

RESOLUTION No. 2013-3042

A RESOLUTION APPROVING THE SALE OF 1.62 ACRES OF CITY PROPERTY, WHICH IS PART OF THE OTIS SPRINGS PROPERTY, TO A TO Z WINERY WORKS FOR THE AMOUNT OF EIGHT THOUSAND DOLLARS (\$8,000.00); APPROVING THE SALES AGREEMENT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS TO COMPLETE THE SALE OF THE PROPERTY

RECITALS:

1. A to Z operates Rex Hill Winery (A to Z) located on 99W east of the City. The winery is adjacent to Otis Springs property which is owned by the City.
2. A to Z desires to purchase 1.62 acres of the Otis Springs property in order to facilitate the expansion of their winery operations.
3. The city council met in executive session on October 1, 2012, to discuss the possible sale of the property.
4. The city has advertised and has held a public meeting to discuss the sale of the property at this May 20, 2013, council meeting in accordance with ORS 221.725 dealing with the sale of city real property.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council approves the purchase and sales agreement which the city manager has signed contingent upon approval by the council. The purchase and sales agreement is marked as Exhibit "A" which is attached to this resolution and by this reference incorporated as well as accepted by City Council.
2. The City Council delegates, authorizes, and directs the City Manager to perform all necessary acts, sign all necessary documents, and do any other necessary matters in order to sell the property to A to Z. This delegation includes the authority of the City Manager to sign a deed transferring ownership of the property to A to Z.
3. All documents shall be approved by the City Attorney as to form and content.
4. The authorization to sell the property is subject to approval of a lot-line adjustment by Yamhill County. The purchaser is applying for the lot-line adjustment. The City Manager is authorized to cooperate with the process and do all necessary acts to assist the purchaser in obtaining approval of the lot-line adjustment.

5. The City Council makes the following findings:
- A. The 11.87 acre city owned property shown as Tax Lot 400, Yamhill County Assessors Map 3S-2W-15, commonly known as “Otis Springs” is located adjacent to the northerly right of way of Highway 99W, approximately 800 feet west of the intersection of Coral Creek Road and Highway 99W.
 - B. The city has owned the Otis Springs property for decades. The facility is currently used as secondary source of irrigation water for the Chehalem Glenn Golf Course. The primary source of irrigation water for the golf course is from the reuse system in operation at the city’s wastewater treatment plant.
 - C. A to Z operates Rex Hill Winery (Winery) located on the north side of 99W east of the current city limits. The winery is located adjacent to the easterly property line of the Otis Springs property.
 - D. A to Z desires to purchase 1.62 acres of the Otis Springs property in order to facilitate the expansion of their winery operations.
 - E. City engineering and operations division staff reviewed the proposed property purchase boundaries onsite in the summer of 2012 and determined the sale of the property would not have an adverse impact on the ongoing city operations at the Otis Springs Facility.
 - F. It is necessary and convenient for the City to sell its interest in this portion of the real property (1.62 acres of the Otis Springs property) to A to Z. It would be a benefit to the City to encourage this economic activity conducted by the winery.
 - G. The Rex Hill Winery was established in 1982, after Yamhill County found that: “...the proposed winery would facilitate further agricultural production within the County and would enhance the reputation of an increasingly popular and economically viable Yamhill County industry.” In the following year, a former prune dryer on the site was converted to a winery and about 5,000 cases of wine were produced from grapes grown on site and on neighboring vineyards.
 - H. Rex Hill winery expanded significantly in 1989 and was purchased by A to Z Wineworks in 2006. Since that time Rex Hill—A to Z Wineworks has been the fastest growing winery in Oregon... ever. It is now one of the state’s largest wineries producing over 250,000 cases, employing 31 full time, 3 part time, and 4-14 seasonal workers on-site plus 5 others in Yamhill County, 6 more across the country in sales, and many others tending vineyards leased by the winery. Rex Hill-A to Z recently updated its master plan. It is now projected to increase its production to well above 300,000 cases.
 - I. Particular to Newberg, a 2010 economic study found Yamhill County benefited more than any other region in Oregon from the state’s \$2.3 billion a year wine industry, and that urban areas benefited over rural areas by almost 2 to 1. The purchase of 1.62 acres of the Otis Springs property will alleviate two pinch points in the winery’s internal circulation system and assist in its future growth by providing setbacks for the development of property already owned by Rex Hill--A to Z Wineworks.

