

**EARNEST MONEY AGREEMENT**

DATE: \_\_\_\_\_

SELLER: Canby Development, LLC

BUYER(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RECITAL:**

Seller desires to sell to Buyer and Buyer desires to purchase from Seller certain real property having the following legal description (the "Property"):

**Lot Number \_\_\_\_\_, Plat# \_\_\_\_\_,  
Clackamas County, OR**

**AGREEMENT:** Now, therefore, for valuable consideration, the parties agree as follows:

**1. Sale and Purchase.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum indicated below (the "Purchase Price"):

Purchase Price: \$ \_\_\_\_\_

Earnest Money: \$ \_\_\_\_\_

**Amount Due:** \$ \_\_\_\_\_

**2. Earnest Money.** Buyer shall pay the sum of \$5,000.00 as a NON- REFUNDABLE EARNEST MONEY payment (except as provided in paragraphs 5, 6, 7 and 14 below). The non-refundable earnest money shall be applied to the Purchase Price on the Closing Date, as that term is defined below. If this agreement is entered into prior to recording of the final Plat, then this agreement is conditioned upon such recording and is only final after said recording.

**3. Payment.** The Purchase Price plus any SDC pre-payments shall be paid as follows: At closing, the earnest money shall be credited to the Purchase Price and Buyer shall pay the balance of the purchase price, plus any closing costs or charges to Buyer as provided herein.

**4. Closing.** Closing shall take place on or before forty-five (45) days after execution of this Earnest Money Agreement. Closing shall occur at a location coordinated by Chicago Title. Each party shall pay one-half of the closing escrow fee.

**5. Preliminary Title Report.** Within 15 days after full execution of this Agreement, Seller shall furnish to Buyer a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). If Buyer is not satisfied by the preliminary title report, Buyer may terminate this agreement by written notice to seller within ten (10) days and the Earnest Money shall be refunded to the Buyer. If Buyer fails to give such notice of termination within the applicable time period, the preliminary title report shall be deemed acceptable and any exceptions noted shall be the Permitted Exceptions.

**6. Conditions.** Buyer's obligation to purchase the property is contingent upon receipt and approval of the preliminary title report as provided in paragraph 5.

**7. Deed.** On the Closing Date, Seller shall execute and deliver to Buyer a statutory warranty deed, conveying the Property to Buyer, free and clear of all liens and encumbrances except the Permitted Exceptions.

**8. Title Insurance.** Within 15 days after closing, Seller shall furnish Buyer with title insurance in the amount of the purchase price, standard form, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

**9. Taxes; Prorates.** Real property taxes for the current tax year and other usual items shall be prorated as of the Closing Date.

**10. Possession.** Buyer shall be entitled to possession immediately upon closing.

**11. Notice of Home Owners Association and Covenants Conditions and Restrictions.** Buyer agrees to:

- A) Buyer accepts that the real property is located in a subdivision with a homeowners association;
- B) All construction, design and use of said property must comply with the Home Owners Association and Covenants, Conditions and Restrictions applicable to this subdivision.
- C) All architectural standards, subject to change from time to time as approved by the Architectural Review Committee, attached as Exhibit A.

**12. Representations.** Buyer represents that it has accepted and executed this Agreement on the basis of its own examination and personal knowledge of the Property; that Seller and Seller's agents have made no representations, warranties, or other agreements concerning matters relating to the Property; that Seller and Seller's agents have made no agreement or promise to alter, repair, or improve the Property; the property is bare land and that Buyer takes the Property in the condition, known or unknown, existing at the time of this Agreement, "AS IS". Buyer should conduct any due diligence on the condition of the lot and Property prior to signing this earnest money agreement. The soils report and any other written information Seller may have is available upon request.

**13. Binding Effect/Assignment Restricted.** This Agreement is binding on and will inure to the benefit of Seller and their respective heirs, legal representatives, successors, and assigns. Buyer shall not be allowed to assign its rights under this Agreement.

**14. Remedies.** Except as provided in paragraphs 5 and 6, Seller's remedy for failure to consummate the transaction shall be the non-refundable earnest money as any and all damages. If Seller fails to deliver the deed described in Section 7 above on the Closing Date or otherwise fails to consummate this transaction, the "non-refundable earnest money" shall be refunded to Buyer.

**15. Attorney Fees.** In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

**16. Additional Lot.** Buyer hereby agrees that they and their associates, affiliates, or representatives will not oppose any action by Seller in any manner, either by appeal, land use action, opposition to the jurisdiction, or any other legal opposition, with regard to the Remainder of Tract 2017-041729

between Lot 3 and Lot 4.

**17. Notices.** All notices and communications in connection with this Agreement shall be given in writing and shall be transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set forth above. Any notice so transmitted shall be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

**18. Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

**19. Applicable Law.** This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.

**20. Acceptance.** This Agreement shall be null and void unless accepted by Seller, by Seller's execution of it, within 3 days of the offer.

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, 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 TO INQUIRE ABOUT 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

**SELLER: Canby Development, LLC**

**BUYER 1:**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

**BUYER 2 (if any):**

Buyer(s) Notification Address:

Signed: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_