliance shall be responsible for curing or correcting the Interference within a period of five (5) Business Days following receipt of such Notice of Noncompliance; provided, however, that if such cure or correction cannot reasonably be effected within said five (5) Business Day period, then the recipient of the Notice of Noncompliance shall be required to commence, within said five (5) Business Day period, action to effect such cure or

correction and thereafter to prosecute diligently and continuously such action until such cure or correction has been effected.

ARTICLE IV ADDITIONAL COVENANTS

Section 4.1. Management of Construction of Infrastructure Improvements. Sherwood URA shall contract with Developer to provide development services to Sherwood URA in connection with Construction of the Infrastructure Improvements pursuant to the terms and provisions of the Development Services Agreement.

Section 4.2. Utility Facilities. Sherwood URA shall be responsible for maintaining in good and operating condition and repair utility facilities it controls during Construction of the Project Improvements and Infrastructure Improvements located on the Infrastructure Property. Sherwood URA shall complete the construction of utility facilities it controls that are part of the Infrastructure Improvements necessary for construction of the Project Improvements prior to the time Developer is scheduled to commence its construction of the Project Improvements. Developer shall be wholly responsible for maintaining in good and operating condition and repair, all utility facilities used during Construction of the Project Improvements and the Infrastructure Improvements (including, without limitation, the water, sewer, gas, and electrical facilities) located on the Conveyed Property. In the case use of a utility is shared by Sherwood URA and Developer during construction costs shall be allocated based on the relative usage of the utility by each party. In no event will Sherwood URA be responsible for any utilities located on the Conveyed Property after the Conveyed Property has been acquired by Developer.

Section 4.3. Maintenance of Infrastructure Improvements. The parties may agree to share maintenance on some Infrastructure Improvements and Project Improvements jointly used by the parties notwithstanding obligations set forth in the Operative Agreements. If the parties desire to enter into any such written agreement, such separate written agreement will detail the improvements being shared, maintenance responsibilities, and the cost allocation.

ARTICLE V DEFAULTS

Section 5.1. Events of Default by Developer. An Event of Default by Developer shall be deemed to have occurred under this Agreement if Developer fails or refuses to observe, perform or comply with any of the other provisions of this Agreement whether by neglect, inadvertence, intent or otherwise within forty-five (45) Days after written notice is given by Sherwood URA to Developer (a "Developer Default Notice") provided, however, that in the case of a failure which cannot reasonably be cured within the aforesaid forty-five (45) Day period, no Event of Default shall be deemed to exist and Sherwood URA may not exercise any of the remedies set forth in this Agreement, unless and until Developer shall have failed

either (i) to commence action to effect such cure within such forty-five (45) Day period or (ii) to prosecute diligently and continuously such action until such failure has been cured. Any notice given pursuant to this Section shall identify the failure in question with reasonable particularity.

Section 5.2. Events of Default by Sherwood URA. An Event of Default by Sherwood URA shall be deemed to have occurred under this Agreement if Sherwood URA shall fail or refuse to observe, perform, or comply with any of the other provisions of this Agreement, whether by neglect, inadvertence, intent, or otherwise within forty-five (45) Days after written notice is given by Developer to Sherwood URA (a "Sherwood URA Default Notice"); provided, however, that in the case of a failure which cannot reasonably be cured within the aforesaid forty-five (45) Day period, no Event of Default shall be deemed to exist and Developer may not exercise any of the remedies set forth in this Agreement, unless and until Sherwood URA shall have failed either (i) to commence action to effect such cure within such forty-five (45) Day period or (ii) to prosecute diligently and continuously such action until such failure has been cured. Any notice given pursuant to this Section shall identify the failure in question with reasonable particularity.

Section 5.3. Remedies. Upon the occurrence of an Event of Default the non-defaulting party shall be entitled to exercise any and all remedies conferred by this Agreement or otherwise available to such non-defaulting party in law or in equity.

Section 5.4. No Waiver of Rights. No failure by a non-defaulting party to insist upon strict performance of any of the terms of this Agreement or to exercise any right or remedy upon a Default hereunder, no acceptance by a non-defaulting party of partial performance and no custom or practice of the parties hereto at variance with the provisions hereof constitutes a waiver of any such Default or of the terms of this Agreement or a waiver of a non-defaulting party's right to demand compliance with this Agreement. None of the terms of this Agreement to be kept, observed or performed by a defaulting party and no breach thereof shall be waived, altered or modified except by a written instrument executed by the non-defaulting party. No waiver of any breach shall affect or alter this Agreement but each of the terms of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach hereunder. No waiver of any Default hereunder by a defaulting party shall be implied from any omission by a non defaulting party to take any action on account of such Default if such Default persists or is repeated, and no express waiver shall affect any Default other than the Default specified in the express waiver for the time and to the extent therein stated. One or more waivers shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

Section 5.5. Rights Are Cumulative. All rights, powers, privileges, and remedies conferred by this Agreement upon Sherwood URA and Developer shall be cumulative and shall be deemed additional to any and all of the remedies to which either party may be entitled in law, in equity, or otherwise, unless specifically and

expressly limited by the provisions of this Agreement. Either party shall have the right to restrain by injunction any violation or threatened violation of any of the terms, covenants, or conditions of this Agreement and by decree to compel performance of any such terms, covenants, or conditions, it being agreed by Developer and Sherwood URA that the remedy at law for any breach of such term, covenant or condition (except those requiring the payment of a liquidated sum or damages in accordance with express provisions of this Agreement) is not adequate.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.1. No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed to create the relationship between Sherwood URA and Developer of principal and agent, of mortgagee and mortgagor, of partners, of joint venturers, or of any association with each other or, except as may be expressly provided in this Agreement, so as to render either of the parties liable for the debts or obligations of the other.

Section 6.2. Effect of Review, Objection, Failure to Object, Approval. Non-Approval or Consent. In no event shall any review, objection, failure to object, approval, non-approval, or consent by Sherwood URA or Developer with respect to any act, plan, or proposal of the other made pursuant to any provision of this Agreement or otherwise be deemed (i) to constitute an assumption by Sherwood URA or Developer of responsibility or liability for the adequacy or suitability of any such act, plan, or proposal, (ii) to constitute a waiver of any claim or right that Sherwood URA or Developer might have against the other or any other person or entity by reason of or in connection with any act or omission of such other person pursuant to or in accordance with any act, plan, or proposal reviewed by Sherwood URA or Developer, or (iii) to result in Sherwood URA's or Developer's being deemed a joint tortfeasor with the other.

Section 6.3. Notices. Except as may be expressly set forth in this Agreement to the contrary, every notice, demand, request, submittal, consent, approval, or other communication required or permitted to be given to any party hereto pursuant to the terms of this Agreement shall be effective only if given in writing and personally delivered or mailed, postage prepaid, by certified United States mail, return receipt requested, addressed as follows or to such other address as any such party may from time to time designate by notice to the other party in accordance with this Agreement. Every notice, demand, request, submittal, consent, approval, or other communication transmitted as aforesaid shall be deemed to have been given, or communicated, as the case may be, on the date of personal delivery or three (3) Business Days after the time that the same shall have been deposited, certified, in the United States mail from a United States post office or box.

<p>SHERWOOD URA:</p> <p>Sherwood Urban Renewal Agency 22560 SW Pine Street Sherwood, OR 97140 Attn: Joe Gall Fax No: (503) 625-5524</p> <p>With a copy to: Beery, Elsner & Hammond, LLP Attn: Pamela J. Beery 1750 SW Harbor Way, Suite 380 Portland, OR 97201 Fax No: (503) 226-2348</p>	<p>DEVELOPER:</p> <p>Capstone Partners LLC 1015 NW 11 th Avenue, Suite 243 Portland, Oregon 97209 Attn: Chris Nelson Fax No: (503) 226-1973</p> <p>With a copy to: Ball Janik LLP Attn: Bradley S. Miller 101 SW Main St., Suite 1100 Portland, OR 97204 Fax No: (503) 295-1058</p>
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Section 6.4. No Personal Liability. No director, commissioner, officer, official or employee of Sherwood URA or Developer shall be personally liable to the other (i) on account of any default or breach by Sherwood URA or Developer under this Agreement; (ii) for any amount which may become due to the other under this Agreement; or (iii) with respect to any obligations under the terms of this Agreement. Neither Sherwood URA nor Developer shall collect or attempt to collect any money judgment for such matters from the personal assets of any of the directors, commissioners, officers, officials, partners, members or employees of the other on account of a failure by the other to comply with, observe, or perform any of the terms of this Agreement.

