

**THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE**

**URA RESOLUTION NO. 145**

**A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER AS THE AGENCY'S EXECUTIVE DIRECTOR TO ENTER INTO AN EARNEST MONEY AGREEMENT FOR THE ACQUISITION OF PROPERTY INTEREST FOR THE CONSTRUCTION OF A WESTSIDE NEIGHBORHOOD ELEMENTARY SCHOOL AND ASSOCIATED PLAYFIELDS AND AUTHORIZING TITLE TO VEST IN THE CITY OF WILSONVILLE**

WHEREAS, URA Resolution No. 144 authorized Urban Renewal Agency staff and attorneys to acquire property (the "Property") for an elementary school site and associated playfields; and

WHEREAS, the Property is a 9.81 acres site owned by Sharon L. Lund, identified in Clackamas County Tax Records as 3S1W15 Tax Lot 1100 and Tax Lot 1101 , and is within the Plan Area and designated within the Villebois Master Plan as a future school site; and

WHEREAS, the appraised value of this site as established in a January 12, 2006 appraisal report prepared by Craig Zell, MAI, SRA is \$4,150,000; and

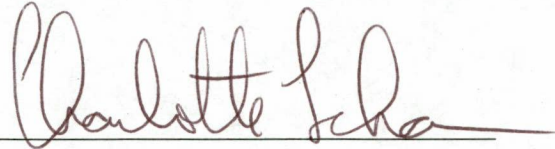
WHEREAS, the Property owner and Urban Renewal Agency staff and attorneys have completed negotiations for the Property and have agreed upon a sales price equal to the appraised value of \$4,150,000; and

WHEREAS, an Earnest Money Agreement (Exhibit A) has been prepared detailing the terms under which the acquisition is to be completed.

NOW, THEREFORE, THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Manager acting as the Agency's Executive Director is authorized to enter into an Earnest Money Agreement with the Property owner and purchase the Property for \$4,150,000.
2. The City Manager acting as the Agency's Executive Director is authorized to transfer title of identified property to the City of Wilsonville by deed or directly through negotiation.
3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville Urban Renewal Agency at a regular meeting thereof this 5<sup>th</sup> day of June, 2006 and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, Board Chair

ATTEST:

  
Sandra C. King, City Recorder, MMC

SUMMARY OF VOTES:

Chair Lehan	Yes
Member Knapp	Yes
Member Ripple	Excused
Member Kirk	Yes
Member Holt	Yes

URA Resolution No. 145

**COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

DATE: June 5, 2006  
TO: Agency Board Chair and Members  
FROM: Kristin Retherford, Urban Renewal Project Manager  
SUBJECT: Earnest Money Agreement for Acquisition of Property for an Elementary School Site and Associated Playfields

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**Summary:** In URA Resolution No. 144 the City of Wilsonville's Urban Renewal Agency Board authorized Urban Renewal Agency staff and attorneys to negotiate for the acquisition of land (the "Property") owned by Sharon L. Lund to be developed as an elementary school with associated playfields. Negotiations have reached an amicable solution and the owner is willing to sell the land to the Urban Renewal Agency for the appraised value of \$4,150,000.

**Recommendation:** Staff recommends the Urban Renewal Agency Board authorize the City Manager, acting as the Urban Renewal Agency's Executive Director to enter into an Earnest Money Agreement with the Property owner and purchase the Property for \$4,150,000 and further authorize the transfer of title of the identified property to the City of Wilsonville by deed or directly through negotiation.

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**Kristin Retherford**  
Urban Renewal Project Manager

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**Date**

**EARNEST MONEY AGREEMENT FOR PURCHASE OF LAND**

Wilsonville, Oregon

June \_\_, 2006

Seller: Sharon L. Lund  
11650 SW Tooze Road  
Wilsonville, OR 97070

Buyer: Wilsonville Urban Renewal Agency  
30000 Town Center Loop East  
Wilsonville, Oregon 97070

**RECITALS**

1. The Agency is a public body corporate and politic of the City of Wilsonville with the power of condemnation. The Buyer desires to acquire property for a school site and associated sports fields. Seller owns real property consisting of tax lots 3S1W15 1101 and 1100 which is needed for the school site (the "Property"). The Property is described as Parcel 1 and Parcel 2, Partition Plat No. 1994-182, in the County of Clackamas and the State of Oregon. A copy of Map No 31W 15 01100 for the purpose of aiding in locating the property is attached as Exhibit 1.

