



URBAN RENEWAL DISTRICT BOARD
Resolution 2003-013

A RESOLUTION APPROVING THE DEVELOPMENT OF THE PROPERTY AT
RAILROAD AND MAIN

WHEREAS, the City of Sherwood Urban Renewal District (the District) purchased the property at Railroad and Main for development purposes; and

WHEREAS, the District issued an Request for Proposal (RFP) for the purpose of development on the property on Railroad and Main; and

WHEREAS, Mark Stewart has responded to this RFP; and

WHEREAS, the Sherwood Urban Renewal Planning and Advisory Committee (SURPAC) has reviewed all responses to the RFP; and

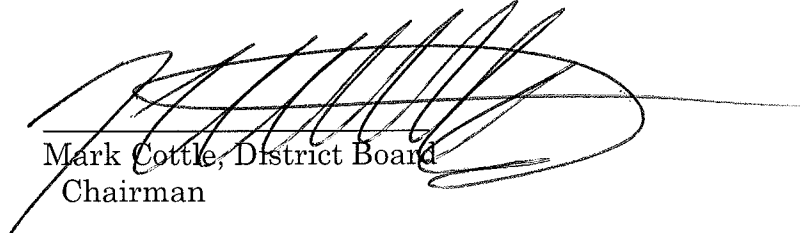
WHEREAS, SURPAC has recommended the District accept Mr. Stewart's proposal as outlined in the Sales Agreement attached as Exhibit A.

NOW, THEREFORE, THE URBAN RENEWAL DISTRICT BOARD RESOLVES AS FOLLOWS:


Section 1: The District Administrator is authorized to sign an agreement substantially in the form attached labeled as Exhibit A and included as part of this resolution and is authorized to sign appropriate documents in order to develop the property at Railroad and Main.

Section 2: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City of Sherwood Urban Renewal District this 26th day of August 2003.


Mark Cottle, District Board
Chairman

ATTEST:


C.L. Wiley, District Recorder

DRAFT

AGREEMENT FOR DISPOSITION AND DEVELOPMENT

OF PROPERTY AT:

290 NW RAILROAD ST.
SHERWOOD, OREGON 97140

THIS AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY (Agreement) is entered into August __, 2003, by the CITY OF SHERWOOD (City), a municipal corporation of the State of Oregon, acting by and through the URBAN RENEWAL AGENCY (URA), the duly designated urban renewal agency of the City of Sherwood, and Mark Stewart, an Oregon limited liability company (Buyer). URA and Buyer are referred to jointly as Parties.

RECITALS

- A. URA is the duly authorized urban renewal agency of the City of Sherwood, Oregon, and administers the City's urban renewal plans.
- B. The Urban Renewal Plan for the City of Sherwood was adopted by the Sherwood City Council on Aug. 29, 2000 , by Ordinance No.2000-1098 and has been amended from time to time.
- C. URA has previously found it necessary and in the public interest to implement the Plan through acquisition of the Property as reflected in URA Resolution No. 2001-04 dated Dec. 1, 2001, and through a disposition process as reflected in the minutes from special Board Meeting May, 2003. .
- D. The development of the Property in a manner consistent with the Plan is pivotal to attracting the private investment necessary to area-wide revitalization.
- E. On May 30, 2003 URA made the Property available for sale by the Issuance of an Request for Proposal (RFP) to rehabilitate and redevelop the Property. This will Promote private development in the Old Town Area., improve the visual impact of the Property, and minimize negative impacts of to neighboring uses.
- F. Buyer responded to the URA RFP June 27, 2003. The Parties are now prepared to enter into a definitive agreement.
- G. The completion of the Project under this Agreement is a material inducement to URA's participation in the Project.

H. URA finds that Buyer's development of the Property will help achieve the community and City goals for neighborhood revitalization and creation of jobs. URA also finds that this Agreement is in the vital and best interests of the City and the health, safety, and welfare of its residents. It is in accord with the public purposes and provisions of the applicable state and federal laws and requirements under which the Property has been acquired, and the plan for financial assistance for the development of the Property.

AGREEMENT

DEFINITIONS

The following terms apply to this Agreement:

"Affiliate" means any entity that is owned at least 51 percent by Buyer.

"Agreement" means this Disposition and Development Agreement and all attached Exhibits.

"Certificate of Completion" means a certificate to be issued by URA to Buyer under Section 3.7 of this Agreement.

"City" means the City of Sherwood, Oregon, except URA.

"Close" or **"Closing"** means the conveyance of the Property to Buyer by URA by Deed.

"Closing Date" means the date on which the Property is conveyed to Buyer by Deed.

"Conceptual Plan" means the preliminary plans, general property use description, site drawings and cost estimates for the Project that Buyer submitted to URA prior to June 27, 2003.

"Deed" means the form of Bargain and Sale Deed conveying fee simple title to the Property, attached to this Agreement as **Exhibit A**.

"Design Development Drawings" includes items such as:

- Detailed engineering and architectural site plans for the Project showing the relationship of the buildings to projected final topography of the land, with all proposed connections to existing or proposed utilities and services together with a landscape plan;
- Plans, elevations, typical cross-sections and typical wall sections of all building areas;
- Elevations of the buildings to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials, of the building exteriors;
- A calculation of gross building areas, floor areas, height ratios and open spaces;
- A preliminary Exterior Finish Schedule;
- Proposed layouts for exterior signage and graphics;

- Outline of the exterior lighting plan; and
- A description of servicing requirements, trash collection locations, loading docks and related functional areas.