Section 6.5. Headings. The headings of the various articles and sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions hereof.

Section 6.6. Severability. If any provision of this Agreement or the application thereof to any person, business entity, public body, or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons, business entities, public bodies, or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.

Section 6.7. Governing Law. This Agreement shall be governed by and interpreted and construed under the laws of the State of Oregon.

Section 6.8. Exhibits. All Exhibits referred to herein and affixed hereto, i.e., B-1 (Depiction of Conveyed Property and Depiction of Infrastructure

Improvements); B-2 (General Description of Infrastructure Improvements); and, B-3 (Amended and Restated Development Services Agreement) are deemed incorporated herein by reference.

Section 6.9. Entire Agreement. In the making, execution, and delivery of this Agreement, neither party has been induced by any representations, statements, covenants, or warranties made by the other party or its agents, other than as specifically set forth herein and in the other Operative Agreements. This Agreement and the other Operative Agreements constitute the full, complete, and entire agreement between and among the parties hereto with respect to the subject matters set forth herein and supersede all prior agreements between Sherwood URA and Developer on the subject matters set forth herein. No agent, employee, officer, representative, or attorney of the parties hereto has the authority to make, or has made, any statement, agreement, representation, or contemporaneous agreement, oral or written, in connection herewith modifying, adding to, or changing the provisions of this Agreement. No amendment of this Agreement shall be binding or effective unless such amendment shall be in writing, signed by both Sherwood URA and Developer.

Section 6.10. Time Is Of Essence. All time limits stated in this Agreement are of the essence of this Agreement.

Section 6.11. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original instrument, and such counterparts together shall constitute one and the same instrument.

Section 6.12. Compliance. No failure of either party hereto to exercise any right or power given hereunder or to insist upon strict compliance with any conditions and obligations specified herein, and no custom or practice of any of the parties hereto at variance with the terms of this Agreement, shall constitute a waiver of either party's right to demand exact compliance with the terms and conditions of this Agreement.

Section 6.13. Survival and Termination of Agreement. This Agreement shall expire and terminate upon the termination of the Purchase and Sale Agreement or if the Purchase and Sale Agreement is not terminated, upon the later of the Substantial Completion of the Project Improvements or Substantial Completion of the Infrastructure Improvements in compliance with the requirements of this Agreement or the mutual agreement of Developer and Sherwood URA.

Section 6.14. No Third Party Beneficiary. No individual or entity that is not a signatory to this Agreement (other than successors, successors-in-title and assigns of the parties to this Agreement) shall have any rights or privileges under or arising out of this Agreement, nor shall any person or entity that is not a signatory to this Agreement otherwise be deemed a third party beneficiary of this Agreement.

Section 6.15. Estoppel Certificates. Sherwood URA and Developer shall execute, acknowledge and deliver to the other promptly upon written request a certificate certifying, among other things, any of the following as requested:

(a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the modifications);

(b) that no notice has been given by Sherwood URA to Developer or by Developer to Sherwood URA of any default under this Agreement that has not been cured and to the best of its knowledge and belief no default exists (or, if such exists, describing the same).

Certificates from Sherwood URA and Developer pertaining to the aforesaid matters may be relied upon by any existing or prospective lending institution and by any prospective assignee or successor of any interest under this Agreement. No certificate issued hereunder, however, shall be deemed to affect the rights and obligations of Sherwood URA and Developer between themselves under this Agreement.

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

Sherwood URA Urban Renewal District

By: _____
Joe Gall, District Manager

Capstone Partners LLC
an Oregon limited liability company

By: _____
Chris Nelson, Member

By: Triangle Development Company, an Oregon corporation, Member

Jeffrey M. Sackett, President

REVISED EXHIBIT B-1

Depiction of Conveyed Property and
Depiction of Infrastructure Improvements

REVISED EXHIBIT B-2

General Description of Infrastructure Improvements

The Infrastructure Improvements consists of (i) the public plaza containing approximately 12,000 square feet on Tract A of Exhibit B-1 at the southeast corner of the intersection of SW Pine Street and the Southern Pacific Railroad tracks ("Cannery Square"); (ii) the construction of new public rights of way, including streets, sidewalks, utilities, and storm water treatment facilities, for the proposed SW Columbia Street east of Pine Street and the proposed SW Highland Drive north of Willamette Street; (iii) the improvement of the north side of SW Willamette Street adjacent to the West Residential Phase and the East Residential Phase of the Conveyed Property, the improvement of SW Pine Street between the railroad and Willamette Street, the improvement, including approximately 17 angle parking stalls, of SW Columbia Street west of Pine Street, the improvement of the east side of SW Washington Street between the railroad and SW Columbia Street;; (iv) the storm water treatment facility located on the west side of the existing Machine Works building on Tract E of Exhibit B-1 (the "Storm Water Garden");, and (v) work required to mitigate the impact on the existing wetlands buffer pursuant to the Service Provider Letter provided by Clean Water Services issued as of June 8, 2009.

REVISED EXHIBIT B-3

Amended and Restated Development Services Agreement

TO: Sherwood Urban Renewal Agency Board

FROM: Tom Pessemier, Community Development Director
Through: Paul Elsner, Beery Elsner & Hammond

SUBJECT: A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD, DIRECTING THE AGENCY MANAGER TO SIGN THE LETTER OF AGREEMENT FOR THE CANNERY DEVELOPMENT

Issue

Should the URA Board approve a non-binding Letter Agreement between the URA and Capstone Partners, LLC pertaining to the development for the Cannery project?

Background

In 2008 the Urban Renewal Agency and Capstone entered into three agreements to document to roles and responsibilities of the URA and Capstone. The three agreements were the Purchase and Sale Agreement, the Site Development Agreement and the Development Services Agreement.

In late 2009 the timelines for the project became more evident and market conditions had changed significantly so the URA and Capstone decided together to amend the agreement.

In 2012 the URA and Capstone amended and restated all three agreements and there were some items in those agreements that both parties agreed should be handled in a separate development agreement to be finally negotiated at a future date. In order to make sure that the items to negotiate are apparent to everyone this Letter Agreement has been created. Since the terms are yet to be decided this Agreement is non-binding but each of the items expected to be addressed in the future Development Agreement.

The specific items relate to Lot 1 and Lots 9&10.

Lot 1 is the West Phase or the building that will share a parking lot with the Community Center. The original agreements did not address the need for only a portion of this property to be conveyed or reciprocal parking, access and utility easements. These items are noted to be addressed.

The amended agreements contemplated grading and gravel of conveyed properties. Particularly Lots 9&10 (Apartment lots). Since that work has not been completed and has been removed from the other agreements. The URA has proposed to cover costs

up to \$40,000 for wet weather work, if necessary, on those lots. All work paid for will be documented and the need will be determined by a geo-technical firm.

Attached is a copy of the Letter agreement.

Financials

As noted above there is a potential commitment for \$40,000 for wet weather construction associated with Lots 9 and 10.

The final price of Lot 1 will be determined by the amount of land purchased.

The URA will be reimbursed for the portion of the costs associated with the construction of the Community Center parking lot that is needed for the Lot 1 building.

Recommendation

The City's attorneys have thoroughly reviewed and prepared the recommended Letter Agreement. In addition Capstone and their attorney have thoroughly reviewed the agreement.

Staff respectfully recommends approval of URA Resolution 2012-xx to adopt the Letter Agreement.



