



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2010-033

A RESOLUTION APPROVING AMENDMENTS TO THE DEVELOPMENT AGREEMENT FOR THE LANGER PLANNED UNIT DEVELOPMENT (PUD 95-997) AND RELATED PUBLIC IMPROVEMENTS

WHEREAS, the City of Sherwood originally approved the Langer Planned Unit Development (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 Langer's subsequently applied for a Minor Modification of the PUD to clarify the allowed uses and adjust the timing, requirements and sequencing of the PUD phases, which was approved by the City on November 6, 2007; and

WHEREAS, at the time the City approved the Minor Modification, the City and the Langers entered into a Development Agreement regarding the development of the Langer property and the surrounding public improvements; and

WHEREAS, the Development Agreement committed the Langers to, among other things, constructing Adams Avenue from Highway 99E south to the intersection with Tualatin-Sherwood Road ("Adams North"), as well as south from Tualatin-Sherwood Road to intersect with Oregon Street.

WHEREAS, the Development Agreement committed the City to related activities including, among other things, completing the planning and zoning for the Adams North area, acquiring right-of-way, preparing design and engineering plans, and obtaining permits to reconstruct the railroad crossing at Oregon Street.

WHEREAS, since the Development Agreement was executed economic conditions for development and public facility financing have changed significantly such that the Parties find it necessary to re-evaluate their respective commitments.

WHEREAS, the City has secured funding sufficient for the construction of Adams South and wishes to move construction forward in a timely manner to complete that section of the roadway.

WHEREAS, the construction of Adams South is vital to development of the PUD and the economic vitality of the City; and

WHEREAS, the proposed amendments to the Development Agreement allow the construction of Adams South in a manner consistent with the Parties obligations under the Development Agreement and existing land use approvals; and

WHEREAS, after due consideration of the Development Agreement, the proposed amendments to the agreement, the existing land use approvals and staff comments, the Council determines that the proposed amendments to the Langer PUD Development Agreement are in the best interest of the public and the City and Citizens of Sherwood.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Council approves the Amended and Restated Langer Development Agreement as shown in the attached Exhibit 1.

Section 2. The City Manager is authorized to execute the Amended and Restated Development Agreement on behalf of the City.

Section 3: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 26th day of July 2010.


Keith S. Mays, Mayor

ATTEST:


Sylvia Murphy, CMC, City Recorder

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

PARTIES

The Parties to this Amended and Restated Development Agreement ("Agreement") are the City of Sherwood, Oregon ("City") and Pamela 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 the following issues (collectively, the "PUD Issues"):

- (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. The City and Langer previously set forth their respective commitments relative to the PUD Issues in that certain Development Agreement dated January 3, 2008 ("2008 Agreement"), which was a condition of approval to a companion Minor Change to the PUD approved contemporaneously by the City.
- 8. Subsequent to entering into the 2008 Agreement, economic conditions have changed such that the Parties find it necessary to re-evaluate their respective commitments under the 2008 Agreement. The City and Langer now desire to amend and restate their commitments relative to the PUD Issues set forth below.
- 9. This Agreement represents the only Agreement between the City and Langer with respect to the PUD Issues 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.
- 10. 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 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.a. to B.1.c. of this Agreement but prior to issuance of final occupancy permits for any structures included in Phases 6 or 7, Langer will substantially construct the South Extension, including the traffic circle and island at the intersection with Century Drive and the twelve-foot (12') wide multi-use path extending the length of the South Extension as identified in the City Transportation Systems Plan (the "Path"). The street will be aligned and constructed in a manner consistent with the "90-percent drawings" prepared by Hopper Dennis Jellison, PLLC dated April 2008 and on file with the City (the "South Extension Plans"). 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 (the "South Extension Right-of-Way").