"Effective Date" means the date the last party executes this Agreement.

"Environmental Abatement" means the testing for and lawful disposition of all Hazardous Materials on the Property (including asbestos, lead paint, and PCBs, if any) as required prior to demolition or construction in compliance with Environmental Laws.

"Environmental Laws" means all federal, state, ordinances, rules and regulations pertaining to the protection or regulation of the environment that apply to the Property, including RCRA, CERCLA, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.

"Environmental Reports" means the *Environmental Site Assessment*, dated December 2001, prepared by PBS Environmental for URA, together with assorted subsequent correspondence among PBS, URA and the Oregon Department of Environmental Quality, all of which will be provided to Buyer on or about September 1, 2003.

"Escrow Agent" means Pacific Northwest Title of Oregon, Inc.

"Final Construction Plans and Specifications" means all plans and specifications required to complete the Project under this Agreement approved by URA and the City.

"Hazardous Substances" means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substances as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, *et seq.* (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, *et seq.* (CERCLA), or any other environmental law.

"Infrastructure" means public streets, sidewalks, alleys, and driveway approaches, connections to garages or parking lots, planting street trees and grass in planting strips, stormwater mitigation, street lighting, construction and connection of the Property to abutting potable water and sewer and storm sewer mains, connecting the Property to gas and electric utility services, and all permitting as described in the Scope of Development.

"Mortgage" means a mortgage or deed of trust against the Property, or any portion, recorded in the real property records of Washington County, Oregon.

"Mortgagee" means the holder of any Mortgage affecting or encumbering the Property or any portion, together with any successor or assignee of such holder. Mortgagee includes any Mortgagee as owner of the property as a result of foreclosure proceedings, or any insurer or guarantor of any obligation or condition secured by a mortgage. It does not include (a) any other party who obtains title to the Property from or through a Mortgagee or (b) any other purchaser at

foreclosure sale other than a Mortgagee.

"Notice" means any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by the Oregon Department of Environmental Quality (DEQ), the United States Environmental Protection Agency (EPA), URA, and other federal, state or local authority or any other government having jurisdiction with respect to the Property.

"Project" means the Property, fixtures and the buildings, and other improvements to be rehabilitated or newly constructed by Buyer on the Property, including new office space, landscaping and sidewalk improvements and the Infrastructure.

"Property" means Map 2s132BC, Tax Lot #4700 of Smockville Tract, City of Sherwood, Washington County, Oregon.

"Purchase Price" means the price Buyer or approved assignee pays to URA for the Property to be conveyed by URA to Buyer under Section 1.2.

"Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.

"Schedule of Performance" means the document describing the schedule by which construction and development will be completed, and by which the job creation and retention activities will be carried out, attached as **Exhibit B**.

"Scope of Development" means the detailed description of the new improvements to be built comprising the Project, attached as **Exhibit C**.

1. CONVEYANCE

1.1 Conveyance of Property. After satisfaction of all conditions provided in Section 1.5 and payment by Buyer to URA of the Purchase Price, URA will convey the Property to Buyer by Deed. The Closing will occur in an escrow at the office of the Escrow Agent not later than the deadline for Closing set forth in the Schedule of Performance. At Closing, Buyer will accept the conveyance and pay the Purchase Price to URA in the manner as set forth in Section 1.2

1.2 Buyer Payment. The total Purchase Price for the Property is \$100,000.00. At Closing, Buyer will pay the Purchase Price for the Property, in cash, with credit for the Earnest Money, and any interest earned.

1.3 Title Review.

1.3.1 URA will deliver to Buyer a preliminary title report and copies of all exception documents (Title Report). Buyer and URA will have agreed to acceptable

exceptions to title within 30 days of the Effective Date.

1.3.2 Buyer may obtain an update to the Title Report at anytime prior to the Closing. Buyer must promptly give URA a copy of any updated Title Report. Buyer may object in writing to URA about any exceptions (which are not Permitted Exceptions) to title that appear on the updated Title Report. Within 10 days of any written notice By Buyer to URA, URA will notify Buyer in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If URA refuses to remove any such objected to exceptions, Buyer may terminate this Agreement or proceed to close subject to that exception. Any exceptions that Buyer accepts at Closing are the "Final Permitted Exceptions."

1.4 Title Insurance, Survey, Property Taxes and Closing Costs. At its expense, URA will provide Buyer with a standard coverage ALTA Owner's Policy of Title Insurance covering the Property insuring Buyer for the value of the Property, all free and clear of encumbrances except Final Permitted Exceptions. At its option and its expense, Buyer may elect to obtain extended coverage and URA agrees to execute any affidavits or other documents required to obtain such coverage. Buyer may also elect to obtain a survey of the Property at its own expense. The costs for recording the Deed and any other recorded documents will be paid by Buyer. Each Party shall pay one-half of the escrow fees. Buyer must pay all property taxes from and after the Closing Date. Any assessments on the Property will be prorated as of the Closing Date. URA will pay installments due through the Closing Date for any assessments, and Buyer will be responsible for installment payments due after the Closing Date. Any other closing costs will be allocated in accordance with the customary practice in Washington County.