2. The Property consists of two separate parcels. Parcel 2, approximately 2.17 acres, contains the owner occupied residential dwelling. The Seller represents that Parcel 1, approximately 7.64 acres, has been held as investment property.

3. Under the threat of condemnation, Seller has agreed to sell the Property to Buyer upon the terms and conditions set forth in this Agreement. The Buyer, as a statutorily constituted public entity has statutory eminent domain/condemnation authority, and will, in the absence of this agreement utilize this authority in order to come into ownership of the real property referenced herein. Buyer has initiated an eminent domain/condemnation proceeding in Clackamas County Circuit Court, Case No. CV05120153, The Urban Renewal Agency of the City of Wilsonville vs Donald E Bishof and Sharon L. Lund, et al against Seller Sharon L. Lund and her brother Donald E. Bishof regarding some nearby real property that they own.

4. Buyer acknowledges that Seller may at Seller's sole option choose to pursue a tax deferred exchange under 1031 or 1033 of the Internal Revenue Code and in such event, Buyer will cooperate on any documentation at Seller's expense and without cost to Buyer.

**AGREEMENTS**

**1. Purchase and Sale.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property, including improvements, save and except the Skyland Mobile Home that Seller shall retain and remove at Seller's expense, and any damages to the remainder for Four Million One Hundred Fifty Thousand and No/100 Dollars (\$4,150,000.00) (the "Purchase Price"). A non refundable earnest money sum of \$10,000.00 shall be paid upon this agreement being authorized and approved by the Board of Urban Renewal Agency of the City of Wilsonville, which earnest money sum shall be credited against the purchase price at the time of closing.

Buyer shall pay Seller the entire Purchase Price in cash upon closing less the above mentioned payment of earnest money.

**2. Additional Consideration.** Should Seller determine and notify the Agency within 45 days of execution of this agreement that Seller wishes to lease back the residential 2.17 acre premises, Buyer agrees to negotiate in good faith a lease of all or a portion of the premises to Seller for a term of up to two years from closing in order for Seller's daughter to finish her high school education in the Sherwood School District and Seller agrees to negotiate in good faith to care take and maintain the premises together with the 7.64 acre parcel as the rental consideration. Seller is under no obligation to exercise the above option to lease back the residential premises. Should such agreement disqualify the residential premises from the Agency or City's property tax exemption, Seller would pay the property taxes as additional rental consideration. Within 30 days of execution of this agreement, the City shall inspect the premises and the parties shall determine any maintenance items that Seller should maintain at her cost to maintain habitability for the term of the lease.

**3. Title Report.** Chicago Title Insurance Company (the "Escrow Agent") has prepared a preliminary title report (the "Preliminary Report 1") for tax lot 3S1W15 1100 (Parcel 1) dated May 23, 2006 and a preliminary title report (the "Preliminary Report 2") for tax lot 3S1W15 1101 (Parcel 2) dated May 23, 2006. Seller agrees to convey the Property to Buyer subject only to exceptions 6, 7, and 8 described in the Preliminary Report 1 and subject only to exceptions 6 described in the Preliminary Report 2 (the "Permitted Exceptions"). Buyer is aware there is currently an oral ground lease with a third party that allows this years crops to be harvested by the third party lessee , that term of the oral lease is only for this 2006 harvest year, and shall expire in 2006 unless Buyer shall agree to extend same with the third party lessee.

**4. Condition Precedent to Purchase.** Buyer's obligation to close the purchase of the Property shall be subject to and conditioned upon Seller's ability to convey the Property to Buyer subject only to the Permitted Exceptions and the accuracy of Seller's representations and warranties made in this Agreement as of the closing date. Seller shall have until escrow closing to cause the extinguishment of all exceptions other than the Permitted Exceptions.

