



RESOLUTION 2007-081

A RESOLUTION APPROVING PUD 07-01, A MINOR MODIFICATION TO THE LANGER PUD (PUD 95-997) TO MODIFY CONDITIONS OF APPROVAL RELATED TO PHASES 4, 6, 7 AND 8, CLARIFYING THE ALLOWED USES, AND AUTHORIZING THE CITY TO ENTER INTO A DEVELOPMENT AGREEMENT WITH RESPECT TO DEVELOPMENT OF THESE PHASES.

WHEREAS, the City of Sherwood originally approved the Langer PUD (PUD 95-997) April 25, 1995; and

WHEREAS, The decision approved development of the property in eight (8) separate phases and assigned specific uses to each phase, including High Density Residential (HDR), Retail/Commercial (RC), and Light Industrial (LI); and

WHEREAS, The portions of the PUD designated LI have not yet developed, except for a portion of Phase 4, which was developed as a mini-warehouse use under the General Retail Trade category of allowed uses in the LI zone; and

WHEREAS, both the City and the property owner would like to see the property develop in the interest of economic vitality of the City; and

WHEREAS, the City's Zoning and Community Development Code ("ZCDC") 16.32.020.H, provides the following: "Approved PUDs may elect to establish uses which are permitted or conditionally permitted under the base zone text at the time of final approval of the PUD": and

WHEREAS, to help facilitate economic development of Phases 4, 6, 7 and 8 of the original PUD, the City and the property owner have negotiated a Development Agreement, attached Exhibit 2, stipulating commitments for public improvements, clarification of uses and providing clarity on how certain fees would be reviewed and applied as development applications were submitted; and

WHEREAS, upon negotiating the Development Agreement, it was determined that modification to the original conditions of approval was necessary to adjust the timing and requirements in order to be consistent with the Development Agreement; and

WHEREAS, the applicant submitted a request for Minor Modification of the PUD and clarification of allowed uses which has been reviewed in the attached Exhibit 1 and findings made that the proposed modifications in fact meet the minor modification standards; and

WHEREAS, the Council has considered the Development Agreement, the request for clarification of allowed uses and PUD modification as submitted by the applicant, the Staff report, and considered public testimony submitted at the public hearing held on October 16, 2007 and during the written comment period through October 30, 2007 with final applicant statements submitted prior to November 6, 2007; and

WHEREAS, after due consideration of all public comments, applicant response and staff comments, the Council determined that as proposed, the continuation of the PUD would be in the best interest of the public and the City and Citizens of Sherwood.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

Section 1. After full consideration of the applicant submittal, the criteria and findings of fact contained in the Staff Report attached as Exhibit A and all related testimony included in the record, the original Langer PUD 95-997 conditions of approval shall be modified as follows:

Modify Finding B. 1. of the July 25, 1995, City staff report, which was adopted by reference in the City's decision to approve the PUD, to delete the following language: "Remove the Century Drive extension of Adams Avenue." Add a new Condition of Approval requiring that Century Drive be extended east of Adams Drive to connect with the existing terminus of Century Drive east of the PUD at the time of the completion of the combined development of Phases 6 and 7.

Modify Condition of Approval 3 to read as follows (new language is underlined): "Adams Avenue shall be constructed from Century Drive north to Tualatin-Sherwood Road prior to completion of Phase 3. These improvements shall include curbs, gutters and sidewalks and 28 feet of paving on the west side of the street. Adams Avenue shall be constructed by the developers to connect to Oregon Street (not across the railroad tracks) upon completion of the combined development of Phases 6 and 7, and where necessary the City will acquire road right-of-way to complete the connection. Sidewalks on all portions of Adams Avenue shall be constructed in the same meandering design as approved for Century Drive."

Modify the Conditions of Approval to add the requirement that Adams Road be extended from Tualatin-Sherwood Road north to the east end of the existing stub road connecting to Highway 99W near Home Depot prior to issuance of occupancy permits for any structures included in the redevelopment of Phase 4.

