

RESOLUTION NO. URR 15-003

A RESOLUTION APPROVING A MINOR AMENDMENT TO THE CANBY URBAN RENEWAL PLAN TO IDENTIFY AN ADDITIONAL PROPERTY TO BE ACQUIRED AND APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE CANBY URBAN RENEWAL AGENCY AND CUTSFORTH PROPERTIES LLC TO PURCHASE PROPERTY FOR THE NEW LIBRARY/CIVIC BUILDING PROJECT

WHEREAS, the Canby City Council established the Canby Urban Renewal Agency (“Agency”) as an urban renewal agency to function within the City pursuant to Ordinance 1032 passed October 6, 1999; and

WHEREAS, the Agency is undertaking to carry out the Canby Urban Renewal Plan (“Plan”) as amended, which enables the Agency to assist in the development of new public facilities within the Renewal Area by participating in funding the acquisition, construction or rehabilitation of public facilities within the Renewal Area; and

WHEREAS, the Agency previously found that participating in the development of a new Civic Center would benefit the Renewal Area by creating a centerpiece for civic involvement and engagement within the Area thereby bringing more individuals into the Area and increasing business and investment opportunities within the Area; and

WHEREAS, the Agency further found that the Library/Civic Building Project is important to carrying out the Plan objectives of improving and retaining existing businesses as well as improving attractive visual amenities for customers and community members throughout the Renewal Area; and

WHEREAS, consistent with those findings, the Agency was authorized and directed to undertake development of a new Library/Civic Building (“Library/Civic Building Project”) on a site within the Renewal Area, located north of NE Second Avenue and abutting both sides of North Juniper Street in Canby, Oregon 97013 in the County of Clackamas, State of Oregon; and

WHEREAS, the Agency previously purchased tax lots 3100 and 4600 within the Renewal Area as part of the Library/Civic Building Project, and in furtherance of that Project it now desires to purchase tax lot 4700, Map 3-1E-33CA (more commonly known as 184 NE 2nd Avenue) as depicted on the map appended as Exhibit B hereto; and

WHEREAS, the Plan requires the Agency to approve a minor amendment to the Plan in order to authorize the approval of the purchase of real property; and

WHEREAS, the Agency has successfully negotiated the purchase and sale of certain real property necessary for the Library/Civic Building Project with Cutsforth Properties LLC, as owner; and

WHEREAS, the Agency staff and Cutsforth Properties LLC have agreed to the terms and conditions for the purchase and sale of the identified real property, subject to approval by the Agency Board, in the form of the Purchase and Sale Agreement attached to this Resolution as Exhibit C and by this reference incorporated herein.

NOW THEREFORE, IT IS HEREBY RESOLVED by the Canby Urban Renewal Agency as follows:

1. Section 600 (C) (3) of the Plan is hereby amended to include tax lot 4700, Map 3-IE-33CA in the City of Canby, Oregon 97013 in the County of Clackamas, State of Oregon as a property to be acquired by the Agency, as listed in Exhibit A and as depicted on the map attached hereto as Exhibit B; and
2. The Agency hereby approves the Purchase and Sale Agreement between the Agency and Cutsforth Properties LLC substantially in the form attached as Exhibit C; and
3. The Agency Director is authorized and directed to execute the Purchase and Sale Agreement on behalf of the Agency and to carry out such necessary actions to complete the Agency's obligations under said Purchase and Sale Agreement.

This Resolution shall take effect on February 18, 2015.

ADOPTED this 18th day of February 2015, by the Canby Urban Renewal Agency.

Tim Dale
Chair

ATTEST:

Kimberly Scheafer, MMC
City Recorder

Exhibits:

Exhibit A: Text of Amendments to the Plan
Exhibit B: Map of Property to be Acquired
Exhibit C: Proposed Purchase and Sale Agreement

EXHIBIT A

TEXT OF AMENDMENTS TO THE URBAN RENEWAL PLAN
(new text is shown as **bold**)

Section 600 (C) (3), Properties to be acquired

The following properties have been identified for acquisition by the Canby Urban Renewal Agency.