- J. The City has met the conditions of ORS 221.725 concerning the sale of real property which includes publication of a public hearing which shall describe the interest to be sold and the use of the property as well as the reasons why the Council considers it necessary convenient to sell the property.
- K. When it was established the City was open to A to Z purchasing a sliver of the Otis Springs parcel, the city manager suggested the value be determined by an appraiser acceptable to both parties. Ticor Title suggested Woodard Appraisal. Woodard was acceptable to the parties. The price of \$8,000.00 for 1.62 acres was established. This price was a bit more than the appraised value because it was adjacent to winery property.
- L. The City of Newberg had a long standing cooperative relationship with Rex Hill Winery with one of its owners, Paul Hart. The City has continued with that relationship since the winery has been purchased by A to Z. It is a benefit to the City to continue this cooperative relationship.
- M. It will be to the benefit of the City and the citizens of the City to encourage development of the wine industry which surrounds the City.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 21, 2013.

ADOPTED by the City Council of the City of Newberg, Oregon, this 20th day of May, 2013.



Daniel Danicic, City Recorder

ATTEST by the Mayor this 23rd day of May, 2013.



Bob Andrews, Mayor

EXHIBIT A
To Resolution No. 2013-3042

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT, dated for reference purposes the 10th day of April, 2013, is by and between the **City of Newberg**, an Oregon municipal corporation ("Seller"), and **A to Z Wineworks, LLC**, an Oregon limited liability company ("Purchaser").

For valuable consideration, including the covenants, terms and conditions set forth below, Seller and Purchaser have agreed as follows:

1. ***Sale and Purchase of Property.*** Seller agrees to sell to Purchaser, and Purchaser agrees to buy, the 1.62 acre parcel of real property in Yamhill County, Oregon more particularly described on Exhibit A attached hereto, including any and all easements, all water rights and all other rights of every nature appurtenant to such real property (collectively, the "Property").

2. ***Price; Earnest Money; Payment.*** The purchase price for the Property shall be the sum of Eight Thousand Dollars (\$8,000) (the "Purchase Price"). Seller hereby acknowledges receipt of Purchaser's promissory note (the "Note") in the sum of Two Thousand Dollars (\$2,000) as earnest money. The Note shall be redeemed at Closing (as that term is defined in Section 5.1 below) upon removal of the contingencies described in Sections 3 and 4 below. The balance of the Purchase Price shall be paid in cash at Closing.

3. ***Purchaser's Inspection and Approval Rights.*** Within seven days of full execution hereof, Seller shall provide Purchaser with copies of all surveys, environmental reports, geotechnical reports and other documents relating to the Property in Seller's possession. Purchaser shall have three (3) weeks from the full execution of this document to review the documents provided to Purchaser by Seller, to inspect the Property; to review all governmental and private restrictions applicable to the Property; to have a qualified environmental consultant inspect the Property and report as to the condition thereof; and to determine that the Property is otherwise satisfactory to Purchaser. Purchaser and its employees and agents shall have full access to the Property commencing upon execution of this Agreement and continuing through closing to conduct its inspections and determinations. If Purchaser is not satisfied in its sole discretion with the results of such inspections and determinations, Purchaser may terminate this Agreement by written notice to Seller given at any time prior to the date set forth above in this section, and in such event the Note shall then be returned to Purchaser.

4. ***Preliminary Title Report, Survey.*** Within ten days after full execution of this Agreement, Seller shall furnish to Purchaser at Purchaser's expense (i) a preliminary title report issued by First American Title Company (the "Title Company") showing the condition of title to the Property (the "Title Report") The Title Report shall include copies of all title exceptions. Purchaser shall have 15 days from its receipt of the Title Report to review the Title Report and send Seller written notice rejecting any items reflected in the Title Report. If Purchaser rejects any item, Seller shall have 15 days thereafter to deliver to Purchaser an amended Title Report or

other satisfactory written evidence of the removal of such exception. Those exceptions approved by Purchaser are hereinafter referred to as the "Permitted Exceptions." If Seller fails within that period to remove any exception to which Purchaser has objected, Purchaser may terminate this Agreement by written notice to Seller, and the Note shall then be returned to Purchaser. Notwithstanding the foregoing, Seller shall be obligated to satisfy, on or before the Closing Date, any exception created, or suffered to be created by Seller that is security for payment of a sum of money (including mortgages, trust deeds, tax liens, contractor's liens and judgment liens).