**5. Representations and Warranties.** Seller represents and warrants to Buyer that:

(a) To Seller's knowledge, without the duty of investigation or inquiry, the Property is not in violation of any agreements, covenants, conditions or restrictions affecting the Property.

(b) Seller has received no notice from any governmental agency having jurisdiction in the matter of any violation of any statute, law, ordinance, deed restriction or rules or regulations with respect to the existence, construction, maintenance or operation of the Property.

(c) Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, and at closing Seller shall deliver a certification to this effect to Buyer.

(d) To Seller's knowledge without the duty of investigation or inquiry, there are no material hidden or latent defects that exist in or on the Property.

(e) There are no actions, claims or proceedings pending or, to Seller's actual knowledge, threatened by any party against Seller in connection with the Property or against the Property, nor to Seller's knowledge is there any basis for any such action or proceeding.

(f) Seller has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated herein. The individual executing this instrument on behalf of Seller has the legal power, right and actual authority to bind Seller to the terms and conditions of this Agreement. Buyer has been represented by City Attorney, Michael E. Kohlhoff. Seller acknowledges and understands that Mr. Kohlhoff does not and has not represented the Seller and that Seller has the right to seek independent legal advice and Buyer has encouraged Seller to do so.

(g) The foregoing representations and warranties shall be true and correct at closing, and to the extent that full performance of such representations and warranties is not required prior to or at closing, they shall survive the closing and be fully enforceable thereafter.

**6. Closing, Escrow, Prorates.** If the conditions set forth in paragraph 3 above have been timely satisfied or waived, the purchase and sale shall close on the date designated by Seller in a written notice to Buyer (but in no event later than 60 days after execution of this agreement) given at least ten (10) days before the designated closing date. The purchase of the Property shall be closed in escrow by the Escrow Agent. Prior to closing, each party will deposit with the Escrow Agent the funds, documents and instructions necessary for closing. The cost of the escrow shall be Buyer's responsibility. Current real property taxes on the Property will be prorated between the parties as of the date of

closing. Buyer shall be entitled to possession of the Property on the closing date and on or thereafter may lease back the property as the parties may agree as set forth above.

7. **Broker.** The parties represent and warrant to one another that there are no real estate brokers or salespersons involved in this transaction.

8. **Full Payment.** Seller acknowledges that the Purchase Price and Buyer's completion of the Site Specific Items are just and full compensation for a fee taking of real property, including any and all damages, costs, liabilities or other obligations which Seller may have otherwise been entitled to in the event a condemnation action had been filed. Seller agrees to defend, indemnify and hold harmless Buyer from any and all claims of any tenants of the Site related to the purchase of the Property by Buyer.

9. **General and Miscellaneous Provisions.**

(a) **Prior Agreements.** This instrument is the entire, final and complete agreement of the parties pertaining to the sale and purchase of the Property, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Property is concerned. Neither party shall be bound by any promises, representations and agreements except as are herein expressly set forth.

(b) **Time is of the Essence.** Time is expressly made of the essence of each provision of this Agreement.

(c) **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail addressed to the addresses set forth below the names of the parties on the first page hereof, or to such other address as one party may indicate by written notice to the other party.

(d) **Attorney Fees and Costs.** In event legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred therein.

(e) **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

(f) **No Merger.** The obligations set forth in this Agreement shall not merge with the transfer or conveyance of title to any party of the Property but shall remain in effect until fulfilled.

(g) **Amendments.** This Agreement may be amended, modified or extended without new consideration but only by written instrument executed by both parties.

(h) **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon.

(i) **Severability.** If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

(j) **Counting of Days.** Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or legal holiday.

(k) **Number, Gender and Captions.** In construing this Agreement, it is understood that if the context so requires the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to individuals and/or corporations and partnerships. All captions and paragraph heading used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

(l) **Recording.** Upon request of either party, the parties shall execute in a form sufficient for recording a memorandum of this Agreement, which may be recorded at the expense of the party requesting the same.