Map Number	Tax Lot Number	Street Address
<i>3S-1E-34</i>	<i>1707</i>	<i>No Address</i>
<i>3S-1E-33DB</i>	<i>2500</i>	<i>301 NE 3rd Avenue</i>
<i>3S-1E33DB</i>	<i>3600</i>	<i>316 NE 2nd Avenue</i>
<i>3S-1E33DB</i>	<i>3601</i>	<i>326 NE 2nd Avenue</i>
<i>3S-1E-33DB</i>	<i>3700</i>	<i>325 NE 2nd Avenue</i>
<i>3-IE-33DB</i>	<i>3100</i>	<i>210 NE 2nd Avenue</i>
<i>3-IE-33CA</i>	<i>4600</i>	<i>194 NE 2nd Avenue</i>
<i>3-IE-33CA</i>	<i>4700</i>	<i>184 NE 2nd Avenue</i>

EXHIBIT B
MAP OF PROPERTY TO BE ACQUIRED

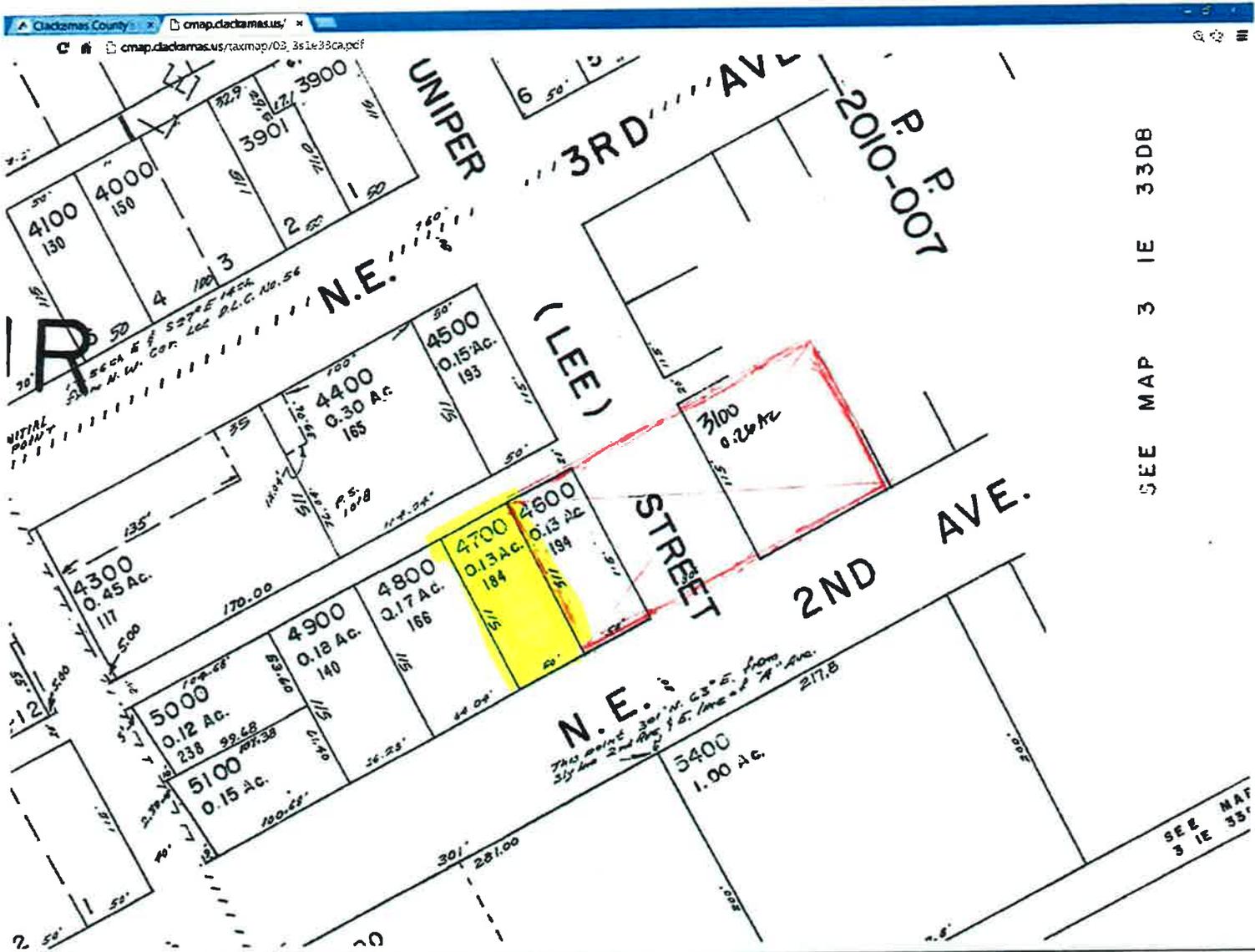


EXHIBIT C
PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made of the last date of signature indicated below (“Effective Date”), by and between Cutsforth Properties LLC (“Seller”) and the Canby Urban Renewal Agency (“Canby URA”).

RECITALS

- A. Seller is the owner of approximately 0.13 acres of real property, together with all the improvements, structures, and all rights appurtenant (including but not limited to access, timber, water, grazing, mineral and development rights), located between 2nd and 3rd Avenues and between North Ivy and North Juniper Streets in Canby, Oregon 97013 in the County of Clackamas, State of Oregon, consisting of tax lot 4700, and more particularly described on the attached Exhibit A (the “Property”).
- B. Seller desires to sell and convey to Canby, and Canby desires to purchase from Seller, all right, title and interest in the Property.
- C. The terms of this Agreement are as follows:

TERMS

- 1. Purchase and Sale.** Seller agrees to sell and convey to Canby URA, and Canby URA agrees to purchase from Seller, the Property upon the terms and conditions set forth below in this Agreement.
- 2. Purchase Price.** Subject to Sections 6.1.1 below, the Purchase Price for the Property is Two Hundred Thousand Dollars (\$200,000.00), payable on Closing Date by depositing the entire amount of the Purchase Price into escrow with the mutually agreed upon Title Company.
- 3. Closing Date.** This transaction shall close no later than 60 days after the Effective Date of this Agreement, unless otherwise extended as set forth herein (the “Closing Date” or “Closing”). Closing the mutually agreed upon Title Company.
- 4. Canby’s Title Review.**
