Accessibility and Accommodation Requests
For questions about accessibility or accommodations for persons with disabilities, or to request a translator, interpreter, or other communication aids, please contact Melissa Bisset at 503-856-3412 or bissetm@keizeror.gov. The City of Keizer is committed to providing equal access to all public meetings and information per the requirements of the ADA and Oregon Revised Statutes (ORS). The Keizer Civic Center is wheelchair accessible.

To provide oral comments via electronic means, please contact the City Recorder's Office no later than 2:00 p.m. on the day of the meeting. Most regular City Council meetings are streamed live through www.KeizerTV.com and cable-cast on Comcast Channel 23 within the Keizer City limits.

AGENDA

KEIZER CITY COUNCIL
REGULAR SESSION

Monday, December 15, 2025
6:00 PM
Robert L. Simon Council Chambers
930 Chemawa Road NE
Keizer, Oregon

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **FLAG SALUTE**

4. **SPECIAL ORDERS OF BUSINESS**

   a. **Discussion regarding deeming it important that Councilor Christopher appear electronically and be considered "in attendance" (Council Rules of Procedure Section 3.10 - Attendance Duty)**

5. **COMMITTEE REPORTS**

6. **PUBLIC COMMENTS**

   This time is provided for citizens to address the Council on any matters other than those on the agenda scheduled for public hearing.

7. **CONSENT CALENDAR**

   a. **Approval of December 1, 2025 Regular Session Minutes**

8. **ADMINISTRATIVE ACTION**

   a. **ORDINANCE - Relating to Auto-Oriented Uses in Keizer Station Area B; Amending Keizer Code Appendix A, Section 2.1104.04 and Section 2.110.05**

9. **PUBLIC HEARINGS**

   a. **RESOLUTION - Authorizing City Manager to Sign Purchase and Sale Agreement with CPD Real Co LLC**

10. **OTHER BUSINESS**

This time is provided to allow the Mayor, City Council members, or staff an opportunity to bring new or old matters before the Council that are not on tonight's agenda.

11. STAFF UPDATES

12. COUNCIL MEMBER REPORTS

13. AGENDA INPUT

Monday, January 5, 2026 - 6:00 p.m.
City Council Regular Session

Monday, January 12, 2026 - 6:00 p.m.
City Council Work Session - Urban Growth Boundary

Tuesday, January 20, 2026 - 6:00 p.m.
City Council Regular Session

14. ADJOURNMENT

City of Keizer Mission Statement
Keep City Government Costs And Services To A Minimum By Providing City Services To The Community In A Coordinated, Efficient, And Least Cost Fashion

"Agenda Management Services are being supported, in whole or in part, by federal award number 21.019 awarded to City of Keizer by the U.S. Department of the Treasury."

MINUTES
KEIZER CITY COUNCIL
Monday, December 1, 2025
Robert L. Simon Council Chambers
930 Chemawa Road NE
Keizer, Oregon

CALL TO ORDER

Mayor Clark called the meeting to order at 6:00 p.m.

ROLL CALL

Roll call was taken as follows:

Present:	Staff:
Cathy Clark, Mayor	Adam Brown, City Manager
Shaney Starr, Council President	Tim Wood, Assistant City Manager
Kyle Juran, Councilor	Shane Witham, Planning Director
Daniel Kohler, Councilor	Joseph Lindsay, City Attorney
Marlene Parsons, Councilor	Bill Lawyer, Public Works Director
Lore Christopher, Councilor	Andrew Copeland, Police Chief
Felicia Guptill, Youth Councilor	Melissa Bisset, City Recorder

Absent:
Soraida Cross, Council Vice President

FLAG SALUTE

Mayor Clark led the pledge of allegiance.

SPECIAL ORDERS OF BUSINESS

a. <u>PROCLAMATION</u>: Human Rights Day

Mayor Clark introduced State Representative Kevin Mannix. Mr. Mannix shared about his time in Bolivia and Panama and the lessons he learned about respecting other cultures. He shared his experience during desegregation. He commented on the fresh perspective of a new generation in relation to Human Rights. Representative Mannix explained that the community can reaffirm its commitment to Human Rights.

Mayor Clark read the Proclamation recognizing Human Rights Day, and she presented the proclamation to Mr. Mannix.

b. Introduction of Officer Joshua Barnett, Officer Caleb Harrison, and Community Service Officer Ben Crosby

Police Chief Andrew Copeland introduced Community Service Officer Ben Crosby, Officers Joshua Barnett and Caleb Harrison.

COMMITTEE REPORTS

Trevor Lewis, member of the Multi-Modal Safety Committee, summarized the recent meeting.

Lindsey King, Planning Commission, summarized the recent meeting.

Claire Juran, Keizer Public Arts Commission, summarized the recent meeting.

Rhonda Rich, West Keizer Neighborhood Association (WKNA) President, commented that WKNA would like to give input on location and uses of the pavilion at Keizer Rapids Park. She was hoping there would be more outreach and discussion on the matter.

Youth Councilor Guptill shared that last week she had a tour of City Hall with the City Manager.

PUBLIC COMMENTS

There were no public comments.

CONSENT CALENDAR

<u>Council President Starr moved that the Keizer City Council approve the Consent Calendar. Councilor Kohler seconded. Motion passed unanimously as follows:</u>
AYES: Clark, Starr, Kohler, Juran, Christopher, and Parsons (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Cross (1)

a. Approval of November 17, 2025 Regular Session Minutes

PUBLIC HEARING

Mayor Clark opened the Public Hearing.

Planning Director Shane Witham summarized the staff report, noting that one additional use was proposed.

With no further testimony, Mayor Clark closed the Public Hearing.

<u>Council President Starr moved the City Council direct staff to prepare an ordinance for adoption of proposed text amendments along with any other identified changes necessary for consistency with the Keizer Development Code. Councilor Kohler seconded. Motion passed unanimously as follows upon first reading:</u>
AYES: Clark, Kohler, Starr, Juran, Christopher, and Parsons (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Cross (1)

a. **Text Amendment Case 2025-17: Amending Keizer Code Appendix A - Development Code Section 2.110 - Commercial Mixed Use (related to auto-oriented uses)**

ADMINISTRATIVE ACTION

a. **Keizer Public Arts Commission (KPAC) approval to use Los Dos Hermanos as a mural location.**

City Manager Adam Brown summarized the staff report. Councilor Christopher shared that there would be additional locations coming before the Council in the future. She thought it was a place where people would stop and take pictures. There was a potential artist identified and hoped to have a ribbon cutting during KeizerFEST.

<u>Council President Starr moved that the Keizer City Council approve “Los Dos Hermanos,” located at 3590 River Rd. N, Keizer, OR, as an authorized site for public art, subject to Keizer Code public art provisions and the Keizer Public Arts Commission (KPAC) review criteria. Councilor Kohler seconded. Motion passed unanimously as follows:</u>
AYES: Clark, Kohler, Starr, Juran, Christopher, and Parsons (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Cross (1)

b. **Parks Master Plan Project Process Update and Discussion**

Public Works Director Bill Lawyer summarized the staff report. Mr. Brown shared that the additional work would be covered by the Community Prosperity Initiative Grant.

Discussion followed regarding the cost of having MIG present and if it was necessary to have MIG present. The estimated cost of the contract was discussed.

Mr. Lawyer and Mr. Brown felt it was important for MIG to conduct the Town Hall. Mr. Brown shared that there was a new online engagement tool that could be used. Concern was expressed about the additional expense.

There was a suggestion to quantify the outcomes for engagement in future contracts. There was a comment about having the pavilion be where the dog park was located and moving the dog park to a different area of the park.

Mr. Lawyer shared that MIG would provide consistency through the end of the project and that there was value in that. Mr. Brown added that they had managed the data from KeizerFEST, as well as the stakeholders meetings. There was hope that there would be flexibility in regards to the pavilion in the Parks Master Plan. Mr. Lawyer felt the conversation should be about the area within the park and what the maximum size should be.

It was suggested that the location, maximum size and range of uses be discussed at the Town Hall and that flexible terminology be used in the Parks Master Plan.

Rhonda Rich, WKNA President, thought that the community would want to keep the big open area as a public access space where the KeizerFEST was located for a facility, have an adventure course, or have an indoor recreation facility near Chemawa. She was grateful for the additional outreach that would be happening.

Council President Starr moved that the Keizer City Council direct staff to provide additional engagement opportunities through a town hall-style meeting by amending MIG's contract not-to-exceed $2,500 and to use the City's engagement platform to seek feedback on alternative locations within Keizer Rapids Park for the pavilion under consideration. Councilor Kohler seconded.

Mayor Clark made a friendly amendment to change the word "construction" to "consideration." Council President Starr accepted.

It was noted that the input should have an emphasis on System Development Charge (SDC) eligibility, and there needed to be conversation about the maximum size, range of locations, and range of uses.

Motion passed unanimously as follows:
AYES: Clark, Kohler, Starr, Juran, Christopher, and Parsons (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Cross (1)

OTHER BUSINESS

City Manager Brown shared that on December 10th, there would be a signing ceremony with the Sister City, Iyo, Japan and requested the Council's authorization to have a public meeting.

Council President Starr moved to authorize staff to provide public meeting notification for the December 10 signing ceremony with Iyo, Japan. Councilor Kohler seconded. Motion passed unanimously as follows:
AYES: Clark, Kohler, Starr, Juran, Christopher, and Parsons (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Cross (1)

(Motion restated by Clerk for clarity; original motion was “so moved.”)

STAFF UPDATES

Assistant City Manager Wood reminded the Council that Saturday would Miracle of Lights Donation Tent.

City Recorder Bisset shared the new ways the community could subscribe to meetings and alerts from the new City website.

Chief Copeland shared about a small theft that was responded to—and that some jurisdictions would not have responded. Public Works Director Lawyer reported on leaves and asked the community to having some patience with the new street sweeping contractor, as they were working on getting caught up. He asked the community not to blow the leaves into the street.

City Attorney Joseph Lindsay reported that Planning Director Witham, Finance Director Wood, and he would be attending Incident Command System (ICS) training.

COUNCIL MEMBER REPORTS

Council President Starr announced that Public Works Director Lawyer was selected as the 2025 Holiday Lights Parade Grand Marshal.

Mayor Clark and the Councilors each reviewed the events and meetings that they had attended as well as upcoming events.

AGENDA INPUT

Monday, December 8, 2025 - 6:00 p.m.
Long Range Planning Task Force Meeting

Monday, December 15, 2025 - 6:00 p.m.
City Council Regular Session

Monday, December 15, 2025 - 7:00 p.m.
City Council Work Session - Bailey Road Property Discussion

Monday, January 5, 2026 - 6:00 p.m.
City Council Regular Session

ADJOURNMENT

Mayor Clark adjourned the meeting at 7:48 p.m.

MAYOR: APPROVED:

______________________________ ______________________________
Cathy Clark Dawn Wilson, Deputy City Recorder

Minutes approved: ________________________

“Agenda Management Services are being supported, in whole or in part, by federal award number 21.019 awarded to City of Keizer by the U.S. Department of the Treasury.”

City Council Meeting Date: December 15, 2025

To: Mayor Clark and City Council Members

Thru: Adam J. Brown, City Manager

From: Shane Witham, Planning Director

Subject: Ordinance - Text amendment: Commercial Mixed Use (CM) zone

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Proposed Motion

I move that City Council adopt Ordinance No. 2025-___ Relating to Auto-Oriented Uses in Keizer Station Area B; Amending Keizer Code Appendix A, Section 2.110.04 and Section 2.110.05.