5. **Closing.**

5.1 **Time and Place of Closing.** The closing of the transaction provided for in this Agreement shall take place in escrow at the Title Company's office in Newberg, Oregon upon final completion of the lotline adjustment referenced in Section 7 below (the "Closing" or "Closing Date"). The Closing, and all obligations hereunder, are conditioned on approval by the Newberg City Council at its meeting on May 20, 2013.

5.2 **Seller's Documents.** The Property shall be conveyed at Closing by statutory warranty deed (the "Deed"), free and clear of all liens, encumbrances, restrictions and reservations other than the Permitted Exceptions.

5.3 **Conditions of Closing.** In addition to the conditions to Closing described in Section 3 above, the obligations of Purchaser hereunder shall be subject to the fulfillment of the following conditions on or prior to the Closing Date, each of which shall be continuous conditions until closing unless waived by Purchaser:

- The representations and warranties of Seller contained in this Agreement shall be true and correct as of the Closing Date.
- There shall be no material change in the physical condition of the Property.

6. **Title Insurance Policy.** Within 15 days after the Closing, Seller shall furnish to Purchaser, at Purchaser's expense, an ALTA extended coverage owner's policy of title insurance, in the full amount of the Purchase Price. The title policy shall insure Purchaser as the owner of the Property subject only the Permitted Exceptions.

7. **Expenses.** Purchaser shall pay the escrow fee. Purchaser shall pay the cost of recording the Deed and any transfer, excise or documentary stamp taxes, and Purchaser shall pay the cost of recording any financing instruments. Purchaser shall pay the cost of the title insurance policy. Each party shall bear its own attorney fees, if any. Purchaser shall pay the costs of the preparation and County fees for the lotline adjustment land use planning application and the land surveyor and County recording fees for the lotline adjustment survey and newly configured legal descriptions for each parcel.

8. **Possession.** Purchaser shall be entitled to possession of the Property immediately upon Closing.

9. **Prorations, Deferred Taxes.** All real property taxes, insurance, rents and other usual items shall be prorated as of the Closing Date. Notwithstanding the foregoing, if the

Property is specially assessed for property taxes (e.g., farm, forest or other), Seller shall be responsible for and shall pay at or before Closing all deferred and/or additional taxes and interest which apply to periods before Closing (regardless of whether or not the Property is disqualified for such special assessment at Closing), and shall hold Purchaser completely harmless therefrom.

10. *Maintenance Prior to Closing.* Seller shall maintain the Property in good condition and repair prior to the Closing. Seller shall not, without the prior written consent of Purchaser, make any change or modification in any zoning, use or any similar right with respect to the Property or create any new restriction, encumbrance, lien or assessment thereon.

11. *Representations and Warranties.* Seller represents and warrants to Purchaser as follows:

a. Seller has the authority and power to enter into this Agreement and to consummate the transaction provided for herein.

b. Seller has received no written notice from any governmental agency of any violation of any statute, law, ordinance, deed restriction, rule or regulation with respect to the Property.

c. There is no pending or threatened litigation, condemnation proceeding, or annexation proceeding affecting the Property, and there are no governmental assessments not disclosed herein or not disclosed in the Title Report or any agreements to convey any portion of the Property, or any rights thereto, to any party other than Purchaser, including, without limitation, any government or governmental agency.

d. The Property consists of a legally subdivided lot.

e. There are no underground storage tanks on the Property, nor have underground storage tanks been removed from the Property.

f. The Property has never been used for the storage or disposal of any hazardous material or waste, there are no environmentally hazardous materials or wastes contained on or under the Property, there are no potentially hazardous environmental conditions on the Property, and the Property has not been identified by any governmental agency as a site upon which environmentally hazardous materials have been or may have been located or deposited.

All of the representations, warranties and covenants of the Seller contained in this Agreement (i) shall be true and correct as of the date of this Agreement and as of the Closing Date, and (ii) Purchaser's rights to enforce such representations and warranties and covenants shall survive the Closing and such rights to enforce shall not be merged into any documents delivered by Seller at closing. Seller shall indemnify, defend and hold Purchaser harmless from and against any cause, claim, loss, damage or expense, including attorney fees, which Purchaser suffers as a result of a breach of the representations, warranties and covenants contained in this Agreement.