 - 4.1. Title Report; Unacceptable Exceptions.** Within ten (10) days after the Effective Date, Canby URA shall order from the Title Company a preliminary title report on the Property, along with legible copies of all plats and exceptions documents referenced in such report (the “Title Report”). Canby URA will have forty-five (45) days following the Effective Date to review the Title Report and give Seller written notice of the exceptions listed in the Title Report that are unacceptable to Canby URA (“Unacceptable Exceptions”). Mortgages, delinquent taxes, or other financial obligations secured by the Property are automatically deemed Unacceptable Exceptions. If Canby URA notifies Seller of its objection to any Unacceptable Exceptions, Seller will have ten (10) calendar days to provide Canby URA written notice stating whether Seller will (at Seller’s sole cost and expense) cause one or more of such exceptions to be removed from the Title Policy issued to Canby URA at Closing. If Seller refuses to remove any of the Unacceptable Exceptions and Canby URA is not then satisfied with the condition of title, Canby URA may elect to terminate this

Agreement in which event this Agreement shall be deemed terminated and neither Party will have any further rights or liabilities pursuant to this Agreement.

4.2. Failure to Deliver Clean Title at Closing. If Seller fails to eliminate any Unacceptable Exception by the Closing Date, then Canby URA may, without limiting any other remedies, elect to: (a) accept title to the Property subject to such exceptions, (b) refuse to accept the Property and terminate this Agreement, or (c) extend the Closing Date for forty-five (45) days to provide Seller with additional time to remove such exceptions. If Canby URA elects option (c) and at the end of the 45-day period, such exceptions have not been removed, Canby URA may then proceed with either option (a) or (b). To the extent that an Unacceptable Exception is a monetary lien or financial obligation secured by the Property, the Title Company is hereby directed to pay off such lien or obligation to the extent that it can be satisfied by application of all or a portion of the Purchase Price delivered into escrow by Canby URA at Closing.