Modify the Conditions of Approval to add a new condition requiring the applicant and the City to enter into a Development Agreement detailing the parties' respective obligations with respect to the off-site transportation improvements required and memorializing the developer's election pursuant to CDZC 16.32.020.H. to develop Phases 4, 6, 7, and 8 for uses allowed under the LI base zone text applicable on August 3, 1995 (when the City approved the PUD Final Development Plan).

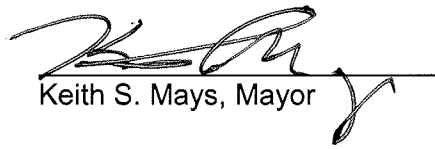
Section 2. The City acknowledges and accepts the applicants decision to elect to develop Phases 4, 6, 7 and 8 under CDZC 16.32.020.H, including the ability to develop those phases for General Retail Trade under Section 2.109.02 of the 1995 CDZC. Accordingly, the City Council interprets that the current provisions of CDZC 16.32.030.k which restrict retail uses in the LI zone to a maximum of 60,000 square feet, will not apply to site plan review of the PUD.

Section 3. The City Manager is hereby authorized to sign the Development Agreement attached hereto as Exhibit 2.

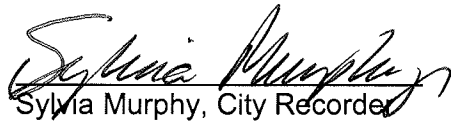
Section 4. The City Council determines that, as conditioned, the continuation of the PUD is in the public interest consistent with Sherwood Zoning and Community Development Code 16.40.040.A.2.

Section 5: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 4th day of December 2007.


Keith S. Mays, Mayor

ATTEST:


Sylvia Murphy, City Recorder

DEVELOPMENT AGREEMENT

PARTIES

The Parties to this Development Agreement ("Agreement") are the City of Sherwood, Oregon ("City") and Pam and Clarence Langer, as to Phase 4, and the Langer Family, LLC, as to the remainder of the PUD (collectively, "Langer").

RECITALS

1. On April 26, 1995, the City approved a Preliminary Development Plan for a Planned Unit Development ("PUD") on property owned by Langer. The subject property is located generally southeast of Hwy 99W and south of the Tualatin-Sherwood Road, in the City.
2. The decision approved development of the property in eight (8) separate phases. The decision contemplated and assigned specific uses to each phase, including High Density Residential, Retail/Commercial, and Light Industrial (LI).
3. The portions of the PUD designated LI have not yet developed, except for a portion of Phase 4, which was developed as a mini-warehouse use under the General Retail Trade category of allowed uses in the LI zone. Since the approval of the PUD, the City has amended its list of permitted and conditional uses in the LI zone, subject to the City's Zoning and Community Development Code ("ZCDC") 16.32.020.H, which provides the following: "Approved PUDs may elect to establish uses which are permitted or conditionally permitted under the base zone text at the time of final approval of the PUD."
4. The PUD approval contained conditions of approval including: a requirement for a wetlands delineation prior to development of Phase 8; the construction of Adams Drive at the time of development of Phase 6; and the elimination of the then-proposed extension of Century Drive east of Adams Drive.
5. The Final Development Plan was approved August 3, 1995. Neither the Preliminary Development Plan nor the Final Development Plan approvals related to a site plan. Thus, site plan review is required for each phase as development is proposed for that phase.
6. Phases 1 through 3 and 5 have been developed, and a portion of Phase 4 was developed as above-described and is anticipated for future redevelopment. The purpose of this Agreement is to clarify and refine the intent of the Parties regarding:

- (a) The allowed uses of Phases 4, 6, 7 and 8 of the PUD, all of which are designated for LI uses;
 - (b) The timing of related improvements, including the construction of Adams Drive and Century Drive;
 - (c) The cost-sharing of public improvements, including the construction of Adams Drive and Century Drive; and
 - (d) Certain related matters.
7. In consideration of City's approval of Langer's election to develop the remaining phases of the PUD as set forth in this DA, Langer is making a companion request for Minor Change to the PUD that will increase the number and type of transportation improvements adjacent to those phases of the PUD, in addition to accelerating the timing of the construction of Adams Drive south of Century Drive. This Agreement is a condition of approval for the PUD modification and is made a part of that decision by this reference.
 8. This Agreement represents only the agreement between the City and Langer with respect to the PUD modification and does not preclude or require any conditions that may arise from a subsequent application for site plan review. It is the intent of the parties that the site plan review conditions should not be inconsistent with this Agreement.
 9. This Agreement is only between the City and Langer and does not affect any conditions or improvements that may be required by other jurisdictions.