1.5 Conditions for Conveyance.

1.5.1 Conditions. Buyer and URA are not obligated to close the Conveyance unless the following conditions are satisfied to the reasonable satisfaction of the benefited Party. The Party benefited by a particular condition may not unreasonably withhold, condition or delay acknowledgment that the condition has been satisfied.

(a) To the Satisfaction of Both URA and Buyer:

- (1) Buyer will apply for and receive land use approval for the condo project with commercial space and parking.
- (2) Buyer will within seven months from mutual acceptance of this Agreement complete the land use approval process and be approved for all required construction permits, excluding building occupancy permit. Seller agrees to review this process and make reasonable extensions as required.
- (3) Approval of Design Development Drawings for the Project by

URA under Section 3.2.

- (4) Building permits issued by the City of Sherwood Office of Planning & Development Review.
- (5) Buyer demonstrates financial feasibility for the Project, including acquisition and rehabilitation, by providing to URA within 30 days of the Effective Date copies of binding commitment letters from private lenders, subject to standard lender conditions to funding.
- (6) URA and Buyer agree to the final form of the Deed.
- (7) There is no litigation pending that prevents URA or Buyer from performing their respective obligations under this Agreement. If any such litigation is filed, Buyer may extend this contingency, and the Closing for up to 180 days, or both parties may mutually agree to any period of extension.
- (8) Neither party is in default under any material term or condition of this Agreement, including the completion of each task shown on the Schedule of Performance to be completed as of Closing. Each party represents to the other that there are no material defaults under this Agreement or events that could constitute a material default under this Agreement.

(b) To Buyer's Satisfaction:

- (1) Buyer will confirm that URA has title to the Property subject only to the Final Permitted Exceptions.
- (2) Escrow Agent will issue a binding commitment satisfactory to Buyer (a) an Owner's Extended Title Insurance Policy covering the Property in an amount not less than the Purchase Price, subject only to the Final Permitted Exceptions; and (b) a Lender's Extended Title Insurance Policy in the amount of the funding to be provided to Buyer.
- (3) URA's representations and warranties stated in Section 1.6 are true and correct as of the Closing Date.
- (4) Seller shall credit Buyer for the sum of \$50,000.00 at time of closing.

(c) To URA's Satisfaction:

- (1) Buyer will accept conveyance of Property from Buyer by Deed within two weeks of notification that construction permits have been approved by City.
- (2) Buyer will sign and place in escrow a note and trust deed in the amount of \$65,000.00 to be recorded in the event buyer has not completed construction of the building within 12 months of beginning of construction.
- (3) Buyer agrees to begin construction within 60 days of building permit issuance.
- (4) Reasonable evidence that Buyer is an Oregon business existing and in good standing in the state of Oregon and that Buyer has full authority to enter into and perform its obligation under this Agreement.
- (5) Execution and delivery by Buyer to URA of copies of all commitments and other documentation reasonably necessary to evidence that Buyer has obtained construction financing for the Project.
- (6) Buyer is not in default under any material term or condition of this Agreement. As of Closing, Buyer represents to URA that there are no material defaults by Buyer under this Agreement or events that could constitute a material default by Buyer under this Agreement.
- (7) Buyer's representations and warranties stated in Section 1.7 are true and correct as of the Closing Date.

1.5.2 Elections upon Non-Occurrence of Conditions. Except as provided below, if any condition in Section 1.5.1 is not fulfilled to the satisfaction of the benefited Party on the earlier of (i) the date designated for satisfaction of the condition, or (ii) on the date scheduled for Closing, subject to any extension, then such benefited Party or Parties may elect to:

- (a) Terminate this Agreement effective 60 days after the notice of termination is sent (Termination Date) unless, before the 60 day period ends, the other Party fulfills such condition or conditions to the reasonable satisfaction of the benefited Party; or
- (b) Waive in writing the benefit of that condition to its obligation to perform under this Agreement, and proceed in accordance with the terms; or
- (c) Extend the Termination Date by which the other Party must satisfy the applicable condition, if the other Party can satisfy the condition and if the

other Party agrees in writing to the extension.

1.5.3 Final Termination Date. If all of the conditions under Section 1.5.1. have not been satisfied, waived or otherwise resolved pursuant to this Agreement by September 1, 2004, then this written Agreement will automatically terminate on October 1, 2004 (Final Termination Date) unless the date for Closing is extended by written agreement of the Parties prior to the Final Termination Date. The Final Termination Date may not be extended for more than 180 days. If the Agreement is terminated for failure of satisfaction of the conditions, and such failure is not the result of a breach of this Agreement by either Party, then the obligations under this Agreement terminate.

1.6 URA Representations. URA represents that:

1.6.1 Except as disclosed to Buyer in the Environmental Reports and to the best of URA's actual knowledge, there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, release or production of Hazardous Substances, or other dangerous or toxic substances or solid wastes on the Property. There are no underground storage tanks existing on the Property, except in compliance with Environmental Laws currently in effect. URA has not received notice of the release of any Hazardous Substances on the Property.