I. Summary

As directed by City Council at the December 1, 2025, meeting, staff has prepared an Ordinance for consideration and adoption that will modify the Keizer Code to allow for *automotive services, except repair* as a Conditional Use within the Commercial Mixed Use (CM) zone in Keizer Station Area B, only on the east side of Keizer Station Boulevard.

II. Background

A. The text amendment was initiated through City Council resolution to consider allowing additional auto-oriented uses within the Commercial Mixed Use (CM) zone as a conditional use. This resolution was initiated after the City Council authorized a letter of intent to purchase city owned property by Happy's Carwash and Oilstop. The Planning Commission held a public hearing to consider the proposed changes on November 12, 2025, and recommended approval of the proposed changes to City Council for consideration. On December 1, 2025, the City Council held a public hearing and deliberated on the issue and ultimately directed staff to prepare an ordinance for adoption that would allow *automotive services, except repair* as a conditional use, and that it would be limited to the area located on the east side of Keizer Station Boulevard.

B. Prior to any development moving forward, a masterplan amendment will have to be pursued, which will include public hearings and notice to surrounding property owners. The process requires hearings before both the Planning Commission and the City Council, which will provide neighbors and other interested persons opportunities to testify on the actual development proposal, and afford the City the ability to require conditions of approval for the development. The text amendment in itself does not approve any specific development plan or concept, but rather modifies that code to allow the possibility of a use within this specified category.

III. **Current Situation**

A. Staff has prepared the ordinance and findings for adoption, as directed by the City Council. The ordinance, as written, will allow *automotive services, except repair,* as a Conditional Use within the Commercial Mixed Use (CM) zone in Keizer Station Area B, on the east side of Keizer Station Boulevard.

IV. **Analysis**

A. **Strategic Impact** - There is no direct strategic impact. However, this change is being requested in order for properties within Area B of Keizer Station to be developed.

B. **Financial** - There is no direct financial impact for the proposed text amendment.

C. **Timing** - There is no specific time constraint or requirement for action, but staff has brought this matter back to City Council at the next available meeting in order to expedite the process.

D. **Policy/Legal** - The code identifies the process for a text amendment, which has been followed and included public hearings before both the Planning Commission and City Council. The adoption of the ordinance and findings is the final step required to change the language in the code.

V. **Alternatives**

A. Adopt the attached ordinance.

B. Adopt the attached ordinance with any identified changes/amendments. This option would be appropriate if the Council wishes to consider allowing any additional uses, or if there are additional mitigation measures desired that the Council identifies, or if there are any other changes desired. Minor amendments need to be read as part of the motion. Substantial amendments need a second reading.

C. Take no action. This would result in no change to the existing provisions of the Keizer Code. Which would mean that *automotive services, except repair,* would continue to be prohibited throughout the entire area of Keizer Station Area B.

VI. **Recommendation**

Staff recommends that City Council adopt the ordinance.

Attachments

1. ORD_CC_Amending Appendix A Section 2.110.04 and 2.110.05_12 15 2025

"Agenda Management Services are being supported, in whole or in part, by federal award number 21.019 awarded to City of Keizer by the U.S. Department of the Treasury."

A BILL ORDINANCE NO. 2025-__________

FOR

AN ORDINANCE

RELATING TO AUTO-ORIENTED USES IN KEIZER STATION AREA B; AMENDING KEIZER CODE APPENDIX A, SECTION 2.110.04 AND SECTION 2.110.05

The City of Keizer ordains as follows:

Section 1. Keizer Code Appendix A is hereby amended at Section 2.110.04 and Section 2.110.05 as set forth in Exhibit A, attached hereto and by this reference incorporated herein.

Section 2. This is a legislative land use amendment. Findings demonstrating compliance with the applicable criteria are set forth in Exhibit B, which is attached hereto and incorporated herein by reference.

Section 3. In preparing this ordinance for publication and distribution, the City Recorder shall not alter the sense, meaning, effect or substance of this ordinance, but within such limitations, may:

(a) Renumber sections and parts of sections of the ordinance;

(b) Rearrange sections;

(c) Change reference numbers to agree with renumbered chapters, sections or other parts;

(d) Delete references to repealed sections;

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

(e) Substitute the proper subsection, section or chapter, or other division numbers;

(f) Change capitalization and spelling for the purpose of uniformity;

(g) Add headings for purposes of grouping like sections together for ease of reference; and

(h) Correct manifest clerical, grammatical or typographic errors.

Section 4. Each section of this ordinance, and any part thereof, is severable, and if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

Section 5. This Ordinance shall take effect thirty (30) days after its passage.

PASSED this ________ day of ___________________, 2025.

SIGNED this ________ day of ___________________, 2025.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

Sec. 2.110.04. Conditional uses.

The following uses may be permitted, subject to obtaining a conditional use permit:

A. Craft industries, subject to the provisions in section 2.421. (5/98)

B. Transit station (section 2.429). (5/09)

C. ~~Drive-through windows or car service associated with eating and drinking places (58)~~ The following uses may be allowed conditionally on the east side of Keizer Station Boulevard in Keizer Station Area B. (12~~7~~/25)

1. Drive-through windows or car service associated with eating and drinking places (58) (12/25)

2. Automotive services, except repair (754). (12/25)

In addition to the conditional use criteria found in Section 3.103.03, the following requirements must be satisfied: (7/25)

1. Must provide screening and buffering to adjacent residential uses and must mitigate the aesthetic impacts of on-site stacking and queuing visible from any public right-of-way or adjacent properties. (7/25)
2. Employ access management and control standards as appropriate to eliminate and/or reduce conflicts. (7/25)
3. Comply with all applicable requirements and standards, including, but not limited to, KDC 2.301.04 (Traffic Impact Analysis) and all mitigations required by such section. Traffic analysis must address the operational needs of the Keizer Fire District. (7/25)

(Ord. No. 2025-899, § 1(exh. A), 8-4-2025)

Sec. 2.110.05. Use restrictions.

No permitted or special permitted use shall in any way involve any of the following:

A. Farm use. (5/98)

B. The rendering, processing, or cleaning of animals, fish, seafoods, fowl, poultry, fruits, vegetables, or dairy products for wholesale use. (5/98)

C. The following uses are prohibited from any property contained within the Area B as described in the Keizer Station Plan. (7/25)

   1. Gasoline service stations (554), except as provided in section 2.110.04.C. (9/17)
   2. Vehicle sales and secondary repair. (5/98)
   3. Public utility structures and buildings. (5/98)
   4. Recreational vehicle parks (7033). (5/98)
   5. Automobile parking not associated with an allowed use (752). (5/98)
   6. Automotive dealers (55). (5/98)
   7. Automotive rental and leasing, without drivers (751). (5/98)
   8. Automotive repair shops (753). (5/98)
   9. ~~Automotive services, except repair (754). (5/98)~~
   10. Utilities; secondary truck parking and material storage yard. (5/98)

D. A limitation of the total floor area of specified uses applies to all of Area B, Retail Service Center, of the Keizer Station Plan. A maximum total floor area shall apply to the uses identified in sections 2.110.02(I) and 2.110.03(E)(12)—(14). This maximum floor area is set forth in the Keizer Station Plan; however, this maximum floor area may change as part of an approved master plan. (9/18)

(Ord. No. 2025-899, § 1(exh. A), 8-4-2025)

EXHIBIT "B"

Findings regarding the adoption of amendments to Keizer Code Appendix A, Section 2.110 Commercial Mixed Use (CM) of the Keizer Development Code (KDC).

The City of Keizer finds that:

1. General Findings.
The particulars of this case are found within Planning file Text Amendment Case 2025-17. Public hearings were held before the Planning Commission on November 12, 2025 and before the City Council on December 1, 2025. Both the Planning Commission and the City Council voted in favor of the proposed revisions.

2. Criteria for approval are found in Section 3.111.04 of the Keizer Development Code. Amendments to the Comprehensive Plan or Development Code shall be approved if the evidence can substantiate the criteria are met. Amendments to the map shall be reviewed for compliance with all of the listed criteria in Section 3.1104, while text amendments shall only be reviewed for compliance with Section 3.111.04 B, C, and D. Given this is a text amendment, Section 3.111.04 A is not applicable.

3. **Section 3.111.04.B - A demonstrated need exists for the product of the proposed amendment -**

   Findings: The proposed revisions to the zone code reflect a demonstrated need. Both the Planning Commission and City Council held public hearings to consider the proposed changes. Ultimately, Council directed staff to prepare an ordinance for adoption of the proposed changes to allow *automotive services, except repair* as a conditional use. Therefore, this proposal complies with this review criterion.

4. **Section 3.111.04.C- The proposed amendment to the Keizer Development Code complies with statewide land use goals and related administrative rules**

   FINDINGS: The proposed text amendments comply with the statewide land use planning goals as discussed below.

   Goal 1 – Citizen Involvement: The adoption of this ordinance followed notice, a public process involving public hearings, deliberation, and ordinance adoption. Public notice was provided in the Keizertimes newspaper. Public hearings were held before the Planning Commission and before the City Council. Citizens were afforded the opportunity to participate in the public process. This process is consistent with the provision for providing an opportunity for citizens to be involved in all phases of this proposed planning process as is required by this goal and with implementing administrative rules within Oregon Administrative Rules.

Goal 2 – Land Use Planning: This ordinance amends the Keizer Code, Appendix A (Keizer Development Code). The city has an adopted comprehensive plan acknowledged by the state. The adoption proceeding was conducted in a manner consistent with the Keizer Comprehensive Plan, Keizer Development Code, and applicable state law. The proposed revisions to the Code are consistent with this statewide planning goal and administrative rules.

Goal 3 – Farm Land: The purpose of this goal is to protect lands that are designated for agricultural uses. Within the city limits the Exclusive Farm Use (EFU), Special Agriculture (SA), Urban Transition (UT), and Public (P) allow commercial agricultural uses. However, only the city's SA zone is a state recognized EFU qualifying zone. The changes do not affect farm lands, but rather modify the Commercial Mixed Use (CM) zone. These provisions do not affect lands that are outside the city limits or any lawful uses occurring on those lands, nor does it amend any of those existing zoning designations. The proposed amendments will comply with the Farm Land Goal and with implementing administrative rules.

Goal 4 – Forest Land: The intent of this goal is to protect lands designated for commercial forest uses. There are no zoning districts specifically designated within the city limits that will allow for commercial forestry. Also, there are no commercial forest lands near, or adjacent to the city limits of Keizer. The amendments do not involve any land which is designated as forest land, nor will it impact the use of any forest lands. The proposed amendments will comply with this Goal and with implementing administrative rules.

Goal 5 – Natural Resources: The intent of the Natural Resources Goal is to protect various natural resources such as wetlands, waterways, big game habitat, etc. The city has a wetland inventory of sites where wetland soils may be present. The city has an adopted Willamette River Greenway Overlay zone to protect resources along the Willamette River. There are no identified big game habitats within the city limits of Keizer. The city established a Resource Conservation overlay zone to maintain, preserve and protect the natural features adjacent to Claggett Creek. The city has storm water regulations to protect water quality of the local water ways consistent with the requirements of the City's National Pollutant Discharge Elimination Permit (NPDES). The proposed amendments will not preclude any of the city's natural resources protection regulations. Nor will the changes preclude the lawful use of any properties that are within the City. Therefore, the proposed text amendments will be consistent with this goal and with administrative rules which implement this goal.