URA RESOLUTION 2012-022

A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF SHERWOOD, DIRECTING THE AGENCY MANAGER TO SIGN THE LETTER OF AGREEMENT FOR THE CANNERY DEVELOPMENT

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") as amended which Plan was originally 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 approximately 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. The legal description of land is set forth on the Sherwood Cannery Square Plat No. 2011-089523, Washington County, Oregon plat records; 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 Agency approved Agreements with Capstone Partners, LLC to purchase and develop the property on August 19, 2008; and

WHEREAS, the Agency approved the First Amendment to the Agreements with Capstone Partners, LLC to purchase and develop the property on November 3, 2009; and

WHEREAS, the Agency approved Amended and Restated Agreements in 2012; and

WHEREAS, the Amended and Restated Agreements noted a future Development Agreement for items not contemplated in those Agreements; and

WHEREAS, the attached not legally binding Letter of Agreement (Attachment A) defines the general terms and conditions agreed upon 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 Letter of Agreement with Capstone Partners, LLC., attached as Exhibit A.

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

Duly passed by the Sherwood Urban Renewal Agency Board this 18th day of September, 2012.

Keith S. Mays, Chair

Attest:

Sylvia Murphy, CMC, Agency Recorder

September 14, 2012

SENT VIA MAIL AND EMAIL

Capstone Partners LLC
Attn: Chris Nelson
1015 NW 11th Avenue, Suite 243
Portland, Oregon 97209

Re: Sherwood Cannery Property Development Agreement

As discussed during meetings between the Sherwood Urban Renewal Agency (URA) and Capstone Partners, LLC (Capstone) during the week of August 27, 2012, both parties have agreed to negotiate a development agreement to address development and construction issues pertaining to several parcels – Lots 1, 9 and 10 as shown on the Sherwood Cannery Square Plat No. 2011-089523 (Exhibit A) - currently owned by the URA and which are set to be sold to Capstone.

This letter is an expression of intent but is not legally binding and does provide the basis of preparation of a legally binding Development Agreement (Agreement) between the URA and Capstone. Both the URA and Capstone acknowledge this letter does not address all the issues the Development Agreement may have to include and as such those additional issues will be the subject of further negotiations. If the parties are unable to agree upon/execute - for any reason whatsoever - a mutually acceptable agreement, each party reserves the right to cancel all negotiations and consider other options. If a binding agreement can be executed and delivered by the parties, the terms of such agreements will supersede all prior discussions, negotiations and agreements relating to the topics they cover.

With the foregoing in mind, Capstone accepts the general terms and conditions to be included as part of the Agreement as set forth below. All the terms and conditions set forth below are subject to URA Board approval.

The parties agree to negotiate the following as part of the Agreement:

On Lot 1

- URA agrees to design and construct a parking lot on a portion of Lot 1 which may ultimately be a separate legal parcel of its own, the total square footage of which being determined by both parties at a future date.

September 17, 2012
Page 2

- Developer agrees to pay URA a pro-rated amount for the total cost to design and construct the parking lot based on the total square footage of the parking lot that will be conveyed to Developer which shall include a reasonable construction management fee based on the total cost for design and construction of the parking lot.
- Both parties agree to negotiate and record reciprocal shared parking, access and public utility easements.

On Lots 9 and 10

- URA will pay Developer an amount not to exceed \$40,000.00 should Developer be required to do “wet weather construction work” for earthwork on Sites 9 and 10. Developer must provide URA with detailed invoices substantiating all wet weather construction work costs necessary for Lots 9 and 10 in advance of any payment by URA to Developer. As used above, the phrase “wet weather construction work” shall mean work identified in a geo-technical report that has been specifically prepared for wet weather construction on lots 9 and 10.

Agreed and Accepted:

Agreed and Accepted:

By: _____
Its: _____

By: _____
Its: _____

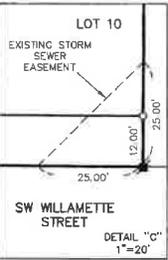
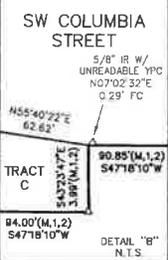
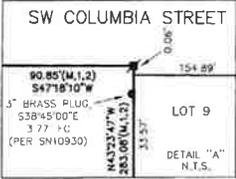
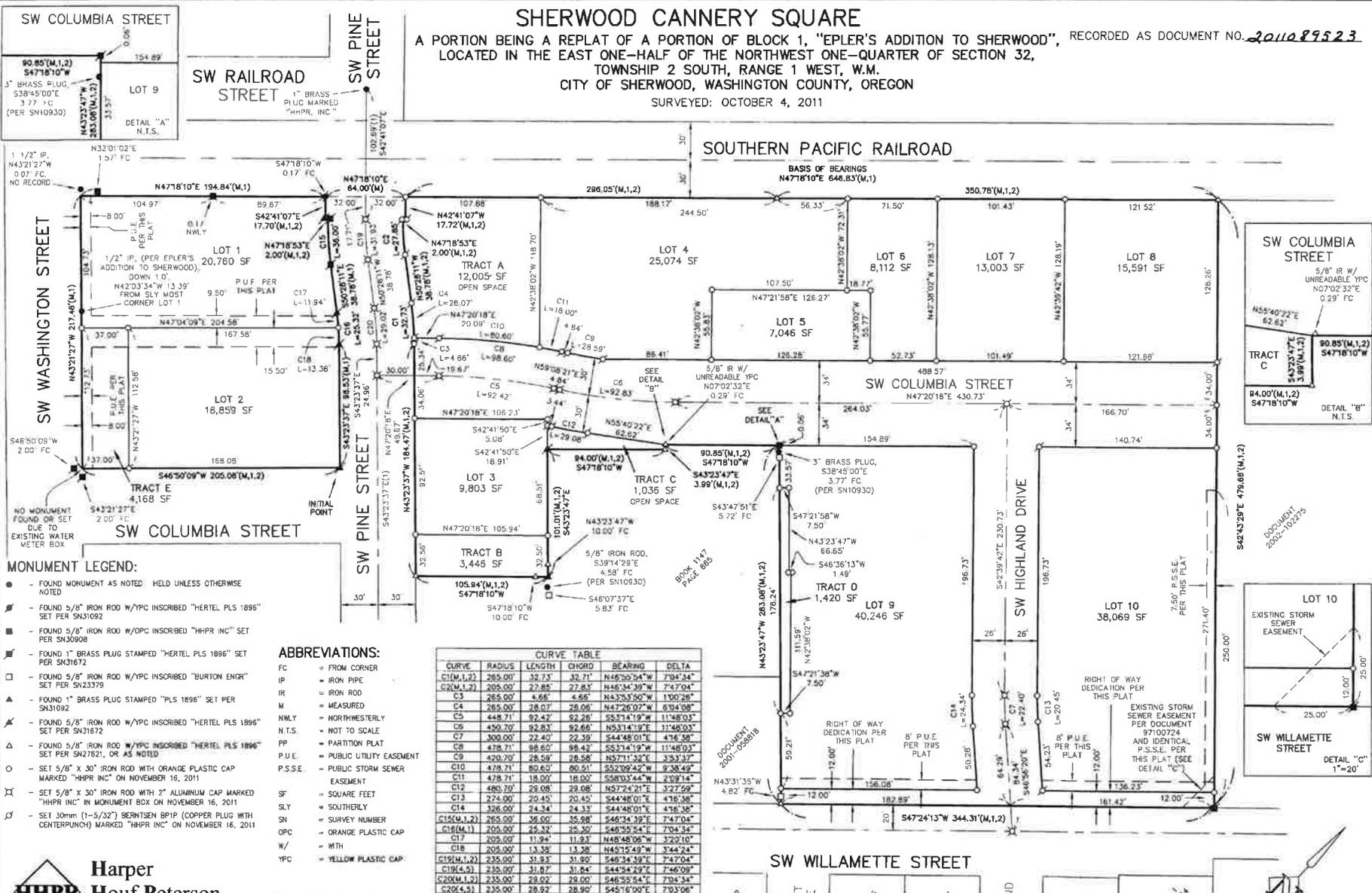
Sherwood Urban Renewal Agency