AGREEMENT

A. PUD USES

1. Applicable Code. ZCDC 16.32.020.H, provides that “Approved PUDs may elect to establish uses which are permitted or conditionally permitted under the base zone text at the time of final approval of the PUD.” The Langer PUD was approved and Phases 4, 6, 7 and 8 were assigned the Light Industrial (“LI”) base zone designation on August 3, 1995.
2. Permitted and Conditional Uses. Accordingly, Langer elects to establish uses on the LI-designated phases of the PUD that were permitted or conditionally permitted under the LI base zone text applicable on August 3, 1995, including: “Uses permitted outright in the GC zone Section 2.109.02, except for adult entertainment businesses, which are prohibited.” A copy of the uses permitted in the LI and GC zones on August 3, 1995 is set forth in Attachment A, attached hereto and incorporated herein by reference.
3. Election of Uses and Acceptance. The City acknowledges and accepts Langer’s decision to elect to develop Phases 4, 6, 7 and 8 under ZCDC 16.32.020.H, including the ability to develop those phases for General Retail

Trade under Section 2.109.02 of the 1995 ZCDC. Accordingly, the current provisions of ZCDC 16.32.030.K, which restrict retail uses in the LI zone to a maximum of 60,000 square feet, will not apply to site plan review of the PUD.

B. ADAMS DRIVE SOUTH EXTENSION

1. City Commitments. Except as otherwise provided in this section, as soon as reasonably practicable and in any event prior to Langer's construction of any portion of Adams Drive south of the PUD's southern boundary, the City, at the City's sole cost and expense, will take the following actions:
 - a. Acquire the necessary right-of-way (except that portion located within the PUD) and complete the design and engineering for construction of the extension of Adams Drive ("South Extension") south from its present terminus up to but not including the railroad crossing between the southern PUD boundary and Oregon Street ("Rail Crossing");
 - b. Obtain all necessary permits for the construction and operation of the South Extension, including without limitation, all permits associated with allowing impacts to wetlands;
 - c. Provide for the mitigation of any impacts to wetlands related to the alignment and construction of the South Extension; and
 - d. Pursuant to the City's standard timeline and procedure in such instances, accept Langer's dedication of that portion of the South Extension located within the boundaries of the PUD following final inspection approval and thereupon assume maintenance obligations for all of the South Extension.
2. Langer Commitments. Subsequent to the City's performance of its obligations set forth in Section B.1. of this Agreement but prior to issuance of final occupancy permits for any structures included in Phase 6 and Phase 7, Langer will substantially construct the South Extension, including the traffic circle and island at the intersection with Century Drive. The street will be aligned and constructed in a manner consistent with the “__-percent drawings” prepared by Hopper Dennis Jellison, PLLC dated _____ and on file with the City. Upon completion of the construction of the South Extension, Langer will dedicate and record a public right-of-way easement to the City for Adams Drive south from its present terminus to the southern boundary of the PUD.

C. ADAMS DRIVE NORTH EXTENSION

1. City Commitments. Except as otherwise provided in this section, as soon as reasonably practicable and in any event prior to Langer's construction of any portion of Adams Drive north of the PUD's northern boundary, the City, at the City's sole cost and expense, will take the following actions:
 - a. Acquire the necessary right-of-way for and complete the surveying, design, and engineering for construction of an extension of Adams Drive ("North Extension") from the north side of the intersection with Tualatin-Sherwood Road, north to the existing stub road connecting to Highway 99W, with the alignment to curve east around the PGE substation and connect to the east end of the Home Depot stub road. The tentative, non-binding alignment and cross-section of the North Extension are set forth in Attachment B, attached hereto and incorporated herein by reference. The right-of-way, design and engineering shall anticipate and include at least 43 p.m. peak-hour vehicle trips per acre from Phase 4 to accommodate redevelopment of Phase 4.