Goal 6 – Air, Water and Land Quality: The intent of this goal is to protect the city's air, water and land qualities. The city provides its residents with city water from groundwater sources. The quality of the water is monitored to ensure that it complies with all state and federal water quality standards. New construction is required to be connected to the established sanitary sewer system thereby reducing the potential of groundwater contamination from failing on-site septic systems. The city has storm water regulations which are to maintain water quality in the Willamette River and local streams. Land quality is preserved through the city's erosion control regulations and through zone code development regulations. Air quality is preserved through the city's development code regulations which limit certain types of uses and are enforced by appropriate state agencies which govern air emission standards. The proposed revisions comply with this goal and with the administrative rules that implement this goal.

Goal 7 – Natural Hazards: The purpose of this goal is to protect life and property from hazards resulting from flooding, steep slopes or other natural occurrences. The city has floodplain regulations that govern the placement of structures within identified 100-year floodplains within the city limits. In Keizer, these are primarily located along the Willamette River and smaller streams such as Claggett Creek. The floodplains have been mapped by the federal government. The intent of the floodplain regulations is to minimize the loss of life and property damage by preventing development, elevating structures above the flood elevation, or flood proofing structures in the floodplain. While there are some steep slopes in the northwest quadrant of the city, there are no mapped areas of steep slopes in Keizer that might warrant any special engineering. The proposed text amendments will neither impact this goal nor any administrative rules pertaining to natural hazards.

Goal 8 – Recreation: This goal requires the city to identify and plan for the current and future recreation needs of the residents of the city. The city has an adopted Parks and Recreation Master Plan that inventories parks, playgrounds, and recreational opportunities within the city limits and plans for the city's future park and recreation needs. The proposed amendments will have no impact on the recreational activities that occur on any park land within the city and will not impact either this goal or any administrative rules that implement it.

Goal 9 – Economic Development: The intent of this goal is to ensure that the city plans for its overall economic vitality. Current employment needs were projected forward based on regional job growth estimates and target industry goals. The growth forecast calls for a total of 3,774 new jobs over the next 20 years. The adopted Economic Opportunities Analysis found there is a net need for commercial and institutional lands amounting to 63.3 gross acres above and beyond what the City's remaining buildable employment lands can accommodate. The proposed text amendments will not have any adverse impact on the economic development activities or uses within the city. The modification will allow for additional flexibility for commercial development by allowing an additional use as a conditional use in Keizer Station Area B, which may result in the creation of additional jobs and a positive economic impact. Therefore, the proposal is consistent with this goal.

Goal 10 – Housing: This goal requires the city to plan and provide for the housing needs of its residents. The proposed revisions do not affect the land supply in any way and only affect the Commercial Mixed Use (CM) zone, not residentially zoned land. The CM zone allows for residential uses, and the proposed changes do not restrict the ability for residential development. Therefore, the proposal is consistent with this goal.

Goal 11- Public Facilities and Services: The intent of this goal is to develop a timely, orderly and efficient arrangement of public facilities and services necessary to serve the residents of Keizer. The city provides its residents with water, an established street system, administrative services and police services. Sanitary sewer service is provided by the city of Salem through an intergovernmental agreement. Fire protection services are provided by the Keizer Fire District or Marion County Fire District #1. There is sufficient capacity in the municipal water delivery system and also within the sanitary sewer treatment system to accommodate planned growth within the upcoming 20-year planning period. The proposed text amendments will not impact any of the city's public facilities and services. Therefore, the revisions will comply with this goal and all administrative rules.

Goal 12 – Transportation: The city has an adopted Transportation System Plan that describes the city's transportation systems. This system includes streets, transit, bike, and pedestrian systems. It inventories the existing systems and contains plans for improving these systems. The proposed text amendment will not affect any transportation facility within the city limits and so is consistent with Section 3.111.05 regarding Transportation Planning Rule compliance. The proposed text amendments will have no adverse impact on the city's transportation systems and will not affect this goal or any implementing rules. It should be noted that at the time of development, traffic impacts will be considered through a quasi-judicial land use review process to assure that any impacts are mitigated appropriately.

Goal 13 – Energy Conservation: This goal seeks to maximize the conservation of energy. All new construction requires compliance for review to applicable energy conservation standards. The proposed text amendments will have no impact on this goal or any of the implementing administrative rules.

Goal 14 – Urbanization: The intent of this goal to provide for an orderly and efficient transition from rural to urban land use. The city has an adopted Comprehensive Plan and zone code that complies with the goal. The proposed text amendments will affect only land that is within the city limits and will not impact the use of any land being transitioned from rural to urbanized uses and is therefore consistent with this goal.

Goal 15 – Willamette River: This goal seeks to protect, conserve, and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River. The revisions to the city's development code will have no impact on the ability of the city to regulate uses along the river or the Willamette River Greenway Management overlay zone regulations. Therefore, the proposed amendments are consistent with this goal.

Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands), Goal 18 (Beaches and Dunes), and Goal 19 (Ocean Resources) govern areas along the ocean. Since Keizer is not located along the coast these goals are not applicable.

In consideration of the above findings, the proposed zone code revisions comply with all applicable statewide land use goals and with all applicable administrative rules which implement the relevant goal.

5. **Section 3.111.04.D - The amendment is appropriate as measured by at least one of the following criteria:**
   a. It corrects identified error(s) in the previous plan.
   b. It represents a logical implementation of the plan.
   c. It is mandated by changes in federal, state, or local law.
   d. It is otherwise deemed by the council to be desirable, appropriate, and proper.

FINDINGS: The proposed text amendments will revise the Keizer Code. The changes proposed will allow *automotive services, except repair* as a Conditional Use within the Commercial Mixed Use (CM) zone in Keizer Station Area B. The change will allow for the possibility of future development of the site and the City Council has, by this adoption, determined the proposed text revisions are desirable, appropriate, and proper. As such, staff finds the proposal complies with this criterion.

City Council Meeting Date: December 15, 2025

To: Mayor Clark and City Council Members

Thru: Adam J. Brown, City Manager

From: Joseph Lindsay, City Attorney

Subject: Purchase and Sale Agreement with CPD Real Co LLC

Proposed Motion

I move that the City Council adopt Resolution R2025-___ Authorizing City Manager to Sign Purchase and Sale Agreement with CPD Real Co LLC.

I. Summary

On October 6, 2025, the City Council authorized the City Manager to sign a Letter of Intent with CPD Real Co LLC for a portion of property in Keizer Station Area B located at the northeast corner of Lockhaven Dr. NE and Keizer Station Blvd. Since that time, the City and CPD Real Co have been negotiating the terms of the Purchase and Sale Agreement and have now reached agreement ready for Council approval. The sale of publicly owned property requires a public hearing which has been set for tonight's meeting.

II. Background

A. City staff began negotiating with CPD Real Co in September 2025.

B. On October 6, 2025, City Council authorized the City Manager to sign the Letter of Intent for the purchase of tax lots 063W36BD01101, 063W36BD01201, 063W36BD01300, and 063W36BD01401.

C. The property is zoned mixed commercial.

D. The City originally purchased the property to construct roads for Keizer Station. The property has benefited from several street related improvements.

III. Current Situation

A. Since the signing of the letter of intent, the parties have negotiated the terms of the Purchase and Sale Agreement. The terms are as stated in the attached agreement.

B. State statutes require a public hearing prior to the Council agreeing to enter into a sale of publicly-owned property. State statutes also requires "evidence of value" to be indicated. I have enclosed a letter from Powell Banz Valuation dated November

25, 2024 indicating that the land value is $1,905,000 (Land Area C).

IV. Analysis

A. **Strategic Impact** - This sale is consistent with a Council endorsed strategy of selling city-owned property to pay down the City's long-term Public Employee Retirement System (PERS) obligation.

B. **Financial** - The purchase price is $1,905,000. The property was initially purchased with Urban Renewal Funds.

C. **Timing** - A public hearing is required to be held before approval of a purchase and sale agreement. Both staff and CPD Real Co are interested in moving forward with the transaction.

D. **Policy/Legal** - A public hearing is required to be held before approval of a purchase and sale agreement.

V. Alternatives

A. Conduct the public hearing and adopt the attached Resolution.

B. Direct staff to renegotiate amended terms.

C. Take No Action and direct staff to discontinue negotiations.

VI. Recommendation

Staff recommends Council conduct the public hearing and take testimony. If there are no further questions, close the hearing and adopt the attached Resolution.

Attachments

1. ATT_CC_Appraisal Excerpt - Keizer Station Area B_12 15 2025
2. RES_CC_Purchase and Sale Agreement with CPD Real Co_12 15 2025
3. EXH_CC_Purchase and Sale Agreement_CPD Real Co_12 15 2025

"Agenda Management Services are being supported, in whole or in part, by federal award number 21.019 awarded to City of Keizer by the U.S. Department of the Treasury."

PBV
POWELL BANZ
VALUATION

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Oregon
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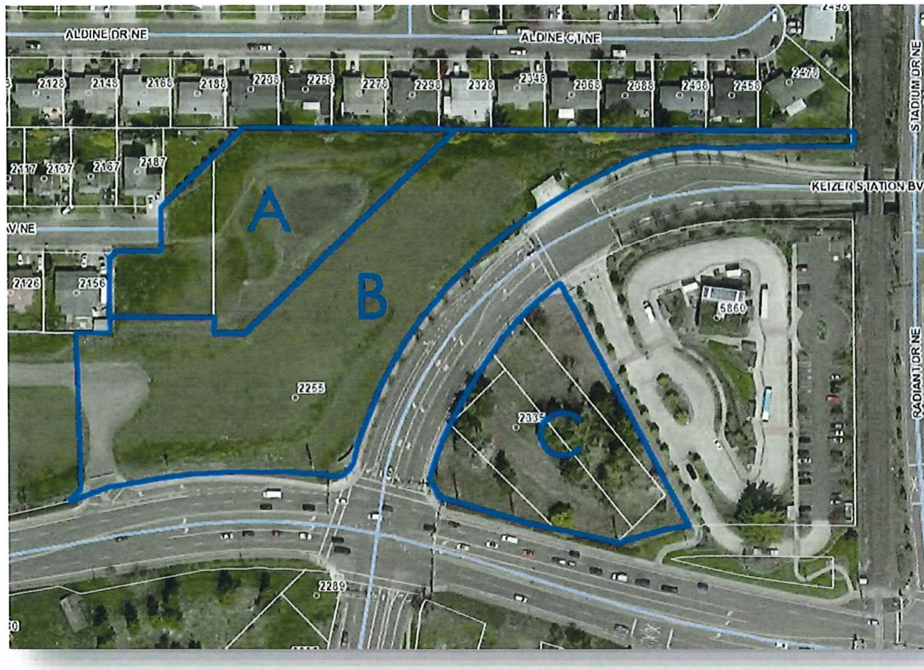
Powell Banz Valuation, LLC
1467 13th Street SE
Salem, Oregon 97302
(503) 371-2403 voice
(503) 371-2613 fax
www.powellbanz.com

REAL ESTATE APPRAISAL REPORT



Marion County GIS Aerial

DEVELOPMENT LAND

A: 5820 McLeod Lane NE
B: 2255 Lockhaven Drive NE
C: 2335 Chemawa Road NE
Keizer, Oregon 97303

PREPARED FOR

City of Keizer
c/o Adam Brown, City Manager
PO Box 21000
Keizer, Oregon 97307

PREPARED BY

Daniel P. Harms, MAI
Katherine Powell Banz, MAI
PBV File Number: P241343

EFFECTIVE DATE OF VALUES

"As Is" Date of Values: November 6, 2024

POWELL BANZ
VALUATION

November 25, 2024

City of Keizer
c/o Adam Brown, City Manager
PO Box 21000
Keizer, Oregon 97307

RE: **DEVELOPMENT LAND**
A: 5820 McLeod Lane NE,
B: 2255 Lockhaven Drive NE
C: 2335 Chemawa Road NE
Keizer, Oregon 97303

Dear Mr. Brown:

As requested, the captioned properties have been valued using generally accepted appraisal principles and practices. This appraisal report is intended to comply with the development and report requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) and the Appraisal Institute. A copy of the signed professional service agreement is included in the Addenda.