12. *Agreements Regarding the Property.* Purchaser shall with respect to the Property:

- a. Install and maintain DEQ approved erosion control measures during any construction of vineyard and/or site improvements on the Property.
- b. Install and properly maintain permanent ground cover on the Property upon the completion of any vineyard and/or site improvements on the Property.
- c. Cause new overland and subsurface storm runoff discharging onto the property to be in the form of non-concentrated flow; concentrated flows of storm water extant before January 1, 2012 are exempt from this requirement.
- d. Cause all storm runoff from the Property from gravel, paved, building, or other impervious surfaces to be treated to the current City of Newberg water quality standards before discharge from the Property.
- e. Cause irrigation facilities within the Property to be designed, installed, and operated in a manner that will not increase overland and/or subsurface flows.
- f. Use best management practices established by the Oregon Department of Agriculture for agricultural chemicals with respect to any crops on the Property.
 - (i) Pesticide and herbicide use shall be minimized through best management practices.
 - (ii) Pesticides and herbicides shall not be applied when overspray could be carried toward the Otis Springs vegetative buffer.
 - (iii) If agricultural chemicals are required to be used on the Property, targeted pesticides and herbicides shall be used in preference to broad-spectrum pesticides and herbicides.
 - (iv) Fertilizers, including manure, and other agricultural chemicals shall be applied strictly in accordance with authorized uses, label directions, and other federal, state, and local government policies and requirements. All fertilizers and other agricultural chemicals shall be approved for use in water quality sensitive areas.
 - (v) Spray equipment shall be property calibrated and maintained.
 - (vi) Mixing of chemicals shall be completed offsite.
 - (vii) All mixing and application of pesticides, herbicides, and other agricultural chemicals shall be performed by an applicator certified by the State of Oregon.

- g. Utilize good spill prevention practices on the Property, such as
 - (i) Storage of herbicides, pesticides, and other agricultural chemicals onsite is prohibited.
 - (ii) Storage of manure and other fertilizers onsite is prohibited.
 - (iii) Permanent storage of fuel shall be prohibited.
 - (iv) Purchaser shall notify the City of Newberg within one day of any spills exceeding five gallons of agricultural chemicals, agricultural waste, and/or fuel.
- h. Not permit sewerage and/or agricultural waste storage, treatment, processing, discharge, and/or drain fields to occur or exist on the Property.

13. **Default; Remedies.** TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH PROVISION HEREOF. If Seller has performed each and every one of its obligations under this Agreement and the transaction provided for herein fails to close, through no fault of Seller, on or before the Closing Date specified in Section 5.1 above, Purchaser shall forfeit the earnest money to Seller as liquidated damages as Seller's sole remedy, and this Agreement shall thereupon be null and void. If Seller cannot furnish at closing the Deed and a commitment for the title insurance policy described in Section 6 or otherwise fails to complete this transaction on or before the Closing Date specified in Section 5.1 above, the Note shall be returned to Purchaser, but Purchaser's acceptance of the Note shall not constitute a waiver of other remedies available to Purchaser, including the right to seek specific performance.

14. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of Seller, Purchaser and their respective heirs, personal representatives, successors and assigns. Purchaser shall have the right at any time prior to closing to assign its right to purchase the Property.

15. **Attorney Fees.** In the event of any action to enforce or interpret this Agreement, or for any remedy on account of any breach of this Agreement, the prevailing party in such action shall be entitled to recover from the other party its costs, disbursements and reasonable attorney fees as determined by the court in such action and in any appeal therefrom.

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

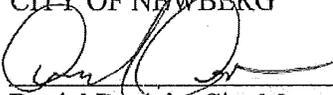
17. **Further Acts.** The parties agree to execute and deliver such additional documents, and perform such additional acts, as may be reasonably required to carry out the transaction provided for in this Agreement.

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

[Signature Page Follows]

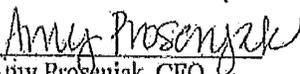
19. *Land Use Disclaimer.* THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Seller: CITY OF NEWBERG

By: 
Daniel Danicic, City Manager

Date: April 24, 2013

Purchaser: A TO Z WINEWORKS, LLC

By: 
Amy Prosenjak, CFO

Date April 10, 2013

APPROVED AS TO FORM & CONTENT:


Terrence D. Mahr, City Attorney

April 24, 2013
Date

EXHIBIT A

[attached]

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EXHIBIT A