1.6.2 URA has full power and authority to enter and perform this Agreement, and all action necessary has been taken by URA to execute this Agreement.

1.6.3 URA is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

1.6.4 To the best of URA's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, URA's ability to perform its obligations under this Agreement, or Buyer's ability to develop the Project.

1.6.5 To the best of URA's knowledge, and except as disclosed in writing to Buyer, the Property is in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements (Laws).

1.6.6 URA has not received or given any notice stating that the Property is in violation of any Laws. URA makes no representation as to the availability or suitability of utility connections to the Property.

1.6.7 No representation or statement of URA in this Agreement or any of its exhibits contains any untrue statement of a material fact or omits a material fact.

1.6.8 There are no defaults by URA under this Agreement or events that with the

passage of time would constitute a default of URA under this Agreement.

1.6.9 "*URA's knowledge*" means the actual knowledge of the managers of URA having responsibility for the supervision of the Property.

1.7 **Buyer Representations.** Buyer represents that:

1.7.1 Buyer has full power and authority to enter and perform this Agreement, and Buyer has taken all action necessary to execute this Agreement and its obligations.

1.7.2 No representation or statement of Buyer in this Agreement or any of its exhibits contains any untrue statement of a material fact or omits a material fact.

1.7.3 There are no defaults by Buyer under this Agreement or events that with the passage of time would constitute a default of Buyer under this Agreement.

1.7.4 Buyer enters into this Agreement without reliance upon any verbal representation of any kind by URA, its employees, agents or consultants regarding any aspect of the site, the Project, its feasibility, financing or compliance with any governmental regulation.

1.8 **Right of First Offer.** If Buyer desires to convey the Property at any time prior to the 10th anniversary of the Closing Date prior to offering the Property for sale to any party, Buyer will notify URA in writing of its intent to sell the Property. URA has the opportunity to make the first offer to purchase the Property. If URA chooses to make a first offer, the Parties will negotiate exclusively with one another for sale and purchase of the Property for up to 90 days from the date URA receives Buyer's notice. If the Parties cannot agree to the terms of the sale of the Property during that exclusive negotiating period, Buyer may then offer the Property for sale to any Party. URA may make an offer at any time after the exclusive negotiating period.

1.9 **Earnest Money.** Buyer will deposit a note for \$5,000.00 with the Escrow Agent within three days after the Effective Date of this Agreement. Upon Closing, the Earnest Money will be redeemed and credited to the Purchase Price. If Buyer fails to purchase the Property, Escrow Agent must redeem the note within two weeks and pay the Earnest Money to URA. If URA refuses to convey the Property to Buyer at Closing, the Escrow Agent will immediately after the Final Termination Date return the Earnest Money note to Buyer.

2. INFRASTRUCTURE AND PROPERTY CONDITION

2.1 **Infrastructure Improvements.** Buyer is responsible for the design, construction, funding and obtaining of permits for all Infrastructure.

- 2.2 Utility Service.** URA makes no representation as to the availability or suitability of utility connections to the Property. Buyer will pay any costs of installation, connection, or upgrading. Buyer will pay all costs of new utilities to serve the Project. Buyer has determined that public and private utilities are available to the Property with sufficient capacity to serve the Project, and that any utilities within the Property are acceptable or will be removed by Buyer.
- 2.3 Subsurface, Surface and Building Conditions.** The Property will be conveyed from URA to Buyer in "AS IS" condition. URA makes no representations as to the suitability of the soil conditions or any other conditions of the Property or structures for any improvements to be constructed by the Buyer. Buyer not relied on any representations by the URA as to the environmental condition of the Land, the suitability of the soil conditions or any of the conditions of the Property for any improvements to be constructed by the Buyer. Buyer agrees that URA will not be liable for any loss, cost or damage that may be caused or incurred by Buyer by reason of any soil or physical conditions on the Property. URA has allowed Buyer free access to URA's records with respect to conditions of the soils and will assist in obtaining the cooperation of other public and private agencies having such information.

3. DEVELOPMENT

3.1 Project Financing. Buyer is responsible for obtaining all private financing necessary to acquire the Property and to construct the Project.

3.2 Plans, Drawings and URA Review.

3.2.1 Buyer and URA have agreed to the Conceptual Plan identifying the components of the Project that is the basis for entering into this Agreement. Buyer will prepare Design Development Drawings and Final Construction Plans and Specifications and submit to them to URA for review and approval in accordance with the Schedule of Performance. Design Development Drawings must be approved by the URA upon recommendation before Buyer submits its application to the City for any building permit. All plans and specifications referred to in this Section are referred to as the "Drawings." URA will not unreasonably withhold its approval of any Drawings for the Project that, in URA's opinion, adequately address the following design and use objectives:

- (a) **Pedestrian Environment.** The design and materials of the Project foster a safe, friendly and active pedestrian environment in the Project area;
- (b) **Neighborhood Compatibility.** The design for site and building details, materials and colors are compatible with and complementary to the Project's neighborhood; The design evidences methods to mitigate immediate neighbor impacts, including, but not limited to outdoor storage, garbage, noise, nighttime operations, deliveries, graffiti, outdoor

maintenance, outdoor lighting, and odors; The design is consistent with implementation of the truck/traffic management plan required by Section 1.5.1(c)(7).