The subject properties are three parcels of residential and commercial/mixed use development land located at the intersection of Keizer Station Boulevard and Lockhaven Drive NE/Chemawa Road NE in Keizer, Marion County, Oregon. The parcels are identified herein as Subjects A, B, and C.

We have performed no services as appraisers or in any other capacity, regarding the properties that are the subject of this report within the three-year period immediately preceding acceptance of this agreement. However, portions of the properties were previously appraised by PBV in reports P201434, P201434B, and P141329.

1467 13th Street SE, Salem, Oregon 97302
Voice: 503.371.2403 / Fax: 503.371.2613
jbanz@powellbanz.com / kbanz@powellbanz.com

Based upon our investigation and analysis of available information, the concluded values under the requested scenario, as of November 6, 2024, were:

MARKET VALUE SCENARIOS – FEE SIMPLE	DATE	VALUE
Subject A: "As Is" Market Value	November 6, 2024	$ 655,000
Subject B: "As Is" Market Value	November 6, 2024	$ 4,000,000
Subject C: "As Is" Market Value	November 6, 2024	$ 1,905,000
Estimated Marketing/Exposure Time		One Year per Property

The concluded value of Subject A is predicated on the ***extraordinary assumption*** *that retaining wall easements encumber the northern 21' of the entirety of Subject A. This assumption may have affected the assignment results, and if determined to be false, the concluded value of Subject A will need to be revisited.*

This appraisal is subject to the conditions and comments presented in this report. If any questions arise concerning this report, please contact the undersigned.

Sincerely,

POWELL BANZ VALUATION, LLC

Daniel P. Harms, MAI
OR State Certified General Appraiser
No. C001113
Expiration Date: January 31, 2026

Katherine Powell Banz, MAI
OR State Certified General Appraiser
No. C000897
Expiration Date: August 31, 2026

KPB: dph

Appraisal Report
P241343

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2025-_____

AUTHORIZING CITY MANAGER TO SIGN PURCHASE AND SALE AGREEMENT WITH CPD REAL CO LLC

WHEREAS, City Council authorized the City Manager to sign a Letter of Intent with CPD Real Co LLC with regard to a 61,419 square feet of property located at the northeast corner of Lockhaven Drive NE and Keizer Station Blvd, Keizer, Oregon;

WHEREAS, the parties have negotiated a Purchase and Sale Agreement;

WHEREAS, a notice of hearing as provided in ORS 221.725 was completed and public hearing was held on December 15, 2025;

WHEREAS, the City Council enters the findings set forth below:

NOW, THEREFORE,

BE IT RESOLVED as follows:

Section 1. PUBLIC HEARING. A public hearing was held before the City Council on December 15, 2025. Notice of such hearing was published concerning the above referenced sale.

Section 2. FINDINGS. The notice requirements of ORS 221.725 have been complied with. The nature of the proposed sale and the general terms thereof, including other evidence of the market value of the property have been fully disclosed by the City Council at the public

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

hearing. Any resident of the city has been given an opportunity to present written or oral testimony at the hearing.

The property is zoned Commercial Mixed Use and is developable. The property is not necessary for City use. The subject property is useful to the proposed buyer in that it provides developable ground.

Section 3. DECISION TO SELL. Following the public hearing, the City Council voted to sell the subject property to the buyer, on the terms set forth in the attached Purchase and Sale Agreement.

Section 4. AUTHORIZATION TO CITY MANAGER. The City Council hereby authorizes the City Manager to enter into the attached Purchase and Sale Agreement and to take all acts necessary to consummate the transaction as contemplated therein.

In addition, the City Manager is authorized to enter into amendments to the Agreement as necessary and appropriate, so long as the purchase price is not amended without formal Council approval.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon the date of its passage.

PASSED this __________ day of _________________, 2025.

SIGNED this __________ day of _________________, 2025.

____
Mayor

____
City Recorder

Keizer City Attorney
930 Chemawa Road NE
PO Box 21000
Keizer, Oregon 97307
503-856-3433

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of the _____ day of ________, 2025 (the "Effective Date"), by and between CITY OF KEIZER, an Oregon municipal corporation ("Seller"), and CPD REAL CO LLC, a Delaware limited liability company ("Buyer").

WITNESSETH:

For and in consideration of the promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer (each, a "Party" and, collectively, the "Parties") hereby covenant and agree as follows:

1. **Agreement to Purchase**. Buyer agrees to purchase, and Seller agrees to sell, in accordance with the terms, conditions and stipulations set forth in this Agreement (the "Transaction"):

(a) all of Seller's right, title and interest in and to the parcels of real property, known as Tax Lots 1101, 1201, 1300, and 1401 located at the northeast corner of Lockhaven Drive NE and Keizer Station Blvd in Keizer, Oregon, and as more particularly described on **Exhibit A** attached hereto (the "Real Property") and as generally depicted on **Exhibit A-1**;

(b) all easements, licenses, privileges and other property interests belonging or appurtenant to the Real Property (all of the foregoing items in clauses (a) through (b) above, now or hereafter existing, collectively, the "Property").

2. **Purchase Price**. The purchase price to be paid by Buyer to Seller for the Property is One Million Nine Hundred Five Thousand and NO/100 Dollars ($1,905,000.00) (the "Purchase Price"), which Purchase Price is payable as follows:

(a) Fifty Thousand and No/100 Dollars ($50,000.00) earnest money (said amount, plus all interest earned or accrued thereon, the "Earnest Money Deposit") to be deposited in escrow with First American Title National Commercial Services, 701 5th Ave, Seattle, Washington 98104, Attention: Aubry Ludberg ("Escrow Agent") not later than five (5) business days following the receipt by Escrow Agent of a fully-executed original of this Agreement (said receipt by Escrow Agent of both a fully-executed original of this Agreement and the Earnest Money Deposit, the "Opening of Escrow"), which Earnest Money Deposit is to be held by Escrow Agent until released to Seller or Buyer as provided herein or paid to Seller at close of escrow ("COE"); and

(b) The balance of the Purchase Price, in additional cash, or other immediately available funds (as may be increased or decreased by such sums as are required to take into account any additional deposits, prorations, credits, or other adjustments required by this Agreement), as set forth in the settlement or closing statement (the "Closing Statement") prepared by Escrow Agent and approved by Buyer and Seller in connection with COE of the Property purchased by Buyer from Seller pursuant to this Agreement, which sum is to be deposited in escrow with Escrow Agent on or before COE, and held by Escrow Agent until cancellation of this Agreement as provided herein or paid to Seller at COE.

3. **Application of Earnest Money Deposit**. Seller and Buyer hereby instruct Escrow Agent to place the Earnest Money Deposit in a federally insured account on behalf of Seller and Buyer,

which account may at Buyer's election be interest-bearing, in which event all interest earned thereon shall be deemed a part of the Earnest Money Deposit. The Earnest Money Deposit shall be applied as follows:

(a) if Buyer terminates this Agreement as Buyer is so entitled to do as provided in this Agreement, the Earnest Money Deposit shall be paid immediately to Buyer;

(b) if the Earnest Money Deposit is forfeited by Buyer pursuant to this Agreement, such Earnest Money Deposit shall be paid to Seller as Seller's agreed and total liquidated damages as contemplated in Section 20(b) below, it being acknowledged and agreed that it would be difficult or impossible to determine Seller's exact damages; and

(c) if escrow closes, the Earnest Money Deposit shall be credited to Buyer, automatically applied against the Purchase Price and paid to Seller at COE.

4. **Transaction Documents**. The Real Property shall be transferred and conveyed by execution and delivery of Seller's statutory warranty deed, subject to the matters accepted or deemed accepted by Buyer as set forth in the Title Report (the "Deed"); and the transfer of the Property shall be subject to the execution of an Indemnification Agreement pursuant to which Seller shall indemnify, defend, and hold Buyer harmless from and against any loss, damage, liability and expense, together with all court costs and attorneys' fees, arising out or related to Hazardous Materials upon, under or about the Property that occurred prior to COE (the "Indemnification Agreement"). The Deed and the Indemnification Agreement are hereinafter collectively referred to as the "Transaction Documents". Buyer's approval to the form and substance of the Transaction Documents is a condition precedent to Buyer's obligation to close the transaction contemplated in this Agreement.

5. **Title Commitment; Survey; Objectionable Matters**.

(a) Within five (5) business days after the Opening of Escrow, Escrow Agent shall deliver a current commitment (the "Title Commitment") for the issuance of an ALTA extended coverage title insurance policy (the "Owner's Policy") for the Property to Buyer and Seller. The Title Commitment shall show the status of title to the Property as of the date of such Title Commitment and shall also describe the requirements of Escrow Agent for the issuance of the Owner's Policy as described herein. The cost of the Owner's Policy shall be paid by Buyer as well any additional costs for an extended coverage policy, endorsements thereto (excluding, however, those endorsements required to cure one or more Objectionable Matters (defined below), which endorsements shall be issued at Seller's sole cost and expense), or any lender's title policy shall be paid by Buyer. In addition to the Title Commitment, Escrow Agent shall simultaneously deliver to Buyer complete, legible copies of all documents identified in Schedule B of the Title Commitment.

(b) Promptly after the Opening of Escrow, Buyer may cause a surveyor licensed in the State in which the Property is located to complete and deliver to Escrow Agent and Buyer a current, certified ALTA/NSPS survey of the Real Property and Improvements (the "Survey"), whereupon the legal description in the Survey shall control over the description in **Exhibit A** attached hereto. The Survey shall set forth the legal description and boundaries of the Real Property and all easements, encroachments and improvements thereon.

(c) If Buyer determines, in its reasonable discretion, that any exception to title as shown in the Title Commitment and/or any matter disclosed by the Survey is objectionable and/or unacceptable to Buyer (collectively, the "Objectionable Matters"), then Buyer may, by giving written notice thereof to Escrow Agent and Seller on or before expiration of the Inspection Period or ten (10) days from Buyer's receipt of the Title Commitment or Survey disclosing such Objectionable Matter, whichever is later, either (i) terminate this Agreement, whereupon the Earnest Money Deposit shall be paid immediately to Buyer and all documents deposited in escrow by Buyer shall be returned to Buyer without delay, or (ii) provisionally accept the title to the Property, subject to Seller's agreement to cause the removal of or otherwise cure such Objectionable Matters prior to COE. If Buyer gives notice to Seller of its election of option (ii) above, Seller shall notify Buyer in writing within five (5) days after receiving Buyer's written notice of Objectionable Matters whether Seller intends to remove (or cause Escrow Agent to endorse over, to Buyer's satisfaction) or otherwise cure any such Objectionable Matters. If Seller fails to notify Buyer of its intentions within such five (5) day period, Seller shall be deemed to have elected not to remove or otherwise cure such Objectionable Matters. Subject to Section 5(g) below, Buyer acknowledges that Seller shall have no obligation to remove or otherwise cure any Objectionable Matters. All costs and expenses to remove or otherwise cure the Objectionable Matters shall be borne by Seller.