_____ –Any substantial changes to theis alignment and cross-section shall require an amendment to this Agreement. Such amendment shall only relate to this section of the Agreement, and all other terms and conditions of this Agreement shall remain in full force and effect. A "substantial change" may include but is not limited to an increase in the number of lanes, an increase in the right-of-way width by 10 or more feet, requiring additional landscaping, medians, or pedestrian paths, shifting the alignment east or west by fifty (50) or more feet, and/or any other changes that will substantially increase the cost of construction.
 - b. Obtain all necessary permits for the construction and operation of the North Extension, including without limitation, all permits associated with impacts to wetlands, all approach and/or signal permits required by the Oregon Department of Transportation for the intersection of Highway 99W and the existing stub road, and all approach permits required by Washington County for the connection of the North Extension and Tualatin-Sherwood Road.
 - c. Provide for the mitigation of any impacts to wetlands associated with the alignment and construction of the North Extension.
 - d. Otherwise remove any legal or planning constraints to the construction of the North Extension.
 - e. Pay any extraordinary labor costs associated with Langer's performance of its obligations under Section C.2., where "extraordinary labor costs" means any costs required by law to exceed an arms-length privately negotiated rate solely due to the nature of the improvement.

- f. Pay any extraordinary construction costs associated with Langer's performance of its obligations under Section C.2. that are attributable to extraordinary environmental or geographic conditions; and
- g. Pursuant to the City's standard timeline and procedure in such instances, assume maintenance obligations for all of the North Extension following the City's final inspection approval of the North Extension.
- h. Permit Langer to assume, for purposes of completing the required traffic study, that the North Extension has been planned and funded for construction prior to development of Phases 6 and 7 pursuant to Langer's alternative commitments to construct the North Extension or make a payment in lieu thereof pursuant to Section C.2. below.
- i. Permit Langer to assume, for purposes of completing the required traffic study, that the North Extension has been planned and funded for construction prior to the redevelopment of Phases 4 pursuant to Langer's alternative commitments to construct the North Extension or make a payment in lieu thereof pursuant to Section C.2. below.
- j. The City will not require the closure of any residential access to Phase 4 from Tualatin-Sherwood Road until redevelopment of Phase 4. The City will reimburse Langer for the cost of relocating and rebuilding any access to and from the existing commercial uses on Phase 4 resulting from the closure of any access due to the construction of the North Extension, including the relocation of any administrative facilities associated with the commercial use.
- k. In the event Langer pays a fee in lieu of construction as described in Section C.2. below, the City will:
 - (A) Place the payment into an existing or newly-created interest-bearing City Trust and Agency Fund;
 - (B) Grant credits for transportation System Development Charges ("SDC's") otherwise payable by Langer as if Langer had constructed the North Extension; and
 - (C) Use the payment-in-lieu exclusively for the construction of the North Adams Extension. However, if the City has not entered into a contract for the construction of the North Adams Extension or any portion thereof within five (5) years after Langer deposits the fee with the City, the City shall return the fee-in lieu, together with any interest thereon to Langer, Langer successor or a person designated by Langer's successor, minus any amount provided as a credit against transportation SDC's under paragraph (B) above. This Agreement does not constitute a "contract for construction of the North Extension" for purposes of this subsection.