3. Alternative Commitments.

- a. Alternatively, in the event the City has completed the obligations set forth in Section B.1.a. to B.1.c. of this Agreement and the City receives or accrues funding equal to the cost estimate for the construction of the South Extension prior to the time Langer has substantially commenced the obligations set forth in Section B.2. of this Agreement, the City may, in its sole discretion, elect to construct the South Extension, including the traffic circle and island at the intersection with Century Drive, the Path, and if warranted, the traffic signal at Tualatin-Sherwood Road, at the City's sole expense. In the event the City undertakes construction of the South Extension, the City will deliver written notice ("Written Election") to Langer of the City's intent in accordance with Section I.7. of this Agreement prior to undertaking construction of the South Extension.
- b. The City will issue a Notice to Proceed to the selected bidder(s) ("Contractor") for completion of the physical construction of the South Extension within ninety (90) days after delivery of the Written Election to Langer ("Commencement Date"). In the event the City fails to issue the Notice to Proceed by the Commencement Date and Langer has obtained final site plan approval for either Phases 6 and/or 7 by said date, the City will forfeit its right to undertake construction of the South Extension, and Langer will re-assume the obligation to substantially construct the South Extension in accordance with Section B.2. of this Agreement, unless Langer agrees in writing to extend the Commencement Date. If the City has not forfeited its right to undertake construction of the South Extension, the City will substantially complete the construction of the South Extension within fourteen (14) months after the Commencement Date ("Completion Date"), and in any event, prior to the issuance of an occupancy permit for any structure included in Phases 6 or 7.
- c. To ensure the Completion Date is met, the City will include the required Completion Date and penalties for late completion in the contract ("Contract") the City enters with the Contractor. The penalties shall be an amount calculated to reimburse Langer for any losses incurred by Langer due to Contractor's failure to substantially complete construction by the Completion Date when such failure prevents the reasonable use of Phases 6 or 7 for retail commercial purposes, but in any event not less than \$10,000.00 per day Langer is unable to make reasonable use of Phases 6 or 7 for commercial retail purposes. The City shall take all necessary and appropriate action to enforce the penalty provision in the Contract and forward any amounts collected to Langer within 30 days of the date the City receives payment.
- d. If the City elects to construct the South Extension under this Section B.3, the City will perform its construction activities in a manner that minimizes obstruction or interference with access to, from, or within the PUD and

Langer's construction, if any, and use of the subject property in accordance with the PUD. The City will mobilize, conduct, and maintain all construction activities, equipment and materials on and around the PUD in such manner to allow use of the South Extension and access between the PUD and the South Extension through all access driveways. The City's agreement to perform its construction activities consistent with this section is a material inducement for Langer to enter this Agreement as it will facilitate Langer's timely completion of the PUD in accordance with Langer's agreement with its end users of the PUD.

- e. If the City elects to construct the South Extension, Langer will take the following actions prior to the City's commencement of construction:

(A) Grant the South Extension Right-of-Way to the City, provided the City shall bear the expense of preparing the legal description for the South Extension Right-of-Way.

(B) Grant to the City reasonable temporary construction easement(s) to allow the City to complete its construction commitments, provided Langer's grant of an easement(s) may be conditioned to ensure that the City's use of the PUD property does not unreasonably interfere with Langer's use and development of the PUD.

(C) If Langer has not yet constructed the stormwater facility on Phase 8 as provided in Section F.1 of this Agreement ("Stormwater Facility"), allow temporary location of stormwater detention and treatment from the South Extension on Phase 8 in either a temporary facility ("Temporary Facility") or the existing stormwater facilities located on Phase 7 and Phase 8 ("Existing Facilities"). To the extent that the Temporary Facility or the Existing Facilities will require any expenses for engineering, construction, design, maintenance, or modification to existing land use approvals, the City will bear the expenses. If applicable, Langer and the City shall execute and record appropriate easement documents or amendments to the existing easement for the Existing Facilities to formalize the parties' respective obligations under this subsection (C).