Capstone Partners, LLC

SHERWOOD CANNERY SQUARE

A PORTION BEING A REPLAT OF A PORTION OF BLOCK 1, "EPLER'S ADDITION TO SHERWOOD",
 LOCATED IN THE EAST ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 32,
 TOWNSHIP 2 SOUTH, RANGE 1 WEST, W.M.
 CITY OF SHERWOOD, WASHINGTON COUNTY, OREGON
 SURVEYED: OCTOBER 4, 2011

RECORDED AS DOCUMENT NO. 2011089523



- MONUMENT LEGEND:**
- - FOUND MONUMENT AS NOTED HELD UNLESS OTHERWISE NOTED
 - - FOUND 5/8" IRON ROD W/YPC INSCRIBED "HERTEL PLS 1896" SET PER SN31092
 - - FOUND 5/8" IRON ROD W/OPC INSCRIBED "HHR INC" SET PER SN30908
 - - FOUND 1" BRASS PLUG STAMPED "HERTEL PLS 1896" SET PER SN31672
 - ▲ - FOUND 1" BRASS PLUG STAMPED "PLS 1896" SET PER SN31092
 - ▲ - FOUND 5/8" IRON ROD W/YPC INSCRIBED "HERTEL PLS 1896" SET PER SN31672
 - ▲ - FOUND 5/8" IRON ROD W/YPC INSCRIBED "HERTEL PLS 1896" SET PER SN27621, OR AS NOTED
 - - SET 5/8" X 30" IRON ROD WITH ORANGE PLASTIC CAP MARKED "HHR INC" ON NOVEMBER 16, 2011
 - ⊠ - SET 5/8" X 30" IRON ROD WITH 2" ALUMINUM CAP MARKED "HHR INC" IN MONUMENT BOX ON NOVEMBER 16, 2011
 - ⊘ - SET 30mm (1-5/32") BERNTSEN BP1P (COPPER PLUG WITH CENTERPUNCH) MARKED "HHR INC" ON NOVEMBER 16, 2011

- ABBREVIATIONS:**
- FC = FROM CORNER
 - IP = IRON PIPE
 - IR = IRON ROD
 - M = MEASURED
 - NWLY = NORTHWESTERLY
 - N.T.S. = NOT TO SCALE
 - PP = PARTITION PLACEMENT
 - P.U.E. = PUBLIC UTILITY EASEMENT
 - P.S.E. = PUBLIC STORM SEWER EASEMENT
 - SF = SQUARE FEET
 - SLY = SOUTHERLY
 - SN = SURVEY NUMBER
 - OPC = ORANGE PLASTIC CAP
 - W/ = WITH
 - YPC = YELLOW PLASTIC CAP

CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1(M,1,2)	205.00'	32.73'	32.71'	N46°20'54"W	7°04'34"
C2(M,1,2)	205.00'	27.85'	27.83'	N46°54'30"W	7°47'04"
C3	265.00'	4.66'	4.66'	N43°23'50"W	1°00'26"
C4	265.00'	28.07'	28.06'	N47°26'07"W	6°04'08"
C5	448.71'	92.42'	92.26'	S53°14'19"W	11°48'03"
C6	450.70'	92.83'	92.66'	S53°14'19"W	11°48'03"
C7	300.00'	22.40'	22.39'	S44°48'01"E	4°16'36"
C8	478.71'	88.60'	88.42'	S53°14'19"W	11°48'03"
C9	420.70'	28.59'	28.58'	N57°11'52"E	3°53'37"
C10	478.71'	80.60'	80.51'	S52°09'42"W	9°38'49"
C11	478.71'	18.00'	18.00'	S58°03'44"W	2°09'14"
C12	480.70'	29.08'	29.08'	N57°24'21"E	3°27'59"
C13	274.00'	20.45'	20.45'	S44°48'01"E	4°16'36"
C14	326.00'	24.34'	24.33'	S44°48'01"E	4°16'36"
C15(M,1,2)	265.00'	39.00'	39.00'	S46°52'54"E	7°04'34"
C16(M,1)	205.00'	25.32'	25.30'	S46°52'54"E	7°04'34"
C17	205.00'	11.24'	11.83'	N48°48'06"W	3°20'10"
C18	205.00'	13.38'	13.38'	N43°15'49"W	3°44'24"
C19(M,1,2)	235.00'	31.93'	31.90'	S46°34'39"E	7°47'04"
C19(L,2)	235.00'	31.97'	31.84'	S44°24'29"E	7°46'09"
C20(M,1,2)	235.00'	29.04'	29.04'	S46°52'54"E	7°04'34"
C20(L,2)	235.00'	28.92'	28.90'	S45°16'00"E	7°03'06"

- REFERENCE DOCUMENTS LEGEND:**
- (1) - RECORD INFORMATION PER SN31672
 - (2) - RECORD INFORMATION PER SN31092
 - (3) - RECORD INFORMATION PER SN27621
 - (4) - RECORD INFORMATION PER SN30908
 - (5) - RECORD INFORMATION PER DOCUMENT 2007-115729

- SHEET INDEX:**
- SHEET 1: PLAT MAP, 1"=50'
 LEGEND
 REFERENCES
- SHEET 2: SURVEYOR'S CERTIFICATE
 DECLARATION
 NARRATIVE
 APPROVALS

Harper Houf Peterson Righellis Inc.
 ENGINEERS • PLANNERS
 LANDSCAPE ARCHITECTS • SURVEYORS
 245 SE Spokane Street, Suite 200, Portland, OR 97202
 phone 503.221.1131 www.hhrpc.com fax 503.221.1171

REGISTERED PROFESSIONAL LAND SURVEYOR

 JOHN T. CAMPBELL
 60070 LS



SHERWOOD CANNERY SQUARE

A PORTION BEING A REPLAT OF A PORTION OF BLOCK 1, "EPLER'S ADDITION TO SHERWOOD",
 LOCATED IN THE EAST ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 32,
 TOWNSHIP 2 SOUTH, RANGE 1 WEST, W.M.
 CITY OF SHERWOOD, WASHINGTON COUNTY, OREGON

RECORDED AS DOCUMENT NO. 2011089523

SURVEYED: OCTOBER 4, 2011

APPROVALS:

APPROVED THIS 30th DAY OF November, 2011
 COMMUNITY DEVELOPMENT DIRECTOR, CITY OF SHERWOOD

BY: [Signature]

APPROVED THIS 16th DAY OF Dec 2011
 WASHINGTON COUNTY BOARD OF COMMISSIONERS

BY: [Signature]
 County Surveyor

APPROVED THIS 16th DAY OF Dec 2011
 WASHINGTON COUNTY SURVEYOR

BY: [Signature]

ATTEST THIS 16th DAY OF DECEMBER 2011
 DIRECTOR OF ASSESSMENT AND TAXATION
 EX-OFFICIO COUNTY CLERK



BY: [Signature]
 DEPUTY

APPROVED THIS 16th DAY OF DECEMBER 2011
 DIRECTOR OF ASSESSMENT AND TAXATION
 (WASHINGTON COUNTY ASSESSOR)

BY: [Signature]

STATE OF OREGON }
 COUNTY OF WASHINGTON } SS.