(d) In the event the Title Commitment is amended (an "Amended Title Commitment") to include new exceptions that are not set forth in the prior Title Commitment, or in the event the Survey is amended (an "Amended Survey") to include or depict matters that are not set forth in the prior Survey, Buyer shall have until the later of (i) the expiration of the Inspection Period, (ii) the date five (5) days after Buyer's receipt of both such Amended Title Commitment and copies of the documents identified in the new exceptions or new requirements, or (iii) the date five (5) days after Buyer's receipt of the Amended Survey, as applicable, within which to either (a) terminate this Agreement as set forth in Section 5(c)(i) above, or (b) to provisionally accept the title to the Property corresponding to such Amended Title Commitment or Amended Survey subject to Seller's agreement to cure or otherwise cause the removal of any Objectionable Matters identified by Buyer in a written notice to Seller in the manner set forth in Section 5(c) above.

(e) In the event Buyer provisionally accepts title to the Property subject to Seller's agreement to cure one or more Objectionable Matters pursuant to Sections 5(c) and/or 5(d) above, if Seller serves notice to Buyer that Seller does not intend to remove or otherwise cure such Objectionable Matters before COE (or if Seller is deemed to have elected not to remove or otherwise cure such Objectionable Matters), Buyer shall, within five (5) days after receipt of such notice from Seller, notify Seller and Escrow Agent in writing of Buyer's election to either (i) terminate this Agreement as set forth in Section 5(c)(i) above, or (ii) waive such Objectionable Matter(s). If written notice of either satisfaction or dissatisfaction as to any Title Commitment, Survey, Amended Title Commitment, or Amended Survey is not timely given by Buyer to Seller pursuant to this Section 5, then Buyer shall be deemed to have disapproved of the condition of title of the Property and shall have elected to terminate this Agreement as set forth in Section 5(c) or 5(d), as applicable, above.

(f) If Buyer and Seller mutually agree that an Objectionable Matter cannot be cured by either Seller or Escrow Agent within the five (5) day period specified in this Section 5, but such Parties mutually agree that such Objectionable Matter is reasonably susceptible to cure within thirty (30) days following the scheduled Closing Date, then Seller and Buyer shall amend this Agreement to provide that COE shall be delayed until the date which is no later than thirty (30) days following the scheduled Closing Date to allow time for such Objectionable Matter to be cured by Seller or Escrow Agent.

(g) Notwithstanding anything to the contrary set forth in this Agreement, any lien, including, without limitation, any mortgage lien, deed of trust lien, tax lien, judgment lien and/or mechanics liens affecting the Property must be paid and satisfied by Seller at COE, whether or not Buyer objects thereto, and such items shall be deemed to be included in all Objectionable Matters even if not specifically so included by Buyer.

(h) If Seller is unable to convey title to the Property free and clear of the lien of any state or local tax, Seller shall be responsible for either paying such tax or providing to Escrow Agent security (such as a cash deposit) so that Escrow Agent can issue the Title Policy to Buyer free and clear of such liens, whether or not Buyer includes such liens as Objectionable Matters.

6. **Seller's Diligence Materials**. Seller agrees to deliver to Buyer, within ten (10) business days following the Effective Date, copies of all documents and information in Seller's possession or control relating to the ownership, use, management or operation of the Property (collectively, "Seller's Diligence Materials"), all at no cost to Buyer. The foregoing deliveries shall include, but not be limited to, the documents, materials and information set forth on the attached **Exhibit B**. Should Seller receive new or updated information regarding any of the matters set forth in this Section 6 (any such new or updated information, the "New Information") after the Effective Date and prior to COE, Seller will immediately notify Buyer of such fact and will promptly deliver complete copies thereof to Buyer.

7. **Inspection Period; Entry Rights; Permit Period**.

(a) Buyer shall have until 11:59 p.m. PST on the forty-fifth (45th) day after the later to occur of (i) the Opening of Escrow and (ii) the date of Buyer's receipt of Seller's Diligence Materials (the "Inspection Period"), at Buyer's sole cost, within which to conduct and approve any inspections, investigations, studies or tests deemed necessary by Buyer, in Buyer's sole discretion, to determine the feasibility of acquiring the Property, including, without limitation, Buyer's right to: (i) review and approve the Title Commitment and Survey, review Seller's operating statements with respect to the Property, and review the Permits, Warranties and Contracts; and (ii) obtain, review and approve an environmental, property condition and zoning study of the Property (collectively, "Buyer's Diligence"). Seller's contact person for purposes of scheduling Buyer's physical inspections of the Property is Adam Brown, (503) 856-3414, BrownA@Keizeror.gov.

(b) Seller hereby grants to Buyer and Buyer's agents, employees and contractors the right to enter upon the Property, at any time or times prior to COE, to conduct Buyer's Diligence, including, without limitation, any Phase II environmental audit. Notwithstanding anything set forth in this Agreement to the contrary, in the event that Buyer's environmental reports indicate an environmental concern, Seller shall be responsible for any further testing and/or remediation requested by Buyer. Buyer and/or its consultants shall, during any entry upon the Property, carry not less than One Million Dollars ($1,000,000.00) commercial general liability insurance insuring all activity and conduct of Buyer and/or such consultants. Buyer shall repair damage to the Property resulting from Buyer's Diligence, and Buyer shall and does hereby agree to indemnify and hold Seller harmless from any and all liabilities, claims, losses or damages, including, but not limited to, court costs and attorneys' fees, which may be incurred by Seller as a direct result of Buyer's Diligence, except to the extent arising from the negligence or willful misconduct of Seller or the mere discovery of a pre-existing condition by Buyer. Buyer's indemnity and hold harmless obligation shall survive cancellation of this Agreement or COE for a period of six (6) months (the "Survival Period").

(c) Provided that Buyer has not elected to terminate this Agreement, upon the expiration of the Inspection Period, Buyer shall have an additional one hundred twenty (120) days after the expiration of the Inspection Period (the "Permit Period") to obtain all governmental and third-party approvals necessary or desirable in Buyer's sole and absolute discretion to develop and operate the Property (and the Improvements) for the use of an drive-thru automotive oil change and tune-up service shop offering oil changes, preventative automotive maintenance services and other related automotive services, including, without limitation, oil changes, tune-ups, transmission services, gearbox services, smog and emissions testing, air condition services, brake services, fuel system cleaning, and the retail sale and installation of automobile tires, and other similar automotive related services, and car wash services. During the Permit Period, Seller shall apply for and enact a text amendment to the City of Keizer's municipal code, approved by the Oregon Department of Land Conservation and Development (DLCD) (the "Code Amendment"), and Buyer shall apply for and complete a master plan amendment to the Keizer Station Master Plan, of which is applied for by Buyer in its sole and absolute discretion (the "Master Plan Amendment"). In the event that Seller is unable to provide the Code Amendment or the Buyer is not able to complete the needed Master Plan Amendment prior to the expiration of the Permit Period, the Permit Period (and the Permit Contingency Period) shall be extended on a day per day basis until two (2) business days after Seller is able to provide Code Amendment or the Buyer completes the Master Plan Amendment, unless this Agreement was previously terminated by Buyer. If Buyer is unable to secure the permits and approvals desired by Buyer in Buyer's absolute and sole discretion, Buyer may terminate this Agreement solely for that reason by giving written notice of such termination (the "Permit Termination Notice") to Seller and Escrow Agent not later than the expiration of the Permit Period (the "Permit Contingency Period"). Buyer may extend the Permit Contingency Period two (2) additional times by up to thirty (30) days each by delivering written notice of such extension to Seller and Escrow Agent at least one (1) business day prior to the expiration of the current Permit Period. If Buyer delivers a Permit Termination Notice prior to the expiration of the current Permit Contingency Period, as such date may be extended herein, the Earnest Money Deposit will be returned to Buyer and this Agreement and the rights and obligations of the Parties under this Agreement will terminate, except for obligations surviving termination. If Buyer does not deliver a Permit Termination Notice prior to the Permit Contingency Period, as such date may be extended herein, the Earnest Money Deposit will remain nonrefundable to Buyer (other than as expressly set forth in this Agreement), and this Agreement will continue in effect subject to the other provisions hereof. Seller expressly agrees and acknowledges that if it is determined that the Property must be re-platted in order for Buyer to obtain its desired entitlements and permits and/or or to create a legal (separately assessed) lot for Closing, the parties agree as follows: (i) Seller (and not Buyer) shall be responsible and liable for any and all costs and expenses (inclusive of engineering) (the "City Entitlement Costs") with respect to the foregoing; (ii) Buyer will take the steps needed for the replatting of the Property and approval of the replatting shall be in Buyer's sole and absolute discretion and shall be a condition precedent to Buyer's obligation to close the transaction contemplated herein; (iii) Seller shall reasonably cooperate with Buyer in the facilitation and approval of the replatting of the Property and other actions reasonably related thereto; (iv) Seller will grant such easements to Buyer as are needed or desired by Buyer on any adjacent Seller-owned property as necessary for Buyer's intended development of the Property, each in form and substance mutually agreed to by the Parties (and if costs are incurred by Buyer with respect to same, such costs shall be added to the City Entitlement Costs), and the approval of such form of easements shall be a condition precedent to Buyer's obligation to close the transaction contemplated herein; and (iv) Seller will reimburse Buyer for all City Entitlement Costs within ten (10) days of Buyer's delivery of invoice for same.

8. **Buyer's Termination Right**. Unless Buyer so notifies Seller or Escrow Agent, in writing, on or before the end of the Inspection Period, of Buyer's acceptance of the Property, this

Agreement shall be terminated, whereupon the Earnest Money Deposit shall be returned immediately to Buyer and, except as otherwise provided in this Agreement, neither of the Parties shall have any further liability or obligation under this Agreement.

9. **Close of Escrow**. COE shall be on or before 5:00 p.m. PST on the thirtieth (30th) day after the expiration of the Permit Contingency Period, as such date may be extended herein (such date, the "Closing Date"). Notwithstanding the foregoing, Buyer shall have the right to extend COE for up to five (5) business days upon written notice to Seller prior to the original Closing Date. Seller shall deliver possession of the Property to Buyer at COE subject only to the Permitted Exceptions (defined below)

10. **Closing Prorations and Costs**.

(a) Insurance, taxes, special assessments, utilities or any other costs related to the Property shall be prorated between Seller and Buyer at COE as of the Closing Date. The Property is subject to the payment of certain development costs, such as payment of off-site improvement costs and water tower assessments and SDCs, each of which are outlined in recorded instruments encumbering the Property (collectively, the "Water Tower and Offsite Improvement Costs"), which shall be the sole responsibility of Buyer at the time of obtaining public improvement construction permits; provided, however, notwithstanding anything set forth in this Agreement to the contrary, in no event shall the total amount of the Water Tower and Offsite Improvement Costs to be paid by Buyer exceed the total (collective and aggregate) amount of Twenty-Six Thousand Dollars ($26,000.00) ("Water Tower and Offsite Improvement Costs Cost Cap") and Seller shall be solely responsible for the payment of any Water Tower and Offsite Improvement Costs in excess of Water Tower and Offsite Improvement Costs Cost Cap. Seller shall indemnify, hold harmless and defend the Indemnified Parties from any and all Claims relating to the payment of and/or liability for any Water Tower and Offsite Improvement Costs in excess of the Water Tower and Offsite Improvement Costs Cost Cap. The Property is subject to the payment of certain other development costs which are outlined in recorded instruments encumbering the Property, which shall be the sole responsibility of Buyer at the time of obtaining public improvement construction permits. Other than those costs attributable to development, all such other items attributable to the period up to the Closing Date shall be credited or charged to Seller. All such items attributable to the period on and after the Closing Date shall be credited or charged to Buyer. Seller shall be credited with the full amount of any refundable deposits paid in connection with contracts with utility providers or vendors that are assumed by Buyer; *provided,* that such providers and vendors acknowledge that such deposits are held, as of COE, for Buyer's account. Seller shall be required to deliver to Escrow Agent at COE a certificate of Seller respecting the "non-foreign" status of Seller, any required state withholding or non-foreign status certificate and any other such affidavits, documents and security required by applicable law or that Escrow Agent may reasonably require, each executed by Seller, including any necessary or required to (i) confirm the sale of the Property does not constitute the sale of the majority of the assets of Seller, or (ii) allow Escrow Agent to insure title to the Property free and clear of the lien of any state or local tax, and the performance of Seller's obligation set forth in this sentence shall be a condition to Buyer's obligation to purchase the Property. The provisions of this Section 10(a) shall survive COE.