(m) **Binding Effect.** The covenants, conditions and terms of the Agreement shall extend to and be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

(n) **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

(o) **Assignment.** The Buyer shall have the right to assign its rights and obligations under this Agreement to the City of Wilsonville, a municipal corporation of the state of Oregon ("City"). The City, as assignee, shall succeed to all the rights and remedies under this Agreement, including but not limited to the specific performance of this Agreement. If Buyer assigns its rights and obligations under this Agreement to the



City, Seller thereafter shall tender all Seller performance to and for the benefit of the City, including, but not limited to delivery of the deed, in the name of the City. Buyer also agrees to cooperate in any 1031 or 1033 exchange as set forth in Recital 4 above.

**10. Zoning and Land Use.** 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 CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)). BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)).

**11. Authority.** This Earnest Money Agreement is subject to final authorization and approval by the Board of the Urban Renewal Agency of the City of Wilsonville. Buyer shall seek immediate approval of this agreement by the Urban Renewal Agency of the City of Wilsonville at it June 5, 2006 meeting.

**SELLER:**

SHARON L. LUND

**BUYER:**

WILSONVILLE URBAN RENEWAL AGENCY

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

Arlene Loble, Wilsonville City  
Manager, the Agency's duly authorized  
Representative

**BUYER'S ASSIGNMENT OF EARNEST MONEY AGREEMENT  
TO CITY OF WILSONVILLE, OREGON**

In consideration of the Assignee's performance of Buyer's obligations pursuant to that certain Earnest Money Agreement dated June \_\_, 2006, between Wilsonville Urban Renewal Agency, as Buyer and Sharon Lund as Seller ("Agreement"), Buyer, as Assignor, hereby assigns to the City of Wilsonville, Oregon, a municipal corporation of the state of Oregon, as Assignee, all of Buyer's rights and obligations under the Agreement. This assignment is effective immediately upon Assignor's deposit into escrow of those funds necessary to close the sale of the Property as determined under the Agreement.

Notwithstanding the assignment, the funds so deposited by Assignor shall be applied to the purchase price and other Buyer closing costs, as determined under the Agreement.

ASSIGNOR:  
Wilsonville Urban Renewal Agency

ASSIGNEE:  
City of Wilsonville, a municipal  
Corporation of the state of Oregon

By: \_\_\_\_\_  
Arlene Loble, City Manager  
Authorized Representative

By: \_\_\_\_\_  
Arlene Loble, City Manager

SECTION 15 T.3S. R.1W. W.M.  
CLACKAMAS COUNTY

1" = 400'