I DO HEREBY CERTIFY THAT THIS SUBDIVISION PLAT WAS
 RECEIVED FOR RECORD ON THIS 16th DAY OF
December 2011 AT 12:00 O'CLOCK P.M.
 AND RECORDED IN THE COUNTY CLERK RECORDS

[Signature]
 DEPUTY COUNTY CLERK

SURVEYOR'S CERTIFICATE

I, JOHN T. CAMPBELL, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF OREGON, HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS THE LAND REPRESENTED ON THIS SUBDIVISION PLAT, LOCATED IN THE EAST ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 32, TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF SHERWOOD, WASHINGTON COUNTY, OREGON, SAID SUBDIVISION BEING A REPLAT OF A PORTION OF BLOCK 1, "EPLER'S ADDITION TO SHERWOOD" AND A SUBDIVISION OF OTHER LANDS, THE BOUNDARY OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, BEING A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896" AT THE EASTERLY MOST CORNER OF BLOCK 1, "EPLER'S ADDITION TO SHERWOOD", THENCE SOUTH 46°50'09" WEST ALONG THE SOUTHEASTERLY BOUNDARY OF SAID BLOCK 1, AS WELL AS THE NORTHEASTERLY RIGHT OF WAY LINE OF S.W. COLUMBIA STREET, A DISTANCE OF 205.08 FEET TO THE SOUTHERLY MOST CORNER OF SAID BLOCK 1, FROM WHICH A 1" BRASS PLUG INSCRIBED "PLS 1896" BEARS SOUTH 43°21'27" EAST A DISTANCE OF 2.00 FEET AND A 1" BRASS PLUG INSCRIBED "PLS 1896" BEARS SOUTH 46°50'09" WEST A DISTANCE OF 2.00 FEET; THENCE NORTH 43°21'27" WEST ALONG THE SOUTHWESTERLY BOUNDARY OF SAID BLOCK 1 AND ITS NORTHWESTERLY EXTENSION, AS WELL AS THE NORTHEASTERLY RIGHT OF WAY LINE OF S.W. WASHINGTON STREET, A DISTANCE OF 217.48 FEET TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD, FROM WHICH A 1-1/2" IRON PIPE BEARS NORTH 43°21'27" WEST A DISTANCE OF 0.07 FEET AND A 5/8" IRON ROD WITH ORANGE PLASTIC CAP INSCRIBED "HHR INC." BEARS NORTH 32°01'02" EAST A DISTANCE OF 1.57 FEET; THENCE NORTH 47°18'10" EAST ALONG SAID SOUTHEASTERLY SOUTHERN PACIFIC RAILROAD RIGHT OF WAY LINE, A DISTANCE OF 194.84 FEET TO THE SOUTHWESTERLY RIGHT OF WAY OF S.W. PINE STREET, FROM WHICH A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896" BEARS SOUTH 47°18'10" WEST A DISTANCE OF 0.17 FEET; THENCE ALONG SAID SOUTHWESTERLY RIGHT OF WAY OF S.W. PINE STREET THE FOLLOWING FOUR (4) COURSES AND TWO (2) CURVES; SOUTH 42°41'07" EAST A DISTANCE OF 17.72 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896"; THENCE NORTH 47°18'53" EAST A DISTANCE OF 2.00 FEET TO A 1" BRASS PLUG INSCRIBED "HERTEL PLS 1896"; THENCE ALONG THE ARC OF A NON-TANGENT, 265.00 FOOT RADIUS CURVE 98.53 FEET, THROUGH A CENTRAL ANGLE OF 07°04'34" (THE LONG CHORD BEARS SOUTH 46°34'39" EAST A DISTANCE OF 35.98 FEET) TO A 1" BRASS PLUG INSCRIBED "HERTEL PLS 1896"; THENCE SOUTH 50°28'11" EAST A DISTANCE OF 38.78 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896"; THENCE ALONG THE ARC OF A 205.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 25.32 FEET THROUGH A CENTRAL ANGLE OF 07°04'34" (THE LONG CHORD BEARS SOUTH 46°34'39" EAST A DISTANCE OF 35.98 FEET) TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896"; THENCE SOUTH 43°23'37" EAST A DISTANCE OF 98.53 FEET TO THE INITIAL POINT.

TOGETHER WITH:

COMMENCING AT SAID INITIAL POINT; THENCE SOUTH 46°50'09" WEST ALONG THE SOUTHEASTERLY BOUNDARY OF SAID BLOCK 1, AS WELL AS THE NORTHEASTERLY RIGHT OF WAY LINE OF S.W. COLUMBIA STREET, A DISTANCE OF 205.08 FEET TO THE SOUTHERLY MOST CORNER OF SAID BLOCK 1, FROM WHICH A 1" BRASS PLUG INSCRIBED "PLS 1896" BEARS SOUTH 43°21'27" EAST A DISTANCE OF 2.00 FEET AND A 1" BRASS PLUG INSCRIBED "PLS 1896" BEARS SOUTH 46°50'09" WEST A DISTANCE OF 2.00 FEET; THENCE NORTH 43°21'27" WEST ALONG THE SOUTHWESTERLY BOUNDARY OF SAID BLOCK 1 AND ITS NORTHWESTERLY EXTENSION, AS WELL AS THE NORTHEASTERLY RIGHT OF WAY LINE OF S.W. WASHINGTON STREET, A DISTANCE OF 217.48 FEET TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD, FROM WHICH A 1-1/2" IRON PIPE BEARS NORTH 43°21'27" WEST A DISTANCE OF 0.07 FEET AND A 5/8" IRON ROD WITH ORANGE PLASTIC CAP INSCRIBED "HHR INC." BEARS NORTH 32°01'02" EAST A DISTANCE OF 1.57 FEET; THENCE NORTH 47°18'10" EAST ALONG SAID SOUTHEASTERLY SOUTHERN PACIFIC RAILROAD RIGHT OF WAY LINE, A DISTANCE OF 194.84 FEET TO THE SOUTHWESTERLY RIGHT OF WAY OF S.W. PINE STREET, FROM WHICH A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896" BEARS SOUTH 47°18'10" WEST A DISTANCE OF 0.17 FEET; THENCE CONTINUING ALONG SAID SOUTHEASTERLY SOUTHERN PACIFIC RAILROAD RIGHT OF WAY LINE, NORTH 47°18'10" EAST A DISTANCE OF 64.00 FEET TO A 1-5/32" COPPER PLUG INSCRIBED "HHR INC." AND THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHEASTERLY SOUTHERN PACIFIC RAILROAD RIGHT OF WAY LINE, NORTH 47°18'10" EAST A DISTANCE OF 646.83 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896"; THENCE SOUTH 42°43'29" EAST A DISTANCE OF 479.86 FEET TO A 1" BRASS PLUG INSCRIBED "HERTEL PLS 1896" AT THE NORTHEASTERLY RIGHT OF WAY LINE OF S.W. WILLAMETTE STREET; THENCE SOUTH 47°24'13" WEST ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE OF S.W. WILLAMETTE STREET, A DISTANCE OF 344.31 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896"; THENCE NORTH 43°23'47" WEST A DISTANCE OF 283.08 FEET TO A 1" BRASS PLUG INSCRIBED "HERTEL PLS 1896"; THENCE SOUTH 47°18'10" WEST A DISTANCE OF 80.85 FEET TO A POINT, FROM WHICH A 5/8" IRON ROD WITH YELLOW PLASTIC CAP (UNREADABLE) BEARS NORTH 07°02'32" EAST A DISTANCE OF 0.25 FEET; THENCE SOUTH 43°23'47" EAST A DISTANCE OF 3.99 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896"; THENCE SOUTH 47°18'10" WEST A DISTANCE OF 94.00 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896"; THENCE SOUTH 43°23'47" EAST A DISTANCE OF 101.01 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896"; THENCE SOUTH 47°18'10" WEST A DISTANCE OF 105.94 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896" AT THE NORTHEASTERLY RIGHT OF WAY LINE OF S.W. PINE STREET; THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY OF S.W. PINE STREET THE FOLLOWING FOUR (4) COURSES AND TWO (2) CURVES; NORTH 43°23'37" WEST A DISTANCE OF 164.47 FEET TO A SET 1-5/32" COPPER PLUG MARKED "HHR INC."; THENCE ALONG THE ARC OF A 265.00 FOOT RADIUS CURVE 98.53 FEET TO THE LEFT, AN ARC DISTANCE OF 32.73 FEET THROUGH A CENTRAL ANGLE OF 07°04'34" (THE LONG CHORD BEARS NORTH 46°55'54" WEST A DISTANCE OF 32.71 FEET) TO A SET 1-5/32" COPPER PLUG MARKED "HHR INC."; THENCE NORTH 50°28'11" WEST A DISTANCE OF 38.78 FEET TO A SET 1-5/32" COPPER PLUG MARKED "HHR INC."; THENCE ALONG THE ARC OF A 205.00 FOOT RADIUS CURVE TO THE RIGHT, AN ARC DISTANCE OF 25.32 FEET THROUGH A CENTRAL ANGLE OF 07°04'34" (THE LONG CHORD BEARS NORTH 46°34'39" WEST A DISTANCE OF 27.83 FEET) TO A SET 1-5/32" COPPER PLUG MARKED "HHR INC." AND POINT OF NON-TANGENCY; THENCE NORTH 47°18'53" EAST A DISTANCE OF 2.00 FEET TO A SET 1-5/32" COPPER PLUG MARKED "HHR INC."; THENCE NORTH 42°41'07" WEST A DISTANCE OF 17.72 FEET TO THE POINT OF BEGINNING.