(b) Seller and Buyer shall be responsible for the payment of costs and expenses incurred by Seller and Buyer in connection with the Transaction as follows:

(i) Seller shall pay: (A) any and all municipal, county and state transfer taxes, documentary stamp taxes, and/or similar taxes due on the transfer of the Real Property from

Seller to Buyer (including, without limitation, any state or local recording fee), (B) the costs of releasing all liens, judgments, and other encumbrances that are to be released and of recording such releases, (C) any costs associated with any endorsements which are the obligation of Seller pursuant to Section 5(a); (D) one-half (1/2) of any escrow fee charged by Escrow Agent, and (E) the City Entitlement Costs.

(ii) Buyer shall pay: (A) the delivery of the Title Commitment, (B) the cost of the standard coverage portion of the Owner's Policy any additional Owner's Policy costs for an extended coverage policy and any endorsements thereto, except endorsements which are the obligation of Seller pursuant to Section 5(a), (C) the standard coverage portion of Buyer's lender's title policy (if any) and any endorsements thereto, and (D) one-half (1/2) of any escrow fee charged by Escrow Agent.

(iii) Any other closing costs not specifically designated as the responsibility of either Party to this Agreement shall be paid by Seller and Buyer according to the usual and customary allocation of the same in the jurisdiction in which the Property is located. Except as otherwise set forth in this Agreement, Seller and Buyer will each be solely responsible for and bear all of their own respective expenses, including, without limitation, expenses of legal counsel. Seller agrees that all closing costs payable by Seller shall be deducted from Seller's proceeds otherwise payable to Seller at COE. Buyer shall deposit with Escrow Agent sufficient cash to pay all of Buyer's closing costs.

(iv) Seller shall be responsible for any tax or similar obligations incurred by Seller prior to COE, or which otherwise relate to any period of time prior to COE, under applicable successor liability or so-called "bulk sales" laws or regulations. Seller shall indemnify, hold harmless and defend the Indemnified Parties from any and all Claims relating to a breach of the preceding sentence. The provisions of this Section 10(b)(iv) shall survive COE.

(c) If, after COE, the Parties discover any errors in adjustments and apportionments or additional information becomes available which would render the closing prorations inaccurate, the same shall be corrected as soon after their discovery as possible. The provisions of this Section 10(c) shall survive COE except that no adjustment shall be made later than six (6) months after COE unless prior to such date the Party seeking the adjustment shall have delivered a written notice to the other Party specifying the nature and basis for such claim; provided, however, if an adjustment is sought due to the fact that current tax bills with respect to the Property had not yet been issued as of COE, the provisions of this Section 10(c) shall survive with respect to any closing proration of real property taxes until thirty (30) days after Buyer's receipt of tax bills for the period of time during which COE occurred. If any such claim is valid, the Party against whom the claim is sought shall have ten (10) days in which to remit any adjustment due.

11. **Seller's Representations and Warranties**. Seller hereby represents and warrants to Buyer as of the Effective Date and again as of COE that:

(a) Seller has the full power and lawful authority to enter into and carry out the terms and conditions of this Agreement and to execute and deliver all documents which are contemplated by this Agreement; and all actions necessary to confer such power and authority upon the persons executing this Agreement and all documents which are contemplated by this Agreement to be executed on behalf of Seller have been taken;

(b) Applicable laws do not in any way prohibit, limit or otherwise affect the right or power of Seller to enter into and perform all of the terms and covenants of this Agreement. Seller is not a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. Other than holding a public hearing and garnering consent by the Keizer City Council prior to entering into this Agreement and any work necessary to obtain the Code Amendment and Master Plan, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental agency or any other person are required for the due execution, delivery and performance by Seller of this Agreement or any of the terms and covenants contained in this Agreement;

(c) the execution, delivery and performance of this Agreement do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Seller, nor will this transaction in any way violate any other agreements to which Seller is a party;

(d) there are no leases, licenses or other occupancy agreements and no liens or encumbrances which may affect title to the Property; any existing financing secured by the Property or any part thereof shall be satisfied and discharged in full at or prior to COE and any liens or encumbrances relating thereto shall be terminated and released of record at or prior to COE; and Seller does not have any defeasance, lender approval or prepayment obligations with respect to any existing financing which will delay COE;

(e) to Seller's knowledge, no notice of violation has been issued with regard to any applicable regulation, ordinance, requirement, covenant, condition or restriction relating to the present use or occupancy of the Property by any person, authority or agency having jurisdiction, which violation has not been cured;

(f) there are no intended public improvements which will or could result in any charges being assessed against the Property which will result in a lien upon the Property, and there is no impending or contemplated condemnation or taking by inverse condemnation of the Property, or any portion thereof, by any governmental authorities;

(g) there are no suits or claims pending or to Seller's knowledge, threatened with respect to or in any manner affecting the Property, nor does Seller know of any circumstances which should or could reasonably form the basis for any such suits or claims which have not been disclosed in writing to Buyer by Seller;

(h) Seller has not entered into and there is not existing any other agreement, written or oral, under which Seller is or could become obligated to sell the Property, or any portion thereof, to a third party;

(i) Other than a legislative land use process to conditionally allow the use proposed by Buyer, and the requirement of a quasi-judicial land use action to amend the Master Plan for the area including any work needed to obtain the Code Amendment and the Master Plan, there is no action before any governmental authority having jurisdiction thereover, the object of which would be to change the present zoning of or other land-use limitations, upon the Property, or any portion thereof, or its potential use;

(j) Seller has no actual knowledge that there exists or has existed, and Seller itself has not caused any generation, production, location, transportation, storage, treatment, discharge, disposal, release or threatened release upon, under or about the Property of any Hazardous Materials. "Hazardous Materials" shall mean any flammables, explosives, radioactive materials, hazardous wastes, hazardous and toxic substances or related materials, asbestos or any material containing asbestos (including, without limitation, vinyl asbestos tile), or any other substance or material, defined as a "hazardous substance" by any federal, state, or local environmental law, ordinance, rule or regulation including, without limitation, the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Hazardous Materials Transportation Act, as amended, the Federal Resource Conservation and Recovery Act, as amended, and the rules and regulations adopted and promulgated pursuant to each of the foregoing;

(k) there is not now, nor has there ever been, on or in the Property or any portion thereof underground storage tanks, any asbestos-containing materials or any polychlorinated biphenyls, including those used in hydraulic oils, electric transformers, or other equipment;

(l) there are no proceedings pending for the increase of the assessed valuation of the Property or any portion thereof;

(m) no change has occurred with respect to the condition of the Property which has not been disclosed in writing to Buyer or has had, or could reasonably be expected to result in, a material adverse effect upon the Property;

(n) Seller has in place and in force such insurance with such coverages and in such amounts that are equal to or greater than those customarily maintained by similar businesses in the same geographic area in which the Property is located;

(o) the Real Property is subject to all requirements and conditions of the Master Plan approval for Keizer Station – Area B. Buyer understands and agrees that the Real Property must be connected to all appropriate utilities and all conditions applicable to the Real Property set forth in the Master Plan must be complied with as set forth in such Order and any amendments thereto. This includes, but is not limited to any utility infrastructure and off-site improvements that may be required subject to Buyer's responsibility and/or liability for same in an amount not to exceed the Buyer Development Cost Cap;

(p) Access to the Real Property is by an Access Easement recorded in the Marion County Real Property Records at Reel 3267, Page 214; and

(q) The State of Oregon does not impose (so Buyer shall in no event be subject to or otherwise responsible for) any such tax or similar obligations incurred which relate to any period of time prior to COE, under applicable successor liability or so-called "bulk sales" laws or regulations.

If, prior to COE, Seller becomes aware of any fact or circumstance that would materially change a representation or warranty of Seller in this Agreement, then Seller shall promptly, and in all events at least five (5) days prior to the Closing Date (which date shall be extended if necessary to give Buyer five (5) days to review such material change), give written notice of such changed fact or circumstance to Buyer. If, prior to COE, upon Seller's notice or otherwise, Buyer becomes aware of the untruth or inaccuracy of, or facts or circumstances that would change materially and adversely, any representation or warranty of Seller in this Agreement or would constitute a material adverse change in the Property or its future use or operation, then Buyer shall have the option of: (i) waiving such breach of representation or warranty or material adverse change and completing its purchase of the

Property pursuant to this Agreement; (ii) reaching agreement with Seller to adjust the terms of this Agreement to compensate Buyer for such change, but only to the extent Seller agrees in its sole discretion; or (iii) terminating this Agreement and receiving reimbursement by Seller for Buyer's actual, verifiable out-of-pocket costs and expenses incurred with respect to Buyer's Diligence (including, without limitation, reasonable attorneys' fees). Upon a termination of the Agreement pursuant to clause (iii) in the forgoing sentence, the Earnest Money Deposit shall be paid immediately by Escrow Agent to Buyer and, except as otherwise provided in this Agreement, neither of the Parties shall have any further liability or obligation hereunder. Seller shall and does hereby indemnify against and hold harmless Buyer from any loss, damage, liability and expense, together with all court costs and attorneys' fees, if awarded by a court of law, which Buyer may incur, by reason of any material misrepresentation by Seller or any material breach of any of Seller's warranties or covenants. All representations and warranties of Seller made in this Agreement, and Seller's indemnity and hold harmless obligations, shall survive COE for the Survival Period.

12. **Buyer's Representations and Warranties**. Buyer hereby represents and warrants to Seller as of the Effective Date and again as of COE that:

(a) Buyer is a limited liability company duly formed and validly existing and authorized to transact business in and under the laws of the State of Delaware and the individual(s) executing this Agreement on behalf of Buyer are duly authorized to execute and deliver this Agreement and all documents that are contemplated by this Agreement; and

(b) the execution, delivery and performance of this Agreement: (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under any agreement, document or instrument to which Buyer is a party or by which Buyer's assets may be bound or affected; and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Buyer or its members. Buyer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and Buyer is not in default or claimed default under any agreement for borrowed money.

Buyer shall and does hereby indemnify against and hold Seller harmless from any loss, damage, liability and expense, together with all court costs and attorneys' fees, if awarded by a court of law, which Seller may incur, by reason of any material misrepresentation by Buyer or any material breach of any of Buyer's warranties or covenants. All representations and warranties of Buyer made in this Agreement, and Buyer's indemnity and hold harmless obligations, shall survive COE for the Survival Period.

13. **Seller Held Harmless as Municipal Government**. Buyer agrees and understands that Seller's responsibility and obligations under this Agreement do not and cannot bind Seller as to its duties as municipal government which are necessarily separate and apart from its obligations hereunder. To that end, with regard to any actions that may affect Buyer's operation of the Property in any manner whatsoever, Buyer agrees that enforcement in good faith of any lawful ordinances or regulations or any other acts Seller may take with regard to the adoption of appropriate and necessary laws and ordinances, or any other acts Seller may take in its role as municipal government shall not be restricted by the fact that Seller entered into this Agreement. However, nothing in this Section shall be interpreted to permit Seller to act or fail to act in any way inconsistent with any common law, constitutional or statutory rights of Buyer or the established duties and obligations of Seller as a municipal body. If this transaction fails to close due to Seller's responsibilities or obligations as a municipal corporation as described herein, Buyer may terminate this Agreement and receive a refund

of the Earnest Money Deposit. This provision shall survive closing or termination of this Agreement and shall not merge with the Deed.