- (c) Reinforces the Neighborhood's Best. The site and building design reinforces the best characteristics of the nearby built environment generally; and

3.2.2 Standards of Design Review. URA's review and approval of drawings will be limited to the following Standards of Review:

- (a) Design Development Drawings. Elements depicted in the Design Development Drawings not at a level of detail, not approved or that do not conform to the Conceptual Plan;
- (b) Final Construction Plans and Specifications. Elements depicted in the Final Construction Plans and Specifications not at a level of detail, not approved or that do not conform to the approved Design Development Drawings.

3.2.3 Changes in Approved Drawings. If Buyer wants to substantially change any drawings or plans after approval by URA, Buyer must submit the proposed changes to URA for approval. A substantial change means any change that would have a material impact on the function, appearance or cost of the Project. Buyer acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals will be sought after URA approves the changes. URA will assist Buyer throughout URA design review and any land use process of the offices within the City, but URA does not represent that its assistance will guarantee approval.

3.2.4 Project Rendering. Buyer will provide URA with a color rendering of the Project at the time the Final Construction Plans and Specifications are submitted for review.

3.3 Diligent Completion.

3.3.1 Buyer agrees to complete the Project in substantial conformance with the Final Construction Plans and Specifications. Buyer agrees to comply with the Schedule of Performance. Buyer agrees to keep URA informed of its progress with respect to development of the Project during construction and make periodic reports at least once a month until URA issues a Certificate of Completion for the Project.

3.3.2 Project development includes:

- (a) Entering into all necessary architectural and construction contracts;

- (b) Securing all necessary public entitlements and building permits;
- (c) Securing all financing necessary to complete the Project.

3.4 Safety Matters; Indemnification. Buyer must:

- 3.4.1 Safety.** Take all safety measures necessary to protect its employees, and URA's agents, contractors, subcontractors, licensees and invitees and the personal property and improvements of each from injury or damage caused by or resulting from its construction activities.
- 3.4.2 Liability Claims.** Indemnify and hold URA and City harmless from all claims, costs, expenses and liabilities arising from the death of or accident, injury, loss or damage whatsoever caused to any person or to the property of any person as occurs in the process of the construction work.
- 3.4.3 Indemnity from Liens.** Indemnify, defend and hold URA and City harmless from and against all mechanics', materialmen's and laborers' liens and all costs, expenses and liabilities arising from its construction.

3.5 Liens. Buyer agrees that if any statutory lien is filed against any portion of the Project by reason of labor, services, or materials supplied, it will pay and discharge them within 30 days of filing. Buyer has the right to contest the validity, amount or applicability of any lien by appropriate legal proceedings. If the Buyer provides a bond or indemnity and contests the lien in good faith, the requirement that it pay and discharge within 30 days does not apply. Buyer must provide a bond or indemnity within 30 days of the lien filing in amount and form satisfactory for the title company that insured title to the Project. That satisfaction must permit insurance over such liens or to reissue or update its existing policy, binder or commitment without showing any title exception of such liens. The Buyer must indemnify and hold harmless the URA and City from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such liens. If such legal proceedings are concluded adversely to the Buyer, Buyer must within five days discharge the lien(s) of record.

3.6 Inspection and Property Access.

- 3.6.1 Before Conveyance of Property.** Before conveying the Property to Buyer, URA may allow Buyer and Buyer's employees, agents and consultants to enter upon the Property at reasonable times to carry out the purposes of this Agreement.
- 3.6.2 After Conveyance of Property.** After conveying the Property to Buyer during construction of the Project, and until a Certificate of Completion is issued, Buyer's work will be accessible at all reasonable times for inspection by representatives of URA. URA agrees not to interfere with the work occurring on

the Property.

3.7 Certificate of Completion.

3.7.1 When Buyer is Entitled to Certificate of Completion. Upon substantial completion of the Project, and upon satisfaction of the other conditions of this Section, URA will furnish Buyer with a Certificate of Completion for the Project. The form will be substantially as attached as **Exhibit D**. The Project will be substantially complete when (i) the Project is completed according to the Final Construction Plans and Specifications, except for punch list items that do not materially affect the use of the Project, (ii) the City has issued a temporary or permanent Certificate of Occupancy for the Project, and (iii) any other improvements required by this Agreement are complete in all material respects.

3.7.2 Meaning and Effect of the Certificate of Completion. The Certificate of Completion terminates obligations under this Agreement and limits remedies available to URA.

3.7.3 Form of Certificate of Completion; Procedure Where URA Refuses to Issue. A Certificate of Completion will be in a form that can be recorded in the real property records of Washington County. At Buyer's request, the Certificate of Completion for the Project will state that the terms and conditions of this Agreement are no longer in effect. If URA fails to provide a Certificate of Completion, then within 15 days after written request by Buyer URA must provide Buyer with a written statement of respects Buyer has failed to complete the Project in accordance with this Agreement or is otherwise in default. URA must state the measures or acts Buyer must take or perform to obtain such Certificate of Completion. Upon receipt of such detailed statement from URA, Buyer must either (a) complete the improvements and cure the alleged default in a manner responsive to the stated reasons for disapproval or (b) submit to arbitration, under Section 7.10, the issue of whether URA has unreasonably refused to issue the requested Certificate of Completion. URA's failure to furnish Buyer with a detailed written statement within the 15 day period will be deemed URA's approval of Buyer's request for the Certificate of Completion.