4.3. Permitted Exceptions. All exceptions other than the Unacceptable Exceptions objected to by Canby URA shall be deemed acceptable to Canby URA (“Permitted Exceptions”) provided, however, that in no event will mortgages, delinquent taxes, liens or other financial obligations secured by the Property be deemed Permitted Exceptions. If the Title Company informs Canby URA of any new title exceptions in the initial Title Report, such new exceptions will be deemed Unacceptable Exceptions, unless specifically accepted in writing by Canby.

5. Canby’s Due Diligence and Inspections.

5.1. Seller’s Delivery of Documents. Within ten (10) days after the Effective Date, Seller will deliver to Canby URA any and all material information and documentation in Seller’s possession or control pertaining to the Property (“Due Diligence Documents”). The Due Diligence Documents include (without limitation) copies, if any, of: (a) all environmental data, studies, analyses, and reports relating to the Property or any neighboring property, (b) any existing survey of the Property, (c) any existing leases, boundary agreements, road maintenance agreements, or other contracts relating to all or a portion of the Property, (d) all topographical, geotechnical, wetlands, soils, and groundwater reports, or any other professional reports relating to the Property, (e) any well logs or water right certificates or permits relating to the Property, and (f) copies of any government permits, land use approvals or conditions, or zoning restrictions affecting the Property. If Seller is aware of the existence of any material information and documentation pertaining to the Property that are not in Seller’s possession or control, Seller shall notify Canby of the existence of such information within fifteen (15) days after the Effective Date or two (2) business days after learning of such information. Should Seller fail to timely provide Canby URA with the Due Diligence Documents, Canby URA may, at Canby URA’s sole discretion, extend the Closing Date for a period not to exceed thirty (30) days, so that Canby URA may have adequate time to review such additional documentation.

5.2. Property and Environmental Inspections. Canby URA and its agents, including but not limited to consultants, surveyors, engineers, home inspectors, appraisers, and other professionals hired by Canby URA, shall have the right to access the Property to conduct environmental studies (including but not limited to Phase II or any additional Environmental Site Assessments), structural inspections, sewer and septic system sampling, asbestos and lead testing, and any other due diligence Canby URA deems necessary. Seller shall cooperate with Canby URA in making such inspections. Canby URA and its agents will have the right to enter the Property at reasonable times

before Closing to perform such surveys, analyses, studies, appraisals, and other due diligence that Canby URA deems necessary; provided, however, that Canby URA shall give Seller 24 hours notice prior to entering any structures located on the Property. Any area disturbed by Canby URA's inspections shall be restored to its pre-inspection condition by Canby URA, at Canby URA's sole costs and expense.

6. Conditions Precedent to Closing.

6.1. Conditions Precedent to Canby's Obligations. In addition to any other conditions contained in this Agreement, the conditions set forth in this Section 6.1 must be satisfied prior to Canby URA's obligation to acquire the Property. These conditions are intended solely for Canby URA's benefit and Canby URA has the sole right and discretion to waive, by written notice, any of the conditions. If any condition is not satisfied or waived on or before Closing, Canby URA has the right to terminate this Agreement.

6.1.1. Board Approval. Prior to Closing, the Canby URA Board of Directors must approve the purchase of the Property as well as provide funding approval for such purchase.

6.1.2. Due Diligence and Inspection Results. Canby URA must be satisfied, in its sole and absolute discretion, with its review of the Due Diligence Documents and the results of Canby URA's inspections of the Property conducted under Section 5.2 above. If Canby URA notifies Seller prior to the Closing Date that Canby URA is not satisfied with the Property due to the results of its due diligence and inspections under Section 5, the Closing Date will be automatically extended for a period of forty-five (45) days, so that Seller and Canby URA may address such results. If at the end of the forty-five (45) day period, Canby URA and Seller have not reached an agreement regarding the issues disclosed as a result of such due diligence and inspections, Canby URA may obtain written consent from the Seller to extend the Closing Date for an additional length of time to be determined by both parties at the time of the extension or this Agreement will automatically terminate.