14. **<u>Seller's Covenants During Contract Period</u>**. Seller hereby covenants to Buyer as of the Effective Date that:

(a) From and after the Effective Date, Seller shall: (i) not execute, modify, terminate, amend and/or approve any new leases, licenses or other occupancy agreements, nor any contracts or commitments of any kind affecting the Property, or any interest therein, without Buyer's written approval (which approval shall not be unreasonably withheld); (ii) not encumber the Property with any liens, encumbrances or other instruments creating a cloud on title or securing a monetary obligation with the Property; (iii) not, without the prior written consent of Buyer, take any action before any governmental authority having jurisdiction thereover, the object of which would be to change the present zoning of or other land-use limitations, upon the Property, or any portion thereof, or its potential use except as specified herein; (iv) continue to operate the Property as heretofore operated by Seller subject to Buyer's rights under this Agreement to direct specific activities of Seller; and (v) not make or affirmatively consent to any capital improvements or any material physical changes to the Real Property and/or Improvements without the Buyer's written consent, which consent shall not be unreasonably withheld.

(b) From and after the Effective Date, Seller shall, (i) maintain the Property in its current condition; and (ii) perform required and routine repairs and maintenance to, and make necessary replacements of, each tangible portion of the Property (whether real or personal) as the relevant conditions require.

(c) Seller shall reasonably cooperate with Buyer in timely providing information requested by Buyer that is readily available to Seller or within Seller's control. In addition, each Party agrees to provide the other with such consents as may reasonably be necessary so that the other may independently confirm information provided to it by third parties. Seller and Buyer shall reasonably cooperate with each other and exercise commercially reasonable efforts to obtain, as of the Closing Date, all approvals, permits, consents from, and provide all notices to, any third party and any governmental or regulatory authority, which are required in connection with the execution, delivery or performance of this Agreement. Buyer understands that Seller is the municipal government for this Property and has roles and duties pursuant to Section 13 above.

(d) Until the Closing Date or prior termination of this Agreement by the Parties, Seller shall not offer the Property for sale publicly or otherwise solicit, make, pursue, negotiate or accept offers for the sale of the Property to or from any party.

15. **<u>Buyer's Conditions Precedent</u>**. In addition to all other conditions precedent set forth in this Agreement, Buyer's obligations to perform under this Agreement and to close escrow are expressly subject to the following:

(a) the delivery by Seller to Escrow Agent, for delivery to Buyer at COE, of the executed original Transaction Documents and such further documents as reasonably may be required in order to fully and legally close this Transaction, including without limitation documents evidencing, to the satisfaction of Escrow Agent, Seller's authority to consummate the Transaction, and any required assignments and assumptions of operating agreements related to the Property;

(b) the issuance of the Owner's Policy (or a written commitment therefor) subject only to those matters approved or deemed approved by Buyer pursuant to this Agreement (collectively, the "Permitted Exceptions") which shall reflect valid and indefeasible title and which shall contain no condition, restriction or easement which, in the opinion of Buyer or Buyer's lender would impair Buyer's use of or the value of the Property;

(c) the delivery by Seller to Escrow Agent, for delivery to Buyer at COE, the executed original Assignment of Access Easement (recorded in the Marion County Real Property Records at Reel 3267, Page 214);

(d) the deposit with Escrow Agent of an executed affidavit of Seller and such other documentation as may be reasonably required by Escrow Agent to allow for the deletion of the mechanics' lien exception from, and generally with respect to the issuance of, the Owner's Policy;

(e) there shall have been no material New Information delivered to Buyer after the Inspection Period, nor any material adverse change to the Property, nor any fact, circumstance, condition, or occurrence which would materially and adversely affect the marketability, financing or insurability of the Property first arising after the expiration of the Inspection Period;

(f) all (i) representations and warranties of Seller set forth herein shall have been true and correct in all respects when made, and (ii) covenants, agreements and conditions required to be performed or complied with by Seller prior to or at the time of COE in connection with the Transaction shall have been duly performed or complied with by Seller prior to or at such time or waived in writing by Buyer;

(g) delivery to Buyer, prior to expiration of the Inspection Period, of documentary evidence supporting all costs and expenses which are to appear on the Closing Statement arising or resulting from assessments against, or allocations of costs and expenses to, the Property, pursuant to any of the Permitted Exceptions;

(h) obtaining approval for Code Amendment and Master Plan Amendment and the Approved Resolution; and

(i) in the event that Buyer's environmental reports indicated an environmental concern, all testing and/or remediation actions requested by Buyer have been completed by Seller to the full satisfaction of Buyer.

If the foregoing conditions have not been satisfied by the specified date or COE as the case may be, then Buyer shall have the right, at Buyer's sole option, by giving written notice to Seller and Escrow Agent, to (i) terminate this Agreement as it relates to the Property, whereupon the Earnest Money Deposit shall be paid immediately by Escrow Agent to Buyer and, except as otherwise provided in this Agreement, neither of the Parties shall have any further liability or obligation under this Agreement, provided that if the applicable failure of a condition is due to the breach or default by a Party to this Agreement, then the non-defaulting Party shall also have such rights and remedies as are provided for under this Agreement as a result of such breach or default, or (ii) extend such specified date or COE, as applicable, for the Property for such amount of time as Buyer deems reasonably necessary to allow Seller to satisfy such conditions. In any event, Buyer's consent to the closing of the Transaction as to the Property pursuant to this Agreement shall waive any remaining unfulfilled conditions for the benefit of Buyer with respect thereto.

16. **Seller's Condition Precedent**. Notwithstanding anything in this Agreement to the contrary, Seller's obligation to sell the Property shall be subject to and contingent upon the following conditions:

(a) passage by the Keizer City Council of a resolution authorizing the sale, following the statutory public hearing required for sale of publicly owned property (the "Approved Resolution").

(b) due performance by Buyer of each and every undertaking and agreement to be performed by Buyer hereunder.

17. **Brokerage Commissions and Finder's Fees**. Except for real estate brokerage commission payable to Commercial Realty Advisors Northwest, LLC – Alex MacLean IV & Joe Casy ("Buyer's Broker" or "Real Estate Broker"), which three percent (3%) of the commission will be paid by Seller, each Party to this Agreement represents and warrants to the other that no person or entity can properly claim a right to a real estate commission, real estate finder's fee, real estate acquisition fee or other real estate brokerage-type compensation (collectively, "Real Estate Compensation") based upon the acts of that Party with respect to the transaction contemplated by this Agreement. Seller hereby acknowledges that Seller is not represented by a broker. Each Party hereby agrees to indemnify and defend the other against and to hold the other harmless from any and all loss, cost, liability or expense (including but not limited to attorneys' fees and returned commissions) resulting from any claim for Real Estate Compensation by any person or entity based upon the acts of the indemnifying Party other than the Real Estate Broker. The provisions of this Section 17 shall survive COE.

18. **Assignment**. This Agreement may not be assigned by Seller without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Buyer may assign its rights under this Agreement to one or more affiliates of Buyer without seeking or obtaining Seller's consent. Such assignment shall not become effective until each assignee executes an instrument whereby such assignee expressly assumes each of the obligations of Buyer under this Agreement, including specifically, without limitation, all obligations concerning the Earnest Money Deposit. Buyer may also designate someone other than Buyer, as grantee and/or assignee, under the Transaction Documents by providing written notice of such designation on or prior to COE. No assignment shall release or otherwise relieve Buyer from any obligations hereunder; provided, however, with respect to any assignment, if COE occurs the assigning party (but not the assignee) shall be relieved of all its obligations arising under this Agreement before, on and after COE.

19. **Risk of Loss**. Seller shall bear all risk of loss, damage or taking of the Property which may occur prior to COE. In the event of any loss, damage or taking with respect to the Property prior to COE, Buyer may, at Buyer's sole option, by written notice to Seller and Escrow Agent, terminate this Agreement, whereupon the Earnest Money Deposit shall be paid immediately to Buyer and, except as otherwise provided in this Agreement, neither of the Parties shall have any further liability or obligation hereunder. In the event of any loss, damage or taking which does not result in a termination of this Agreement, Seller shall at COE and as a condition precedent thereto, pay Buyer or credit Buyer against the Purchase Price the amount of any insurance or condemnation proceeds, or assign to Buyer, as of COE and in a form acceptable to Buyer, all rights or claims for relief to the same, and, to the extent not already paid by Seller toward repair or restoration of the Property and confirmed as applicable to the deductible, credit to Buyer an amount equal to the deductible (if any) under the insurance policy.

20. **<u>Remedies</u>**.

(a) <u>Seller's Breach</u>. If Seller breaches this Agreement, Buyer may, at Buyer's sole option, either: (i) by written notice to Seller and Escrow Agent, terminate this Agreement, whereupon the Earnest Money Deposit shall be paid immediately by Escrow Agent to Buyer, Seller shall promptly reimburse to Buyer its reasonable out-of-pocket costs and expenses incurred in connection with this Agreement or otherwise with respect to the Transaction (including, without limitation, all property diligence expenses, attorneys' fees and/or any amounts incurred to secure financing for the Transaction) and, except as otherwise provided in this Agreement, neither of the Parties shall have any further liability or obligation hereunder, or (ii) seek specific performance against Seller in which event COE shall be automatically extended as necessary. Notwithstanding the foregoing, if specific performance is unavailable as a remedy to Buyer because of Seller's affirmative act or intentional omission, Buyer shall be entitled to pursue all rights and remedies available at law or in equity. Seller hereby acknowledges and agrees that the provisions of this Section 20(a) shall not limit any rights or remedies Buyer may have against Seller after COE pursuant to any indemnification provisions of this Agreement or for any misrepresentation, breach of warranty or default by Seller in any of its obligations under this Agreement, the Transaction Documents or any other documents to be entered into pursuant to this Agreement.

(b) <u>Buyer's Breach</u>. IF THE TRANSACTION FAILS TO CLOSE ON OR PRIOR TO THE CLOSING DATE DUE TO A FAILURE BY BUYER TO PERFORM BUYER'S OBLIGATIONS UNDER THIS AGREEMENT, THE ENTIRE AMOUNT OF THE EARNEST MONEY DEPOSIT, PLUS ACCRUED INTEREST, SHALL BE RETAINED BY SELLER AS LIQUIDATED DAMAGES. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT SELLER'S DAMAGES IN THE EVENT OF SUCH A BREACH OF THIS AGREEMENT BY BUYER WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT THE AMOUNT OF THE EARNEST MONEY DEPOSIT PLUS ACCRUED INTEREST IS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES SELLER WOULD SUFFER IN THE EVENT THE TRANSACTION PROVIDED FOR IN THIS AGREEMENT FAILS TO CLOSE, AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT. BUYER AND SELLER AGREE THAT SELLER'S RIGHT TO RETAIN THE EARNEST MONEY DEPOSIT PLUS ACCRUED INTEREST SHALL BE THE SOLE REMEDY OF SELLER AT LAW IN THE EVENT OF A BREACH OF THIS AGREEMENT BY BUYER.