4. ENVIRONMENTAL MATTERS

4.1 Indemnification. Buyer is responsible for compliance with all Environmental Laws for the Project from and after the date of Conveyance, except for matters caused by act or failure to act of URA, its employees, agents, contractors, or invitees. Buyer will defend, indemnify and hold harmless URA and City against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by URA or City or asserted by any other person, including a governmental entity, arising out of or in connection with any violation of Environmental Laws by Buyer. This indemnity

survives the issuance of the Certificate of Completion.

- 4.2 Contribution.** The foregoing indemnity does not limit any rights of contribution that the Buyer may have against others under applicable law or agreement. The indemnity is intended only as an allocation of responsibility between the parties to this Agreement.

5. ASSIGNMENT PROVISIONS

- 5.1 No Assignment.** As a municipal entity, URA is uniquely benefited by completion of the Project. Buyer is uniquely qualified to construct and manage the Project. The anti-assignment restrictions in this Section do not apply to any transfers after the issuance by URA of a Certificate of Completion. Except as provided in Section 5.2, Buyer will not partially or wholly dispose of any interest in this Agreement without the prior written approval of the URA. URA may require as conditions to such approval that:

5.1.1 The transfer is not in violation of provisions of this Agreement; and

5.1.2 Any proposed transferee has qualifications, financial responsibility and an ability to meet and comply with the obligations of this Agreement equal to or superior to Buyer; and

5.1.3 The transfer will not cause a material delay in the completion of the Project.

- 5.2 Approved Pre-Completion Transfers.** Notwithstanding Section 5.1 above, and provided that Buyer provides URA with copies of all agreements related to the transfer at least fifteen 15 days before the proposed effective date, and any other information reasonably necessary for URA to determine whether such transfer complies with the requirements of this Agreement, URA consents to:

5.2.1 Any Mortgage that Buyer attaches to the Property provided that URA has approved the terms of the Mortgage;

5.2.2 Any transfer of all or a part of the Project or other rights in the Project to any affiliate of Buyer; provided that no provisions of the transfer are in violation of any term of this Agreement; and

5.2.3 Transfer to a partnership, limited liability company or partnership, or joint venture with Buyer remaining the managing member of such entity and retaining principal operational control over the entity.

- 5.3 Transfers After Completion.** Subject to URA's Right of First Offer in Section 1.8, after URA's issuance of a Certificate of Completion for the Project, Buyer may transfer its interest, or portions of its interest in the Project, without restriction, consent or approval by URA, except to the extent that any transfer conflicts with commitments still in existence.

6. PERMITTED MORTGAGES

6.1 Mortgagee Protection Provisions.

- 6.1.1 Effect of Revesting on Mortgages.** Any reversion and revesting of the Property or any portion under this Agreement is always subject to approval of URA, and limited by any lien, Mortgage, or security interest approved by URA and authorized by this Agreement.
- 6.1.2 Mortgagee Not Obligated To Construct.** Except for covenants running with the Property, a Mortgagee or its designee for purposes of acquiring title at foreclosure is not obligated by the provisions of this Agreement to construct or complete the improvements in the Property, or to guarantee such construction or completion. This Agreement does not permit or authorize any such Mortgagee to devote the Property to any uses, or to construct any improvements other than those uses or improvements provided or permitted in this Agreement.
- 6.1.3 Copy of Notice of Default to Mortgagee.** If URA delivers any notice or demand to Buyer with respect to any breach or default by Buyer under this Agreement, URA will at the same time send a copy of such notice or demand to each Mortgagee approved by URA at the last known address.
- 6.1.4 Mortgagee's Options to Cure Defaults.** After any default or breach of this Agreement where Buyer fails to cure or remedy the default or breach, then each Mortgagee may, at its option, cure or remedy the breach or default within 30 days after passage of the latest date for Buyer's cure of the default, and if permitted by its loan documents, to add the cost to the Mortgage debt and the lien of its Mortgage. If the breach or default is with respect to construction of the improvements, nothing contained in this Agreement will prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements. The Mortgagee must notify URA in writing of its intention to complete the Project according to the approved Final Construction Plans and Specifications. Any Mortgagee who properly completes the Project is entitled to issuance of a Certificate of Completion, upon written request made to URA following the procedures set forth in Section 3.7.
- 6.1.5 Amendments Requested by Mortgagee.** URA will approve amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to Buyer secured by a security interest in all or any part of the Property or Project. Such proposed amendments or other agreements may not materially and adversely affect the rights of URA or its interest in the Property.

7. DEFAULT; REMEDIES

7.1 Default and Cure.

7.1.1 Default by Buyer. A default occurs if Buyer breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within 60 days after Buyer receives written notice from URA specifying the breach. Failure of conditions does not constitute a default, but failure to meet the Schedule of Performance for an activity that must be completed either before or after Closing is a default. In the case of a breach that cannot with due diligence can be cured within 60 days, a default occurs if Buyer does not commence the cure within 60 days after written notice from URA and thereafter diligently prosecute to complete the cure. A default also occurs if Buyer makes any assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it. A default occurs, and URA is irreparably harmed if Buyer or its assignee constructs any portion of the Project in a manner materially inconsistent with URA-approved plans. Buyer is not in default for failure to pay any tax, assessment, lien or other charge if Buyer in good faith is contesting the same. If necessary to avoid foreclosure, Buyer must furnish an appropriate bond or other undertaking to assure payment in the event Buyer's contest is unsuccessful.