2. Langer Commitments. Langer agrees to take the following actions with respect to the North Extension:
- a. Subsequent to the City's performance of its obligations set forth in Section C.1. of this Agreement but prior to issuance of the final occupancy permit for any structure included in the redevelopment of Phase 4development of Phases 6 and 7, Langer will substantially construct the North Extension consistent with the alignment and cross-section described in Section C.1.a. of this Agreement.
 - b. Alternatively, in the event the City has not substantially performed the obligations set forth in Section C. 1.a. to d. of this Agreement by a date that is sixty (60) days after Langer submits construction drawings for public improvements associated with the development of Phases 6 and 7 to the City, Langer shall submit a fee in lieu of construction in an amount equal to the cost estimate for the construction of the North Extension prior to the issuance of an occupancy permit for any structure included in the development of Phases 6 and 7. Langer's timely deposit of a fee in lieu under this paragraph shall fully satisfy Langer's obligations under Section C.2.a. of this Agreement and shall trigger the City's performance of its commitments under Section C.1.k of this Agreement.
 - c. In the event the City refunds the fee-in-lieu as described in Section C.2.k(C) of this Agreement prior to the redevelopment of Phase 4, and subsequent to the performance of the City's other obligations under Section C.1., Langer will substantially construct the North Extension consistent with the alignment and cross-section provided by the City prior to the issuance of an occupancy permit for any structure included in the redevelopment of Phase 4. In the event the City is still in possession of the fee-in-lieu at the time Phase 4 redevelops, the City will refund the fee to Langer, including any interest thereon, or will not require the construction of the North Extension as a condition of redevelopment.

D. RAIL CROSSING

1. City Commitments. As soon as reasonably practicable, the City, at the City's sole cost and expense, will take the following actions with respect to the Rail Crossing:
- a. Acquire the necessary right-of-way for the Rail Crossing;
 - b. Obtain all required crossing or other permits from ODOT Rail and any other applicable agencies associated with the Rail Crossing;
 - c. Complete the design, engineering, and construction of the Rail Crossing; and

- d. Use all reasonable best efforts to complete these actions and connect the South Extension to Oregon Street via the Rail Crossing no later than the date of issuance of occupancy permits for the development of Phases 6 and 7; provided, however, the failure to complete these actions by such date shall not be grounds to deny the issuance of such occupancy permits.
2. Langer Commitments. None.

E. CENTURY DRIVE

1. Langer Commitments. Langer agrees to take the following actions with respect to Century Drive:
 - a. Prior to issuance of final occupancy permits for any structure located in Phase 6 or Phase 7, design and substantially construct a reasonably direct vehicular connection between the existing terminus of Century Drive on the western boundary of the PUD and existing City right-of-way at the eastern boundary of the PUD ("Century Drive Connection"). The Century Drive Connection shall be constructed to the adjusted street standard described in Section E.2.a. below.
 - b. Following construction, dedicate a right-of-way easement to the City for the Century Drive Connection.
 - c. Provide the City with copies of receipts of eligible expenses where "eligible expenses" is defined to include all hard and soft costs of labor and materials associated with all aspects of the design, engineering, and construction, including applicable consultant fees, of the Century Drive Connection that exceed the cost of designing and constructing the Century Drive Connection as a standard parking lot drive aisle ("Eligible Expenses").
2. City Commitments. The City agrees to take the following actions with respect to Century Drive:
 - a. To work with Langer to achieve an adjustment to the relevant City street standards so that the nature, location, and design of the Century Drive Connection requires the minimum necessary right-of-way to provide a vehicular connection and includes traffic calming measures such as restrictions on through traffic for trucks.
 - b. Reimburse Langer for all undisputed Eligible Expenses within thirty (30) days after the City receives the receipts described in Section E.1.c.. City will immediately contact Langer regarding any disputed expenses and attempt to resolve the dispute within 90 days of the date the receipt containing the expense is received by the City. Any disputed expense that remains

unresolved after 90 days shall be submitted to mediation as provided in Section I.12. of this Agreement; and

- c. Pursuant to the City's standard timeline and procedure in such instances, accept Langer's dedication of the Century Drive Connection following final inspection approval and thereafter assume maintenance obligations for same.