21. **<u>Attorneys' Fees</u>**. If there is any litigation to enforce any provisions or rights arising under this Agreement, the unsuccessful party in such litigation, as determined by the court, agrees to pay the successful party, as determined by the court, all costs and expenses, including, but not limited to, reasonable attorneys' fees incurred by the successful party, such fees to be determined by the court. For purposes of this Section 21, a Party will be considered to be the "successful party" if (a) such Party initiated the litigation and substantially obtained the relief which it sought (whether by judgment, voluntary agreement or action of the other Party, trial, or alternative dispute resolution process), (b) such Party did not initiate the litigation and either (i) received a judgment in its favor, or (ii) did not receive judgment in its favor, but the Party receiving the judgment did not substantially obtain the relief which it sought, or (c) the other Party to the litigation withdrew its claim or action without having substantially received the relief which it was seeking.

22. **Notices**.

(a) Except as otherwise required by law, any notice required or permitted hereunder shall be in writing and shall be given by (i) personal delivery, (ii) deposit in the U.S. Mail, certified or registered, return receipt requested, postage prepaid, (iii) any express or overnight delivery service (e.g., Federal Express), delivery charges prepaid; (iv) facsimile; or (v) electronic mail, in each case addressed to the Parties at the addresses set forth below, or at such other address as a Party may designate in writing pursuant hereto:

if to Seller:	CITY OF KEIZER, OREGON Attention: City Manager Attention: City Attorney 930 Chemawa Road NE PO Box 21000 Keizer, OR 97307 Tel.: (503) 390-3700 E-mail: BrownA@Keizeror.gov LindsayJ@Keizeror.gov
if to Buyer:	CPD REAL CO LLC Attention: Scott Hempy Attention: Brandon Ghiossi 5330 Old Redwood Hwy., Suite C Petaluma, CA 94954 Tel.: (707) 586-9934 E-mail: Scott@Oilstopinc.com E-mail: Brandon@Oilstopinc.com
if to Escrow Agent:	First American Title National Commercial Services Attention: Aubry Ludberg 701 5th Ave Seattle, Washington 98104 Tel.: (206) 447-5419 E-mail: Aubry.Ludberg@fnf.com

(b) Notice shall be deemed to have been delivered on (i) the date on which the notice is received, if notice is given by personal delivery, (ii) the third business day following the day of deposit of such notice with the U.S. Mail, if notice is given by certified or registered mail, return receipt requested; (iii) the next business day, if notice is delivered by a reputable express overnight delivery service; and (iv) the date on which confirmation of facsimile or electronic mail is received, if notice is given by facsimile or electronic mail. If escrow has opened, a copy of any notice given to a party shall also be given to Escrow Agent by regular U.S. Mail or by any other method provided for herein.

23. **Approvals**. Concerning all matters in this Agreement requiring the consent or approval of any Party, the Parties agree that any such consent or approval shall not be unreasonably withheld unless otherwise provided in this Agreement.

24. **Additional Acts**. The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of this Agreement.

25. **Governing Law**. This Agreement shall be construed and interpreted in accordance with and shall be governed and enforced in all respects according to the laws of the state in which the Property is located, without regard to any conflict of laws principles.

26. **Construction**. The terms and provisions of this Agreement represent the results of negotiations among the Parties, each of which has been represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed Agreement or any earlier draft of the same.

27. **Time of Essence**. Time is of the essence of this Agreement. However, if this Agreement requires any act to be done or action to be taken on a date which is a Saturday, Sunday or legal holiday, such act or action shall be deemed to have been validly done or taken if done or taken on the next succeeding day which is not a Saturday, Sunday or legal holiday, and the successive periods shall be deemed extended accordingly.

28. **Interpretation**. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any document, instrument or other agreement executed in connection herewith or in furtherance hereof, including any Exhibits hereto, the same shall be consistently interpreted in such manner as to give effect to the general purposes and intention as expressed in this Agreement which shall be deemed to prevail and control.

29. **Headings**. The headings of this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

30. **Fax and Counterparts**. This Agreement may be executed by facsimile or electronically mailed .pdf file, and/or in any number of counterparts. Each Party may rely upon any facsimile, electronically mailed .pdf file or counterpart copy as if it were one original document.

31. **Incorporation of Exhibits**. All Exhibits to this Agreement are fully incorporated herein as though set forth at length herein.

32. **Severability**. If any provision of this Agreement is unenforceable, the remaining provisions shall nevertheless be kept in effect.

33. **Entire Agreement**. This Agreement contains the entire agreement between the Parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

34. **<u>Waiver of Jury Trial and Certain Damages</u>.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO SHALL AND THEY HEREBY DO INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO. SELLER FURTHER WAIVES THE RIGHT IT MAY HAVE TO SEEK LOST PROFITS, PUNITIVE, CONSEQUENTIAL, AND/OR SPECIAL AND INDIRECT DAMAGES FROM BUYER IN ANY ACTION, PROCEEDING OR COUNTERCLAIM WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO.

35. **<u>Escrow Instructions</u>**.

(a) Escrow Agent is hereby employed by the Parties to act as escrow agent in connection with this Transaction. This Agreement shall be used as instructions to Escrow Agent, as escrow agent, which may provide its standard conditions of acceptance of escrow; *provided, however,* that in the event of any inconsistency between such standard conditions of acceptance and the terms of this Agreement, the terms of this Agreement shall prevail. Escrow Agent's opening of an escrow pursuant to this Agreement shall be deemed to constitute conclusive evidence of Escrow Agent's agreement to be bound by the terms and conditions of this Agreement pertaining to Escrow Agent.

(b) Escrow Agent is authorized to pay, at COE, from any funds held by it for each Party's respective credit, all amounts necessary to procure the delivery of any documents and to pay, on behalf of Buyer and Seller, all charges and obligations payable by them hereunder, respectively. Buyer and Seller will pay all charges payable by them to Escrow Agent. Escrow Agent shall not cause the Transaction to close unless and until it has received written instructions from Buyer and Seller to do so. Escrow Agent is authorized, in the event any conflicting demand is made upon it concerning these instructions or the escrow, at its election, to hold any documents and/or funds deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the rights of Buyer and Seller or to interplead such documents and/or funds in an action brought in any such court.

36. **<u>Statutory Warning (ORS 93.040(2)).</u>** 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 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

CITY OF KEIZER
An Oregon municipal corporation

By: ______________________________
Name: Adam J. Brown
Its: City Manager

BUYER:

CPD REAL CO LLC,
a Delaware limited liability company

By: ______________________________
Name: ____________________________
Its: ______________________________

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

Marion County, Oregon Taxlots 063W36BD01101, 063W36BD01201, 063W36BD01300, 063W36BD01401

EXHIBIT A-1

GENERAL DEPICTION OF REAL PROPERTY

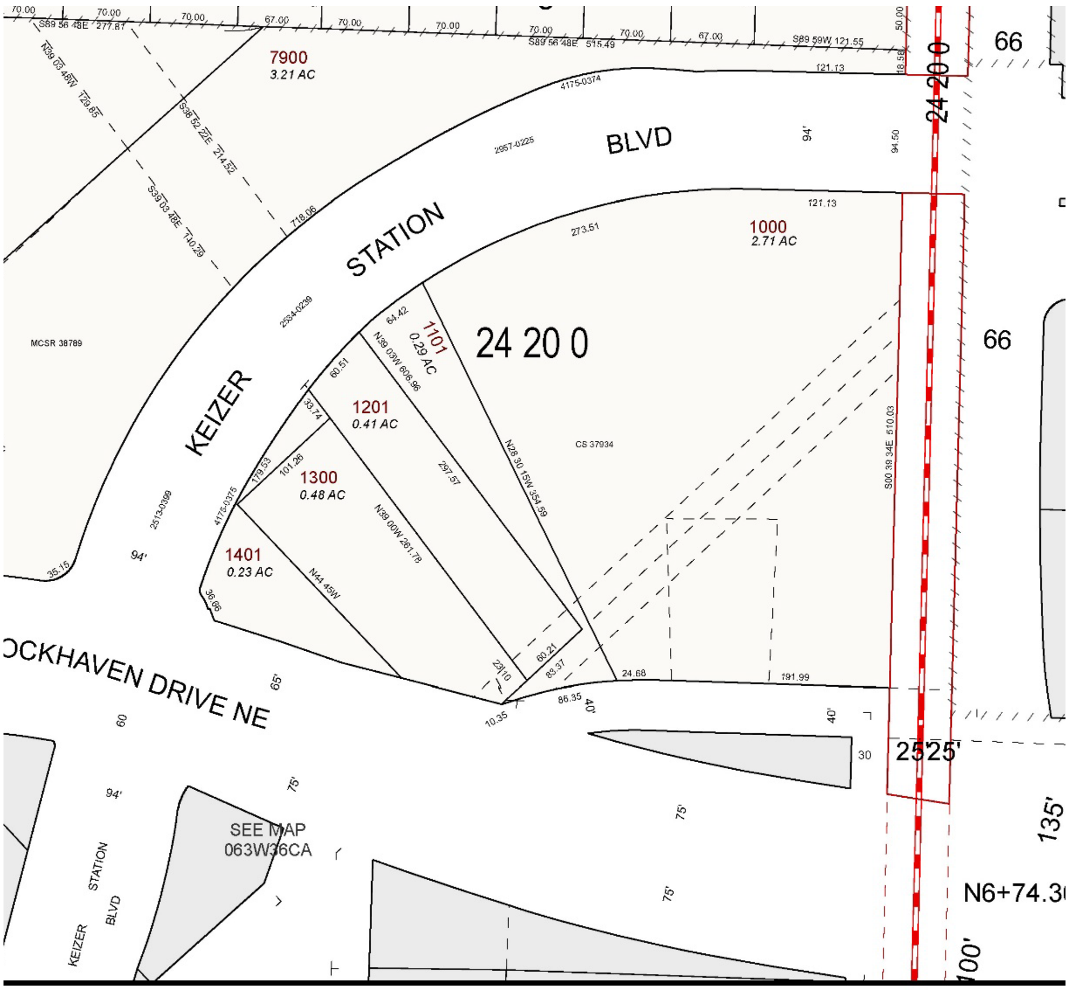


EXHIBIT B

SELLER'S DILIGENCE MATERIALS

1. All agreements relating to possession, use or occupancy of any portion of the Real Property.

2. Maps, reports, documents, surveys, studies, plans and specifications, drawings, and other governmental permits and approvals, notices from insurer or governmental authority regarding the Property or any portion thereof, warranties, documents of significance to the Real Property, correspondence, or other materials pertaining to or concerning the Real Property that are in Seller's possession or under its control, including, without limitation:

   - Any and all ALTA surveys for the Real Property;
   - Any and all soil, geotechnical, grading, drainage, hydrology or other engineering studies relating to the Real Property;
   - Any and all environmental assessments, Phase I reports, Phase II reports and environmental remediation contracts for the Real Property;
   - Any and all seismic or earthquake reports relating to the Real Property;
   - Any and all architectural schematic or design development plans;
   - Any and all applications for or copies of licenses, permits, conditional use permits, variances, certificates of occupancy, or for other land use entitlements to any governmental agency for the use, occupancy, and development of the Real Property, together with relating supporting materials; and
   - Property condition reports.

3. Property tax statements and assessed value notices for the past three years.

4. Copies of all current insurance policies.

5. All correspondence from neighboring property owners regarding the operation and use of the Real Property.

6. Any and all correspondence, notifications or other documentation relating to condemnation of any portion of the Real Property or any real property adjacent to the Real Property.

7. Any and all contracts and warranties relating to the Real Property, whether or not such warranties are assignable or transferrable to Buyer.

8. Any other documents or other information in the possession or control of Seller or its agents pertaining to the Property.