CONTAINING 6.41 ACRES MORE OR LESS.

NOTES

1. TRACTS A AND C ARE OPEN SPACE TRACTS.
2. TRACTS B, D AND E ARE SUBJECT TO STORM SEWER, SURFACE WATER, DRAINAGE AND DETENTION EASEMENTS OVER THEIR ENTIRETY FOR THE BENEFIT OF CLEAN WATER SERVICES
3. TRACTS A, B, C, D AND E SHALL BE OWNED AND MAINTAINED BY THE CITY OF SHERWOOD
4. THIS PLAT IS SUBJECT TO A STORM SEWER EASEMENT PER DOCUMENT NO. 97100724, THE WIDTH OF WHICH IS INDETERMINATE.
5. THIS PLAT IS SUBJECT TO CONDITIONS OF APPROVAL PER CITY OF SHERWOOD CASE FILE NO. SUB 09-02

NARRATIVE

WE WERE RETAINED BY THE CITY OF SHERWOOD URBAN RENEWAL AGENCY TO SUBDIVIDE THAT PROPERTY ACQUIRED BY SAID CITY OF SHERWOOD URBAN RENEWAL AGENCY, AS DESCRIBED BY DEED DOCUMENTS 2008-041103, 2009-079566 AND 2010-004456, WASHINGTON COUNTY DEED RECORDS. SAID PROPERTY IS LOCATED IN THE EAST ONE-HALF OF THE NORTHWEST ONE-QUARTER (E1/2 NW1/4) OF SECTION 32, TOWNSHIP 2 SOUTH, RANGE 1 WEST, W.M., CITY OF SHERWOOD, WASHINGTON COUNTY, OREGON.

SAID PROPERTY WAS RECENTLY SURVEYED BY ALBERT HERTEL AND FILED AS SN31672, WASHINGTON COUNTY SURVEY RECORDS. ALL BEARINGS AND DISTANCES SHOWN ALONG THE BOUNDARY WERE FOUND TO BE CONSISTENT WITH RECORD DATA AS SHOWN.

THE BASIS OF BEARINGS FOR THIS SURVEY IS BETWEEN THE FOUND 1" BRASS DISC STAMPED "HERTEL PLS 1896" AND THE FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP INSCRIBED "HERTEL PLS 1896" ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD, AS NORTH 47°18'10" EAST.

THIS SURVEY SHALL ALSO SERVE AS A RECORD OF THE MONUMENTS REPLACED ON THE CENTERLINE AND RIGHT OF WAY LINES OF S.W. PINE STREET AS SET PER SN30908 WHICH WERE SUBSEQUENTLY DESTROYED BY CONSTRUCTION.

DECLARATION

KNOW ALL MEN BY THESE PRESENTS, THAT CITY OF SHERWOOD URBAN RENEWAL AGENCY, IS THE OWNER OF THE LAND DESCRIBED IN THE SURVEYOR'S CERTIFICATE AND AS SHOWN ON THE ANNEXED MAP, AND HAS CAUSED THE SAME TO BE SURVEYED AND PLATTED INTO LOTS AND TRACTS AS SHOWN ON THE PLAT MAP OF "SHERWOOD CANNERY SQUARE" IN ACCORDANCE WITH CHAPTER 92 OF THE OREGON REVISED STATUTES, AND HEREBY DEDICATES ALL RIGHT-OF-WAY SHOWN HEREON TO THE PUBLIC, FOR PUBLIC USE, AND HEREBY GRANTS ALL EASEMENTS AS SHOWN OR NOTED, TRACTS A, B, C, D AND E ARE HEREBY CONVEYED TO THE CITY OF SHERWOOD.

BY: [Signature]
 TOM PESSEMIER, PRO-TEM
 CITY MANAGER

ACKNOWLEDGEMENT

STATE OF OREGON }
 COUNTY OF WASHINGTON } SS.
 THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON November 30, 2011
 BY TOM PESSEMIER AS CITY MANAGER PRO-TEM OF CITY OF SHERWOOD.

[Signature]
 NOTARY SIGNATURE

[Signature]
 NOTARY PUBLIC - OREGON

COMMISSION NUMBER 430402

MY COMMISSION EXPIRES June 23, 2012



ENGINEERS-PLANNERS
 LANDSCAPE ARCHITECTS-SURVEYORS
 205 SE Spokane Street, Suite 200, Portland, OR 97202
 phone: 503.221.1131 www.hhrp.com fax: 503.221.1171

Sept. 18, 2012 URA BOARD
 Date Gov. Body

New Bus. A.1
 Agenda Item Exhibit #

4.B, 4.C, 4.D
Resolution's 2012-019, 2012-020, 2012-021

Approved Minutes

**SHERWOOD URBAN RENEWAL AGENCY BOARD OF DIRECTORS
MEETING MINUTES
Tuesday, September 18, 2012
22560 SW Pine Street, Sherwood, Oregon 97140**

REGULAR SESSION

1. **CALL TO ORDER:** Chair Mays called the meeting to order at 6:35 pm.
2. **URA BOARD PRESENT:** Chair Keith Mays, Dave Grant, Matt Langer and Bill Butterfield. Krisanna Clark arrived at 6:38 pm. Linda Henderson and Robyn Folsom were absent.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Joe Gall, Community Development Director Tom Pessemier, Finance Director Craig Gibons, Police Chief Jeff Groth, Police Captain Mark Daniel, City Engineer Bob Galati, Agency Recorder Sylvia Murphy. City Attorney Paul Elsner.

Chair Mays addressed the Consent Agenda and asked for a motion.

4. **CONSENT AGENDA:**

- A. **Approval of August 7, 2012 URA Board Meeting Minutes**
- B. **Approval of September 4, 2012 URA Board Meeting Minutes**

MOTION: FROM DAVE GRANT TO APPROVE THE CONSENT AGENDA, SECONDED BY BILL BUTTERFIELD. ALL PRESENT BOARD MEMBERS VOTED IN FAVOR, MOTION PASSED 4:0 (HENDERSON, FOLSOM & CLARK HAD NOT ARRIVED YET).

Chair Mays addressed the next agenda item.

5. **NEW BUSINESS:**

- A. **URA Resolution 2012-018 A Resolution of the Sherwood Urban Renewal Agency approving the Sixteenth Amendment to the Sherwood Urban Renewal Plan, dated August 29, 2000 to amend Plan Goals and Objectives**

Tom Pessemier Community Development Director came forward and stated this is the sixteenth amendment to the Urban Renewal Plan originally adopted in 2000 and in 2005 there was a fifth amendment to the Plan which allowed the purchase of the cannery properties and redevelopment of that property. Tom stated as we get closer to a position of being able to sell some of the property, we have gone back and looked at the Urban Renewal Plan and have decided to recommend some changes in regards to specific sections, mostly to do with housing and planned unit development that has been approved by the City Council. Tom explained the planned unit development allows for transfer of densities inside a PUD and the original plan did not contemplate those types of things. Tom stated this is mostly clean up but puts us in a place to sell properties and said this is a resolution for the URA Board and there will be a corresponding ratification resolution before the City Council later tonight.

Chair Mays thanked Tom and asked for questions of the Board, with none received he made the following motion.

Recorder note: URA Board member Krisanna Clark arrived during staff presentation at 6:38 pm.

MOTION: FROM CHAIR MAYS TO ADOPT URA RESOLUTION 2012-018, SECONDED BY DAVE GRANT. ALL PRESENT BOARD MEMBERS VOTED IN FAVOR, MOTION PASSED 5:0 (HENDERSON AND FOLSOM HAD NOT ARRIVE YET).

Chair Mays stated the Board would address the remainder of the items on the agenda after the City Council meeting this evening.