F. STORMWATER FACILITY

1. Langer Commitments. Prior to issuance of final occupancy permits for all structures located in Phase 6 or Phase 7, Langer will design and substantially construct a stormwater facility ("Stormwater Facility") on Phase 8 (including any necessary portions of Phase 6), to accommodate existing stormwater detention and treatment for the PUD, any additional detention and treatment associated with development of Phases 6, 7 and 8, and any detention and treatment associated with the South Extension and the Century Drive Connection. In conjunction with this construction, Langer retains the right to terminate use of the existing stormwater facilities currently located on Phase 7 and Phase 8 ("Existing Facilities"), provided the stormwater detention and treatment functions of the Existing Facilities are incorporated into the Stormwater Facility. Langer retains the right to expand the Stormwater Facility to serve other public rights-of-way and uses outside the PUD in Langer's sole discretion, provided such expansion otherwise complies with City standards, including without limitation, awarding credits for SDC's.
2. City Commitments. The City agrees to work with Langer, to the extent allowed by law, to issue any land use approvals related to termination of the Existing Facilities through an administrative process and to facilitate any related process for the vacation of any prior public dedications associated with the Existing Facilities.

G. RENAMING OF ADAMS DRIVE

1. Langer Commitments. Prior to Langer's dedication of any portion of Adams Drive as described in this Agreement, Langer will submit a petition to the City to rename the completed portion of Adams Drive in accordance with the street name standards of ZCDC 16.108.010.4.A-C. Langer agrees to select a single name for Adams Drive from the southern end of the South Extension to the northern end of the North Extension.
2. City Commitments.
 - a. Provided the petition is submitted in the manner described in ZCDC 16.108.010.3, the City will support a petition received from Langer to rename the completed portion of Adams Drive.

- b. If the petition is approved by the City Council, the City shall install standard City street signage identifying Adams Drive by its new name.

H. TRANSPORTATION CHARGES, FEES, AND CREDITS

1. Transportation Impact Fees. The calculation and assessment of any Transportation Impact Fees, including any TIF credits, will be made according to the current Washington County TIF ordinance. Improvements to Tualatin-Sherwood Road will be creditable towards Washington County TIF's as allowed in Washington County's ordinance. It is the parties' mutual understanding that this ordinance provides full TIF credits for turn lanes and 50% or 66.67% for traffic signals for a four- and three-leg intersection, respectively. The City's commitment to this provision is a material inducement for Langer's agreement to complete the various public improvements set forth in this Agreement.

For the purpose of determining the number of weekday trips generated by all commercial land uses in Phases 4, 6, 7, and 8 of the PUD, the land use category "Shopping Center" from ITE Trip Generation, 7th Edition, shall be applied to the Washington County TIF Ordinance for the calculations of the Washington County TIF. The shopping center size to determine the trip rate will be based on the total square footage of "Shopping Center" in Phase 6, 7, and 8 combined. The shopping center size to determine the trip rate for Phase 4 will be based on the total square footage of "Shopping Center" in such Phase 4.

2. Transportation SDC's. The City shall calculate and assess the Project with SDC's and credits for SDC's, pursuant to the City's Municipal Code, as it may be amended from time to time, and subject to any resolutions adopted by the City implementing same.

For the purpose of determining the number of weekday trips generated by all commercial land uses in Phases 4, 6, 7, and 8 of the PUD, the land use category "Shopping Center" from ITE Trip Generation, 7th Edition, shall be applied to the City's SDC ordinance for the calculations of the City's SDC's. The shopping center size to determine the trip rate will be based on the total square footage of "Shopping Center" in Phase 6, 7, and 8 combined. The shopping center size to determine the trip rate for Phase 4 will be based on the total square footage of "Shopping Center" in such Phase 4.

3. Highway 99W Capacity Allocation Program. For purposes of calculating whether the trips associated with the regulated activities in Phases 6, 7, and 8 of the PUD exceed the trip limit of CDZC 6.306.D.4, the City shall aggregate the trips and acreage of all such phases. As a result, the trips associated with the regulated activities of a single phase may exceed the trip limit that would otherwise apply if that phase were calculated individually, provided that the trips associated with all regulated activities for Phases 6, 7, and 8 do not

exceed the trip limit in the aggregate. At each phase of development of the PUD, the number of reserve trips for the remaining phases will be identified in the applicable Trip Allocation Certificate.