6.1.3. Title. At Closing: (a) Seller shall convey fee simple title to the Property to Canby URA in accordance with Section 7.1.1; and (b) the Title Company must be committed to issue to Canby the Title Policy described below in Section 9.

6.1.4. Representations, Warranties, and Covenants of Seller. Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.

6.1.5. No Material Changes. At Closing, there must have been no material adverse changes related to or connected with the Property.

6.1.6. Seller's Deliveries. Seller must have timely delivered each item to be delivered by Seller pursuant to this Agreement, including the documents and materials described in Section 7.1.

6.1.7. Seller to Give Proper Notice of Sale of Property. Seller shall have given the required notice of intent to sale property under law.

6.2. Conditions Precedent to Seller's Obligations. Closing and Seller's obligations with respect to the transactions contemplated by this Agreement are subject to Canby URA's delivery to the Title Company on or before the Closing Date of: (i) the Purchase Price; and (ii) the documents and materials described in Section 7.2.

6.3. Failure of Conditions. In the event any of the conditions set forth above in Sections 6.1 or 6.2 are not timely satisfied or waived for a reason other than the default of Canby URA or Seller under this Agreement, then this Agreement, escrow, and the rights and obligations of Canby URA and Seller will terminate.

6.4. Cancellation Fees and Expenses. If the escrow terminates because of the nonsatisfaction of any condition by Canby URA, for a reason other than the default of Seller under this Agreement, Canby URA will pay the cancellation charges required by the Title Company. If the escrow terminates because of the nonsatisfaction of any condition by the Seller, for a reason other than the default of Canby URA under this Agreement, Seller will pay the cancellation charges required by the Title Company.

7. Deliveries to the Title Company.

7.1. By Seller. On or before the Closing Date, Seller shall deliver the following into escrow with the Title Company:

7.1.1. Deed. A Statutory Warranty Deed (Deed) duly executed and acknowledged in recordable form by Seller, conveying the Property to Canby URA free and clear of all liens and encumbrances except the Permitted Exceptions accepted by Canby URA under Section 4 above. The Title Company's usual, preprinted general exceptions listed on the Title Report (typically listed as general exceptions 1-5 on the Title Report) will not be listed as exceptions on the Deed.

7.1.2. Nonforeign Certificate. Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. Seller shall give Canby URA a certification to this effect in the form required by that statute and related regulations.

7.1.3. Proof of Authority. Such proof of Seller's authority to enter into this Agreement and consummate the transaction contemplated hereunder, as may be reasonably required by the Title Company and/or Canby URA.

7.1.4. Lien Affidavits. Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Title Company to issue the Title Policy.

7.1.5. Other Documents. Such other fully executed documents and funds as are required of Seller to close the sale in accordance with this Agreement, including (without limitation) escrow instructions.

7.2. By Canby. On or before the Closing Date, Canby URA will deliver the following into escrow with the Title Company:

7.2.1. Purchase Price. The Purchase Price, in accordance with Section 2 above.

7.2.2. Proof of Authority. Such proof of Canby URA's authority to enter into this Agreement and consummate the transaction contemplated hereunder, as may be reasonably required by the Title Company and/or Seller.

7.2.3. Other Documents. Such other fully executed documents and funds as are required of Canby URA to close the sale in accordance with this Agreement, including (without limitation) escrow instructions.

8. Deliveries to Canby URA at Closing.

8.1 Right to Possession. At Closing, Seller shall deliver to Canby URA: (i) exclusive possession of the Property; and (ii) keys to all improvements and personal property located on the Property.

9. **Title Insurance.** At Closing, Seller shall cause the Title Company to issue to Canby URA a standard ALTA owner's title insurance policy in the full amount of the Purchase Price, insuring: (a) fee simple title vested in Canby URA or its nominees, subject only to the Permitted Exceptions as established under Section 4 of this Agreement; and (b) unrestricted vehicular access from the Property to a public road (the "Title Policy").

10. **Closing Costs.** Seller shall pay for the Title Policy, one-half of all escrow fees, any real property transfer or excise taxes, all recording charges other than those allocated to Canby URA below, and Seller's share of prorations pursuant to Section 11 below. Canby URA shall pay the cost of recording the Deed, one-half of all escrow fees, and Canby URA's share of prorations pursuant to Section 11 below. Canby URA and Seller each shall pay for its own legal and professional fees incurred. All other costs and expenses are to be allocated between Canby URA and Seller in accordance with the customary practice in the county where the Property is located.

11. Prorations and Taxes.

11.1. Prorations. Any and all state, county, and city taxes for the current year, rents, or other income or operating expenses pertaining to the Property will be prorated between Seller and Canby URA as of the Closing Date.

11.2. Taxes and Assessments. All taxes, assessments, and encumbrances that will be a lien against the Property at Closing, whether or not those charges would constitute a lien against the Property at settlement, must be satisfied by Seller at Closing. If Seller fails to do so, Canby URA may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price. If the Property is subject to farm or forest deferred taxes, Seller will have no obligation or responsibility for said deferred taxes, unless the Property becomes disqualified for or loses its deferred tax status as a result of Seller's actions prior to Closing in which case such taxes shall be Seller's responsibility.

12. **Seller's Representations and Warranties.** Seller hereby warrants and represents to Canby URA the following matters, and acknowledges that they are material inducements to Canby URA to enter into this Agreement. Seller agrees to indemnify, defend, and hold Canby URA harmless from all expense, loss, liability, damages and claims, including (without limitation) attorney's fees, arising out of the breach or falsity of any of Seller's representations, warranties, and covenants. These

representations and warranties shall survive Closing. Seller warrants and represents to Canby URA that the following matters are true and correct, and will remain true and correct through Closing:

12.1. Authority. Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an individual, have full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with this Agreement. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

12.2. Hazardous Substances. For purposes of this Agreement, the term “Hazardous Substances” has the meaning defined in and includes those substances set forth in ORS 465.200. Seller warrants and represents as follows:

(a) To Seller’s knowledge, there are no Hazardous Substances in, upon, or buried on or beneath the Property and no Hazardous Substances have been emitted or release from the Property in violation of any environmental laws of the federal or state government;

(b) To Seller’s knowledge Seller has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, emitted, released from, or produced or disposed of, from, or on the Property, any Hazardous Substances in violation of any environmental laws of the federal or state government;

(c) To Seller’s knowledge, no underground storage tanks are located on the Property including (without limitation) any storage tanks that may have at one time contained any Hazardous Substances;

(d) To Seller’s knowledge, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it;

(e) Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property;

(f) To Seller’s knowledge, Seller has not transferred and no other person has transferred, Hazardous Substances from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements; and

(g) There are no proceedings, administrative actions, or judicial proceedings pending or, to Seller’s knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

12.3. Encroachments. To Seller’s knowledge: (a) all structures and improvements, including any driveways and accessory structures, are wholly within the lot lines of the Property; (b) no existing building, structure, or improvement of any kind encroaches upon the Property from any adjacent property; and (c) there are no present or past discrepancies or disputes regarding the boundaries of the Property.

12.4. Rights and Contracts Affecting Property. Except for this Agreement, Seller has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal or options to purchase the Property. Except for those exceptions of record listed on the Title Report, Seller owns the Property in fee, free and clear of all liens, conditions, reservations, mortgages, leases, licenses, easements, prescriptive rights, permits, or other similar encumbrances. Seller has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions relating to the Property, and to Seller's knowledge no such rights encumber the Property. There are no service contracts or other agreements pertaining to the Property that Seller will be required to assume at Closing.

12.5. Possession. Except as specifically set forth in this Agreement, there are no leases, licenses, or other agreements permitting, nor has Seller entered into any course of conduct that would permit, any person or entity to occupy or use any portion of the Property. Seller shall deliver immediate and exclusive possession of the entire Property to Canby URA at Closing.

12.6. Recitals. The statements and information set forth in the Recitals are true and correct.

12.7. No Legal Proceedings. There is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against the Property or against Seller that could: (a) affect Seller's right or title to the Property; (b) affect the value of the Property; or (c) subject an owner of the Property to liability.

12.8. Mechanic's and Other Liens. No work on the Property has been done or materials provided that would give rise to actual or impending mechanic's liens, private liens, or any other liens, against the Property.

12.9. Public Improvements or Governmental Notices. To Seller's knowledge, there are no intended public improvements which will result in the creation of any liens upon the Property, nor have any notices or other information been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property.

12.10. Breach of Agreements. The execution of this Agreement will not constitute a breach or default under any agreement to which Seller is bound or to which the Property is subject.

12.11. Bankruptcy Proceedings. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to Seller's knowledge, threatened against Seller, nor are any such proceedings contemplated by Seller.

12.12. Changed Conditions. If Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Canby URA of those facts and information. If any of the foregoing warranties and representations ceases to be true before Closing, Seller shall use its best efforts to remedy the problem, at its sole expense, before Closing. If the problem is not remedied before Closing, Canby URA may elect to either: (a) terminate this Agreement, in which case Canby URA will have no obligation to purchase the Property, or (b) extend the Closing Date for a period not to exceed forty-five (45) days or until such problem has been remedied, whichever occurs first. Should Canby URA extend the Closing Date

and the problem is not remedied within the forty-five (45) day timeframe, Canby URA may then elect to terminate this Agreement; provided, however, that such election will not constitute a waiver of Canby URA's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor will it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

13. Condition of the Property Through Closing. Seller further represents, warrants, and covenants that until this transaction is closed or escrow is terminated, whichever occurs first, it shall: (a) maintain the Property in substantially the same condition as it was on the Effective Date, with no tree cutting, timber harvesting, or alteration of the Property in any way, (b) keep all existing insurance policies affecting the Property in full force and effect, (c) make all regular payments of interest and principal on any existing financing, (d) comply with all government regulations, and (e) keep Canby URA timely advised of any repair or improvement required to keep the Property in substantially the same condition as it was on the Effective Date.

14. Canby URA's Representations and Warranties. In addition to any express agreements in this Agreement, Canby makes the following representations and warranties to Seller:

(a) Subject to the conditions stated herein, Canby URA has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate this transaction;

(b) Subject to the conditions stated herein, all requisite action has been taken by Canby URA in connection with entering into this Agreement and the instruments referred to herein and the consummation of this transaction; and

(c) Subject to the conditions stated herein, the persons executing this Agreement and the instruments referred to herein on behalf of Canby have the legal power, right, and actual authority to bind Canby URA to the terms and conditions of this Agreement.

15. Enforcement of Agreement.

15.1. Default by Either Party. In the event Closing and the consummation of the transaction herein contemplated do not occur by reason of any default by either Party, the other Party shall be entitled to all its out-of-pocket expenses incurred in connection with the transaction other than attorney fees. Canby URA will have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement provided that monetary damages shall be limited by section 15.2 of this Agreement.

15.2. Default by Canby URA. If Closing and consummation of this transaction do not occur because of any default by either Party, the Parties agree that it would be impractical and difficult to estimate the monetary damages that the other Party may suffer, other than out of pocket expenses incurred in connection with the transaction. Therefore, Canby URA and Seller agree that a reasonable estimate of the total net monetary detriment, other than out of pocket expenses incurred in connection with the transaction, to either Party if the other Party defaults and the Closing and consummation of the transaction herein contemplated do not occur is ten thousand dollars (\$10,000.00). Except as provided in Section 15.1, this amount will be either Party's sole and exclusive monetary remedy, and the full, agreed, and liquidated damages for the breach of this Agreement by the other Party. The payment of said amount is liquidated damages and not a forfeiture or penalty. All other claims for monetary damage or other monetary remedies are waived by both Parties. Upon default by either Party, this Agreement will terminate and except for this section and section 15.1, neither party will have any further rights or obligations.

16. Risk of Loss, Condemnation. Seller bears the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, all or any part of the Property is damaged, destroyed, condemned, or threatened with condemnation, Seller shall give Canby URA written notice of such event. Canby URA may terminate this Agreement by giving written notice to Seller within fifteen (15) days following receipt by Canby URA of written notice from Seller of such casualty or condemnation.

17. Notices. All notices under this Agreement must be in writing to the address set forth below and will be deemed given upon: (a) personal service; or (b) deposit in the United States Mail, postage prepaid. All such notices shall be deemed received upon personal service, three days after deposit in the United States Mail, postage prepaid, or one day after deposit with a nationally recognized overnight courier service.

To Seller: Cutsforth Property LLC
 P.O. Box 1207
 225 NE 2nd Avenue
 Canby, OR 97013
 Phone: (971) 275-4455

To Canby: Canby URA
 Richard Robinson
 URA Executive Director
 P.O. Box 930
 182 N. Holly St.
 Canby, OR 97034
 Phone: (503) 266-0745

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than that set forth above will be effective when received by the party for whom it is intended. Telephone, email, and fax numbers are for information only.

18. Additional Obligations of Seller.

18.1 Hazardous Materials Abatement. Parties agree that if hazardous materials are discovered on the Property, Purchaser will give Seller not less than three business days' notice of the discovery so that Seller may have an opportunity to assist Purchaser in the removal, mitigation or abatement of the hazardous materials. However, if Purchaser, upon discovery, determines in its sole discretion that the hazardous materials pose an imminent or elevated threat to public health or safety, Purchaser is not required to give any notice prior to removal, mitigation or abatement. Seller agrees to pay the first \$10,000 toward any necessary removal, mitigation, or abatement of hazardous materials discovered and located underground per the Purchase and Sale Agreement approved by the Canby URA on August 20, 2014, and to include tax lot 4700. Seller agrees that if City authorizes or allows Seller to assist in any removal, mitigation or abatement of hazardous materials, Seller and its agents and employees waive all claims against Purchaser for negligence or harm to persons or property resulting from the assistance, including any wrongful death claims.

19. **Further Actions.** Canby URA and Seller agree to execute all such instruments and documents and to take all actions pursuant to this Agreement to consummate the purchase and sale contemplated and both parties will use their best efforts to accomplish Closing in accordance with these provisions.

20. **Miscellaneous.**

20.1. Partial Invalidity. If any term or provision of this Agreement is, to any extent, found invalid or unenforceable, the remainder of this Agreement will not be affected, and each remaining term and provision of this Agreement is valid and enforceable fully permitted by law.

20.2. Waivers. No waiver of any breach of any covenant or provision will be deemed a waiver of any preceding or succeeding breach or of any other covenant or provision. No extension of time for performance of any obligation or act will extend the performance of any other obligation or act.

20.3. Survival of Representations. The covenants, agreements, representations, and warranties survive Closing and will not merge into the Deed upon recordation.

20.4. Successors and Assigns. This Agreement is binding on and insures to the benefit of the successors and assigns of the parties.

20.5. Representation. This Agreement was prepared by Canby. Seller represents that Seller had an opportunity to consult with its own legal counsel prior to executing this Agreement. Seller waives any claim that any term or condition will be construed against the drafter of the Agreement. This Agreement will be construed as if it had been prepared by both parties.

20.6. Entire Agreement. This Agreement (including any exhibits) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings. This Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged.

20.7. Time of Essence. Seller and Canby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision contained in this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, whenever a date for an action required to be performed falls on a Saturday, Sunday, or a state or federal holiday, then such date shall be extended to the following business day.

20.8. Recitals and Attachments. The statements and information set forth in the Recitals and any attachments or exhibits to this Agreement are incorporated as if fully set forth herein and shall be used for the purposes of interpreting this Agreement.

20.9. Governing Law. The parties acknowledge that this Agreement has been negotiated and entered in Oregon. The parties expressly agree that this Agreement is governed by and will be interpreted in accordance with Oregon laws without regard to conflict of laws principles.

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 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. 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 VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, 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 document will automatically expire on _____ at 5:00 p.m., if not executed by Seller within that time and delivered to Canby URA pursuant to the notice requirements contained in Section 17 above.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature specified below.

CANBY URA

SELLER:
Cutsforth Properties, LLC

Tim Dale, URA Chair

Richard Robinson, Urban Renewal Director

Print Name

Date

Date

Exhibit A
Property Legal Description