6. RECESSED:

Chair Mays recessed the URA Board meeting at 6:40 pm to convene to a City Council session and reconvened the URA Board meeting at 8:01 pm.

RECONVENED

1. **CALL TO ORDER:** Chair Mays reconvened the URA Board meeting at 8:01 pm.
2. **URA BOARD PRESENT:** Chair Keith Mays, Dave Grant, Matt Langer, Bill Butterfield, Krisanna Clark, Linda Henderson and Robyn Folsom.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Joe Gall, Community Development Director Tom Pessemier, Public Works Director Craig Sheldon, Finance Director Craig Gibbons, Police Chief Jeff Groth, Police Captain Mark Daniel, City Engineer Bob Galati, Civil Engineer Jason Waters, and Agency Recorder Sylvia Murphy. City Attorney Paul Elsner.

Chair Mays continued with addressing the following business.

4. NEW BUSINESS

B. URA Resolution 2012-019 A Resolution of the Urban Renewal Agency of the City of Sherwood, directing the Agency Manager to sign the amended and restated Development Services Agreement for the Cannery Development

Tom Pessemier Community Development Director stated his presentation will combine all four URA Resolutions as they are related and contractually tied together. Tom stated in 2000 the Urban Renewal Plan addressed development inside the Urban Renewal District and the plan was essentially the start of the Urban Renewal District and what the goals and objectives were inside of that. In 2005 the Urban Renewal Plan was changed to add the cannery property and in this same year LeLand Consulting was hired to prepare a development strategy for that property and that essentially identified what the city wanted to do in order to develop the property and eventually sell the different properties. In 2007 the Urban Renewal Agency prepared Request for Proposals to select a preferred developer to work with the Urban Renewal Agency to develop that property, this was a competitive process that was advertised and Capstone Partners was the

selected developer to work with the Urban Renewal Agency in 2008. In late 2008 the Urban Renewal Agency signed a Memorandum of Understanding with Capstone Partners and that eventually turned into three agreements; the Purchase and Sale Agreement, the Development Services Agreement, and the Site Development Agreement that formed the basis of the different responsibilities for Capstone Partners and the Urban Renewal Agency. Tom stated in 2009 these agreements were modified and different timing elements were better defined at that point as well as market conditions had changed and there was a first amendment to each of these agreements. Tom informed the Board staff is proposing amending and restating the agreements so that they are very clear in the documents verses previously where you had to go to three different agreements to figure things out. Tom stated the reason for doing this is we have a better idea of the timing, responsibilities and the market conditions that exist today. Tom said many of the things in these agreements have been accomplished both on the public side and private side and having documents reflect where we are currently makes a lot of sense. Tom stated the attorneys have thoroughly reviewed the documents and actually prepared them, not only our attorney but Capstone's attorneys as well and the urban renewal staff and Capstone have been very involved. Tom stated we worked hard to make these documents the best that we possibly can so they reflect the different responsibilities.

Tom addressed the Purchase and Sale Agreement and stated the major changes are identifying the different items that have been accomplished for the last four years since 2008 when originally put in place. Tom stated there were phrases that were used throughout the document and were not clear as to what was property and what was land, and said now that we have a recorded plat it's easy to define those better and define what land was to make that clear, so as we sold land it was clear as to what we were doing. Tom stated the infrastructure improvement completion date was defined and that date is December 16, 2011 and there are a number of things in the documents that comes from that date, primarily the two most important are the first take down date and the last take down date. Tom explained the first take down date is essentially the first date at which a phase of the property will be purchased and that is two years from the infrastructure completion date and this date would be December 16, 2013. Tom said there's an expectation that the first phase of the project will have been taken down. Tom explained the last take down date is when essentially the last phase is expected to be taken down and this date is December 16, 2018. Tom stated those were not really defined before as we did not have a date for the infrastructure improvements and those have now been defined to a date.

Tom stated the ability to purchase individual phases was defined and said there were two phases in the previous document and it's obvious as each individual building is ready to be built it would want to be it's own phase. Tom stated Section C was added, which documents the work that has been done to date by the Urban Renewal Agency. Tom explained there were a number of changes in regards to Lot 1, this is the lot outside of the Machine Works Building and this lot was always intended to be a shared lot for parking for the Community Center as well as a building to be built by the private developer, and in regards to the parking lot that was not clear in this document so we worked to make sure that was clear.

Tom stated, financially as far as the Purchase and Sale Agreement, the way the original agreement was written was that the purchase of the two apartment buildings, which are lots 9 and 10, were not required to be purchased by the private side until they either achieved 95% of

occupancy or 5 years from the date that occupancy was given for the building. Tom stated that began to be problematic for both the URA and Capstone because of lending issues. Tom stated what they proposed was to purchase it years earlier and we worked out a formula to basically say if we are getting the money earlier than that's a benefit to us because that's the money we don't have to take loans out. Tom stated we proposed to adjust the square footage price from \$8 to \$7.11 and getting the money earlier is a benefit to the City as well as the developer.

Tom addressed the Development and Services Agreement and said this agreement identifies what work will be done as far as construction and construction management, essentially the projects. Tom said Capstone Partners was doing a large portion of that work and this agreement changes that in some respects, specifically it removes the remaining portions of the Machine Works Building from the agreement. Tom stated, if this document is adopted as proposed, there would be much left in it. We have proposed to essentially close this document out and in doing so, we identified a number of things that were not fully complete, so we added a number of things to identify those to make it clear who was doing what and identified transition services that will need to happen between Capstone and the URA. Tom stated the biggest one is, the way that the document was set up, the payments happened as the project went from start to finish and the bulk of the payments to Capstone would have happened during construction, because that's when the bulk of the cost associated with the project go out, but that doesn't necessarily mean that this was the bulk of the work. Tom stated we went through a process to identify exactly how much work Capstone had done to date and we came up with an agreement that essentially would pay them \$80,000 if this agreement is adopted for the work they have already completed. Tom stated moving forward those cost would be borne by the URA.

Tom addressed the Site Development Agreement and stated this agreement tied the Development Services Agreement and the Purchase and Sale Agreement together. Tom said this agreement defined a lot of the different terms and defined a substantial completion date, which we redefined as December 16, 2011, it also included the general description of construction improvements, which included the Machine Works Building and the gravel and grating of conveyed property. Tom explained there were provision in there that basically defined public infrastructure including the Machine Works Building, which we changed because we removed that from public infrastructure definition. And gravel and grating of conveyed property was in that agreement and it was not clear to either side what that was. Tom stated there wasn't a lot of changes made to this agreement accept to add more specificity and identification of what has happened and what is going to happen.

Tom stated as we went through these documents there were things that we found that will probably take more time to work through and needed better definition, and if this is adopted, we will end up in a separate agreement. Tom stated these were issues, particularly in regards to Lot 1, this is the lot next to the Community Center, we have some work to make sure it's clear how reciprocal access easements, reciprocal parking agreements, reciprocal utility easements, where the property line may end up eventually, there's just a lot of little things we need to work out to make sure both sides are fair. Tom stated what we are prepared to do and before you tonight is a nonbinding Letter Agreement, this basically denotes the things we want to work on through a Development Agreement which will come back to the URA Board for final adoption after we agree on that. Tom explained we wanted to make sure all the pieces were there and it wasn't really

necessary that this was done before this was done. Tom stated there are some timing constraints because Capstone is really trying to move forward with their apartment building and in order to do that these agreements need to be changed. Tom stated that is in regards to Lot 1, and as mentioned, the grating and graveling of conveyed property, certainly for the apartments, that is something that is coming up and wet weather season is coming up quickly so we put a provision in this Letter Agreement that basically says that if there is wet weather construction as defined by a geotechnical engineer and is shown in the reports and if Capstone Partner's documents that and submits it to us we can potentially pay up to but no more than \$40,000 for the wet weather associated with that development, this basically gets the gravel and grating conveyed property removed from all the agreements.

Tom stated there are four agreements for consideration and offered to answer Board questions.