11500

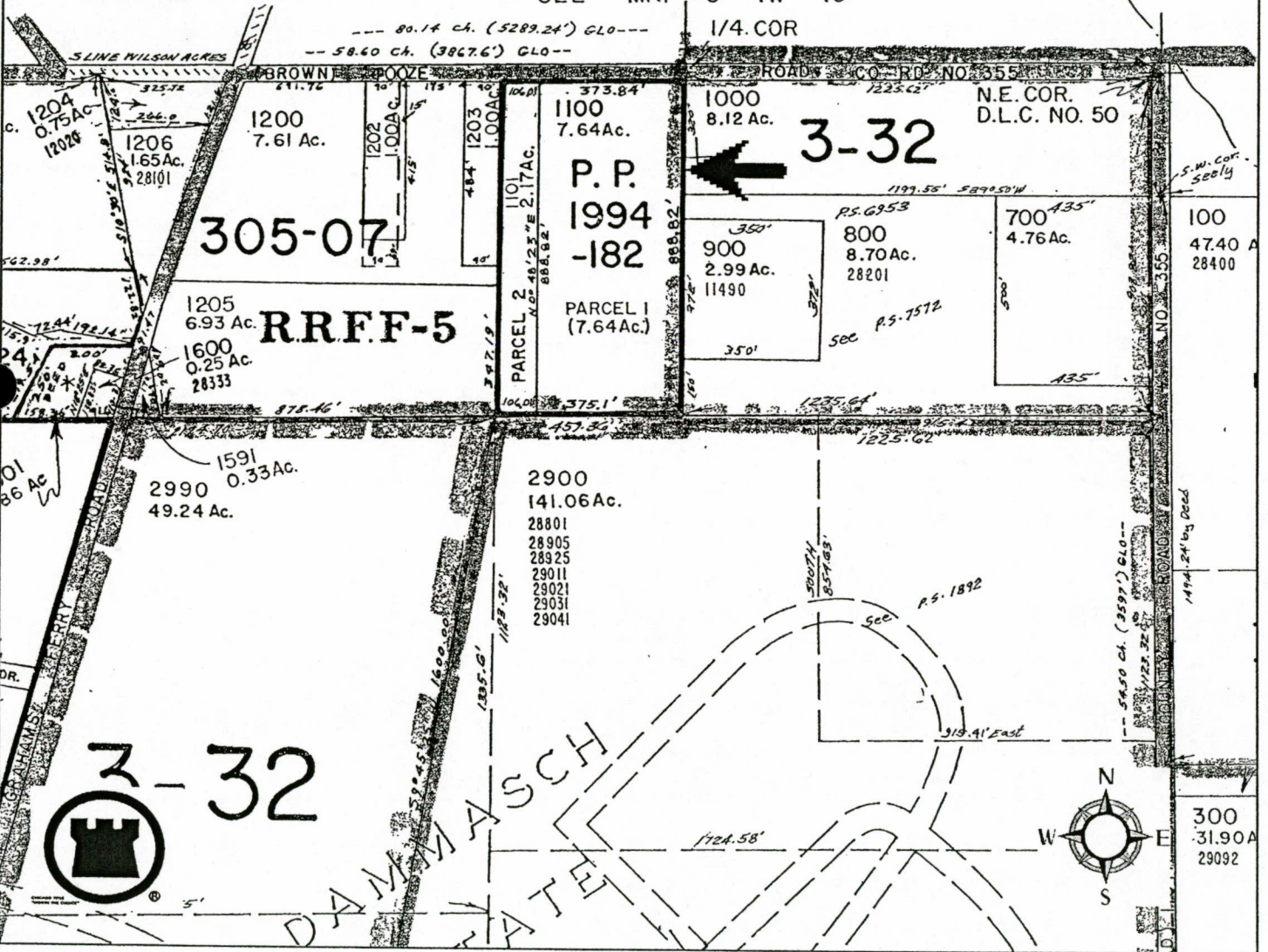
305-01

This map was prepared for  
assessment purpose only.

SEE MAP 3 IW 10

1/4 COR

1501 Should  
cause the north  
int on road by deeds



**CHICAGO TITLE**

This plat is for your aid in locating your land with reference to streets and other parcels.  
While this plat is believed to be correct, the company assumes no liability for any loss occurring by reason of reliance thereon.

Map No. 31W15 01100  
CHICAGO TITLE INSURANCE COMPANY  
10001 S.E. SUNNYSIDE ROAD  
CLACKAMAS, OREGON 97015

URA Resolution No: 145



30000 SW Town Center Loop E  
Wilsonville, Oregon 97070  
(503) 682-1011  
(503) 682-1015 Fax

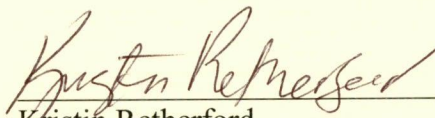
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DATE: June 5, 2006  
TO: Agency Board Chair and Members  
FROM: Kristin Retherford, Urban Renewal Project Manager  
SUBJECT: Earnest Money Agreement for Acquisition of Property for an Elementary School Site and Associated Playfields

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**Recommendation:** Staff recommends the Urban Renewal Agency Board authorize the City Manager, acting as the Urban Renewal Agency's Executive Director to enter into an Earnest Money Agreement with the Property owner and purchase the Property for \$4,150,000 and further authorize the transfer of title of the identified property to the City of Wilsonville by deed or directly through negotiation.

  
\_\_\_\_\_  
Kristin Retherford  
Urban Renewal Project Manager

5-31-06  
\_\_\_\_\_  
Date