7.1.2 Default by URA. A default occurs if URA breaches any material provision of this Agreement including failure to adhere to the Schedule of Performance for any element of the Schedule of Performance that is in the control of URA. Such breach continues and is not remedied within 60 days after URA receives written notice from Buyer specifying the breach or, in the case of a breach which cannot with due diligence be cured within 60 days, if URA does not commence the cure of the breach within 60 days and thereafter diligently prosecute to complete the cure.

7.2 URA's Pre-Conveyance Remedies. If Buyer defaults in any material term of this Agreement before any of the Property is conveyed to Buyer, URA may (i) terminate this Agreement by written notice to Buyer, without waiving any cause of action URA may have against Buyer; and (ii) specifically enforce the obligations of Buyer under this Agreement; and (iii) seek monetary damages against Buyer. If URA terminates this Agreement under this Section, then Buyer must deliver to URA within 30 days after such termination, copies of all Property market research, design documents, engineering documents, proformas and financial projections prepared for Buyer. Design and construction contracts may be used by URA in any manner that URA deems appropriate with the consent of any party having approval rights.

7.3 Restoration. If, prior to acquiring the Property, Buyer performs any construction activities on the Property and Buyer fails to acquire the Property, Buyer agrees to restore the Property to substantially the condition that existed prior to the time that Buyer performed any activities. URA may elect to require that any improvements Buyer has

installed on the Property remain on the Property.

7.4 URA's Post-Conveyance Remedies.

7.4.1 Failure to Complete Construction. If, after Closing, Buyer fails to obtain the required Certificate of Completion, then URA may demand in writing that Buyer cure such default within 60 days. If Buyer does not cure the default within 60 days period or begin and diligently pursue cure in the case default is not curable within 60 days, then URA will have the following remedies in addition to any others:

- (a) The right to re-enter and take possession of the Project, and terminate the Buyer's right to develop the Project, and to resell the Property under Section 7.5. URA, at its option, may upon 60 days written notice (Notice of Termination) to Buyer and the Escrow Agent declare a termination in favor of URA of the title, and of all the rights and interest in the Property including any rights conveyed to Buyer and any assigns or successors in interest shall be reconveyed to URA by Quitclaim Deed, pursuant to the Escrow Instructions in **Exhibit E**.
- (b) Buyer will provide URA with any work product produced by any third parties for Buyer.

7.5 URA Resale. If title to the Property reverts in URA under Section 7.4, URA may bring the improvements to a state of completion deemed by URA as reasonably necessary to protect it from the elements or other dangers, URA will use its best efforts consistent with prudent business practices resell the Property at a reasonable price as soon and in such a manner as URA finds feasible to a qualified and responsible party or parties. The new buyer will assume the obligation of making or completing the improvements or such other improvements that are satisfactory to URA. Upon such resale, the proceeds will be applied as follows:

7.5.1 URA Reimbursement. First, to reimburse URA for all costs and expenses reasonably incurred by it including, but not limited to: salaries of personnel in connection with the recapture, management and resale of the Project; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Project; any subsequent encumbrances or liens due to obligations, defaults, or acts of Buyer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of Buyer's improvements on the Project; any amounts owed to the City as lease or license fees, and any amounts otherwise owing URA by Buyer and its successor or transferee;

7.5.2 Buyer Reimbursement. Second, to reimburse Buyer, its successor or transferee, up to the amount equal to (a) the Purchase Price made prior to reverting in the URA, and (b) the URA-approved development costs incurred by it in making any

of the Project improvements, less any gains or income withdrawn or made as to the Project; and

7.5.3 Balance to URA. Third, any balance remaining after any reimbursements will be retained by URA.

7.6 Buyer's Pre-Conveyance Remedies. If URA fails to perform any obligation under this Agreement, Buyer may (i) terminate this Agreement by written notice to URA, without waiving any cause of action Buyer may have against URA; (ii) specifically enforce the obligations of URA under this Agreement; and (iii) seek monetary damages against URA.

7.7 Buyer's Post-Conveyance Remedies. If URA commits a material default after URA conveys the Property to Buyer, Buyer may specifically enforce the obligations of URA under this Agreement, and seek monetary damages against URA.

7.8 Nonexclusive Remedies. The rights and remedies of this Agreement are exclusive, except as otherwise provided, and are in addition to other rights available at law or in equity. The exercise by either Party of one or more remedies will not preclude the exercise of any other remedies.

7.9 Force Majeur.

7.9.1 Neither a Party nor Party's successor in interest will be considered in breach of or in default for any obligation if the delay in performance of such obligations (the "Unavoidable Delay") is due to causes that are unforeseeable, beyond its control, and without its fault or negligence, including but not limited to acts of God, acts of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, delay in the issuance of necessary permits for the Project, malicious mischief, condemnation action, and unusually severe weather or delays of suppliers or subcontractors due to such causes beyond the control of such Party.