Chair Mays thanked Tom and the URA team for their work to update the agreements to provide more certainty to the community and commended Capstone for being a great partner in all the excitement of the project including the apartment project approved by the Planning Commission. Tom confirmed the great partnership with Capstone.

Chair Mays thanked Board member Bill Butterfield for all his work and involvement and asked how he felt about the agreements. Mr. Butterfield stated he agreed with Tom in that Capstone has worked hard with the City to resolve these issues and believes everyone is happy with the results.

Tom informed the Board the resolutions before them have exhibits which were not attached and Sylvia (Agency Recorder) has copies for the Board (see record, Exhibit A.1, Map) and said Paul Elsner may have comments before we move forward.

Chair Mays asked for Board questions on Tom's report. With none received, Chair Mays addressed the following resolution and asked Attorney Paul Elsner if he needed the Board to do anything to the proposed resolution:

URA Resolution 2012-019, A Resolution of the Urban Renewal Agency of the City of Sherwood, directing the Agency Manager to sign the amended and restated Development Services Agreement for the Cannery Development

Paul stated what Tom is speaking of is in Exhibit B-1, the Description of the Property and said in the way the agreement was written, it is defined as the property and the property is the universe and then there's a subset of that which makes up the land, we did it to basically bifurcate the property, and the land is basically a set number of lots. Paul stated the exhibit describes the larger universe and we will likely have to amend the agreement in a very technical fashion to exclude some of the tracts. Paul stated if you look at the map (Exhibit A.1), the map has lots and tracts, for example on SW Pine you'll see Tract B, that is included in the description of property but it is not...the way the language is used in the agreement, it says the legal description of the land is as set forth in Sherwood Cannery Square plat number 2011, that is this (Mr. Elsner referred to the map) and said the land excludes Tract B, Tract A, Lot 2, Tract C and Tract D. Paul stated all we will be doing is basically divorcing those away from that, so the only language is, that will be changed in each of the agreements is in the recitals to basically say:

“The legal description of the land as set forth in there accepting for Tracts A, B, C, Lot 2” this will be taken out, Paul stated probably an oversight on my part as I did not have this map (Exhibit A.1) in front of me as we were moving with agreeing with the document.

Ms. Henderson asked if Paul was referring to, A, B, C & D. Paul replied what he is saying is Lot 2, Tract B, Tract A, Tract C and Tract D are going to be excluded from the description of the term “land”. Tom Pessemier stated as a reference, Tract A is the Plaza and Tracts B, C & D are wetland buffers and these are obviously properties that Capstone does not want to purchase. Tom confirmed Lot 2 was the Machine Works Building.

Chair Mays asked Paul Elsner to state what the motion should be to amend.

Mr. Elsner replied what the Board can do is make a motion to approve the contract “substantially akin in the form attached thereto”, attached to the resolution, that way that will allow me the flexibility to add that rather than you approving that contract in that form. Paul said the only change that will be made to these documents is basically excluding what we have just described to you, the wetland buffers and Lot 2.

Chair Mays said he will start the motion language and asked the Mr. Elsner to fill in the remainder of the motion language.

Paul stated: “Directs the Agency Manager to sign the amended and restated, (for example with the Purchase and Sale Agreement with Capstone Partners, LLC) in a form substantially akin to that attached as Exhibit A”

Paul stated the only change that you are going to make which is just in the final document is basically divorcing off those pieces that they are not going to buy.

Chair Mays stated the following motion, seeking Mr. Elsner input of language, with back and forth clarifying discussions between Chair Mays and Mr. Elsner the following motion was made:

MOTION TO AMEND: FROM CHAIR KEITH MAYS TO AMEND URA RESOLUTIONS 2012-019, 2012-020 AND 2012-021, SECTION 1 TO BE CHANGED TO READ “THE AGENCY DIRECTS THE AGENCY MANAGER TO SIGN THE AMENDED AND RESTATED AMENDED AGREEMENTS WITH CAPSTONE PARTNERS, LLC, IN A FORM SUBSTANTIALY AKIN TO THAT ATTACHED AS EXHIBIT A”. SECONDED BY MS. KRISANNA CLARK.

Prior to calling for a vote, Ms. Henderson stated she has a concern and plans to vote nay on agenda items C and D, as she has not had an opportunity to review the documents in good conscious to vote on them. Ms. Henderson stated not because she does not believe in the agreement or work performed by staff, but because of the timing in which she received the documents and said she had jury duty and was unable to completely review the documents. Ms. Henderson asked if she votes to amend.....brief discussion occurred and clarification was received from Chair Mays and Mr. Elsner that Ms. Henderson can vote for the motion to

amendment, and not vote to approve and the Board can motion to amend unilaterally all three resolutions.

Mr. Elsner added as long as the Board is aware and understands what they are doing, they can do basically anything like this.

Chair Mays called for a vote on the proposed amendments to URA Resolution 2012-019, 2012-020 and 2012-021, changing Section 1 of each resolution to read as Paul stated.

VOTE: ALL BOARD MEMBERS VOTED IN FAVOR OF AMENDMENTS TO URA RESOLUTIONS 2012-019, 2012-020 AND 2012-021.

Prior to receiving a final motion and vote on the amended resolutions, Tom Pessemier informed the Board that the document provided to the Board this evening (Map, Exhibit A.1) will be added to each resolution as an exhibit.

Mayor Mays asked for a motion on amended URA Resolution 2012-019.

MOTION: FROM DAVE GRANT TO APPROVE URA RESOLUTION 2012-019 AS AMENDED, SECONDED BY MS. HENDERSON. ALL BOARD MEMBERS VOTED IN FAVOR.

Chair Mays addressed the next agenda item and asked if there were any changes to this resolution. Tom Pessemier replied, we will be adding the exhibits.

Chair Mays confirmed that Ms. Henderson would be voting no on URA Resolutions 2012-020 and 2012-021.

- C. URA Resolution 2012-020 A Resolution of the Urban Renewal Agency of the City of Sherwood, directing the Agency Manager to sign the amended and restated Purchase and Sale Agreement for the Cannery Development**

MOTION: FROM DAVE GRANT TO APPROVE URA RESOLUTION 2012-020 AS AMENDED, SECONDED BY BILL BUTTERFIELD, MOTION PASSED 6:1 (HENDERSON VOTED NAY).

Chair Mays addressed the next agenda item.

- D. URA Resolution 2012-021 A Resolution of the Urban Renewal Agency of the City of Sherwood, directing the Agency Manager to sign the amended and restated Site Development Agreement for the Cannery Development**

MOTION: FROM DAVE GRANT TO APPROVE URA RESOLUTION 2012-021 AS AMENDED, SECONDED BY BILL BUTTERFIELD, MOTION PASSED 6:1 (HENDERSON VOTED NAY).

Chair Mays addressed the next agenda item.

- E. URA Resolution 2012-022 A Resolution of the Urban Renewal Agency of the City of Sherwood, directing the Agency Manager to sign the Letter of Agreement for the Cannery Development**

Ms. Folsom stated it is her understanding that this is not a legally binding document but is something we put out there so we have a basis of where to step next. Tom Pessemier stated it is nonbinding and we have every intention of doing this agreement but at this point it is the framework and we will come back to the Board with a legally binding agreement in the future. Ms. Folsom asked it is not dissimilar as to what we did in the beginning with Capstone, Tom replied that is correct, when we entered into a Memo of Understanding.

With no other discussion, the following motion was received.

MOTION: FROM LINDA HENDERSON TO APPROVE URA RESOLUTION 2012-022 AS AMENDED, SECONDED BY ROBYN FOLSOM, ALL BOARD MEMBERS VOTED IN FAVOR.

Chair Mays thanked staff, Capstone and the Board for all their work and addressed the next agenda item.

5. STAFF REPORTS

City Manager Joe Gall stated as Chair Mays indicated this was a team effort and said he is new to this team and said it was a challenging time and believes we are in a better position and thanked Tom Pessemier for his work stating this could not have come together without Tom's commitment to this project.

6. ADJOURN

With no other business to discuss, Chair Mays adjourned at 8:35 pm.

Submitted by:


Sylvia Murphy, CMC, Agency Recorder


Keith S. Mays, Chair