I. TERMS AND CONDITIONS

1. Further Assurances. Each party shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder in good faith, to carry out the intent of the parties hereto.
2. Modification of Amendment. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by the parties hereto.
3. Relationship. Nothing herein shall be construed to create an agency relationship or a partnership or joint venture between the parties.
4. Waiver of Default or Condition. In the event a party defaults in the performance of one or more of its obligations under this Agreement or in the event of the failure of a condition precedent to be satisfied under this Agreement, the nondefaulting party or beneficiary of the condition may, in its discretion, waive, as applicable, the default or satisfaction of condition hereunder and rescind any consequence of such default or failure of a condition, and in case of any such waiver or rescission, the parties shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to or affect any subsequent or other default or condition precedent, or impair any right consequent thereon. No such waiver or rescission shall be in effect unless the same is in writing and signed by the nondefaulting party.
5. Burden and Benefit; Assignment. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties and their successors and assigns and shall run with the land. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.
6. Applicable Law. This Agreement shall be interpreted under the laws of the State of Oregon.
7. Notices. All notices, demands, consents, approvals and other communications which are required or desired to be given by either party to the other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States mail at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall

be deemed given when delivered, three days after mailing by United States Mail or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machines, such notice shall be deemed given at the time and on the date of machine transmittal.

8. Merger. This Agreement contains the entire agreement among the parties hereto with respect to the subject matter hereof and cannot be amended or supplemented except by a written agreement signed by all parties.
9. Rights Cumulative. All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lien of, those conferred by law.
10. No Third Party Beneficiaries. None of the duties and obligations of any party under this Agreement shall in any way or in any manner be deemed to create any rights in, any person or entity other than the parties hereto.
11. Force Majeure. The parties shall use reasonable diligence to accomplish the purpose of this Agreement but shall not be liable to each other, or their successors or assigns, for damages, costs, attorneys' fees (including costs or attorneys' fees on appeal) for breach of contract, or otherwise for failure, suspension, diminution, or other variations of services occasioned by any cause beyond the control and without the fault of the parties. Such causes may include but shall not be limited to acts of God, acts of terrorism or the public enemy, acts of other governments (including regulatory entities or courts) in their sovereign or contractual capacity, fires, floods, epidemics, quarantines, restrictions, strikes, or failure or breakdown of transmission or other facilities ("Force Majeure"). If any party is delayed, hindered, or prevented in or from performing its respective obligations under this Agreement by any occurrence or event of Force Majeure, then the period for such performance shall be extended for that period that such performance is delayed, hindered, or prevented.
12. Mediation. Should the parties arrive at an impasse regarding any of the provisions of this Agreement, the parties agree to submit to the dispute to mediation prior to the commencement of litigation. The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement, either party may apply to the Presiding Judge, Washington County Circuit for appointment of a mediator. Each party shall share equally in the fees and costs of the mediator. Each party shall be responsible for its own attorneys fees and other expert fees. Mediation shall be at Portland, Oregon unless the parties agree otherwise. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the City and Langer and failure to comply with this requirement is a material breach of this Agreement. The

schedule and time allowed for mediation will be mutually acceptable. If the dispute is not resolved by mediation, either party may file a lawsuit to resolve the dispute in a court with proper jurisdiction located in Washington County, Oregon. Any trial shall be to the court without a jury. In the event of any such mediation or litigation, each party shall bear its own attorneys' fees and costs.

13. Conditions Precedent to Langer's Performance. ~~a.~~ Langer's commitments set forth in this Agreement are conditioned entirely upon the City's performance of all of its commitments that are precedent to the City's commitments under and in accordance with this Agreement, and the City's timely issuance of a PUD modification for the subject property.

~~b. Notwithstanding any other provision of this agreement, Langer shall have the right, in its sole discretion to decide at any time not to construct and install the PUD improvements by giving the City express written notice of such decision, in which event the parties' obligations to perform under this Agreement shall cease and terminate.~~

14. Conditions Precedent to City's Performance. City's commitments set forth in this Agreement are conditioned entirely upon Langer's performance of all of its commitments that are precedent to the City's commitments under and in accordance with this Agreement.

15. Duration. This Agreement expires not later than January 1, 2015.

IN WITNESS WHEREOF,

For the City of Sherwood:

Title

Ross Schultz, City Manager

For Langer:

Date