(D) Use reasonable best efforts to avoid damaging the Path during construction and development of the PUD, provided that if Langer causes any such damage, Langer shall, at its sole expense, repair and replace the Path back to its original condition.

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 the 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.

- 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 any necessary relocation of 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 Extension. However, if the City has not entered into a contract for the construction of the North 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's 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 development of Phase 6, Langer will substantially construct the North Extension consistent with the alignment and cross-section described in Section C.1.a. of this Agreement. However, in the event the City exercises its option to construct the South Extension under Section B.3. of this Agreement, Langer will substantially construct the North Extension prior to issuance of the final occupancy permit for any structure included in the development of Phases 6 or 7.
- b. Alternatively, in the event the City has not substantially performed the obligations set forth in Section C. 1.a. to C.1.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 Phase 6 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 Phase 6. 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. In the event the City exercises its option to construct the South Extension under Section B.3. of this Agreement, the references to "Phase 6" in this subparagraph b. shall be replaced with "Phases 6 or 7."
- c. In the event the City refunds the fee-in-lieu as described in Section C.1.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.

- a. Prior to issuance of a final occupancy permit for the first structures located in Phases 6 or 7, Langer will design and substantially construct the "Stormwater Facility on Phase 8 (including any necessary portions of Phase 6), to accommodate existing stormwater detention and treatment for the PUD (including 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 Facilities and any Temporary Facility constructed pursuant to Section B.3.c. of this Agreement, provided the stormwater detention and treatment functions of the Existing Facilities and any Temporary Facility are incorporated into the Stormwater Facility and subject to any written agreements relating to the Existing Facilities. 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.
- b. Following construction, Langer will dedicate the Stormwater Facility to the public for use as a stormwater detention and treatment facility.

2. City Commitments.

- a. 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, to facilitate any related process for the vacation of any prior public dedications associated with the Existing Facilities, and to modify the existing recorded easement document among Langer and the City relating to the Existing Facilities.

- b. The City agrees to accept the dedication of the Stormwater Facility following final inspection approval and thereafter assume the maintenance obligations for same.

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 Development Tax. The calculation and assessment of any Transportation Development Tax ("TDT"), including any TDT credits, will be made according to the Washington County TDT ordinance. Improvements to Tualatin-Sherwood Road will be creditable towards Washington County TDT's as allowed in Washington County's ordinance. It is the parties' mutual understanding that this ordinance provides full TDT 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 TDT Ordinance for the calculations of the Washington County TDT.

- 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.

3. Credits.

- a. Langer shall be entitled to seek SDC credits from the City and TDT credits from Washington County for all qualifying improvements and right-of-way dedications made by Langer, subject to the then applicable provisions of Oregon law and applicable ordinances. To the extent allowed by law, the City shall apportion SDC and TDT charges in the manner that maximizes the beneficial use of any resulting credits for Langer. In the event the City amends its SDC ordinance to eliminate the Transportation SDC prior to Langer's redemption of otherwise valid SDC credits, the City shall exercise good faith and best efforts to provide Langer a financial benefit in an amount equal to the value of any unredeemed credits in a manner consistent with applicable law, provided the City is not obligated to ensure such benefit or other return on the unredeemed credits.
 - b. The City hereby determines that, for purposes of qualifying for and administering SDC and TDT credits, Langer's construction of public improvements and dedication of right-of-way to the City pursuant to this Agreement are existing condition(s) of approval of the PUD, as it has been modified by the Minor Change approved in 2007.
4. 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 ZCDC 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. 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.

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. Nature of Agreement. The City hereby confirms that it has approved and executed this Agreement pursuant to its governing charter and not pursuant to ORS 94.504 *et seq.*, and does further confirm that this Agreement does not constitute or concern the adoption, amendment, or application of the Statewide Planning Goals, a comprehensive plan provision, or a land use regulation, the City and Langer acknowledging and agreeing that any and all land use approvals required for the PUD are to be obtained (or have been obtained) in due course on another date in accordance with all applicable laws and regulations.
16. Amendment and Restatement. The Parties intend that this Agreement acts as a full and amended restatement of the original 2008 Agreement. Upon this Amended and Restated Agreement taking effect, the original 2008 Agreement shall no further force or effect.
17. Duration. This Agreement expires not later than January 1, 2015; provided, however, the expiration date of this Agreement shall be automatically extended to January 1, 2017 in the event that on January 1, 2015, Langer is not in material default of any provisions of this Agreement, has substantially built out Phase 7, and has obtained a certificate of occupancy for at least one (1) structure in Phase 6.

IN WITNESS WHEREOF,

For the City of Sherwood:

Jim Patterson, City Manager

Date: _____

For Langer:

Pamela and Clarence Langer, as to Phase 4:

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: _____

Langer Family, LLC, as to remainder of PUD:

By: _____

Print Name: _____

Title: _____

Date: _____

2.109 GENERAL COMMERCIAL (GC)

2.109.01 Purpose

The GC zoning district provides for wholesale and commercial uses which require larger parcels of land, and or uses which involve products or activities which require special attention to environmental impacts as per Chapter 8.

2.109.02 Permitted Uses

The following uses are permitted outright, provided such uses meet the applicable environmental performance standards contained in Chapter 8:

- A. Professional services, including but not limited to financial, medical and dental, social services, real estate, legal, artistic, and similar uses.
- B. General retail trade, including bakeries where product distribution is limited to retailing on the premises only.
- C. Personal and business services, including day cares, preschools, and kindergartens.
- D. Postal substations when located entirely within and incidental to a use permitted outright.
- E. Temporary uses, including but not limited to portable construction offices and real estate sales offices, subject to Section 4.500.
- F. Farm and garden supply stores, and retail plant nurseries, but excluding wholesale plant nurseries, and commercial farm equipment and vehicle sales which are prohibited.
- G. Agricultural uses such as truck farming and horticulture, excluding commercial buildings and structures, or the raising of animals other than household pets.
- H. Commercial trade schools.
- I. Motion picture and live theaters, but excluding drive-ins which are prohibited.
- J. Restaurants, taverns, and lounges.

CHAPTER 2

35

- K. Automotive and other appliance and equipment parts sales, but excluding junkyards and salvage yards which are prohibited.
- L. Blueprinting, printing, publishing, or other reproduction services.
- M. Automobile, recreational vehicle, motorcycle, truck, manufactured home, boat, farm, and other equipment sales, parts sales, repairs, rentals or service.
- N. Wholesale trade, warehousing, commercial storage and mini-warehousing, except as prohibited in Sections 2.110.04E and 2.111.04E.
- O. Limited manufacturing, including only: beverage bottling plants, commercial bakeries, machine shops, and handicraft manufacturing.
- P. Building material sales, lumberyards, contractors storage and equipment yards, building maintenance services, and similar uses.
- Q. Veterinarian offices and animal hospitals.
- R. Agricultural uses including but not limited to farming, and wholesale and retail plant nurseries, with customarily associated commercial buildings and structures permitted.
- S. Medical, dental, and similar laboratories.
- T. Truck and bus yards and terminals.
- U. Adult entertainment businesses, subject to Section 2.208.

2.109.03 Conditional Uses

The following uses are permitted as conditional uses, provided such uses meet the applicable environmental performance standards contained in Chapter 8, and are approved in accordance with Section 4.300:

- A. Special care facilities, including but not limited to hospitals, sanitariums, convalescent homes, correctional institutions, and residential care facilities.
- B. Radio, television, and similar communication stations, including transmitters.
- C. Churches and parsonages.

- D. Cemeteries and crematory mausoleums.
- E. Public and private utility buildings, including but not limited to telephone exchanges, electric substation, gas regulator stations, treatment plants, water wells, and public works yards.
- F. Government offices, including but not limited to administrative office, post offices, and police and fire stations.
- G. Public use buildings including but not limited to libraries, museums, community centers and senior centers.
- H. Private lodges, fraternal organizations, country clubs, sports and racquet clubs, and other similar clubs, but excluding golf courses which are prohibited.
- I. Motels or hotels.
- J. Residential apartments when located on the upper floors, in the rear of, or otherwise clearly secondary to a commercial building.
- K. Public recreational facilities, including but not limited to parks, playfields, and sports and racquet courts, but excluding golf courses which are prohibited.
- L. Public and private schools providing education at the elementary school level or higher.
- M. Any incidental business, service, process, storage or display, not otherwise permitted by Section 2.109, that is essential to and customarily associated with any use permitted outright.

2.109.04 Prohibited Uses

The following uses are expressly prohibited:

- A. Junkyards and salvage yards.
- B. Industrial and manufacturing uses, except as specifically permitted by Sections 2.109.02 and 2.109.03.
- C. Any other prohibited use noted in Section 2.109.03.

2.109.05 Dimensional Standards

No lot area, setback, yard, landscaped area, open space, off-street parking or loading area, or other site dimension or

CHAPTER 2

requirement, existing on, or after, the effective date of this Code shall be reduced below the minimum required by this Code. Nor shall the conveyance of any portion of a lot, for other than a public use or right-of-way, leave a lot or structure on the remainder of said lot with less than minimum Code dimensions, area, setbacks or other requirements, except as permitted by Section 4.400.

A. Lot Dimensions

Except as otherwise provided, required minimum lot areas and dimensions shall be:

1. Lot area: 10,000 square feet
2. Lot width at front property line: 70 feet
3. Lot width at building line: 70 feet

B. Setbacks

Except as otherwise provided, required minimum setbacks shall be:

1. Front yard: None, unless the lot abuts a residential zone, then the front yard shall be that required in the residential zone.
2. Side yards: None, unless abutting a residential zone or public park property, then there shall be a minimum of twenty (20) feet.
3. Rear yard: None, unless abutting a residential zone, then there shall be a minimum of twenty (20) feet.
4. Existing residential uses shall maintain setbacks specified in Section 2.105.04.

C. Height

Except as otherwise provided, the maximum height of structures shall be fifty (50) feet, except structures within one hundred (100) feet of a residential zone shall be limited to the height requirements of that residential area. Structures over fifty (50) feet in height may be permitted as conditional uses, subject to Section 4.300.

2.109.06 Community Design

For standards relating to off-street parking and loading, energy conservation, historic resources, environmental resources, landscaping, access and egress, signs, parks and open space, on-site storage, and site design, see Chapters 5, 8 and 9.

2.109.07 Flood Plain

Except as otherwise provided, Section 8.202 shall apply.

2.110 LIGHT INDUSTRIAL (LI)

2.110.01 Purpose

The LI zoning district provides for the manufacturing, processing, assembling, packaging and treatment of products which have been previously prepared from raw materials. Industrial establishments shall not have objectionable external features and shall feature well-landscaped sites and attractive architectural design, as determined by the Commission.

2.110.02 Permitted Uses

The following uses are permitted outright, provided such uses meet the applicable environmental performance standards contained in Chapter 8.

- A. Veterinarians offices and animal hospitals.
- B. Contractor's offices, and other offices associated with a use permitted in the LI zone.
- C. Public and private utilities including but not limited to telephone exchanges, electric substations, gas regulator stations, sewage treatment plants, water wells and public works yards.
- D. Glass installation and sales.
- E. Government offices, including but not limited to postal stations, administrative offices, police and fire stations.
- F. Automobile, boat, trailer, and recreational vehicle storage.
- G. Laboratories for testing and medical, dental, photographic, or motion picture processing, except as prohibited by Section 2.110.04E.
- H. Industrial hand tool and supply sales, primarily wholesaled to other industrial firms or industrial workers.
- I. Other similar light industrial uses subject to Section 4.600.
- J. Uses permitted outright in the GC zone, Section 2.109.02, except for adult entertainment businesses which are prohibited.

CHAPTER 2

- K. Dwelling unit for one (1) security person employed on the premises, and their immediate family.
- L. PUDs, subject to the provisions of Section 2.202.
- M. Temporary uses, including but not limited to construction and real estate sales offices, subject to Section 4.500.

2.110.03 Conditional Uses

The following uses are permitted as Conditional Uses provided such uses meet the applicable environmental performance standards contained in Chapter 8 and are approved in accordance with Section 4.300:

- A. Manufacture, compounding, processing, assembling, packaging, treatment, fabrication, wholesaling, warehousing or storage of the following articles or products:
 - 1. Food products, including but not limited to candy, dairy products, beverages, coffee, canned goods and baked goods, and meat and poultry, except as prohibited by Section 2.110.03.
 - 2. Appliances, including but not limited to, refrigerators, freezers, washing machines, dryers; small electronic motors and generators; heating and cooling equipment; lawn mowers, rototillers, and chain saws; vending machines; and similar products and associated small parts.
 - 3. Cosmetics, drugs, pharmaceutical, toiletries, chemicals and similar products, except as prohibited by Section 2.110.04.
 - 4. Electrical, radio, television, optical, scientific, hearing aids, electronic, computer, communications and similar instruments, components, appliances and systems, and similar products and associated small parts.
 - 5. Building components and household fixtures, including but not limited to furniture, cabinets, and upholstery; ladders; mattresses, doors and windows; signs and display structures; and similar products and associated small parts.
 - 6. Recreational vehicles and equipment, including but not limited to bicycles, recreational watercraft, exercise equipment, and similar products and

CHAPTER 2

associated small parts, but excluding motorized equipment unless otherwise permitted by Section 2.110.02 or 2.110.03.

7. Musical instruments, toys and novelties.
 8. Pottery and ceramics, limited to products using previously pulverized clay.
 9. Textiles and fiber products.
 10. Other small products and tools manufactured from previously prepared or semi-finished materials, including but not limited to bone, fur, leather, feathers, textiles, plastics, glass, wood products, metals, tobacco, rubber, and precious or semi-precious stones.
- B. Laundry, dry cleaning, dyeing or rug cleaning plants.
- C. Light metal fabrication, machining, welding and electroplating and casting or molding of semi-finished or finished metals.
- D. Offices associated with a use conditionally permitted in the LI Zone.
- E. Sawmills.

2.110.04 Prohibited Uses

The following uses are expressly prohibited:

- A. Adult Entertainment Businesses.
- B. Any use permitted or conditionally permitted under Section 2.111 that is not specifically listed in this Section, and any use listed in Section 2.111.04.
- C. Auto wrecking and junk or salvage yards.
- D. Distillation of oil, coal, wood or tar compounds and the creosote treatment of any products.
- E. Manufacture, compounding, processing, assembling, packaging, treatment, fabrication, wholesale, warehousing, or storage of the following products of substances, except for any incidental business, service, process, storage, or display that is essential to and customarily associated, in the City's determination, with any otherwise permitted or conditionally permitted use:

CHAPTER 2

1. Abrasives, acids, disinfectants, dyes and paints, bleaching powder and soaps and similar products.
2. Ammonia, chlorine, sodium compounds, toxics, and similar chemicals.
3. Celluloid or pyroxylin.
4. Cement, lime, gypsum, plaster of Paris, clay, creosote, coal and coke, tar and tar-based roofing and waterproofing materials and similar substances.
5. Explosives and radioactive materials.
6. Fertilizer, herbicides and insect poison.
- F. Metal rolling and extraction mills, forge plants, smelters and blast furnaces.
- G. Pulp mills and paper mills.
- H. Slaughter of livestock or poultry, the manufacture of animal by-products or fat rendering.
- I. Leather tanneries.
- J. General purpose solid waste landfills, incinerators, and other solid waste facilities.

2.110.05 Dimensional Standards

No lot area, setback, yard, landscaped area, open space, off-street parking or loading area, or other site dimension or requirement, existing on, or after, the effective date of this Code shall be reduced below the minimum required by this Code. Nor shall the conveyance of any portion of a lot, for other than a public use or right-of-way, leave a lot or structure on the remainder of said lot with less than minimum Code dimensions, area, setbacks or other requirements, except as permitted by Section 4.400.

A. Lot Dimensions

Except as otherwise provided, required minimum lot area and dimensions shall be:

1. Lot area: 10,000 sq. feet
2. Lot width at front property line: 100 feet
3. Lot width at building line: 100 feet

CHAPTER 2

B. Setbacks

Except as otherwise provided, required minimum setbacks shall be:

1. Front yard: Twenty (20) feet, except when abutting a residential zone or public park, then there shall be a minimum of forty (40) feet.
2. Side yards: None, except when abutting a residential zone, then there shall be a minimum of forty (40) feet.
3. Rear yard: None, except when abutting a residential zone, then there shall be a minimum of forty (40) feet.
4. Corner lots: Twenty (20) feet on any side facing a street, except when abutting a residential zone, then there shall be a minimum of forty (40) feet.

C. Height

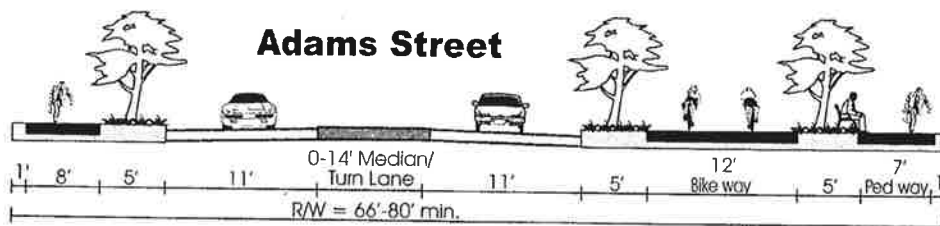
Except as otherwise provided, the maximum height shall be fifty (50) feet, except that structures within one hundred (100) feet of a residential zone shall be limited to the height requirements of the residential zone.

2.110.06 Community Design

For standards relating to off-street parking and loading, energy conservation, historic resources, environmental resources, landscaping, access and egress, signs, parks and open space, on-site storage, and site design, see Chapters 5, 8 and 9.

2.110.07 Flood Plain

Except as otherwise provided, Section 8.202 shall apply.



A variance requires demonstration of hardship or other exceptional circumstances resulting from conditions of the property. Variances must meet Sherwood Development Code and TPR criteria.

**Collector
Street Design Characteristics**

P - On-street Parking Lane
(except at intersections)

Notes:

1. In constrained conditions on collectors a minimum width of 10 feet may be considered (i.e. for intersection turn lanes). 14-feet is desirable for continuous two-way left turn lanes.
2. 8 feet for residential streets, 6 feet in commercial/industrial areas.
3. Turn lane warrants should be reviewed using Highway Research Record No. 211, NCHRP Report No. 279 or other updated/superseding reference.

Characteristic	Collectors
Vehicle Lane Widths (Turn Lane - 12-14 ft.) *1	11 ft.
On-Street Parking	8 ft. -Optional
Bicycle Lanes (minimums)	6 ft.
Sidewalks (minimums)	6-8 ft. *2
Landscape Strips	Required
Raised Medians	Optional (Required where 3-lane section used)
Neighborhood Traffic Management (NTM)	Under Special Conditions
Transit	Appropriate
Turn Lanes	When Warranted *3
Access Control	See Later Discussion

**Figure 8-4
COLLECTOR STREETS
SHERWOOD
STREET CROSS SECTIONS**

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