7.9.2 If there is any such Unavoidable Delay, the time or times for performance of the obligations of URA or Buyer will be extended for the period of the Unavoidable Delay. The Party seeking the benefit of this Section within 30 days after the Party becomes aware of the Unavoidable Delay must notify the other Party in writing of the delay and estimated time of correction.

7.10 Arbitration. All disputes arising pursuant to this Agreement or any additional documents contemplated by this Agreement must be settled by binding arbitration. One neutral arbitrator will be appointed in the accordance with Commercial Arbitration Association

rules. The arbitrator must have experience in the development and operation of mixed-use projects. The arbitrator will not have the power to amend this Agreement or to substitute for the judgment of a Party, but may determine whether a Party is acting reasonably if a Party is bound to act reasonably by this Agreement. The arbitrator will be directed to complete the arbitration within 30 days after the request for arbitration.

8. MISCELLANEOUS PROVISIONS

8.1 URA Project Manager. For the purposes of making determinations or revising provisions of this Agreement on behalf of URA, the URA will designate a Project Manager. Upon the initial execution of this Agreement, the URA Project Manager will be Jenni Lipscomb, Project Manager.

8.2 Discrimination. Buyer, for itself and its successor and assigns, agrees that during the construction of the Property Buyer will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.

8.3 Notice.

8.3.1 Any notice or communication under this Agreement by either Party to the other is deemed given and delivered (a) 48 hours after being dispatched by registered or certified U.S. mail; postage prepaid, return receipt requested, or (b) when received if personally delivered, and;

8.3.2 In the case of a notice or communication to Buyer, addressed as follows:

with copies to:

Ross Schultz, District Administrator
20 NW Washington
Sherwood, Oregon, 97140

8.3.3 In the case of a notice or communication to URA, addressed as follows:

Ross Schultz, District Administrator
20 NW Washington
Sherwood, Oregon, 97140

with a copy to:

or addressed in such other way that either Party may designate in writing dispatched as provided in this Section. Notice given in any other manner will be effective upon receipt by the Party.

- 8.4 Merger.** None of the provisions of this Agreement will be merged by reason of any Deed transferring title to the Property from URA to Buyer or any successor in interest, and any such Deed will not be deemed to affect or impair the provisions and covenants of this Agreement.
- 8.5 Headings.** Titles of the sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting its provisions.
- 8.6 Waivers.** No waiver by either Party of the performance, manner or time of any obligation of the other Party or any condition under this Agreement will be considered a waiver of any other rights of the Party making the waiver. No waiver by URA or Buyer of any provision of this Agreement or any breach will be of any force or effect unless in writing; and no waiver will be a continuing waiver.
- 8.7 Attorneys' Fees.** If a legal action, arbitration, or other proceeding including under U.S. Bankruptcy Code is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including any action for declaration of rights or rescission, the prevailing party is entitled to recover its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary, as determined by the judge or arbitrator, or on any appeal or review.
- 8.8 Choice of Law.** This Agreement is governed by Oregon law.
- 8.9 Calculation of Time.** All periods of time under this Agreement include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period will be extended to include the next day which is not a Saturday, Sunday or legal holiday.
- 8.10 Construction.** In construing this Agreement, singular pronouns mean and include the plural and the masculine pronoun includes the feminine and the neuter, as the context may require.
- 8.11 Legal Purpose.** Buyer agrees that it will use the Property solely for lawful purposes.
- 8.12 Severability.** If any clause, sentence or any other portion of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and

effect to the fullest extent permitted by law.

- 8.13 Entire Agreement.** This Agreement and the attachments are the entire agreement between the Parties. There is no other oral or written agreement between the Parties with regard to this subject matter. There is no oral or written representations made by either Party, implied or express, other than those contained in this Agreement.
- 8.14 Modifications.** Any modifications to this Agreement must be made in writing and executed by both Parties. The Parties recognize that circumstances may change and that it may be in the interest of both Parties that Agreement be amended from time to time. For this reason, each of the Parties will consider changes that may be proposed by the other during the term of this Agreement.
- 8.15 Successors and Assigns.** Subject to the provisions of Section 5, the benefits conferred by this Agreement, and the obligations assumed, inure to the benefit of and bind the successors and assigns of the Parties.
- 8.16 Place of Enforcement.** Any legal action to enforce or construe any provision of this Agreement by either Party must be brought in the Circuit Court of the State of Oregon for Washington County, or the United States District Court for the District of Oregon in Portland, Oregon.
- 8.17 Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, URA is not obligating itself or the City with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Property, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals that may be required.
- 8.18 Approvals.** Where approvals of URA are required, URA will approve or disapprove within 10 business days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary. Failure by URA to approve or disapprove within that period may be deemed approval. Any disapproval must state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to URA's sole discretion.
- 8.19 Approval by URA.** Unless specified to the contrary elsewhere in this Agreement as to a particular consent or approval, whenever consent or approval by URA is required under the terms of this Agreement, all such consents or approvals must be given in writing from the District Administrator of URA.

//

//

//

CITY OF SHERWOOD, a municipal corporation in the State of Oregon, acting by and through the Sherwood Urban Renewal Agency.

By: _____

By: _____

APPROVED AS TO FORM:
