RESOLUTION NO. 2026 - 05

A Resolution of the McMinnville Urban Renewal Board authorizing the McMinnville City Manager or designee to enter into and manage a Disposition and Development Agreement with Guardian Real Estate Services LLC for the redevelopment of the property at 904 NE 10th Avenue and 835 NE Alpine Avenue (Tax Lots R4421BA 03800 and R4421BA 03850).

RECITALS:

WHEREAS, the City of McMinnville created an Urban Renewal Area and adopted an Urban Renewal Plan for its downtown core and NE Gateway Area in 2013; and

WHEREAS, the Purpose of this area and plan was to assist in implementing the goals of the McMinnville Comprehensive Plan, the NE Gateway District Plan, and other planning documents, to help stimulate the economy, create a unique identity and sense of place, and to support local downtown businesses and development of the downtown and the NE Gateway area; and

WHEREAS, some of the McMinnville Urban Renewal Agency's (Agency) goals are to encourage the economic growth of the McMinnville Urban Renewal Area (Area) as the commercial, cultural, civic and craft industry center for McMinnville; to encourage a unique district identify both in the downtown commercial core and the Northeast Gateway area; and pursue development and redevelopment opportunities that will add economic, civic, craft industry and cultural opportunities for the citizens of McMinnville, economically strengthen the Area and attract visitors to the Area; and

WHEREAS, the subject site was identified in the City's adopted NE Gateway District Plan as a catalytic opportunity site for incentivizing the revitalization and redevelopment of the NE Gateway District; and

WHEREAS, the subject site became available for purchase when the existing industrial business and property owner of the site indicated their interest to shut down the business and surplus the site; and

WHEREAS, in order to achieve the goals of the McMinnville Downtown Urban Renewal Plan and NE Gateway District Plan, the Agency entered into an agreement with the City of McMinnville to purchase the properties at 904 NE 10th Avenue and 835 NE Alpine Avenue and reposition the industrial property for a mixed-use commercial and residential development; and

WHEREAS, the Agency chose the development team led by Guardian Real Estate Services to purchase and develop the property into an affordable housing project per the NE Gateway District Plan and NE Gateway Overlay District; and

WHEREAS, the City entered into a Memorandum of Understanding with Guardian Real Estate Services and the Housing Authority of Yamhill County to negotiate the terms of the disposition and development of the subject site; and

WHEREAS, the City and the development team led by Guardian Real Estate Services have successfully concluded their negotiations;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE McMINNVILLE URBAN RENEWAL AGENCY as follows:

1. The McMinnville City Manager or designee is authorized to sign the attached Disposition and Development Agreement with Guardian Real Estate Services, LLC for the redevelopment of the properties at 904 NE 10th Avenue and 835 NE Alpine Avenue on behalf of the McMinnville Urban Renewal Agency.

2. This resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Board Members of the McMinnville Urban Renewal Agency at a regular meeting held the 9th day of June 2026 by the following votes:

Ayes: Geary, Tucholsky, Benner, Peralta

Nays: _____

Approved this 9th day of June 2026.

_____
Sal Peralta, Urban Renewal Board Vice Chair

Approved as to form: _____
City Attorney

Attest: Claudia Cisneros
City Recorder

EXHIBITS:
A. Disposition and Development Agreement with Guardian Real Estate Services, LLC.

DISPOSITION AND DEVELOPMENT AGREEMENT

(NW RUBBER SITE - GUARDIAN)

This **DISPOSITION AND DEVELOPMENT AGREEMENT** (this "**Agreement**") is made as of _____, 2026, by and between the **Urban Renewal Agency of the City of McMinnville**, an Oregon municipal corporation ("**Agency**") and the **City of McMinnville,** an Oregon municipal corporation ("**City**") (collectively referred to herein as "**Owners**"), and **Guardian Real Estate Services, LLC,** an Oregon Limited Liability Company ("**Developer**"). Agency, City, and Developer are referred to jointly in this Agreement as the "**Parties**" and individually as a **"Party."**

RECITALS

A. The City adopted a NE Gateway Plan in 2012 with the intention of revitalizing the historic industrial center of McMinnville into a mixed-use residential, commercial, and light industrial neighborhood. In 2013, the City established Agency and adopted an urban renewal plan to implement the NE Gateway Plan. A large 3.54-acre active industrial site was identified as a critical opportunity site for redevelopment to help catalyze the revitalization of the area into a vibrant residential and employment area just north of the downtown.

B. On October 23, 2023, the City purchased the 3.54-acre site when the industrial owner indicated their interest in closing down the business and selling. That site, which is legally described on Exhibit A, is known to the Parties as the NW Rubber Site (as further defined in Section 2.1 below, the "**Property**"). The Property comprises two parcels, 904 NE 10th Street and 835 NE Alpine Street, extending from 8th Street to 10th Street along portions of Alpine Avenue. The City paid $4.25 million plus closing costs for the Property with a short-term $4.35 million loan from its wastewater fund. This loan was structured as an interest-only, five-year interfund loan that is callable after two years at 5.05% interest per annum with no penalty on pre-payment of the loan during its term. The City then entered into an Intergovernmental Agreement with the Agency to pay the loan interest with tax increment revenues generated within the Urban Renewal District. Agency has or will incur approximately $680,000 in maintenance costs for the Property through June 2026 and thereafter approximately $20,000 per month for the property interest-only payments, security, and utility contracts.

C. The Property was the site of the first industrial development in the area, originally containing a milk dispensary when built in 1908. The land was also used as a lumber yard, and in 1985, it became a facility for recycling rubber mat products when it was owned by Ultimate RB, eventually selling to North West Rubber USA, Inc. The site currently includes a 50,465 sq. ft. vacant warehouse and a 4,500 sq. ft. office building. The site has a railroad spur and loading docks.

D. In October and November 2023, the Agency invested in a Phase I and II environmental study, as well as a Hazardous Building Materials study. Those studies yielded information about potential and known contaminations on the site that would require a contaminated materials management plan if substantial digging occurred on the site. The Property reportedly contained a buried petroleum storage tank, reportedly decommissioned by a previous property owner by filling it with concrete (although no official documents have been found on the decommissioning), which may still exist in the northeastern portion of the Property. The Phase II environmental site assessment found hazardous substances in limited areas in the soil and groundwater exceeding regulatory screening

levels. The remediation plan and costs have not yet been determined. There may be potential federal or state funding for remediation of the site.

E. The Agency also conducted extensive community engagement and data analysis to understand and incorporate the community's vision for the NE Gateway area and the property into a future redevelopment project.

F. The Agency issued a Request for Qualifications ("**RFQ**") in July of 2024 seeking developers interested in redevelopment of the Property. The Property's zoning classification is NE Gateway Planned Development Overlay Zone 2, which allows residential, commercial, and light industrial uses. The Agency intends that the Project (defined below) will meet all of the standards and goals of the NE Gateway Planned Development Overlay ordinance (Ordinance No. 4971).

G. Developer is a leading West Coast mixed-use developer with over 20 years of experience, including two housing projects in McMinnville, Orchards Plaza and Villa West. On February 14, 2025, Developer submitted a proposal in response to the RFQ. Agency selected Developer to negotiate this Agreement based upon a selection process which included evaluation and scoring of proposals, interviews, and a public engagement open house. The City and Developer entered into a Memorandum of Understanding, dated January 14, 2026, as amended ("**MOU**"), to facilitate and provide for further due diligence, design development, and the negotiation of this Agreement.

H. In furtherance of the Urban Renewal Agency Plan, the City desires for Developer to purchase and develop the Property as affordable housing with approximately 150 to 171 affordable housing units ranging from fifty percent (50%) of area median income ("**AMI**") to sixty percent (60%) AMI, with no commercial space, and to encumber the Property with deed restrictions and covenants restricting the future use of the Property to affordable housing, and to build an open area that will serve as required open space for the housing project under the City's zoning code as well as be subject in whole or in part to a public access easement (as described in the Scope of Development in Exhibit C, the **"Project**").

I. By entering into this Agreement, Developer desires to commit itself, subject to the satisfaction of certain contingencies and contributions by Agency provided for herein, to acquire and develop the Property solely as the Project, in accordance with the terms of this Agreement.

J. City, in consideration of the commitments made by Developer in this Agreement, desires to convey the Property to Developer subject to the terms of this Agreement.

K. Developer's construction and operation of the Project on the Property in accordance with the terms of this Agreement, including without limitation the Scope of Development (Exhibit C) and Schedule of Performance (Exhibit D), are material inducements to City's conveyance of the Property to Developer.

L. The Parties are now prepared to enter into this Agreement, pursuant to which Developer will undertake acquisition of the Property and the construction and operation of the Project thereon. Agency will support the Project development in accordance with the terms and conditions set forth below.

M. The City finds that the fulfillment, generally, of this Agreement and the intentions set forth herein, are in the vital and best interest of the City and the health, safety, and welfare of its citizens.

AGREEMENT

This Agreement incorporates by this reference the Recitals, the Definitions, and all Exhibits and Schedules hereto. The Parties, in consideration of the agreements set forth herein and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, covenant and agree as follows:

1. DEFINITIONS

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given to it when it is first defined in this Agreement. Some defined terms are first defined in the text of this Agreement, and some are first defined in Exhibit J, which is a glossary of defined terms. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. If there is any difference between the definition of a defined term in the text of this Agreement and the definition of that term in Exhibit J, the definition in the text controls. Defined terms may be used in the singular or the plural.

2. GENERAL TERMS OF CONVEYANCE

2.1 **Purchase and Sale.** City agrees to sell and convey to Developer, and Developer agrees to purchase from City, the Property, subject to the terms, conditions, covenants, and restrictions set forth in this Agreement. The Property that is the subject of this Agreement consists of the following: The land comprising the Property, together with: (a) all rights, privileges, licenses, and easements appurtenant to the land owned by the City, including, without limitation, all minerals, oil, and gas on and under the land, as well as all development rights, air rights, water rights related to the land, and any other easements, private rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the land; (b) all improvements, equipment, fixtures, or other personal property of every kind located on the land, if any; and (c) any and all permits, warranties, development rights, intangible property, and any other similar personal property assets owned by the City with respect to the land and the improvements thereon.

2.2 **Conveyance of Property.** Upon satisfaction of the conditions precedent to conveyance in Section 2.10 hereof, subject to the terms and conditions of this Agreement, and upon payment by Developer to City of the Purchase Price, the City will convey the Property to Developer, pursuant to a Statutory Special Warranty Deed conveying the Property to Developer free and clear of all liens, claims, easements, charges, and encumbrances whatsoever except for the Permitted Exceptions, in substantially the form attached hereto as Exhibit B (the "**Deed**").

2.3 **Limitations on Conveyance.** City's conveyance of title to the Property will be subject only to the Final Permitted Exceptions and the Memorandum of Agreement.

2.4 **Purchase Price.** The "**Purchase Price**" for the Property shall be Four Million Seven Hundred Thousand Dollars ($4,700,000.00).

2.5 **Earnest Money.** Within three (3) business days after the Effective Date, Developer shall open an escrow with the Escrow Agent and shall deposit with Escrow Agent cash or by wire

transfer of funds or cashier's check in the amount of One Hundred Twenty-Five Thousand Dollars ($125,000.00) in earnest money (along with any additional earnest money provided for in this Agreement, the "**Earnest Money**"). After June 30, 2027, except in the event of City's or Agency's default, the Earnest Money is non-refundable. If Developer fails to effectuate Closing by June 30, 2028, in order to extend the outside Closing Date to June 30, 2029, Developer shall deposit with Escrow Agent additional Earnest Money in the amount of One Hundred Twenty-Five Thousand Dollars ($125,000.00), which additional Earnest Money shall be non-refundable except in the event of City's or Agency's default. The Earnest Money, along with any interest accruing on any such funds while in escrow, is applicable to and will be credited against the Purchase Price at Closing. Escrow Agent shall release Earnest Money to the City when it becomes non-refundable, *provided, however*, that such release does not in any way diminish the rights of Developer to the return of the Earnest Money in the event of City's or Agency's default.

2.6 **Closing.** The Closing shall occur in an escrow closing through Escrow Agent on a date selected by Developer (the "**Closing Date**") which date must be: (A) before June 30, 2028, or, if the outside Closing Date is extended per Section 2.5, before June 30, 2029; and (B) within sixty (60) days after Developer has closed on all Project Financing or the same date as the closing of Project Financing. Developer agrees to provide City with at least fifteen (15) days prior written notice of the Closing Date.

2.6.1 On or before the Closing Date, Owners shall deliver to Escrow Agent the following:

2.6.1.1 An original Deed, duly executed and acknowledged by City.

2.6.1.2 An original, duly executed Bill of Sale, in substantially the form of the attached Exhibit E, wherein Owners convey all of their tangible personal property associated with the Property to Developer.

2.6.1.3 A certificate, in substantially the form attached hereto as Exhibit F, confirming that the representations and warranties made by Owners in this Agreement remain true and correct in all material respects as of the Closing Date.

2.6.1.4 Owners' written escrow instructions to close escrow in accordance with the terms of this Agreement, and Owners' executed settlement statement as prepared by Escrow Agent and approved by Owners (as executed by all Parties, the "**Settlement Statement**").

2.6.1.5 An original non-foreign affidavit on the form required by Escrow Agent and in compliance with Internal Revenue Code section 1445 and the Oregon equivalent.

2.6.1.6 Such funds (by wire transfer), if any, as are necessary to pay City's share of allocations and prorations shown on the Settlement Statement.

2.6.1.7 Such documents as the Escrow Agent may require to establish the authority of Owners to complete the sale of the Property, and to issue title insurance in the form required by Developer, and such proof of the power and authority of the persons executing or delivering any instruments, documents, or certificates on behalf of Owners to act for and bind Owners, as may be required by Escrow Agent.

2.6.1.8 Such other documents, resolutions, consents, and affidavits reasonably necessary or advisable to effect the consummation of the transaction evidenced by this Agreement, including customary title affidavits and deliveries required by Escrow Agent in order to issue the title policy and documents reasonably requested by Developer.

2.6.2 On or before the Closing Date, Developer shall deliver to Escrow Agent the following:

2.6.2.1 Such funds (by wire transfer) as are necessary to complete the payment of the Purchase Price and to pay Developer's share of allocations and prorations shown on the Settlement Statement.

2.6.2.2 Developer's written escrow instructions to close escrow in accordance with the terms of this Agreement, and Developer's executed settlement statement as prepared by Escrow Agent and approved by Developer.

2.6.2.3 Such documents as the Escrow Agent may require to establish the authority of Developer to complete the purchase of the Property, and to issue title insurance in the form required by Developer, and such proof of the power and authority of the persons executing or delivering any instruments, documents, or certificates on behalf of Developer to act for and bind Developer, as may be required by Escrow Agent.

2.6.2.4 Such other documents, resolutions, consents, and affidavits reasonably necessary or advisable to effect the consummation of the transaction evidenced by this Agreement, including customary title affidavits and deliveries required by Escrow Agent in order to issue the title policy.

2.7 Title Review.

2.7.1 Within fifteen (15) days after the Effective Date, the City will deliver to Developer a preliminary title report for the Property from the Escrow Agent (including any updated title report, the "**Title Report**") together with legible and complete copies of all documents listed as exceptions to the Title Report.

2.7.2 Within thirty (30) days following Developer's receipt of the Title Report (the "**Title Review Period**"), Developer may object to any exceptions to title or other matters shown on the Title Report by giving written notice to Owners ("**Developer's Title Objections**")

and all such matters to which Developer so objects, including Monetary Encumbrances as defined below, shall be "**Non-Permitted Exceptions**." Any matters reflected on the Title Report to which Developer does not so object during the Title Review Period shall be "**Permitted Exceptions**." Mortgages, deeds of trust, tax liens, lender's liens, judgement liens, construction or mechanics liens, and any lien, encumbrance, or other exception that provides security for payment of a sum of money or that otherwise can be cured solely by the payment of money (other than title exceptions for taxes and assessments which are not delinquent, and as showing on any Title Report or update thereto are, collectively, "**Monetary Encumbrances**").

2.7.3 Within twenty (20) days of Developer's Title Objections, the City shall notify Developer in writing of its intention to remove or not remove the Non-Permitted Exceptions prior to Closing ("**City's Title Response**"), provided, however, that Owners, at their sole cost and expense, shall remove all identified Monetary Encumbrances on or prior to Closing. If the City notifies the Developer of its intention to remove some or all of the Non-Permitted Exceptions, City shall do so, or cause such removal(s) to occur, before Closing. If the City notifies the Developer of its intention not to remove some or all of the Non-Permitted Exceptions, or if no City's Title Response is provided within the 20-day period, unless an extension is requested by Owners and granted by Developer in writing, then Developer may, in its sole and absolute discretion, elect to either: (a) terminate this Agreement by giving the City notice of termination within twenty (20) days after receipt of the City's Title Response or after the end of the 20-day period; or (b) proceed to Close subject to any Non-Permitted Encumbrances (other than identified Monetary Encumbrances) which Seller does not elect to cause to be removed, cured, or insured around, in which event such Non-Permitted Encumbrances (other than identified Monetary Encumbrances) shall thereafter be Permitted Encumbrances. As used in this Section 2.7, "identified" means that Developer objected to the encumbrance in Developer's Title Objections or New Title Objections Notice, as applicable.

2.7.4 Owners covenant and agree that neither will cause or permit any additional exceptions to title to the Property beyond those exceptions existing as of the Effective Date without the prior written consent of Developer. If Owners or either of them breach this obligation, then City shall remove the additional exception(s) from title promptly upon a notice from Developer to Owners to remove the exception. If City fails to remove promptly any such additional exceptions within twenty (20) business days of such notice from Developer, in addition to any other rights and remedies available for breach of this Agreement, Developer may remove the exception and deduct the costs, fees, and expenses of removal from the Purchase Price if Developer acquires the Property.

2.7.5 Developer may obtain an update to the Title Report at any time prior to Closing and Developer shall promptly provide City with a copy of any such updated Title Report. Within ten (10) business days following its receipt of any updated Title Report (the "**New Exception Review Period**"), Developer may object in writing to the City to any exception to title or other matter shown on the updated Title Report that was not previously shown on a Title Report, including new Monetary Encumbrances (a "**New Title Objections Notice**"). If Developer provides no New Title Objections Notice within the New Exception Review Period, then any matters reflected in the updated Title Report shall be considered Permitted Exceptions, except for identified Monetary Encumbrances. Within ten (10) days of

New Title Objections Notice, City shall notify Developer in writing ("**New Objection Response**") of its intention to remove or not remove any such new Non-Permitted Encumbrances prior to Closing. If the City notifies the Developer of its intention to remove some or all of the new Non-Permitted Exceptions, City shall do so, or cause such removal(s) to occur, before Closing. If the City notifies the Developer of its intention not to remove some or all of the new Non-Permitted Exceptions, or if City provides no New Objection Response within the 10-day period, then Developer may, in its sole and absolute discretion, elect to either: (a) terminate this Agreement by giving the City notice of termination within twenty (20) days after receipt of the New Objection Response or the end of the 10-day period; or (b) proceed to Close subject to any new Non-Permitted Encumbrances (other than identified Monetary Encumbrances)in which event such new Non-Permitted Encumbrances (other than identified Monetary Encumbrances) shall thereafter be Permitted Encumbrances.

2.7.6 Any exceptions which Developer does not timely object to in writing or are accepted by Developer or otherwise deemed Permitted Exceptions under this Section 2.7, and any exceptions which Developer otherwise accepts at Closing, are the "**Final Permitted Exceptions**."

2.8 **Title Insurance, Survey, Property Taxes, and Closing Costs.**

2.8.1 The City, at its expense, shall provide Developer with a standard coverage ALTA Owner's Policy of Title Insurance, issued by Escrow Agent, covering the Property insuring Developer in the amount of Four Million Seven Hundred Thousand Dollars ($4,700,000) free and clear of encumbrances except the ALTA form standard exceptions and the Final Permitted Exceptions. Developer, at its option and its expense, may elect to obtain additional coverage, extended coverage, and any endorsements to such owner's policy of title insurance, and may elect to obtain any lender's title insurance, and the City agrees to execute any affidavits or other documents required by the Escrow Agent to enable Developer to obtain such coverage, policies, or endorsements.

2.8.2 Developer shall have the right, at its option and cost, to obtain an ALTA survey of the Property ("**Survey**") and, upon completion of any such Survey, a copy shall be supplied to City and Escrow Agent and the Title Report updated to reflect any matters set forth in the Survey.

2.8.3 Developer will pay the costs for recording the Memorandum of Agreement, the Deed, and any other documents required by Developer to be recorded. City shall pay the costs for recording any documents needed to remove Monetary Liens or other title encumbrances that Owners have opted to remove from title in accordance with Section 2.7 above.

2.8.4 Developer and the City shall each pay one-half (1/2) of any escrow fees charged by Escrow Agent.

2.8.5 All other Closing costs, if any, shall be allocated in accordance with the customary practice in Yamhill County, Oregon.

2.8.6 The Property is currently exempt from real property taxation due to City's ownership. Real property taxes and assessments will begin to accrue as of the date of delivery of the Deed to Developer. Developer shall be obligated to pay property taxes as required by law from and after the Closing Date subject to any applicable tax abatement.

2.9 **Due Diligence and Inspections.**

2.9.1 *Due Diligence Materials*. Within twenty (20) business days after the Effective Date, Owners shall deliver to Developer legible copies of any and all studies (including all environmental, property condition, seismic, and engineering studies), reports, site analyses, tests, engineers certificates, existing surveys, contracts, leases, licenses, permits, plans, specifications, drawings, warranties associated with the Property or personal property on the Property, maintenance records, utility account numbers and information, appraisals, title insurance policies, correspondence with governmental authorities, and any other documents related to the Property, the condition of the Property, or to the use, operation, or development of the Property, that either of the Owners has in its possession or control (collectively, the "**Due Diligence Materials**").

2.9.2 *Due Diligence Period; Notice of Satisfaction or Termination.* Separately from the title review process provided for in Section 2.7, between the Effective Date and six (6) months following the Effective Date (the "**Due Diligence Period**"), Developer may conduct or have conducted the Inspections (defined below), and perform such review of the Due Diligence Materials, as Developer deems necessary in its sole and absolute discretion to satisfy itself with respect to the condition of and its suitability for Buyer's intended use and other matters related to the Property or Project. If Developer is satisfied with the Property, its Inspections, and all Due Diligence Materials, as determined by Developer in its sole and absolute discretion, then Developer shall so notify City in writing, on or before 11:59 p.m. Pacific Time on the last day of the Due Diligence Period. If Developer does not timely notify Owners of Developer's satisfaction with its Inspections, the Property and all Due Diligence Materials, this Agreement shall automatically terminate (except for terms that expressly survive termination) and all refundable Earnest Money shall be promptly returned to Developer. Upon such termination: (i) this Agreement shall be null and void, (ii) Developer shall not be deemed in default, (iii) no Party shall have any further obligation to the other except as expressly stated to survive termination. If Developer does timely notify Owners of Developer's satisfaction with its Inspections, the Property, and all Due Diligence Materials, the Parties shall proceed to Close the purchase and sale of the Property in accordance with the terms of this Agreement.

2.9.3 *Inspections.* Developer may conduct any due diligence and inspections of the Property and the Project, including such physical, legal, and engineering inspections, tests, and investigations as it may deem necessary or desirable, including soils and environmental studies (collectively, the "**Inspections**"), including, without limitation, surveys, audits and studies, zoning, land use, environmental and geotechnical assessments, including any Phase I or Phase II environmental assessments under ASTM standards satisfying the requirements of "all appropriate inquiries" under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601 *et seq*, other physical or invasive

inspections and investigations, design review, financing, leasing markets, project feasibility, and related matters, tests, or studies.

2.9.4 *Non-Disclosure.* The results of Inspections of the Property undertaken by Developer shall not be disclosed to any third party or other governmental entity without the prior written consent of the City, unless such disclosure is required by law or is required in connection with obtaining any necessary permits or approvals; *provided, however*, that Developer may disclose such results to its design professionals, consultants, attorneys, and potential lenders and investors, provided that such parties have been advised of the foregoing confidentiality obligation.

2.9.5 *License to Conduct Inspections.*

2.9.5.1 Owners grant a license to Developer and its agents, representatives, consultants, and contractors (collectively with Developer, the "**Developer Parties**") to enter onto the Property to make such Inspections as Developer deems necessary or desirable, in Developer's sole and absolute discretion, and the Owners shall reasonably cooperate with Developer to complete any and all such Inspections in a timely manner. The scope and cost of Inspections shall be the responsibility of Developer except the shared cost of Environmental Due Diligence (defined in 2.9.6, below). If Developer approves the Property, its Inspections, and all Due Diligence Materials in accordance with Section 2.9.2, the Developer Parties shall still have the right to enter upon the Property to perform additional Inspections and otherwise evaluate and assess the Property and the Project following the expiration of the Due Diligence Period and up to the Closing or earlier termination of this Agreement; *provided, however*, that Developer shall no longer have the right to terminate this Agreement pursuant to Section 2.9.2. City agrees to cooperate with Developer in connection with Developer's Inspections and to promptly provide information and documentation in City's possession concerning the Property that Developer may request.

2.9.5.2 At any time when entering upon the Property to conduct Inspections, Developer shall carry insurance coverage in the types and amounts set in Section 4.6.4.

2.9.5.3 Developer shall indemnify, defend, and hold the City harmless from and against any claims, damages, or liability (including reasonable attorney fees) to the extent resulting from the Developer Parties' activities on the Property pursuant to this Agreement, and, to the extent caused by such activities of the Developer Parties, Developer shall repair and restore the Property to a condition that is as good as or better than the condition existing prior to commencement of the Inspections; *provided, however*, that Developer shall have no obligation to indemnify, defend, hold harmless, from or related to, or to repair or restore, any

condition of the Property discovered but not aggravated by Developer, nor from any losses, including, without limitation, loss of marketability of the Property, as a consequence of such unaggravated discovery or pre-existing condition or feature of the Property. Developer's repair and indemnity obligations in this Section 2.9.5.3 shall survive any termination of this Agreement for a period of one (1) year.

2.9.6 *Environmental Due Diligence.* Developer intends to perform such Inspections related to the environmental condition, compliance status, and environmental character of the Property as may be warranted, in Developer's sole and absolute discretion, including, without limitation (collectively, the "**Environmental Inspections**"): (a) Phase I and Phase II environmental site assessments performed in accordance with ASTM standards and satisfying the requirements of "all appropriate inquiries" under CERCLA, 42 U.S.C. §§ 9601 *et seq.*; (b) subsurface investigations including soil borings, test pits/trenching, soil and groundwater sampling, and installation and sampling of monitoring wells; (c) soil gas, vapor intrusion screening, and, if appropriate, indoor air and sub-slab sampling; (d) geophysical surveys (including ground penetrating radar or similar methods) to evaluate potential buried tanks, lines, debris, or other subsurface features; (e) inspections and assessments relating to underground/aboveground storage tanks, transformers and other electrical equipment, hazardous materials and hazardous waste management, and compliance with environmental permits; (f) building materials surveys as reasonably necessary for redevelopment (including asbestos-containing materials, lead-based paint, and PCB-containing materials); (g) review of governmental and regulatory files and records, prior reports, and historical uses; and (h) preparation of risk assessments, remedial options evaluations, and cost estimates.

2.9.6.1 The Parties agree that the Environmental Inspections specifically include boring on the Property estimated as of the Effective Date to cost Ninety-Three Thousand Dollars ($93,000.00) and City hereby consents to such scope and agrees to reimburse Developer for half (1/2) of the actual cost of such boring, up to a total City maximum reimbursement amount of Forty-Five Thousand, Five Hundred Dollars ($45,500.00), within thirty (30) days after receipt of an invoice from Developer.

2.9.7 *No Liens.* Prior to Closing, Developer shall not take any action that results in any liens or encumbrances being placed against the Property and, if any liens or encumbrances are placed against the Property as the result of Developer's actions, Developer shall cause them to be released by bond, payment, or otherwise as provided in Section 5.2.

2.9.8 *Financing.* Developer's obligations under this Agreement are expressly contingent upon Developer obtaining all public and private financing reasonably required to develop the Project, including, without limitation, affordable housing funding from the State of Oregon and funding administered by Oregon Housing and Community Services ("**OHCS**") (collectively, the "**Project Financing**"). Developer shall use commercially reasonable efforts to pursue such Project Financing; provided, however, that Developer shall have sole and absolute discretion to determine whether the terms and conditions of any proposed financing are acceptable. If Developer is unable to obtain Project Financing on such terms acceptable to Developer, Developer may terminate this Agreement by written notice to the City, and

upon such termination: (i) this Agreement shall be null and void, (ii) Developer shall not be deemed in default, (iii) no Party shall have any further obligation to the other except as expressly stated to survive termination, and (iv) any Earnest Money that has not yet become non-refundable shall be promptly returned to Developer. Owners acknowledge that the availability, timing, and terms of Project Financing are outside Developer's control, and agree that delays or failure to obtain such financing shall not constitute a default under this Agreement and shall not give rise to penalties or create additional termination rights in favor of the City.

2.10 **Conditions Precedent to Conveyance.**

2.10.1 *Conditions*. Developer and the City are not obligated to Close unless the following conditions ("**Condition(s) Precedent**") are satisfied to the reasonable satisfaction of the benefited Party. Except where a Party is entitled to act in its sole discretion, the Party benefited by a particular Condition Precedent shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied. The Parties shall act diligently and in good faith to satisfy Conditions Precedent over which they have control or influence.

2.10.2 *Mutual Conditions Precedent*. To the satisfaction of each of City and Developer:

2.10.2.1 Developer shall have (1) conducted a traffic impact analysis; and (2) obtained final, non-appealable land use approvals for the Project, if any, as required by City code, as modified or supplemented by Oregon State statute (currently contemplated to be a NE Gateway Design Review - administrative, Landscape Plan Review, and Multi-Unit Design Review - administrative) (the approved plans pursuant to such land use review by City in its regulatory capacity, the "**Approved Plans and Specifications**"); and (3) final, non-appealable building permits necessary to commence site work for the vertical construction of the Project have been issued, or will be ready to be pulled within forty-five (45) days after Closing, subject only to the payment of permit fees and SDCs, if any. "**Non-appealable**" means that no appeal shall have been filed, and the time for any such appeal shall have expired. If an appeal has been filed, it shall have been finally resolved, including the issuance of the appellate judgement, if any. In the event of the filing of an appeal, Developer may, by written notice to City, extend the Closing for a period not to exceed One Hundred Eighty (180) days before being required to make the election in Section 2.10.5 for non-occurrence of conditions. The Parties may mutually agree in writing to a longer extension of the Closing if needed to finally resolve any appeals.

2.10.2.2 If Developer chooses in its sole and absolute discretion to request a Determination Letter pursuant to Section 4.4 of this Agreement, Developer shall have received a final and unappealable determination issued by BOLI stating that the Project is not subject to PWR Laws.

2.10.2.3 Developer shall have secured financing (in any form, including debt, equity, public contribution or assistance, etc.) reasonably sufficient to pay the Purchase Price at Closing and to complete construction of the Project. At least ten (10) days prior to the scheduled date of Closing, Developer has provided reasonable evidence to City of such secured financing and that closing of Developer's construction financing for the Project shall occur concurrently with Closing under this Agreement. Such reasonable evidence may include, without limitation, copies of executed loan, grant, and tax credit commitments, and letters of intent acceptable to City and Developer, from construction sources and investors.

2.10.2.4 The Parties shall have agreed to the final form of the Deed and any other Closing documents necessary to close the financing or consummate this transaction as contemplated in this Agreement.

2.10.2.5 There shall be no pending claim, dispute, or litigation that prevents or is likely to prevent either City or Developer from performing their respective obligations under this Agreement or that is likely to have a material adverse impact on the Property or the intended development of the Project.

2.10.2.6 Neither Party shall be in default of any material term or condition of this Agreement, including the completion of each task specifically marked on the Schedule of Performance as to be completed as of Closing, nor, to the actual knowledge of the Parties without duty of inquiry, have any events occurred that with the passage of time would constitute a material default.

2.10.2.7 City shall have approved of any assignment under Section 7 of this Agreement. Assignments of Developer's interest satisfying the terms of Section 7.2 are preapproved.

2.10.2.8 Each of City and Developer shall have provided the other Party with reasonable proof that those executing this Agreement or any Closing documents on such Party's behalf have full authority to enter into and perform its obligations under this Agreement or such Closing documents.

2.10.2.9 The Parties shall have entered into a separate agreement establishing Developer's Payment in Lieu of Taxes ("**PILOT**") for the Project, reflecting an agreed upon annual payment by Developer to Owners if Developer's annual profit from the Project exceeds the threshold set in the PILOT agreement.

2.10.2.10 The Parties have agreed upon a form of the Public Access Easement and attached such form by amendment to this Agreement as a replacement Exhibit I.

2.10.3 *To Developer's Satisfaction*:

2.10.3.1 Developer shall have reviewed and approved in its sole discretion the results of its due diligence investigation of the Property and of Project feasibility including, without limitation, survey, title, geotechnical, environmental, land use, parking, and financing.

2.10.3.2 If Developer desires to do so, in its sole and absolute discretion, Developer has entered into a Prospective Purchaser Agreement with the Oregon Department of Environmental Quality with terms and conditions satisfactory to Developer in its sole and absolute discretion.

2.10.3.3 City holds title to the Property subject only to the Final Permitted Exceptions.

2.10.3.4 Escrow Agent shall have issued to Developer a binding commitment satisfactory to Developer to issue to Developer an ALTA Standard (or at Developer's option, Extended) Form Title Insurance Policy covering the Property, with any endorsements requested by Developer per Section 2.8.1, and subject only to the Final Permitted Exceptions. Any commitment for a Lender's Title Insurance Policy shall be (1) acceptable both to Developer and to any party identified by Developer that will provide a Mortgage or other financing on the Property for the Project (each, a "**Lender**") and (2) will be a commitment in at least the amount of the funding to be provided by any Lender in connection with the Project.

2.10.3.5 Developer shall have approved and accepted responsibility for constructing any offsite public improvements required by land use approvals for the Project, in writing in a form reasonably acceptable to both Developer and Owners.

2.10.3.6 Owners' representations and warranties stated in Section 2.11 herein shall be true and correct as of the Closing Date.

2.10.4 *To City's Satisfaction*:

2.10.4.1 Developer shall provide City with evidence that Developer (or its assignee pursuant to Section 7) is an entity duly organized and existing in or authorized to do business in the State of Oregon.

2.10.4.2 Developer's representations and warranties stated in Section 2.12 herein shall be true and correct as of the Closing Date.

2.10.4.3 Developer has provided a binding completion guaranty, executed by THOMAS B. BRENNEKE, an individual, for the benefit of Owners in substantially and materially the same form as any completion guaranties executed and delivered to construction lender(s) for the Project. The completion guaranty for the benefit of Owners will be subject to all rights and remedies of the construction lender(s) and shall not require Owner to disburse loan proceeds to the borrower or guarantors as a prerequisite to completing construction, regardless of whether the completion guaranties provided to the lender(s) include such a requirement. Notwithstanding the foregoing, Owners shall be prohibited from enforcing their guaranty unless and until the construction lender(s) have disbursed loan proceeds to the borrower or guarantor if the construction lender(s) are legally required to disburse such funds as a prerequisite to borrower's or guarantors' obligation to complete construction under the guaranty and other loan documents in favor of the construction lender.

2.10.5 *Elections upon Non-Occurrence of Conditions*. Except as provided below, if any Condition Precedent is not fulfilled to the satisfaction of the benefited Party (Developer for Section 2.10.3 or City for Section 2.10.4) or, separately, by each of the benefited Parties (for mutual Conditions Precedent in Section 2.10.2) on the earlier of (1) any date designated for satisfaction of the condition in the condition itself, or (2) the then-current Closing Date, subject to any extension that may granted pursuant to this Agreement or Unavoidable Delay and any associated extension granted pursuant to Section 9.8, then such benefited Party may elect to:

2.10.5.1 Terminate this Agreement, which termination shall become effective on the date (the "**Termination Date**") which is sixty (60) days after a written notice of termination is sent to the other Parties unless, before the sixty (60) day period ends, the relevant Party fulfills such condition or conditions to the reasonable satisfaction of the benefited Party or Parties, or if such condition or conditions cannot reasonably be satisfied within such sixty (60) day period, the relevant Party has begun and is diligently pursuing the fulfillment of such condition or conditions, and such condition or conditions are fulfilled within one hundred and twenty (120) days of the notice of termination. If, within such cure period, the relevant Party fulfills such condition or conditions to the reasonable satisfaction of the benefited Party or Parties, then the Closing Date shall be ten (10) business days after such fulfillment of the condition or conditions, or another date agreed upon by the Parties in writing; or

2.10.5.2 Waive in writing the benefit of that condition precedent to its obligation to perform under this Agreement, and proceed in accordance with the terms hereof; or

2.10.5.3 Extend the Termination Date by which the applicable condition may be satisfied, but only if the benefited Party agrees in writing to the extension.

2.10.6 *Termination Date*.

2.10.6.1 If all of the Conditions Precedent have not been satisfied, waived, or otherwise resolved pursuant to this Agreement by the Termination Date, and no further cure rights are available under this Agreement, then this Agreement shall automatically terminate on that date ("**Final Termination Date**") unless the failure of satisfaction of the Condition(s) Precedent is the result of an Unavoidable Delay, as described in Section 9.8 below. If Developer is diligently pursuing the satisfaction of the Condition(s) Precedent, Developer may extend the Final Termination Date twice, each for a period of twelve (12) months, exercisable by Developer providing City with written notice and depositing into escrow with Escrow Agent, for immediate release to City, a non-refundable payment of Two Hundred Fifty Thousand Dollars ($250,000) per extension not less than thirty (30) days prior to the then-applicable Final Termination Date. Any such extension payments will not be credited against the Purchase Price at Closing.

2.10.6.2 If the Agreement is terminated for failure of satisfaction of Conditions Precedent, and such failure is not the result of a default of this Agreement by a Party, then the obligations of the Parties to each other under this Agreement shall terminate and no Party shall have any other recourse against another Party for failure of satisfaction of the conditions precedent. If a Party is in default under this Agreement on the date this Agreement terminates or is terminated for non-satisfaction of the Conditions Precedent, then the rights and remedies accruing to the non-defaulting Party or Parties under this Agreement as a result of such default shall survive termination of this Agreement for a period of one (1) year.

2.11 Owners Representations and Warranties; AS-IS Sale; Environmental Waiver and Release.

2.11.1 To induce Developer to enter into and perform its obligations under this Agreement, the Owners each hereby make the following representations and warranties, upon each of which Developer is entitled to rely and has relied, and each of which is true in all material respects as of the Effective Date and shall be true as of Closing:

2.11.1.1 Other than as evidenced by the Environmental Reports, to the best of City's knowledge there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, release, or production of Hazardous Materials, or other dangerous or toxic substances or solid wastes on the Property, except in

compliance with Environmental Laws currently in effect, and City has not received notice of the release of any Hazardous Materials on the Property.

2.11.1.2 Each Owner has full power and authority to enter into and perform this Agreement in accordance with its terms, and each Owner has taken all requisite action in connection with the execution of this Agreement and the transactions contemplated hereby. Each of the individuals executing this Agreement on behalf of each Owner has full power and authority to execute and deliver this Agreement on behalf of such Party. This Agreement has been duly executed and delivered by each Owner and is a valid and binding obligation of each Owner, enforceable against such Party in accordance with its terms.

2.11.1.3 Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein, conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under, any bond, note, or other indebtedness, or any contract, indenture, mortgage, deed of trust, loan, organizational document, charter, lease, or other agreements or instruments to which one or both of the Owners is a party or subject to by law.

2.11.1.4 Neither of the Owners is a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

2.11.1.5 To City'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, the Owners ability to perform their obligations under this Agreement, or Developer's ability to develop the Project.

2.11.1.6 To City's knowledge, and except as disclosed in writing to Developer, the Property is in compliance with all applicable Laws, rules, regulations, ordinances, and other governmental requirements, including Environmental Laws.

2.11.1.7 Owners have not received or given any notice stating that the Property is in violation of any Laws.

2.11.1.8 There are no leases, licenses, occupancy agreements, or service contracts that affect the Property that are not terminable at Closing and there are no options to purchase the Property or rights of first refusal to purchase the Property.

2.11.1.9 As of the Effective Date, there are no material defaults by City under this Agreement or, to City's knowledge, events that with the passage of time would constitute a material default of City under this Agreement.

2.11.1.10 No representation, warranty, or statement of one of the Owners in this Agreement or any of the exhibits contains any untrue statement of a material fact or omits a material fact so as to make the statements of facts contained herein misleading.

2.11.1.11 "**City's knowledge**" shall mean the actual knowledge of each of the Owners' managerial and supervisory personnel having responsibility for the Property or the Project without any duty of inquiry.

2.11.2 *AS-IS Disclaimer*. Except for the (i) representations and warranties of City set forth in Section 2.11.1, and (ii) the warranties in the Deed, the sale of the Property hereunder is and will be made on a strictly "AS IS, WHERE IS, WITH ALL FAULTS" basis, without representations or warranties of any kind or nature, express or implied, by City or any of City's agents, employees, elected officials, managers, or contractors, including but not limited to any representations or warranties concerning physical, seismic, structural, legal, or presence of Hazardous Materials on or under the Property, or other environmental condition of the Property, or concerning any legal requirements, utilities, soils, groundwater, expenses, charges, liens, encumbrances, rights, or claims against or affecting or pertaining to the Property or any part thereof. If Closing occurs, Developer will acquire the Property solely on the basis of its own investigations of the Property, the title insurance protections afforded by the title policy, and the representations and warranties of City set forth in Section 2.11.1 and in the Deed. Developer acknowledges that, except for the representations and warranties of City set forth in Section 2.11.1 and in the Deed, it is not entitled to rely upon and has not relied on any City, or City agent, representative, attorney, or employee representation or warranty of any kind, verbal or written, express or implied, with respect to the Property, including but not limited to its fitness for any particular purpose, physical condition, environmental conditions, state of repair, safety, merchantability, accuracy of dimensions, structural soundness, compliance with legal and insurance requirements, and financial viability. Accordingly, except for claims arising from the representations and warranties of City set forth in Section 2.11.1 and in the Deed, and any obligation of City that expressly survives the Closing hereunder or expressly accrues following the Closing, Developer hereby unconditionally and irrevocably waives, as of Closing, any and all actual or potential claims and rights that may inure to Developer against City, and any of their respective elected officials, managers, employees, agents and their respective successors and assigns, regarding any form of representation or warranty, express or implied, relating to the Property, and completely releases and forever discharges such parties of and from any and all claims and demands whatsoever, in law or in equity, whether such claims are known or unknown, direct or indirect, fixed or contingent, which Developer may now have, had or may claim to have against City caused by or arising out of the foregoing matters, including, but not limited to, the environmental condition of the Property.

2.11.3 *Hazardous Materials Release*. Developer and anyone claiming by, through or under Developer hereby waives, upon the occurrence of Closing, its right to recover from and fully and irrevocably releases Owners, their elected officials, managers, employees, agents, successors and assigns, from any and all claims, responsibility, or liability that it may now have or hereafter acquire against any of them for any costs, loss, liability, damage, expenses, demand, action, or cause of action to the extent arising from or related to the condition, latent or otherwise, and the presence in the soil, structures, or surface and subsurface waters of materials or substances that have been or may in the future be determined to be Hazardous Materials.

2.11.4 Anything in this Agreement to the contrary notwithstanding, the terms of Sections 2.11.2 and 2.11.3 shall not be applicable to any waiver, release, claims, responsibilities, liabilities, costs, losses, damages, expenses, demands, actions, causes of action, or judgments arising from or related to (1) any falsity or breach by Owners of any representations or warranties set forth in Section 2.11.1 or in the Deed, (2) any breach by Owners of any obligation that expressly survives Closing or accrues following the Closing, or (3) any misrepresentation by Owners or by any of Owners' elected officials, managers, employees, agents or any of their successors or assigns.

2.11.5 City has given Developer material concessions regarding this transaction in exchange for Developer agreeing to the provisions of Section 2.11.3.

2.12 **Developer Representations and Warranties.**

Developer hereby makes the following representations and warranties, upon each of which the City is entitled to rely and has relied, and each of which is true in all material respects on the Effective Date and shall be true as of the Closing:

2.12.1 Developer has full power and authority to enter into and perform this Agreement in accordance with its terms, and Developer has taken all requisite entity action in connection with the execution of this Agreement and the transactions contemplated hereby.

2.12.2 As of the Effective Date, there are no material defaults by Developer under this Agreement or events that, to Developer's knowledge, with the passage of time would constitute a material default of Developer under this Agreement. Each of the individuals executing this Agreement on behalf of Developer has full power and authority to execute and deliver this Agreement on behalf of Developer. To Developer's knowledge, this Agreement has been duly executed and delivered by Developer and is a valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

2.12.3 To Developer's knowledge, neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein, conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under, any bond, note, or other indebtedness, or any contract, indenture, mortgage, deed of trust,

loan, organizational document, charter, lease, or other agreements or instruments to which Developer is a party.

2.12.4 Developer enters into this Agreement without reliance upon any representation of any kind by Owners, their employees, agents, or consultants regarding any aspect of the Property, the Project, its feasibility, financing, or compliance with any governmental regulation, except as set forth in Section 2.11.

2.12.5 No representation, warranty, or statement of Developer in this Agreement or any of the exhibits contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

2.12.6 "**Developer's knowledge**" shall mean the actual knowledge of each of the Developers' managerial and supervisory personnel having responsibility for the Project.

2.13 **Survival**. The representations and warranties of the Parties set forth in Sections 2.11 and 2.12 shall survive the Closing for a period of twelve (12) months.

3. OFFSITE IMPROVEMENTS AND UTILITIES

3.1 **Offsite Improvements**. Developer shall bear the costs for offsite public improvements required by the City in its regulatory capacity as a result of land use or building codes, unless specifically waived or paid for by City.

3.2 **Utility Service**. Developer shall pay any costs of installation, connection, or the upgrade of utilities (including, without limitation, for bringing new utilities to serve the Project from the street to the Property) to the extent necessary to serve the Project (not including any costs for infrastructure exceeding what is needed to serve the Project), unless paid by the applicable public utilities.

4. DEVELOPMENT OF PROJECT

4.1 **Project Managers.** The "**Developer's Project Manager**" is Ben Bortolazzo, Vice President of Development of Guardian Real Estate Services LLC (Guardian), who may be supported by other Guardian staff or outside consultants. The "**City's Project Manager**" is Heather Richards, City of McMinnville Community Development Director, who may be supported by other City staff or outside consultants. The Parties agree that regular engagement by the City and Developer is essential to Project success. Outside of any meetings the City may require as the regulatory authority for land use approvals, the Parties agree that the Developer's Project Manager and the City's Project Manager shall coordinate regularly regarding the Project during the development of the Project. This will consist of telephone calls and may include in-person and on-site meetings as requested by Developer or the City. Prompt written notice of any re-designation of either Party's Project Manager will be provided to the other Party.

4.2 **Development and Use of the Property.**

4.2.1 *10-Year Use Restriction.* Developer agrees to complete all construction of the Project required by this Agreement. City shall have and exercise no control over the construction of the Project. Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof, that, for a period of at least ten (10) years commencing with the date of issuance of the Certificate of Completion, Developer and its successors and assigns will devote the Property to use consistent with the Scope of Development.

4.2.2 *Project Financing*. Developer will take commercially reasonable efforts to obtain all financing necessary to acquire the Property from City and to construct the Project upon the Property.

4.3 **Diligent Completion.**

4.3.1 Subject to the terms and conditions of this Agreement, Developer covenants to diligently complete the Project in substantial conformance with the Approved Plans and Specifications and to materially comply with the Schedule of Performance (Exhibit D) subject to extension for Unavoidable Delay described at Section 9.8. In addition to Unavoidable Delay, if Developer is unable to meet the performance dates set forth in the Schedule of Performance, Developer and the City shall meet and may agree to appropriate extensions, in City's reasonable discretion.

4.3.2 Between Closing and the date on which City issues a Certificate of Completion (the "**Construction Period**"), Developer shall provide City with: (A) copies of any progress reports prepared by Developer's construction lender's construction manager that are provided to Developer; and (B) monthly written reports documenting progress toward completion of construction of the Project. During the Construction Period, Developer will designate in writing a Construction Project Manager who will be responsible for conducting monthly meetings with City's Project Manager and providing the monthly written report to City. The frequency of said meetings and reports may be adjusted upon mutual written agreement of City and Developer. Such reports shall be in a form reasonably acceptable to City.

4.4 **Prevailing Wage Rate Laws.**

4.4.1 Developer may at any time after the Effective Date, but before expiration of the Due Diligence Period, choose to submit this Agreement and information about the Project to the Oregon Bureau of Labor and Industries ("**BOLI**") for a determination letter from BOLI stating that Oregon prevailing wage rate laws, including ORS 279C.800-870 and related regulations (collectively, the "**PWR Laws**"), do not apply to this transaction or to the Project. Said determination letter shall be deemed final upon written confirmation from BOLI that no request for reconsideration was received by BOLI and the 21-day period in which to request a contested case hearing has expired without notice to BOLI of such a request (the "**Initial Final Determination Letter**"). Developer agrees to promptly provide City with a copy of the determination letter and written confirmation from BOLI set forth above upon receipt.

4.4.2 If the Initial Final Determination Letter concludes that the Project, as described in the initial request for a determination letter, is subject to PWR Laws, then the Parties may agree to revise this Agreement to revise the Scope of Development to exclude any portion of the Project causing the Project to not qualify for the affordable housing exemption from PWR Laws under ORS 279C.810(2)(d) (a "**Scope Change Amendment**"). Upon such amendment, Developer may choose to submit this Agreement, as amended, and information about the revised Scope of Development of the Project to BOLI for a determination letter stating that PWR Laws do not apply to the revised scope of the Project. Said determination letter shall be deemed final upon written confirmation from BOLI that no request for reconsideration was received by BOLI and the 21-day period in which to request a contested case hearing has expired without notice to BOLI of such a request (the "**Revised Final Determination Letter**"). Developer agrees to promptly provide City with a copy of the determination letter and written confirmation from BOLI set forth above upon receipt.

4.4.3 If (A) the Revised Final Determination Letter concludes that the Project, as revised pursuant to Section 4.4.2, is subject to PWR Laws, or (B) if the Parties are unable to agree to the substance of a Scope Change Amendment within thirty (30) days after the Initial Final Determination Letter is issued by BOLI, then Developer, in its sole and absolute discretion, may choose to terminate this Agreement by written notice to City given within ten (10) business days after the end of such Scope Change Amendment thirty-day negotiating period or within ten (10) business days after of Developer's receipt of the Revised Final Determination Letter, as applicable, and any Earnest Money that has not become non-refundable shall be returned to Developer. If Developer does not so elect to terminate this Agreement, then any Party may notify the others within ten (10) days that it will employ legal counsel to assist in seeking a reversal of the Revised Final Determination Letter's conclusion that PWR Laws apply to the Project. If either Party elects to seek a reversal of the determination letter and provides notice to the other Parties within such 10-day period, then this Agreement shall only terminate if such efforts to reverse the conclusion that PWR Laws apply to the Project are unsuccessful, in which case the Agreement shall terminate on the date on which such conclusion that PWR Laws apply to the Project (as revised pursuant to Section 4.4.2) becomes final and unappealable, and any Earnest Money that has not become non-refundable shall be returned to Developer.

4.4.4 If Developer chooses not to obtain a determination letter, or proceeds with the Project after BOLI determines that the Project is subject to PWR Laws in a Revised Final Determination Letter, then Developer shall comply with all applicable requirements of ORS 279C.800 -870, including but not limited to payment of a fee to BOLI per ORS 279C.825 and requiring the inclusion of all provisions set forth in Schedule 4.4.4 in all Project contracts and subcontracts.

4.4.5 If the Property is conveyed to Developer in accordance with this Agreement and BOLI subsequently changes or repudiates its Final Determination Letter or otherwise seeks to enforce prevailing wage laws against City, or if a third party asserts a claim that the Project violates the prevailing wage laws, then Developer shall solely bear the economic impact of such reversal or claims, and indemnify, defend and hold City and Agency, and their respective officers, agents, consultants, advisors and employees, harmless from any such action, payments, or penalties.

4.5 **Inspection and Property Access.**

4.5.1 *Before Closing*. Before Closing, City shall permit Developer and Developer's agents to enter upon the Property for investigatory purposes as provided in Section 2.9.5.

4.5.2 *After Closing*. During the Construction Period, Developer's work shall be accessible at all reasonable times for inspection by City's representatives upon giving Developer not less than three (3) business days prior written notice (email being sufficient). Developer, at its option, may have City's representative accompanied by a Developer representative. This subsection 4.5.2 shall not limit City Building Official, Occupational Safety and Health Administration, or other required inspections conducted in the City's regulatory capacity. Except as otherwise allowed by City Code, City shall not interfere with the work occurring on the Property. By exercising any rights of access under this Section, City shall not have any responsibility to enforce any labor or safety related work rules or conditions arising from Developer's work, and City shall not exercise any control over Developer's construction of the Project except in City's regulatory capacity as it would for any construction project.

4.5.3 *Inspection and Retention of Records*. Developer grants City the right to inspect and photocopy any of Developer's books and electronic or paper records to the extent such records relate to the funding or other consideration valued in money (*i.e.*, waivers of fees) provided through this Agreement, at the City's expense. Developer agrees to provide the City with access to or copies of said books and records as soon as reasonably possible, but no later than ten (10) business days after written request from City (email being sufficient). Developer may choose to only provide access to, without the right to copy or photograph, any materials Developer reasonably considers to be confidential. Developer will retain all such books and records throughout the term of this Agreement and for a period not less than 10 (ten) years following issuance of the Certificate of Completion. The foregoing notwithstanding, Developer shall not be required to permit inspection or copying of any records protected by the attorney-client privilege. Subject to the Oregon Public Records Law, City agrees not to disclose confidential information provided by Developer, including but not limited to financial statements regarding Developer or the Project, and pro forma information. This nondisclosure provision shall survive the termination of this Agreement but shall not apply to the extent any such information is publicly available, has been disclosed by other parties or is required to be disclosed by a District Attorney or court under Oregon public records laws.

4.6 **Safety Matters; Indemnification; Insurance.**

4.6.1 *Safety*. Each Party with respect to its work shall take all commercially reasonable safety measures necessary to protect its employees, the other Party's employees, agents, contractors, subcontractors, licensees and invitees, and the personal property and improvements of each from injury or damage caused by or resulting from the performance of its construction.

4.6.2 *Liability Claims.* From the Effective Date and until City issues a Certificate of Completion for the Project in accordance with this Agreement, each Party performing work

as required by this Agreement will indemnify, defend and hold the other Party, and their respective officers, agents, consultants, advisors and employees, harmless from (1) all damages to the Project, or any portion thereof, (2) injuries to or death of any person or persons, including employees or agents of the other Party; and/or (3) any and all claims, demands, or workers' compensation claims, to the extent that any such damages, injuries, deaths, claims and/or demands under clause (1), (2) and/or (3) above result from the negligent or wrongful acts or omissions of the other Party, its employees, agents, contractors or subcontractors in completion with the construction or development of the Project; provided, however, that neither Party shall indemnify the other to the extent that such damage or injuries caused by the negligent or wrongful acts or omissions of the other Party or their respective officers, agents or employees. Each Party will provide prompt notice to the other Party of any claim to be asserted against the other Party under this indemnification provision; City's indemnities set forth in this Section 4.6 are limited to the extent provided by applicable law.

4.6.3 *Indemnity from Liens.* Each Party shall indemnify, defend, and hold the other Parties harmless from and against all mechanics, materialmen's, and laborer's liens arising from the construction performed by or at the request of a Party or a Party's contractors(s) or agent(s) on the Property, and shall pay all mechanics, materialmen, and laborers promptly such that no such liens shall burden the Property or the Project.

4.6.4 *Insurance*.

4.6.4.1 Within ten days after the Effective Date, Developer will obtain at its sole cost and maintain for the period ending on the date when a Certificate of Completion is issued in accordance with this Agreement, a policy or policies of broad form commercial general liability insurance, or an occurrence basis, written or ISO Form CG 00 01 (12/4 or later) or equivalent reasonably satisfactory to legal counsel for City, naming City, and its officers, agents and employees as additional insurers. Developer shall furnish acceptable certificates of insurance and additional insured addendum to City. Such policy or policies shall provide coverage not less than provided in the broad form commercial general liability insurance policy covering liability with respect to claims and suit for bodily injury, property damages or personal injuries arising from or related to operations of Developer, its officers, agents or employees. The coverage shall be in the amount of two million dollars ($2,000,000) for each occurrence and three million dollars ($3,000,000) general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of two million dollars ($2,000,000) per occurrence, Fire Damage (any one fire) in the minimum amount of fifty thousand dollars ($50,000), and Medical Expense (any one person) in the minimum amount of ten thousand dollars ($10,000). Developer will obtain a Builders Risk/Course of Construction policy that includes the City of McMinnville as a named insured, and which limit will match the total replacement value of all newly constructed buildings at the site and should cover all direct causes of loss, including earthquake and flood. Developer will also provide a

pollution liability policy with a limit of two million dollars ($2,000,000). Said policy or policies must also contain a provision that no termination or cancellation will be effective until after ten (10) days' notice thereof has been given in writing to City. Developer will give to City prompt and timely notice of claim made or suit instituted arising out of Developer's operations hereunder.

4.6.4.2 Coverage provided hereunder by Developer must be primary insurance and not contributing with any insurance maintained by City, and the policy must contain such an endorsement. Developer shall furnish City with a Certificate of Insurance evidencing such coverage prior to commencing construction of the Project.

4.6.4.3 Developer shall, until City issues the Certificate of Completion, effect and maintain Builders All Risk Insurance and fire insurance with extended coverage and malicious mischief coverage upon the structures on which Developer is working under this Agreement to 100% of the insurable value thereof, protecting Developer's interest in the work. "Interest" as used herein means Developer's property interests in the Project and the property interests of others for which Developer is responsible on the Project, in all materials and supplies entering into or destined for use therein and in all expendable items of equipment which are used in or are incidental to, but which do not become a part of the finished Project, if located at the job site at the time of loss or damage.

4.7 **Environmental Clean Up of Property**.

4.7.1 As a material inducement to Developer to acquire and develop the Property in accordance with this Agreement, City agrees to reimburse Developer for the City's share of Environmental Clean-Up Costs (defined below) as follows:

4.7.1.1 Developer to pay the first Five Hundred Thousand Dollars ($500,000) of the Environmental Clean-Up Costs;

4.7.1.2 For any Environmental Clean-Up Costs above five hundred thousand dollars ($500,000.00) but below seven hundred and fifty thousand dollars ($750,000.00), City will pay one half (1/2) and Developer will pay one half (1/2);

4.7.1.3 City will pay any Environmental Clean-Up Costs above seven hundred and fifty thousand dollars ($750,000.00) and below one million dollars ($1,000,000.00); and

4.7.1.4 Developer will pay Environmental Clean-Up Costs above one million dollars ($1,000,000.00).

4.7.2 City will reimburse Developer for its share (provided in Section 4.7.1) of Environmental Clean-Up costs within thirty (30) days of receipt from Developer of

documentation reasonably required by City of the Environmental Clean-Up costs actually incurred if, prior to commencement of the Environmental Clean-Up related to such invoice, City had consented in writing to the scope and anticipated cost of such Environmental Clean-Up. Developer shall provide the scope and anticipated cost of proposed Environmental Clean-Up for City's review and consent at least fifteen (15) business days prior to commencement of such work and City agrees to provide its response or consent within five (5) business days after receipt. The City's consent shall not be unreasonably withheld, conditioned, or delayed, and the only basis for determining whether withholding, conditioning, or delaying such consent is reasonable or unreasonable shall be whether such scope is required for development of the Project and whether the anticipated cost is reasonably within the market rate for performance of the Environmental Clean-Up. Developer shall not submit for reimbursement of incremental costs more frequently than monthly.

4.7.3 "**Environmental Clean-Up Costs**" means all costs related to remediation of environmental conditions at the Property or related to construction of the Project which would not otherwise be incurred but for the existence of environmental contamination in, on, under and about the Property, and that are reasonably incurred by Developer in responding to, investigating, managing, or remediating environmental contamination at the Property in compliance with applicable Laws or governmental requirements, as determined by Developer in its commercially reasonable judgment, including: (a) soil off-haul and disposal; (b) environmental testing of materials (including soil and groundwater) removed from the Property if and as required by applicable law or a disposal facility; (c) environmentally required materials and equipment such as demarcation fabric; (d) dust and track-out control; (e) management of soil piles; and (f) any specialty clothing needed for workers performing soil removal or other remediation work. In other words, "Environmental Clean-Up Costs" are costs and expenses in excess of costs that would be incurred by Developer as a result of the existence of environmental contamination in, on, under and about the Property, including in each cost category described in subsections (a) through (f) of this Section 4.7.3.

5. ENVIRONMENTAL INDEMNIFICATION; LIENS; CERTIFICATE OF COMPLETION PROCESS

5.1 **Environmental Indemnification.** Each Party shall comply with all Environmental Laws with respect to its construction, any related demolition, and the operation of the Project, subject to the limits on City's liability under Laws. Each Party shall defend, indemnify and hold harmless the other Party, their successors and assigns, 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 the other Party, their successors or assigns, or asserted against the other Party, their successors or assigns, by any other party or parties, including, without limitation, a governmental entity, to the extent arising out of or any violation of Environmental Laws by such other Party, except to the extent caused by the negligence or willful misconduct of the other Party or the falsity of the other Party's representations and warranties in this Agreement. The indemnities set forth in this Section 5.1 shall survive both Closing and the issuance of the Certificate of Completion in perpetuity but shall not limit any rights of contribution that the Parties may have against others under applicable Laws or agreement, subject to and limited by the allocation of liability for Environmental Clean-Up Costs set forth in 4.7.1, above. The indemnities are intended only as an allocation of responsibility between the parties to this Agreement.

5.2 **Liens.** If, after the Effective Date and before the Certificate of Completion is issued, any statutory lien shall be perfected against any portion of the Property or Project by reason of labor, services, or materials supplied to or at the request of a Party or pursuant to any construction on the Project, the Party for whom the labor, services, or materials related to such lien was supplied shall, within sixty (60) days after the perfection of the lien, do whatever is necessary and proper (including posting a bond or a cash deposit and taking such further action required by the Oregon Construction Lien Law), so that the Property and the Project shall thereafter be entirely free of the lien. Alternatively, such Party may elect to leave the lien of record and to contest its validity, amount, or applicability by appropriate legal proceedings, but only if such Party shall, within the sixty (60) day period following the perfection of the lien, furnish a bond or an indemnity against such lien in an amount and form satisfactory to induce the title insurance company which insured title to the Project to insure over such lienor to reissue or update its existing policy, binder, or commitment without showing any title exception by reason of such lien; provided, further, that in such event (i) such Party shall indemnify and save harmless the other Party from all loss, damage, liability, expense, or claim whatsoever (including attorney fees and other costs of defending against the foregoing) resulting from the assertion of any such lien, and (ii) in the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to the Party, such Party shall within ten (10) business days thereafter cause the lien to be discharged and removed from title to the Property.

5.3 **City and Other Governmental Permits.** Before commencement of construction or development of any buildings, structures, or other works or improvements on Property, Developer shall, at its own expense, secure or cause to be secured any and all land use and other permits which may be required by Laws for construction, development, or work on Property. City will provide reasonable assistance to Developer in securing such permits that Developer is required to secure.

5.4 **Local, State, and Federal Laws.** Each Party shall carry out its work on the Property in compliance with all applicable Laws.

5.5 **Taxes and Assessments.** Subject to any PILOT Agreement entered into by the Parties pursuant to Section 2.10.2.9, Developer shall pay, prior to delinquency, all real estate taxes and assessments properly assessed and levied, if any, on the Property after conveyance by City. Developer shall defend and hold harmless City, its successors and assigns against any liability or claim with respect to real estate taxes or assessments in connection with the Property accruing after Closing. Nothing herein shall prohibit or limit Developer from contesting or challenging the validity or amounts of any real property tax. Developer may contest or challenge the validity or amount of any such tax provided such challenge or contest is taken in accordance with applicable law and within a reasonable time.

5.6 **Certificate of Completion.**

5.6.1 *When Developer is Entitled to Certificate of Completion*. When the project is substantially complete (defined below), City will furnish Developer with a Certificate of Completion, substantially in the form attached hereto as Exhibit H. The Project will be deemed to be "substantially complete" when (a) City reasonably determines that it is complete according to the Approved Plans and Specifications, except for punch list items which do not materially affect the use of the Project for the purposes intended under this Agreement (*i.e*., for providing affordable housing), and (b) the City in its regulatory capacity has issued a

temporary or permanent Certificate(s) of Occupancy or its equivalent with respect to the Project.

5.6.2 *Meaning and Effect of the Certificate of Completion*. The Certificate of Completion will represent City's conclusive determination that Developer has satisfactorily completed the construction required by Developer under this Agreement, and will so state. It shall provide for termination of construction obligations under this Agreement and limitation of remedies of City as expressly provided for therein. The Certificate of Completion will not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any Mortgage, or any insurer of any Mortgage, nor will it constitute a certificate of occupancy or evidence thereof under the building permit or City codes. After issuance of the Certificate of Completion, neither Owners nor any other person will have the rights, remedies, or controls with respect to the Project that it would otherwise have had or been entitled to exercise under this Agreement and this Agreement shall be considered terminated and completed in all respects, *except* that the indemnities and obligations set forth in Sections 4.2.1, 4.4.5, 8, 9, 10, and those this Agreement explicitly identifies as surviving shall survive issuance and recordation of the Certificate of Completion for the Project.

5.6.3 *Form of Certificate of Completion; Procedure For City Refusal to Issue*. The Certificate of Completion shall be in a form that can be recorded in the real property records of Yamhill County. If City refuses or fails to provide a Certificate of Completion in accordance with this Section 5.6, then City, within fifteen (15) days after written request by Developer for such Certificate of Completion, shall provide Developer with a written statement indicating in detail in what respects Developer has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts Developer must take or perform to obtain such Certificate of Completion. Upon receipt of such detailed statement from City, and unless Developer disagrees with the City's assertions or statements, in which case the process in Section 5.6.3.1 below will apply, Developer shall complete the improvements or cure the alleged default in a manner responsive to the stated reasons for disapproval. City's failure to furnish Developer with a detailed written statement under this Section 5.6.3 within such fifteen (15) day period shall be deemed City's approval of Developer's request for the Certificate of Completion. City will not unreasonably withhold, condition, or delay the Certificate of Completion.

5.6.3.1 If Developer disagrees with City's assertions or statements, Developer shall provide written notice of such disagreement, and the Parties shall promptly meet and confer in good faith to resolve the issue. If the Parties are unable to resolve the disagreement within fifteen (15) business days after Developer's notice, Developer may submit the disputed matter to an independent engineer, architect, or other qualified professional proposed by Developer to City, and City shall, in its sole but reasonable discretion, approve or reject such proposed professional within five (5) business days, such approval not to be unreasonably withheld, conditioned, or delayed. In rejecting a proposed professional, City shall propose an alternative qualified professional to Developer, and Developer shall, in its sole but reasonable discretion, approve or reject such proposed professional within five (5) business days, such approval

not to be unreasonably withheld, conditioned, or delayed. Alternating proposals may continue until a qualified professional is agreed upon by the City and Developer. Once agreed upon, the professional shall consider the disagreement and make a written determination considering any written materials submitted by the Parties, and such written determination by the professional shall be final and binding absent manifest error, and City shall promptly issue the Certificate of Completion if such determination finds that the applicable requirements of this Agreement have been satisfied. If either Party fails or refuses to participate in such process or to timely approve or reject a proposed professional, the other Party's position shall prevail.

5.6.4 *Recording of Certificate of Completion*. Developer shall promptly record the Certificate of Completion in the Yamhill County Recorder's Office. After recordation of the Certificate of Completion, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Project or Property will not (because of such interest in the Project or Property) incur any obligation or liability under this Agreement, except as otherwise provided in this Agreement.

5.7 **Easements**.

5.7.1 *Public Access Easement*. Developer agrees to execute and record an easement for public access to the open space created as part of the Project encompassing the real property commonly known as "tax lot 3805" (the "**Public Access Easement**"), such easement to: (A) contain terms substantially consistent with the terms attached hereto as Exhibit I; (B) be in a form negotiated by the Parties and attached by amendment to this Agreement as a replacement Exhibit I prior to Closing; (C) be recorded on "tax lot 3805" before City is obligated to issue the Certificate of Completion.

5.7.2 *Easements*. Developer agrees to execute and record any and all easements for water line, stormwater maintenance, public utilities, stormwater access, and any and all other easements and/or agreements legally allowed to be required by the City in its regulatory capacity as a result of land use or building codes, in forms acceptable to the City, prior to City's issuance of the Certificate of Completion.

6. ASSISTANCE BY CITY.

6.1 **General Assistance.** City will assist Developer in obtaining any and all land use, building permit, or other governmental approvals necessary to commence construction and complete the Project. The Parties understand and agree that City cannot guarantee such approvals, but City shall use reasonable efforts in working with the City and any other parties necessary to accomplish the Project.

6.2 **Exemptions**.

6.2.1 City agrees that the Project would qualify for exemption from Transportation System Development Charges ("**SDCs**") and wastewater (also known as

Sanitary Sewer) SDCs per McMinnville Municipal Code ("**MMC**") 3.10.060.B for affordable housing projects. The amount of the SDC exemption will be recorded on the Property as a Certificate of Exemption upon issuance of the certificate of occupancy pursuant to MMC 3.10.060.B.2. If, within ten (10) years from the date the Certificate of Exemption is recorded, the Property ceases to be utilized for housing for low-income persons within the meaning of MMC 3.10.060.B.3, Developer shall be required to pay the City the amount of the exempted SDCs.

6.2.2 City agrees that the Project would qualify for exemption from the Construction Excise Tax ("**CET**") per MMC 3.30.040.A.3 and B.2.

6.3 **Financial Assistance.**

6.3.1 Owners agree to waive or pay directly fifty percent (50%) of all City building, planning, permitting, engineering, or similar fees related to or triggered by the Project (collectively, and expressly not including SDCs, the "**Permit Fees**"). Such fifty percent (50%) of the Permit Fees is referred to herein as the "**Waived Amount.**"

6.3.2 Developer will pay an amount equal to the Waived Amount towards Parks SDCs and Owners will waive or pay directly any remaining Parks SDC fees related to the Project.

6.4 **Condition Precedent.** It is a condition precedent to the obligations of Section 6.3 that, at the time of funding or waiving any amounts due, the Developer in not in default of the terms of this Agreement.

6.5 **City Covenants**. Each of Owners hereby covenants and agrees that between the Effective Date and Closing, Owners, at no cost to Developer, shall: (a) ensure that the Property is maintained in a manner consistent with current practices; (b) maintain reasonable and customary levels of liability and property insurance on the Property; (c) not create or acquiesce in the creation of liens or other exceptions to title other than the Permitted Encumbrances; (d) not lease, license, transfer, option, or convey its interest in the Property or any portion thereof nor any right therein, nor enter into or solicit any agreement granting to any person or entity any option to purchase or rights with respect to the Property or any part thereof; (e) not voluntarily take any action to render any of the representations or warranties of Owners materially incorrect or untrue; and (f) not enter into any maintenance, management, or service agreement that will remain in force and effect after the Closing Date.

7. ASSIGNMENT PROVISIONS

7.1 **Prior to Issuance of Certificate of Completion.**

7.1.1 Because City is a municipal corporation with authority to acquire, possess, and dispose of real property, City is uniquely benefited by completion of the Project. Developer is uniquely qualified to construct and manage the Project. Subject to Section 7.1.2, this Section 7.1 shall apply only to transfers of the Project that become effective prior to the issuance by City of a Certificate of Completion. Except as provided in this Section 7, Developer shall not partially or wholly dispose of, assign, or agree to dispose of or assign Developer's

interest in or obligations under this Agreement with respect to the Project without the prior written approval of City, to be granted in City's sole discretion, based on the following factors, which factors City may also choose to require as absolute conditions to such approval:

7.1.1.1 The transfer or assignment is not in violation of other provisions of this Agreement; and

7.1.1.2 Any proposed transferee or assignee shall have qualifications and financial responsibility equal to or superior to those of Developer as determined by Owners in their sole, any proposed transferee or assignee shall assume without limitation all unfulfilled obligations of Developer set forth in this Agreement, and Developer shall guarantee transferee or assignee performance hereunder in a form reasonably satisfactory to City; and

7.1.1.3 The transfer or assignment will not cause a material delay in the completion of the Project and will not materially change the Approved Plans and Specifications.

7.1.2 This prohibition will not apply to any of the following: (1) any contract for lease of individual residential units entered into prior to the issuance of a Certificate of Completion, provided such units may not be occupied prior to the issuance of the Certificate of Completion; and (2) sale of the Project at foreclosure (or a conveyance of the Property in lieu of foreclosure) pursuant to foreclosure thereof by a lender.

7.1.3 The provisions of this Agreement (including, without limitation, this Section) will not prevent the granting of easements, licenses, or permits to facilitate the development of the Project consistent herewith.

7.1.4 Developer shall not be relieved of its obligations under this Agreement by reason of such permitted transfer unless expressly agreed to in writing by City.

7.2 **Approved Pre-Completion Transfers.** Notwithstanding Section 7.1, and provided that Developer provides City with copies of all agreements related to a proposed transfer at least thirty (30) days' notice prior to the effective date of the proposed transfer, and provides to City any information reasonably requested by City to determine that such proposed transfer complies with the requirements of Sections 7.2.1 or 7.2.2, as applicable, Owners hereby consent to full or partial assignments as follows:

7.2.1 Any Mortgage(s) or other security interests or collateral assignments which Developer may cause to attach to the Project or Property for the purpose of securing loans of funds to be used for financing the acquisition of the Property, construction of the Project, or any other expenditures necessary and appropriate to develop the Property or Project under this Agreement; and

7.2.2 Any transfer to a partnership, limited liability company, corporation, or joint venture in which (a) Developer ultimately controls the day-to-day operations, whether through ownership, voting, or contractual management rights, or (b) Developer enters into a

property management contract and construction contract with the new entity, whereby Developer agrees to manage the construction and operation of the Project.

Developer shall not be relieved of its obligations under this Agreement by reason of any such permitted transfer unless expressly agreed to in writing by City.

7.3 **Transfers after Certificate of Completion; Surviving Obligations.** Subject to transferee's assumption of all Developer obligations remaining under this Agreement after City's issuance of a Certificate of Completion, Developer may transfer its interest or portions of its interest in this Agreement and/or the Project without restriction, consent, or approval by City, provided, however, that if Developer elects to sell the Project within the ten (10) years following City's issuance of the Certificate of Completion, Developer shall notify City of its intent to transfer all or a part of its interest in the Project including the proposed terms thereof no later than one hundred twenty (120) days prior to the date of such proposed transfer.

8. MORTGAGEE PROTECTION PROVISIONS

8.1 *Effect of Revesting on Mortgages*. Any reversion and revesting of the Property in City pursuant to this Agreement shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, any lien, Mortgage, or security interest authorized by this Agreement.

8.2 *Mortgagee Not Obligated to Construct*. Notwithstanding any of the provisions of this Agreement, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements of the Project or to guarantee such construction or completion; provided, however, that nothing in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee, or any owner of the Project whose title thereto is acquired by foreclosure, trustee sale, or otherwise, to devote that Project to any uses, or to construct any improvements thereon, other than those uses or Project improvements provided or permitted in this Agreement.

8.3 *Copy of Notice of Default Mortgagee*. If Owners deliver any notice or demand to Developer with respect to any breach of or default by Developer in its obligations or covenants under this Agreement, City shall at the same time send a copy of such notice or demand to each Mortgagee at the last address of such holder shown in the records of City, and if no such address is shown in City records, then as shown in any Mortgage of record.

8.4 *Mortgagee's Options to Cure Defaults*. After any default in or breach of this Agreement by Developer where Developer fails to cure or remedy said default or breach, then each Mortgagee may, at its option, cure or remedy such breach or default within sixty (60) days after passage of the latest date for Developer's cure of the default, and if permitted by its loan documents, add the cost thereof to the Mortgage debt and the lien of its Mortgage. If the breach or default is with respect to construction of the Project improvements, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the Project improvements, provided that the Mortgagee notifies City in writing of its intention to complete the Project improvements according to the Approved Plans and Specifications and expressly assumes Developer's obligations under this

Agreement. Any Mortgagee who properly completes the Project shall be entitled to issuance of a Certificate of Completion, following the procedures set forth in Section 5.6.

8.5 *Failure of Holder to Complete Improvements; City Purchase of Mortgage*. In any case where, one hundred eighty (180) days after default by Developer in completion of construction of Project improvements and notice from City to the applicable Mortgagee pursuant to Section 8.3, the Mortgagee has not exercised the option to construct afforded in Section 8.4, or has exercised such option but failed to proceed diligently with construction, City may purchase the Mortgage by making payment to the Mortgagee in the sum of all outstanding principal, interest, and other sums secured by the Mortgage. If the ownership of the Project has vested in the Mortgagee, City, if it so desires, will be entitled to a conveyance by quitclaim deed from Mortgagee to City upon payment to Mortgagee of an amount equal to the sum of the following: (a) the unpaid Mortgage debt at the time title became vested in the Mortgagee (less all appropriate credits, including those resulting from collection, application of rentals, and other income received during foreclosure proceedings); (b) all expenses with respect to foreclosure or deed in lieu of foreclosure; (c) the net expenses, if any (exclusive of general overhead), incurred by the Mortgagee as a direct result of the subsequent management; (d) the costs of any improvements made by the Mortgagee; and (e) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the Mortgage debt and such debt had continued in existence to the date of payment by City.

8.6 *Right of City to Cure Mortgage Default*. In the event of a Mortgage default or breach by Developer prior to the completion of the construction and the failure of the holder of any Mortgage to exercise its option to construct pursuant to Section 8.4, City may cure the default prior to completion of foreclosure. In such event, Developer will reimburse City for all reasonable and proper costs and expenses incurred by City in curing such default. City will also be entitled to a lien upon the Project to the extent of such costs and disbursements. Any such lien will be subject and subordinate to the construction financing Mortgage of the Project.

8.7 *Right of City to Satisfy Other Liens on the Site After Title Passes*. At any time between conveyance of title and issuance of a Certificate of Completion, if Developer has received written notice from City that there exist liens or encumbrances on the Project which are not permitted under this Agreement, and if Developer has failed after a reasonable time to challenge, cure, adequately bond against, or otherwise satisfy such liens or encumbrances, City may, but has no obligation to, satisfy such liens or encumbrances. In the event City satisfies any such lien or encumbrance, Developer will reimburse City in the amount of the payment by City plus interest in the amount often percent (10%) per annum. Any such payment by City will not remedy Developer's default under this Agreement for failure to satisfy such lien or encumbrance. However, nothing in this Agreement requires Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith contests the validity or amount thereof, and so long as such delay in payment does not subject the Project to forfeiture or sale.

8.8 *Amendments to Agreement Requested by Mortgagee*. Owners shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to or investment in Developer secured by a security interest in the Project or Property, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of, or the interest in the Project of, Owners hereunder. The

order of priority between the Memorandum of Agreement and any Mortgage shall be determined by an Intercreditor Agreement, if so requested by any Mortgagee.

9. DEFAULT; REMEDIES

9.1 Default and Cure.

9.1.1 *Default by Developer*. A default shall occur if, after all Conditions Precedent have been met or waived, Developer breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from City specifying the breach. Failure of Conditions Precedent shall not constitute a default but any such failure shall be subject to Section 2.10.5. In the case of a breach which cannot with due diligence be cured within a period of thirty (30) days and which does not represent an immediate or emergent health, life, or safety concern, a default shall occur without further notice from City if Developer does not commence the cure of the breach within thirty (30) days after Developer receives written notice from City and thereafter diligently prosecute to completion such cure.

9.1.1.1 A default also shall occur if Developer makes any assignment for the benefit of creditors, or is adjudicated as bankrupt, or has a receiver, trustee, or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment.

9.1.1.2 A default shall occur, and City shall be irreparably harmed by such default, if Developer or its assignee constructs or operates the Project in a manner materially inconsistent with the Approved Plans and Specifications. Developer shall not be in default hereunder for failure to pay any tax, assessment, lienor other charge if Developer in good faith is contesting the same and, if necessary to avoid foreclosure, has furnished an appropriate bond or other undertaking to assure payment in the event Developer's contest is unsuccessful.

9.1.1.3 A default shall occur if Developer breaches any material provision of this Agreement including, without limitation, Developer's failure to materially adhere to the Schedule of Performance for any deadline of the Schedule of Performance, subject to Unavoidable Delay as described in Section 9.8, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from City specifying the breach or, in the case of a breach which cannot with due diligence be cured within a period of thirty (30) days, if Developer shall not within such thirty (30) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure.

9.1.2 *Default by Owners*. A default shall occur if either of the Owners breaches any material provision of this Agreement including, without limitation, City's failure to adhere to the Schedule of Performance for any element of the Schedule of Performance, subject to

Unavoidable Delay as described in Section 9.8, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after City receives written notice from Developer specifying the breach or, in the case of a breach which cannot with due diligence be cured within a period of thirty (30) days, if City shall not within such thirty (30) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure.

9.2 **City's Pre-Conveyance Remedies.** If Developer defaults in any material term of this Agreement beyond any applicable cure period before Closing, City may, at its option and as its sole remedy, terminate this Agreement by written notice to Developer and retain any Earnest Money or other sums paid by Developer to Owners under this Agreement. If City terminates this Agreement as provided in this Section 9.2, then Developer shall deliver to City within thirty (30) days after such termination, copies of all Project market research, design documents, engineering documents, pro formas, and financial projections prepared by Developer or for Developer by unrelated third parties; and design and construction contracts may be used by City, without representation or warranty of any kind; and Owners at their own risk may use such materials in any manner that Owners deem appropriate with the consent of any party having approval rights thereover. Nothing in this Section shall obligate Developer to disclose matters protected by the attorney-client privilege.

9.3 **Restoration.** If, prior to acquiring the Property, Developer performs any construction activities on the Property and Developer fails to acquire the Property, Developer agrees to restore the Property to substantially the condition that existed prior to the time that Developer performed any activities thereon or to such other condition that City reasonably approves in writing.

9.4 **City's Post-Conveyance Remedies.** If Developer defaults after Closing, City may bring an action to specifically enforce Developer's obligations under this Agreement or seek monetary damages against Developer. In addition, City may enforce the terms of the Completion Guaranty provided under Section 2.10.4.3.

9.5 **Developer's Pre-Conveyance Remedies**. If Owners or either of them fail to perform any obligation under this Agreement before Closing, Developer may, at its option: (i) terminate this Agreement by written notice to City without waiving any cause of action Developer may have against Owners; (ii) specifically enforce the obligations of either of the Owners under this Agreement; and (iii) seek monetary damages against City.

9.6 **Developer's Post Conveyance Remedies.** In the event of a material default by Owners or one of them after Closing, Developer may specifically enforce the obligations of City or Agency as the case may be under this Agreement and seek monetary damages against City or Agency.

9.7 **Nonexclusive Remedies.** The rights and remedies provided by this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to any and all rights otherwise available at law or in equity. The exercise by either Party of one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default by the other Party, including, without limitation, the right to compel specific performance or for Owners to seek monetary damages. Any limitation of remedies set forth herein does not limit or affect the obligations of a Party under any contractual indemnities set forth herein.

9.8 **Unavoidable Delay.**

9.8.1 Neither a Party nor Party's successor in interest shall be considered in breach of or in default with respect to any obligation created hereunder or progress in respect thereto if the delay in performance of such obligations (the "**Unavoidable Delay**") is due to or arises from causes that are unforeseeable or beyond such Party's reasonable control, including but not limited to acts of God, war, acts of the public enemy, acts of the government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, or general sabotage or rationing or shortage of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, malicious mischief, condemnation action, delays of litigation, and severe weather or delays of suppliers or subcontractors due to such causes or any similar events and/or occurrences beyond the reasonable control of such Party.

9.8.2 It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of obligations shall be extended for the period of the Unavoidable Delay; *provided, however*, that the Party seeking the benefit of this Section shall use commercially reasonable efforts to notify the other Parties in writing of the cause or causes of the delay and the estimated time of correction within thirty (30) days after becoming aware of the Unavoidable Delay.

10. MISCELLANEOUS PROVISIONS

10.1 **Notice.**

10.1.1 Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered when actually delivered or upon refusal of delivery after being dispatched by: (a) registered or certified U.S. mail, postage prepaid, return receipt requested; (b) personal delivery; or (c) nationally recognized courier service (e.g. Federal Express); and:

10.1.2 In the case of a notice or communication to Developer, addressed as follows:

Guardian Real Estate Services
Ben Bortolazzo
Vice President of Development
320 NW 23rd Avenue
Portland, OR 97210

With a copy to:
Radler White Parks & Alexander
Attn: Powers
111 SW Columbia Street, Suite 700
Portland, OR 97201

10.1.3 In the case of a notice or communication to the City, addressed as follows:

City of McMinnville
Attn: Heather Richards
Community Development Director
231 NE Fifth Street
McMinnville, OR 97128

With a copy to:

City of McMinnville
Attn: David Ligtenberg,
City Attorney
230 NE Second Street
McMinnville, OR 97128

or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing dispatched as provided in this Section. Notice may be given by counsel to a party.

10.2 **Discrimination.** Developer covenants, for itself and its successor and assigns, that during the term of this Agreement and construction of the Project, it will not discriminate against any employee or applicant for employment on account of race, color, creed, religion, age, gender, sex, sexual orientation. marital status, national origin, ancestry or disability, and shall comply with the applicable requirements of 49 CPR Parts 26.7, 27.7, 27.9(b) and 37. Developer further covenants, for itself and its successors and assigns, that it will not discriminate against or segregate any person or group of persons in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property on account of race, color, creed, religion, age, gender, sex, sexual orientation, marital status, national origin, ancestry or disability, nor will Developer itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, or others in connection with the Property. The foregoing covenant will run with the land.

10.3 **Equal Employment Opportunity**. Developer must comply with all applicable provisions of Federal or state statutes and regulations and City ordinances concerning equal employment opportunities for persons engaged in the Project.

10.4 **Effect of Covenants.** The covenants established in this Agreement and the Deed(s) shall, without regard to technical classification and designation, be binding on and for the benefit of City, the City, Developer and Developer's successors and assigns, and any successors in interest to the Property or any part thereof. After issuance of the Certificate of Completion pursuant to Section 5.6, all of the terms, covenants, agreements, and conditions set forth in this Agreement will cease and terminate, and except for those terms, covenants and use limitations that, by their terms, are expressly intended to survive after the Certificate of Completion is issued. Upon Developer's or a Mortgagee's request, a release shall be executed by City and recorded at Developer's expense releasing the Project from the covenants of this Agreement that do not survive the Certificate of Completion.

10.5 **Public Communication.** The Parties agree that all public communications concerning the Project, e.g., press releases or information provided to the press and all substantive discussions with public agencies having jurisdiction over the Property or the Project, will be undertaken jointly by City and Developer and shall be subject to the prior approval of each of City and Developer. The foregoing notwithstanding, nothing in this Section shall prohibit Developer from participating in any discussions in connection with preparation for hearings before public agencies or other discussions with public agencies, if the City is not present and if the City was given notice of the proposed meetings and opportunity to attend them.

10.6 **Non-Merger.** None of the provisions of this Agreement are intended to or shall be merged by reason of any Deed transferring title to the Property from City to Developer or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement

10.7 **Headings; Interpretation of Agreement**. Titles of the Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. All Parties having had the opportunity to consult with an attorney regarding this Agreement, the Parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the Party that drafted the ambiguous provision. As used in this Agreement, "and/or" means either or both/all.

10.8 **Waivers.** Except as otherwise expressly provided in this Agreement, no waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by City or Developer of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

10.9 **Attorneys' Fees.** If a suit, action, or other proceeding of any nature whatsoever, including, without limitation, any proceeding 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, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

10.10 **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws.

10.11 **Venue.** Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Yamhill County, or the United States District Court for the District of Oregon in Portland, Oregon. The parties agree to submit to the jurisdiction of these courts.

10.12 **Time of Essence.** Time is of the essence of this Agreement. All obligations of City and Developer to each other are due at the time specified by the Agreement, as the same may be extended by mutual agreement of the parties in writing.

10.13 **Calculation of Time.** Except as otherwise expressly set forth in this Agreement, all periods of time referred to herein shall 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 shall be extended to include the next day which is not a Saturday, Sunday or legal holiday (each, a "business day" for all purposes under this Agreement).

10.14 **Construction.** In construing this Agreement: (a) singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require; (b) "shall" means mandatory and imperative; and (c) "including" means including without limitation.

10.15 **Legal Purpose.** Developer agrees that it shall construct the Project in compliance with all applicable laws and regulations and shall use the Project solely for lawful purposes.

10.16 **Severability.** If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the Parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

10.17 **Entire Agreement.** This Agreement and the exhibits and attachments hereto are the entire agreement between the Parties and supersede any and all prior agreements related to such subject matter, including the MOU. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations made by a Party, implied or express, other than those contained in this Agreement.

10.18 **Amendments and Modifications.** Any modifications to this Agreement shall 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 the 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. Owners may approve minor modifications to this Agreement without City Council or Agency Board approval. Minor modifications include:

10.18.1 Changes in the Schedule of Performance when deemed warranted by the City Project Manager which do not exceed one hundred eighty (180) days.

10.18.2 Changes to the Scope of Development that are reflected in any administrative land use review or building permit revision or modification approved by the City in its regulatory capacity.

10.18.3 Minor modifications that do not change the substantive content of the Agreement in a material way, and

10.18.4 The correction of errors or clerical matters.

10.19 **Successors and Assigns.** Subject to the provisions of Section 5, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.

10.20 **Good Faith and Reasonableness.** The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives a Party "sole discretion" or the Party is allowed to make a decision in its "sole judgment."

10.21 **Interpretation.** As a further condition of this Agreement, the City and Developer acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each Party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any Party.

10.22 **No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties.

10.23 **Approvals.** Unless specified to the contrary elsewhere in this Agreement as to a particular consent or approval, whenever consent or approval by City is required under the terms of this Agreement, all such consents or approvals shall be given in writing from the City Project Manager, or from such other staff as the City has designated. Whenever consent or approval by any Party is required under the terms of this Agreement, all such consents or approvals shall not be unreasonably conditioned, withheld, or delayed.

10.24 **No Construction Contract**. City is neither the contractor nor the developer of the Project. This Agreement is not intended to be a contract that provides for the construction by City of the Project, either directly with a construction contractor or through Developer. The rights and duties of Developer, the general contractor, and the subcontractors are or will be the subject of a separate contract or contracts to which City is not party.

10.25 **Non-Waiver of Government Rights.** By making this Agreement and delivery of the Deed, the City is specifically not obligating itself, or any other agency with respect to any discretionary action relating to development approvals or regulation of the operation of the improvements to be constructed on the Property, including but not limited to condemnation, re-zoning, variances, environmental clearances, or any other governmental approvals which are or may be required, except as otherwise expressly set forth herein.

10.26 **Time for Approvals.** Where this Agreement requires the approval of a Party, said Party will approve or disapprove within ten (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 a Party to approve or disapprove within said period of time shall be deemed approval. Any disapproval shall state in writing the reasons for such disapproval. Except when specifically set forth as subject to City "sole discretion," approvals will not be unreasonably conditioned, withheld or delayed.

10.27 **Confidentiality and Communication with Public.**

10.27.1 The City and Developer agree that all information submitted by Developer during the term hereof, except for any materials, documents, or information submitted as part of a land use and building permit process, is submitted on the condition that the City keep said information confidential. The City agrees not to disclose said confidential information provided by Developer, including but not limited to financial statements regarding Developer or the Project, and pro forma information. This nondisclosure agreement shall survive termination of this Agreement, but shall not apply to the extent any such information is publicly available, has been disclosed by other parties, or is required to be disclosed by the Yamhill County District Attorney under Oregon public records laws. Should a third-party request such confidential information from the City, the City will notify Developer not later than five (5) business days from the City's receipt of the request. Developer will be solely responsible to defend against disclosure should a third party challenge the nondisclosure of the confidential information. The City will cooperate with Developer if such a challenge is made by a third party.

10.27.2 Both Parties shall work in good faith to coordinate Project-related public communications, including press releases, statements to the media, and public testimony.

10.28 **Brokers.** Developer and City represent and warrant to one another that no commissions will be due any broker or entity in connection with the transactions contemplated by this Agreement.

10.29 **Conflicts of Interest; City's Representatives Not Individually Liable.** No elected or appointed official, officer, director, or employee of City shall have any personal interest, direct or indirect, in the Agreement, nor shall any such elected or appointed official, officer, director, or employee participate in any decision relating to the Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No elected or appointed official, officer, director or employee of City or Developer shall be personally liable, in the event of any default or breach by City or Developer or for any amount, which may become due on any obligations under the terms of the Agreement.

10.30 **Compliance with Federal Laws.** The Parties agree to comply with the terms of Internal Revenue Code Section 1445. Owners are not a "foreign person" as that term is used in Internal Revenue Code Section 1445 and City agree to furnish Developer with any necessary documentation to that effect.

10.31 **Recording of Memorandum of Agreement; Amended Memorandum of Agreement.** Within ten (10) business days after the Effective Date, City shall provide Developer with a duly executed and notarized copy of, and Developer shall record, the Memorandum of Agreement. The form of the Memorandum of Agreement is attached as Exhibit G to this Agreement. The order of priority between that instrument and any Mortgage entered into by Developer to finance the acquisition development of the Project shall be determined by an Intercreditor Agreement pursuant to Section 8.8, if so required by any Mortgagee. When City issues to Developer a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record an Amended Memorandum of Agreement to reflect the surviving covenants of this Agreement.

10.32 **No Third-Party Beneficiaries.** Subject to Section 8 (Mortgagee Protection Provisions) above, no person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

10.33 **ZONING AND LAND USE STATUTORY DISCLAIMER.**

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

10.34 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signatures may be made by DocuSign, e-signature, PDF facsimiles, or similar electronic means and such electronic signatures shall be conclusively deemed to be valid and binding as if given as an original.

[*Remainder of page intentionally left blank; Signatures follow*]

IN WITNESS WHEREOF, the Parties have executed this Agreement with the intent that it be effective as of the Effective Date.

GUARDIAN REAL ESTATE SERVICES, LLC,
an Oregon limited liability company

By: _____

Name: _____

Title: _____

Date: _____

CITY OF MCMINNVILLE:

By: _____

Adam D. Garvin, City Manager

Date: _____

MCMINNVILLE URBAN RENEWAL AGENCY:

By: _____

Adam D. Garvin, City Manager

Date: _____

LIST OF SCHEDULES AND EXHIBITS

Schedules:

Schedule 4.4.4 – Public Contracting Code Requirements for Public Improvement Projects

Exhibits:

Exhibit A – Property Legal Description

Exhibit B – Form of Special Warranty Deed

Exhibit C – Scope of Development

Exhibit D – Schedule of Performance

Exhibit E – Form of Bill of Sale

Exhibit F – Form of Owners' Closing Certificate

Exhibit G – Form of Memorandum of Agreement

Exhibit H – Form of Certificate of Completion

Exhibit I – Form of Public Access Easement

Exhibit J – Glossary of Defined Terms

SCHEDULE 4.4.4

PUBLIC CONTRACTING CODE REQUIREMENTS FOR PUBLIC IMPROVEMENT CONTRACTS OVER $50,000

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the Work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.

   (a) ORS 279C.580(3)(a) requires the prime Contractor to include a clause in each subcontract requiring Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the prime Contractor by the public contracting agency; and

   (b) ORS 279C.580(3)(b) requires the prime Contractor to include a clause in each subcontract requiring Contractor to pay an interest penalty to the first-tier Subcontractor if payment is not made within thirty (30) days after receipt of payment from the public contracting agency.

   (c) ORS 279C.580(4) requires the prime Contractor to include in every subcontract a requirement that the payment and interest penalty clauses required by ORS 279C.580(3)(a) and (b) be included in every contract between a Subcontractor and a lower-tier Subcontractor or Supplier.

2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the contract shall promptly be paid.

3. Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.

4. A notice of claim on Contractor's payment bond shall be submitted only in accordance with ORS 279C.600 and 279C.605.

5. Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

6. Contractor shall demonstrate to Owner that an employee drug-testing program is in place within ten (10) days of receiving a Notice of Award.

7. Pursuant to ORS 279C.515, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the Owner may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due

or to become due to Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or its surety from their obligations with respect to any unpaid claim. If Owner is unable to determine the validity of any claim for labor or material furnished, Owner may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

8. Pursuant to ORS 279C.515, if the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from Owner or Contractor, the Contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10 day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is thirty (30) days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.

9. As provided in ORS 279C.515, if the Contractor or a Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

10. Pursuant to ORS 279C.530, Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

11. Contractor shall employ no person for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, Contractor shall pay the employee at least time and one-half pay for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the Work is five (5) consecutive days, Monday through Friday; or for all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the Work week is 4 consecutive days, Monday through Friday; and for all Work performed on Saturday and on any legal holidays as specified in ORS 279C.540.

12. Pursuant to ORS 279C.540(2), the Contractor must give notice to employees who Work on this contract in writing, either at the time of hire or before commencement of Work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to Work.

13. The provisions of ORS 279C.800 to ORS 279C.870 relating to the prevailing wage rates will be complied with.

(a) The hourly rate of wage to be paid by Contractor or any Subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Contract shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840.

(b) The prevailing wage rates for public works contracts in Oregon, plus any amendments, in effect at the time a public improvement contract is executed apply to this project. If a public improvement contract is executed as anticipated, the applicable prevailing wage rates will be contained in the following publication: The January 5, 2028, Prevailing Wage Rates for Public Works Projects in Oregon. Such publications can be reviewed electronically at:

https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx

and are hereby incorporated as part of the Contract Documents.

(c) Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.

(d) The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner as required by the administrative rules adopted by the Commissioner.

(e) If Contractor or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.

14. Unless exempt under ORS 279C.836(4), (7), (8) or (9), before starting Work on this contract, or any subcontract hereunder, Contractor and all Subcontractors must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the amount of $30,000. The bond must provide that the Contractor or Subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836(2), unless the surety sooner cancels the bond. The surety may cancel the bond by giving thirty (30) days' Written Notice to the Contractor or Subcontractor, to the Construction Contractors Board and to the Bureau of Labor and Industries. When the bond is canceled, the surety is relieved of further liability for Work performed on contracts entered into after the cancellation. The cancellation does not limit the surety's liability for Work performed on contracts entered into before the cancellation. Contractor further certifies that Contractor will include in every subcontract a provision requiring a Subcontractor to file a public works bond with the Construction Contractors Board before starting Work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

(a) Unless exempt under ORS 279C.836(4), (7), (8), or (9), before permitting a Subcontractor to start Work on this public works project, the Contractor shall verify that the Subcontractor has filed a public works bond as required under this section or has elected not to file a public works bond under ORS 279C.836(7).

(b) Unless the Owner has been notified of any applicable exemptions under ORS 279C.836(4), (7), (8), or (9), the public works bond requirement above is in addition to any other bond Contractor or Subcontractors may be required to obtain under this contract.

15. As may be required by ORS 279C.845, Contractor or Contractor's surety and every Subcontractor or Subcontractor's surety shall file certified payroll statements with the Owner in writing.

(a) If Contractor is required to file certified statements under ORS 279C.845, the Owner shall retain twenty-five (25) percent of any amount earned by the Contractor on the public works project until the Contractor has filed with the Owner a certified statement as required by ORS 279C.845. The Owner shall pay the Contractor the amount retained within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements required by statute. The Owner is not required to verify the truth of the contents of certified statements filed by the Contractor under this section and ORS 279C.845.

(b) The Contractor shall retain twenty-five (25) percent of any amount earned by a first-tier Subcontractor on this public works contract until the Subcontractor has filed with the Owner certified statements as required by ORS 279C.845. The Contractor shall verify that the first-tier Subcontractor has filed the certified statements before the Contractor may pay the Subcontractor any amount retained. The Contractor shall pay the first-tier Subcontractor the amount retained within fourteen (14) days after the Subcontractor files the certified statements as required by ORS 279C.845. Neither the Owner nor the Contractor is required to verify the truth of the contents of certified statements filed by a first-tier Subcontractor.

16. All employers, including Contractor, that employ subject workers who Work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

17. All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.

18. The contract may be canceled at the election of Owner for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.

19. Contractor certifies that it has not and will not discriminate against minorities, women or emerging small business enterprises in obtaining any required Subcontractors, or against a business enterprise that is owned or controlled by, or that employs a veteran as defined in ORS 408.225.

20. Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.

21. In the performance of this contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.

22. As may be applicable, Contractor certifies that all Subcontractors performing construction Work under this contract will be registered with the Construction Contractors Board or licensed by the state Landscaping Contractors Board in accordance with ORS 701.035 to ORS 701.055 before the Subcontractors commence Work under this contract.

23. Pursuant to District Rule 137-049-0880, the Owner may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records relating to the Contract.

24. Pursuant to ORS 279C.510, if feasible and cost-effective and contract is for demolition, Contractor shall salvage or recycle construction and demolition debris.

25. Pursuant to ORS 279C.510, if feasible and cost-effective and contract is for lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site.

26. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state and local agencies, of which the Owner has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract:

    FEDERAL AGENCIES:

    - Agriculture, Department of
        - Forest Service
        - Soil Conservation Service
    - Defense, Department of
        - Army Corps of Engineers
    - Environmental Protection Agency
    - Interior, Department of
        - Bureau of Sport Fisheries and Wildlife
        - Bureau of Outdoor Recreation
        - Bureau of Land Management
        - Bureau of Indian Affairs
        - Bureau of Reclamation
    - Labor, Department of
        - Occupational Safety and Health Administration
    - Transportation, Department of
        - Federal Highway Administration
    - Homeland Security, Department of
        - Coast Guard

STATE AGENCIES:

- Agriculture, Department of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Land Conservation and Development Commission
- Occupational Safety and Health Division
- Soil and Water Conservation Commission
- State Engineer
- State Land, Department of
- Transportation, Department of
- Water Resources Board

LOCAL AGENCIES:

- City Council
- County Court
- County Commissioners, Board of
- Port Districts
- Metropolitan Service Districts
- County Service Districts
- Sanitary Districts
- Water Districts
- Fire Protection Districts

27. Contractor shall ensure Owner's compliance with all applicable provisions of ORS 279C.527 and OAR Chapter 330 Division 135 regarding green energy technology requirements for new or major renovations of public buildings costing over $5,000,000.

28. Once before the first payment and once before final payment is made of any sum due on account of the contract for a public work, Contractor or Contractor's surety and every Subcontractor with a Subcontractor's surety, shall file a statement with Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each classification of worker which Contractor or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement shall be verified by the oath of Contractor or Contractor's surety or Subcontractor or the Subcontractor's surety, that Contractor or Subcontractor has read such statement and certificate, knows the contents thereof, and that the same is true to Contractor's or Subcontractor's knowledge. A true copy of the certification or certifications required to be filed pursuant to this section shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries.

29. The following notice is applicable to Work involving excavation. "ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503) 232-1987."

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

PARCEL NO. 1:

Part of Blocks 19, 20, and 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 52° 34' 40" West 170.24 feet along the Northerly margin of 8th Street to the true point of beginning; thence North 41° 03' East 185.74 feet; thence North 17° 15' East 181.28 feet; thence North 72° 59' West 245 feet, more or less, to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 275 feet, more or less, along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 223 feet along said margin to the point of beginning.

PARCEL NO. 2:

Part of Block 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Easterly corner of Block 19, said Oak Park Addition; thence North 52° 34' 50" West 185.16 feet along the Southerly margin of 10th Street to an iron rod; thence continuing North 52° 34' 50" West 122.73 feet along said margin to the true point of beginning; thence South 41° 40' West 122.91 feet; thence North 48° 31' West 132 feet to the Easterly margin of the Southern Pacific Railroad; thence Northeasterly along said margin to the Southerly margin of 10th Street; thence South 52° 34' 50" East along said margin to the point of beginning.

PARCEL NO. 3:

Part of Blocks 19, 20, and 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 52° 34' 40" West 115.24 feet along the Northerly margin of 8th Street to an iron rod at the true point of beginning; thence North 37° 38' 40" East 112.19 feet to an iron rod; thence North 48° 25' 30" East 104.53 feet to an iron rod, said point also being the Southerly Southwest corner of that tract of land conveyed to William A. Krueger, et ux by Deed recorded March 25, 1985 in Volume 193, page 166, Yamhill County Records; thence North 17° 15' East 261.29 feet along the Westerly line of said Krueger tract to an iron rod on the Southerly margin of 10th Avenue; thence North 52° 34' 50" West 122.73 feet along said margin; thence South 41° 40' West 122.91 feet; thence North 48° 31' West 132 feet to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 363 feet along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 278 feet along said margin to the point of beginning.

EXCEPTING THEREFROM: Beginning at the Southerly corner of said Block 20; thence North 52° 34' 40" West 170.24 feet along the Northerly margin of 8th Street to the true point of beginning; thence North 41° 03' East 185.74 feet; thence North 17° 15' East 181.28 feet; thence North 72° 59' West 245 feet to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 275 feet along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 223 feet along said margin to the point of beginning.

PARCEL NO. 4:

Part of Block 20, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 37° 27' East 112.84 feet along the Northerly margin of Alpine Avenue to the true point of beginning; thence continuing North 37° 27' East 138.00 feet along said margin to an iron rod, said point being the Southeast corner of that tract of land conveyed to William A. Krueger, et ux by Deed recorded March 25, 1985 in Film Volume 193, page 166; Deed and Mortgage Records; thence South 73° 21' 20" West 101.57 feet to an iron rod at the Southwest corner of said Krueger tract; thence South 48° 25' 30" West 104.53 feet to an iron rod; thence South 52° 54' East 114.86 feet to the point of beginning.

EXHIBIT B

FORM OF STATUTORY SPECIAL WARRANTY DEED

Until a change is requested,
send all tax statements to:
Guardian Real Estate Services
320 NW 23rd Avenue
Portland, OR 97210

After recording return to:
Guardian Real Estate Services, LLC
320 NW 23rd Avenue
Portland, OR 97210

Statutory Special Warranty Deed

The City of McMinnville, an Oregon municipal corporation, Grantor, conveys and specially warrants to Guardian Real Estate Services, LLC, an Oregon limited liability company, Grantee, the real property legally described in the attached Exhibit 1, free of encumbrances created or suffered by Grantor except as specifically set forth in the attached Exhibit 2.

True consideration for this conveyance is Four Million Seven Hundred Thousand Dollars ($4,700,000.00).

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSONS RIGHTS, IF ANY, UNDER ORS 195.300 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED this _____ day of _____, 202__.

[Remainder of Page Intentionally Left Blank;
Signature Page Follows]

GRANTOR:

CITY OF MCMINNVILLE, an Oregon municipal corporation

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of Yamhill)

This instrument was acknowledged before me on the _____ day of _____, 2026, by _____ as _____ of the City of McMinnville, an Oregon municipal corporation, on behalf of the municipal corporation.

_____
Notary Public for Oregon
My Commission Expires: _____

EXHIBIT B
Exhibit 1
(to Statutory Special Warranty Deed)
Property Legal Description

PARCEL NO. 1:

Part of Blocks 19, 20, and 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 52° 34' 40" West 170.24 feet along the Northerly margin of 8th Street to the true point of beginning; thence North 41° 03' East 185.74 feet; thence North 17° 15' East 181.28 feet; thence North 72° 59' West 245 feet, more or less, to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 275 feet, more or less, along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 223 feet along said margin to the point of beginning.

PARCEL NO. 2:

Part of Block 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Easterly corner of Block 19, said Oak Park Addition; thence North 52° 34' 50" West 185.16 feet along the Southerly margin of 10th Street to an iron rod; thence continuing North 52° 34' 50" West 122.73 feet along said margin to the true point of beginning; thence South 41° 40' West 122.91 feet; thence North 48° 31' West 132 feet to the Easterly margin of the Southern Pacific Railroad; thence Northeasterly along said margin to the Southerly margin of 10th Street; thence South 52° 34' 50" East along said margin to the point of beginning.

PARCEL NO. 3:

Part of Blocks 19, 20, and 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 52° 34' 40" West 115.24 feet along the Northerly margin of 8th Street to an iron rod at the true point of beginning; thence North 37° 38' 40" East 112.19 feet to an iron rod; thence North 48° 25' 30" East 104.53 feet to an iron rod, said point also being the Southerly Southwest corner of that tract of land conveyed to William A. Krueger, et ux by Deed recorded March 25, 1985 in Volume 193, page 166, Yamhill County Records; thence North 17° 15' East 261.29 feet along the Westerly line of said Krueger tract to an iron rod on the Southerly margin of 10th Avenue; thence North 52° 34' 50" West 122.73 feet along said margin; thence South 41° 40' West 122.91 feet; thence North 48° 31' West 132 feet to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly

363 feet along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 278 feet along said margin to the point of beginning.

EXCEPTING THEREFROM: Beginning at the Southerly corner of said Block 20; thence North 52° 34' 40" West 170.24 feet along the Northerly margin of 8th Street to the true point of beginning; thence North 41° 03' East 185.74 feet; thence North 17° 15' East 181.28 feet; thence North 72° 59' West 245 feet to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 275 feet along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 223 feet along said margin to the point of beginning.

PARCEL NO. 4:

Part of Block 20, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 37° 27' East 112.84 feet along the Northerly margin of Alpine Avenue to the true point of beginning; thence continuing North 37° 27' East 138.00 feet along said margin to an iron rod, said point being the Southeast corner of that tract of land conveyed to William A. Krueger, et ux by Deed recorded March 25, 1985 in Film Volume 193, page 166; Deed and Mortgage Records; thence South 73° 21' 20" West 101.57 feet to an iron rod at the Southwest corner of said Krueger tract; thence South 48° 25' 30" West 104.53 feet to an iron rod; thence South 52° 54' East 114.86 feet to the point of beginning.

EXHIBIT B
Exhibit 2
(to Statutory Special Warranty Deed)
Permitted Encumbrances

[to be inserted]

EXHIBIT C

SCOPE OF DEVELOPMENT

The Developer shall construct a Project with the following characteristics:

- affordable housing with approximately 150 to 171 affordable housing units ranging from fifty percent (50%) of area median income ("**AMI**") to sixty percent (60%) AMI,
- no commercial space, and
- open area that will serve as required open space for the housing project under the City's zoning code as well as be subject in whole or in part to a public access easement.

EXHIBIT D
SCHEDULE OF PERFORMANCE

All dates in this Schedule of Performance are subject to extension by Unavoidable Delay.

Task or Milestone	Related Section of Agreement	Party Responsible for Milestone Compliance	Deadline or Date
Legal			
Execute Disposition & Development Agreement	Preamble	City, Developer	Effective Date
BOLI Coverage Determination Letter	4.4	Developer, optional	Due Diligence Period, if pursued
Closing	2.6	The Parties	On or before June, 2028, unless extended
Financial			
Loan Terms Request		Developer	Submitted by April 1, 2027
Evidence of Project Financial Commitments	2.10.2.3	Developer	At least ten (10) days prior to the scheduled date of Closing
Construction Financing Closing	2.10.2.3	Developer	Closing Date
Regulatory Submittals			
Land Use Applications		Developer	Submitted by December 1, 2026
Final Building Plans and Specifications		Developer	Initial submission to City for permitting no later than six (6) months prior to Closing
Building Permits Issued		City	Three weeks after final submission with any revisions requested
Construction			
Commence Construction	9.4.1.2	Developer	6 months after the Closing Date
Construction Substantially Complete (occupancy permit issued – temporary or final)	5.6.1	Developer	30 months after the date on which environmental remediation is completed on the Property
Certificate of Completion	5.6.3	City	fifteen (15) days after written request by Developer

EXHIBIT E

FORM OF BILL OF SALE

Bill of Sale

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY OF McMINNVILLE, an Oregon municipal corporation ("Seller"), sells and conveys to GUARDIAN REAL ESTATE SERVICES, LLC, an Oregon limited liability company ("Buyer"), all of Seller's right, title, and interest in and to all appliances, fixtures, equipment, machinery, furniture, floor coverings, drapes and other tangible personal property owned by Seller (collectively "Personal Property") located in or on the real property located in the County of Yamhill, State of Oregon, more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the "Property").

SELLER REPRESENTS AND WARRANTS TO BUYER THAT SELLER HAS ALL LAWFUL RIGHT AND AUTHORITY TO SELL AND TRANSFER THE PERSONAL PROPERTY TO BUYER AND THAT IT SELLS AND TRANSFERS THE PERSONAL PROPERTY TO BUYER FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES. EXCEPT AS PROVIDED IN THE PRIOR SENTENCE, THE TANGIBLE PERSONAL PROPERTY IS TRANSFERRED TO BUYER "AS IS" AND "WHERE IS" AND WITH ALL FAULTS, DEFECTS OR OTHER ADVERSE MATTERS.

Seller and Buyer hereby covenant and agree as follows:

(i) This Bill of Sale shall bind and inure to the benefit of the parties and their respective successors, legal representatives and assigns.

(ii) Neither this Bill of Sale nor any term, provision, or condition hereof may be changed, amended or modified, and no obligation, duty or liability or any party hereby may be released, discharged or waived, except in a writing signed by all parties hereto.

(iii) This Bill of Sale may be executed in a number of identical counterparts that, taken together, shall constitute one (1) agreement. In making proof of this Bill of Sale, it shall not be necessary to produce or account for more than one such counterpart with each party's signature. Delivery of an executed counterpart of a signature page to this Bill of Sale by facsimile, email or other electronic method shall be as effective as delivery of an original executed counterpart of this Bill of Sale.

[Signatures on following page.]

IN WITNESS WHEREOF, Seller and Buyer have executed this Bill of Sale to be effective as of the _____ day of _____ 20_____.

SELLER: **CITY OF MCMINNVILLE,**
an Oregon municipal corporation

By: _____

Name: _____

Title: _____

BUYER: **GUARDIAN REAL ESTATE SERVICES, LLC,**
an Oregon limited liability company

By: _____

Name: _____

Title: _____

(*EXHIBIT E, continued*)

EXHIBIT A TO BILL OF SALE
Legal Description

PARCEL NO. 1:

Part of Blocks 19, 20, and 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 52° 34' 40" West 170.24 feet along the Northerly margin of 8th Street to the true point of beginning; thence North 41° 03' East 185.74 feet; thence North 17° 15' East 181.28 feet; thence North 72° 59' West 245 feet, more or less, to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 275 feet, more or less, along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 223 feet along said margin to the point of beginning.

PARCEL NO. 2:

Part of Block 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Easterly corner of Block 19, said Oak Park Addition; thence North 52° 34' 50" West 185.16 feet along the Southerly margin of 10th Street to an iron rod; thence continuing North 52° 34' 50" West 122.73 feet along said margin to the true point of beginning; thence South 41° 40' West 122.91 feet; thence North 48° 31' West 132 feet to the Easterly margin of the Southern Pacific Railroad; thence Northeasterly along said margin to the Southerly margin of 10th Street; thence South 52° 34' 50" East along said margin to the point of beginning.

PARCEL NO. 3:

Part of Blocks 19, 20, and 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 52° 34' 40" West 115.24 feet along the Northerly margin of 8th Street to an iron rod at the true point of beginning; thence North 37° 38' 40" East 112.19 feet to an iron rod; thence North 48° 25' 30" East 104.53 feet to an iron rod, said point also being the Southerly Southwest corner of that tract of land conveyed to William A. Krueger, et ux by Deed recorded March 25, 1985 in Volume 193, page 166, Yamhill County Records; thence North 17° 15' East 261.29 feet along the Westerly line of said Krueger tract to an iron rod on the Southerly margin of 10th Avenue; thence North 52° 34' 50" West 122.73 feet along said margin; thence South 41° 40' West 122.91 feet; thence North 48° 31' West 132 feet to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 363 feet along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 278 feet along said margin to the point of beginning.

EXCEPTING THEREFROM: Beginning at the Southerly corner of said Block 20; thence North 52° 34' 40" West 170.24 feet along the Northerly margin of 8th Street to the true point of beginning; thence North 41° 03' East 185.74 feet; thence North 17° 15' East 181.28 feet; thence North 72° 59' West 245 feet to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 275 feet along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 223 feet along said margin to the point of beginning.

PARCEL NO. 4:

Part of Block 20, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 37° 27' East 112.84 feet along the Northerly margin of Alpine Avenue to the true point of beginning; thence continuing North 37° 27' East 138.00 feet along said margin to an iron rod, said point being the Southeast corner of that tract of land conveyed to William A. Krueger, et ux by Deed recorded March 25, 1985 in Film Volume 193, page 166; Deed and Mortgage Records; thence South 73° 21' 20" West 101.57 feet to an iron rod at the Southwest corner of said Krueger tract; thence South 48° 25' 30" West 104.53 feet to an iron rod; thence South 52° 54' East 114.86 feet to the point of beginning.

EXHIBIT F

FORM OF OWNERS' CLOSING CERTIFICATE

OWNERS' CLOSING CERTIFICATE

This certificate ("**Certificate**") is executed as of the _____ day of _____ 20___, by the Urban Renewal Agency of the City of McMinnville, an Oregon municipal corporation and the CITY OF McMINNVILLE, an Oregon municipal corporation (collectively referred to herein as "**Owners**"), in favor of Guardian Real Estate Services, LLC, an Oregon limited liability company, and its successors and assigns ("**Developer**"), pursuant to Section 2.6.1.3 of the Disposition and Development Agreement dated _____, 2026 (as amended or assigned, the "**Agreement**") by and between Owners and Developer. Terms used in this Certificate with their initial letter capitalized and not defined shall have the same meaning ascribed to such terms in the Agreement.

The undersigned Owners hereby certify to Developer that each of the representations and warranties contained in Section 2.11 of the Agreement are true and correct in all material respects as of the Closing Date, except as to matters disclosed in writing by Owners in the interim between the date of the Agreement and the Closing Date, as set forth in *Schedule 1* attached hereto.

This Certificate shall inure to the benefit of Developer and its successors and assigns, and shall be binding upon Owners and their successors and assigns, subject to the terms and conditions of the Agreement.

IN WITNESS WHEREOF, the undersigned Owners have executed and delivered this Certificate as of the date first written above.

CITY OF MCMINNVILLE:

By: _____

Name: _____

Title: _____

MCMINNVILLE URBAN RENEWAL AGENCY:

By: _____

Name: _____

Title: _____

[*EXHIBIT F, continued*]

Schedule 1 to Owners' Closing Certificate

Exceptions to Owner Representations and Warranties

[to be inserted / or if none, state "none"]

EXHIBIT G

FORM OF MEMORANDUM OF AGREEMENT

After recording return to:
City of McMinnville
Attn: Heather Richards
Community Development Director
231 NE Fifth Street
McMinnville, OR 97128

No change in tax statements.

MEMORANDUM OF AGREEMENT FOR THE DISPOSITION AND DEVELOPMENT OF REAL PROPERTY

THIS MEMORANDUM OF AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF REAL PROPERTY ("**Memorandum**"), entered into on _____, 2026, shall serve as notice to all persons that the **Urban Renewal Agency of the City of McMinnville**, an Oregon municipal corporation ("**Agency**") and the **City of McMinnville,** an Oregon municipal corporation ("**City**") (collectively referred to herein as "**Owners**"), and **Guardian Real Estate Services, LLC,** an Oregon limited liability company ("**Developer**") have entered into an Agreement for Disposition and Development of Real Property dated _____, 2026 (the "**Agreement**"), governing the title transfer, future development, and use of the real property (the "**Property**") located in Yamhill County, Oregon. The Property is more particularly described as:

PARCEL NO. 1:

Part of Blocks 19, 20, and 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 52° 34' 40" West 170.24 feet along the Northerly margin of 8th Street to the true point of beginning; thence North 41° 03' East 185.74 feet; thence North 17° 15' East 181.28 feet; thence North 72° 59' West 245 feet, more or less, to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 275 feet, more or less, along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 223 feet along said margin to the point of beginning.

PARCEL NO. 2:

Part of Block 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Easterly corner of Block 19, said Oak Park Addition; thence North 52° 34' 50" West 185.16 feet along the Southerly margin of 10th Street to an iron rod; thence continuing North 52° 34' 50" West 122.73 feet along said margin to the true point of beginning; thence South 41° 40' West 122.91 feet; thence North 48° 31' West 132 feet to the Easterly margin of the Southern Pacific Railroad; thence Northeasterly along said margin to the Southerly margin of 10th Street; thence South 52° 34' 50" East along said margin to the point of beginning.

PARCEL NO. 3:

Part of Blocks 19, 20, and 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 52° 34' 40" West 115.24 feet along the Northerly margin of 8th Street to an iron rod at the true point of beginning; thence North 37° 38' 40" East 112.19 feet to an iron rod; thence North 48° 25' 30" East 104.53 feet to an iron rod, said point also being the Southerly Southwest corner of that tract of land conveyed to William A. Krueger, et ux by Deed recorded March 25, 1985 in Volume 193, page 166, Yamhill County Records; thence North 17° 15' East 261.29 feet along the Westerly line of said Krueger tract to an iron rod on the Southerly margin of 10th Avenue; thence North 52° 34' 50" West 122.73 feet along said margin; thence South 41° 40' West 122.91 feet; thence North 48° 31' West 132 feet to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 363 feet along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 278 feet along said margin to the point of beginning.

EXCEPTING THEREFROM: Beginning at the Southerly corner of said Block 20; thence North 52° 34' 40" West 170.24 feet along the Northerly margin of 8th Street to the true point of beginning; thence North 41° 03' East 185.74 feet; thence North 17° 15' East 181.28 feet; thence North 72° 59' West 245 feet to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 275 feet along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 223 feet along said margin to the point of beginning.

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Beginning at the Southerly Southeast corner of said Block 20; thence North 37° 27' East 112.84 feet along the Northerly margin of Alpine Avenue to the true point of beginning; thence continuing North 37° 27' East 138.00 feet along said margin to an iron rod, said point being the Southeast corner of that tract of land conveyed to William A. Krueger, et ux by Deed recorded March 25, 1985 in Film Volume 193, page 166; Deed and Mortgage Records; thence South 73° 21' 20" West 101.57 feet to an iron rod at the Southwest corner of said Krueger tract; thence South 48° 25' 30" West 104.53 feet to an iron rod; thence South 52° 54' East 114.86 feet to the point of beginning.

Among other things, the Agreement requires City to convey the Property to Developer upon the satisfaction of certain conditions precedent, and, once conveyed, requires Developer to construct and complete certain project improvements on the Property, and to devote the Property to certain restricted uses for a 10-year period, all as more particularly set forth in the Agreement (the "**Project**").

After a Certificate of Completion is recorded as to the Project, City shall thereafter have, or be entitled to exercise, no rights or remedies or controls that they may otherwise have been entitled to exercise under the Agreement, except as set forth in those Surviving Sections described in the Agreement and Certificate of Completion.

This Memorandum has been executed, acknowledged, and recorded solely for the purpose of providing notice of the Agreement and shall not itself be interpreted as a conveyance of that certain property described above or as an amendment of the Agreement. If any inconsistency or conflict arises between the provisions of this Memorandum and the Agreement, the terms of the Agreement shall control.

Other property or value was part of the whole consideration given for the Property conveyance referenced herein.

Owners and Developer execute this Memorandum to acknowledge being bound by the Agreement, to provide record notice of the Agreement to third parties, and to encumber City's interest in the Property in accordance with the terms of the Agreement.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, Owners and Developer have caused this instrument to be executed as of the date first set forth above.

CITY:
CITY OF McMINNVILLE,
an Oregon municipal corporation

By: _____

Name: _____

Title: _____

State of Oregon)
ss.
County of Yamhill)

This instrument was acknowledged before me on , 2026, by _____, as _____ of the City of McMinnville.

_____
Notary Public for Oregon

AGENCY:

MCMINNVILLE URBAN RENEWAL AGENCY:

By: _____

Name: _____

Title: _____

State of Oregon)
ss.
County of Yamhill)

This instrument was acknowledged before me on , 2026, by _____, as _____ of the McMinnville Urban Renewal Agency.

_____
Notary Public for Oregon

Date: _____

[*Signatures continued on next page*]

DEVELOPER:

GUARDIAN REAL ESTATE SERVICES, LLC,
an Oregon limited liability company

By: _____

Name: _____

Title: _____

State of Oregon)
ss.
County of _____)

This instrument was acknowledged before me on _____, 2026, by _____, as _____ of Guardian Real Estate Services, LLC, an Oregon limited liability company, on behalf of the company.

_____
Notary Public for Oregon

EXHIBIT H

FORM OF CERTIFICATE OF COMPLETION

After recording, return to:

_____
_____
_____

No change in tax statements.

CERTIFICATE OF COMPLETION

The **Urban Renewal Agency of the City of McMinnville**, an Oregon municipal corporation ("Agency") and the **City of McMinnville,** an Oregon municipal corporation ("City") (collectively referred to herein as "Owners") , and **Guardian Real Estate Services, LLC**, an Oregon limited liability company ("Developer") hereby certify that Developer has satisfactorily completed construction of the Project as described in the Agreement for Disposition and Development of Real Property, dated _____ , 2026 (the "Agreement"), governing the title transfer, development, and use of the real property (the "Property") located in Yamhill County, Oregon. The Property is more particularly described as:

PARCEL NO. 1:

Part of Blocks 19, 20, and 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 52° 34' 40" West 170.24 feet along the Northerly margin of 8th Street to the true point of beginning; thence North 41° 03' East 185.74 feet; thence North 17° 15' East 181.28 feet; thence North 72° 59' West 245 feet, more or less, to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 275 feet, more or less, along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 223 feet along said margin to the point of beginning.

PARCEL NO. 2:

Part of Block 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Easterly corner of Block 19, said Oak Park Addition; thence North 52° 34' 50" West 185.16 feet along the Southerly margin of 10th Street to an iron rod; thence continuing North 52° 34' 50" West 122.73 feet along said margin to the true point of beginning; thence South 41° 40' West 122.91 feet; thence North 48° 31' West 132 feet to the Easterly margin of the Southern Pacific Railroad; thence Northeasterly along said margin to the Southerly margin of 10th Street; thence South 52° 34' 50" East along said margin to the point of beginning.

PARCEL NO. 3:

Part of Blocks 19, 20, and 22, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 52° 34' 40" West 115.24 feet along the Northerly margin of 8th Street to an iron rod at the true point of beginning; thence North 37° 38' 40" East 112.19 feet to an iron rod; thence North 48° 25' 30" East 104.53 feet to an iron rod, said point also being the Southerly Southwest corner of that tract of land conveyed to William A. Krueger, et ux by Deed recorded March 25, 1985 in Volume 193, page 166, Yamhill County Records; thence North 17° 15' East 261.29 feet along the Westerly line of said Krueger tract to an iron rod on the Southerly margin of 10th Avenue; thence North 52° 34' 50" West 122.73 feet along said margin; thence South 41° 40' West 122.91 feet; thence North 48° 31' West 132 feet to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 363 feet along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 278 feet along said margin to the point of beginning.

EXCEPTING THEREFROM: Beginning at the Southerly corner of said Block 20; thence North 52° 34' 40" West 170.24 feet along the Northerly margin of 8th Street to the true point of beginning; thence North 41° 03' East 185.74 feet; thence North 17° 15' East 181.28 feet; thence North 72° 59' West 245 feet to the Easterly margin of the Southern Pacific Railroad; thence Southwesterly 275 feet along said margin to the Northerly margin of 8th Street; thence South 52° 34' 40" East 223 feet along said margin to the point of beginning.

PARCEL NO. 4:

Part of Block 20, OAK PARK ADDITION, in the City of McMinnville, County of Yamhill, State of Oregon, described as follows:

Beginning at the Southerly Southeast corner of said Block 20; thence North 37° 27' East 112.84 feet along the Northerly margin of Alpine Avenue to the true point of beginning; thence continuing North 37° 27' East 138.00 feet along said margin to an iron rod, said point being the Southeast corner of that tract of land conveyed to William A. Krueger, et ux by Deed recorded March 25, 1985 in Film Volume 193, page 166; Deed and Mortgage Records;

thence South 73° 21' 20" West 101.57 feet to an iron rod at the Southwest corner of said Krueger tract; thence South 48° 25' 30" West 104.53 feet to an iron rod; thence South 52° 54' East 114.86 feet to the point of beginning.

A Memorandum of Agreement was recorded in the deed records of Yamhill County, Oregon as Document No. _____ on _____, 2026. Capitalized terms used herein without definition shall have the meaning ascribed to them in the Agreement.

1. Pursuant to Section 5.6 of the Agreement, City and Developer hereby certify that:

1.1 The Project is completed according to the Approved Plans and Specifications, except for punch list items which do not materially affect the use of the Project for the purposes intended under the Agreement; and

1.2 The City of McMinnville Building Department has issued Developer a temporary or permanent Certificate of Occupancy for the Project.

2. This Certificate of Completion is and shall be a conclusive determination of the satisfaction of all of the agreements, covenants, and conditions contained in the Agreement with respect to the obligations of Developer, its successors and assigns, as to the construction of the Project, and such obligations are hereby deemed satisfied. This Certificate represents and certifies the completion of Developer's construction obligations described herein as to Owners, pursuant to the Agreement only, and not as to City of McMinnville Zoning and Development code conditions, obligations and requirements, or other regulations or laws of general applicability.

3. Any party acquiring or leasing any portion of the Project or Property shall not (because of such purchase or lease) have any obligation under the Agreement with respect to the construction of the Project.

4. Other than its right to enforce the Surviving Sections, City shall hereafter have, or be entitled to exercise, no rights or remedies or controls that they may otherwise have been entitled to exercise under the Agreement with respect to the construction of the Project, or as a result of a default in or breach of any provisions of the Agreement relating to construction by Developer, or by any successors in interest or assigns of Developer.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, City and Developer have caused this instrument to be executed this _____ day of _____, 20__.

CITY:

CITY OF McMINNVILLE,
an Oregon municipal corporation

By: _____

Name: _____

Title: _____

State of Oregon)
ss.
County of Yamhill)

This instrument was acknowledged before me on , 202__, by _____, as _____ of the City of McMinnville.

_____
Notary Public for Oregon

[*Signatures continued on next page*]

DEVELOPER:

GUARDIAN REAL ESTATE SERVICES, LLC,
an Oregon limited liability company

By: _____

Name: _____

Title: _____

State of Oregon)
ss.
County of _____)

This instrument was acknowledged before me on _____, 202__, by _____, as _____ of Guardian Real Estate Services, LLC, an Oregon limited liability company, on behalf of the limited liability company.

_____
Notary Public for Oregon

EXHIBIT I

TERMS OF PUBLIC ACCESS EASEMENT

Easement to be limited to non-exclusive public access to the designated open space required by land use codes and located on the real property commonly known as "tax lot 3805" (shown in blue on the map below) and expressly provide that:

(i) Developer / future owner has responsibility for maintenance and repair;
(ii) Developer may establish and enforce reasonable hours of access;
(iii) Developer may temporarily restrict or close access for special events, maintenance, safety, or similar purposes; and
(iv) Developer may adopt and enforce reasonable rules and policies governing public use.

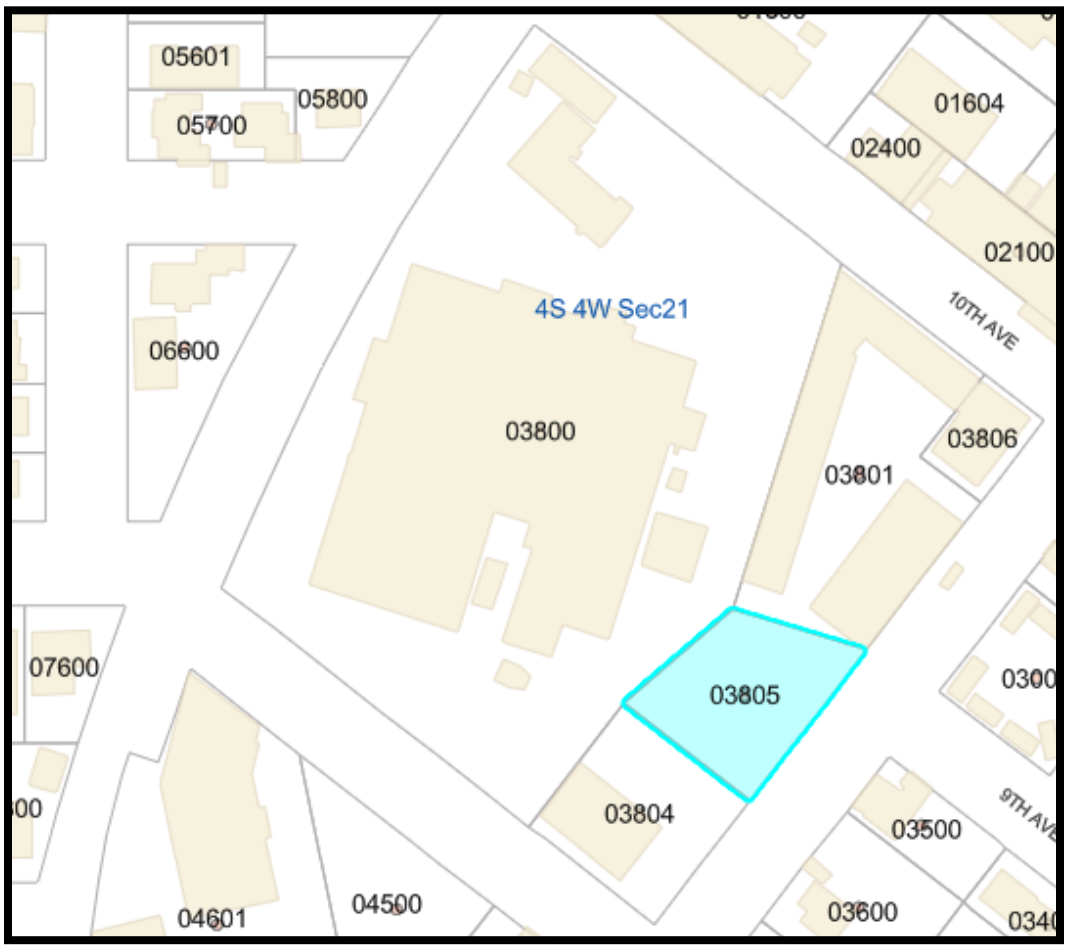

EXHIBIT J

GLOSSARY OF TERMS

1. **"Agency"** means the Urban Renewal Agency of the City of McMinnville, an Oregon municipal corporation.
2. **"Agreement"** means this Disposition and Development Agreement and all attached Schedules and Exhibits.
3. **"AMI"** has the meaning set forth in Recital H of this Agreement.
4. **"Approved Plans and Specifications"** has the meaning set forth in Section 2.10.2.1 of this Agreement.
5. **"BOLI"** means the Oregon Bureau of Labor and Industries as set forth in Section 4.4.1 of this Agreement.
6. **"CET"** means the Construction Excise Tax as set forth in Section 6.2.2 of this Agreement.
7. **"City's knowledge"** has the meaning set forth in Section 2.11.1.11 of this Agreement.
8. **"City's Project Manager"** has the meaning set forth in Section 4.1 of this Agreement.
9. **"City"** means the City of McMinnville, Oregon, a municipal corporation of the State of Oregon.
10. **"Close"** or **"Closing"** means the conveyance of the Property to Developer by the City by Deed and the simultaneous payment of the Purchase Price by Developer to the City, all as more specifically described in Section 2 of this Agreement.
11. **"Closing Date"** means the date on which City conveys or is anticipated to convey the Property to Developer, as more specifically described in Section 2.6 of this Agreement.
12. **"Condition(s) Precedent"** has the meaning set forth in Section 2.10.1 of this Agreement.
13. **"Construction Period"** has the meaning set forth in Section 4.3.2 of this Agreement.
14. **"Deed"** means the Statutory Special Warranty Deed conveying fee simple title to the Property to Developer free and clear of all liens, claims, easements, charges, and encumbrances whatsoever except for the Permitted Exceptions, in substantially in the form attached to this Agreement as Exhibit B.
15. **"Developer Parties"** has the meaning set forth in Section 2.9.5.1 of this Agreement.
16. **"Developer's knowledge"** has the meaning set forth in Section 2.12.6 of this Agreement.
17. **"Developer's Project Manager"** has the meaning set forth in Section 4.1 of this Agreement.
18. **"Developer"** means GUARDIAN REAL ESTATE SERVICES, LLC, an Oregon limited liability company.
19. **"Due Diligence Materials"** has the meaning set forth in Section 2.9.1 of this Agreement.
20. **"Due Diligence Period"** has the meaning set forth in Section 2.9.2 of this Agreement.
21. **"Earnest Money"** has the meaning set forth in Section 2.5 of this Agreement.
22. **"Effective Date"** means the date that all Parties have executed this Agreement.
23. **"Environmental Clean-Up Costs"** has the meaning set forth in Section 4.7.3 of this Agreement.

24. **"Environmental Inspections"** has the meaning set forth in Section 2.9.6 of this Agreement.

25. **"Environmental Laws"** means (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.; (b) Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; (c) Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, 33 U.S.C. § 1251 et seq.; (d) Clean Air Act, 42 U.S.C. § 7401 et seq.; (e) Toxic Substances Control Act, 14 U.S.C. § 2601 et seq.; (f) Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; (g) the Oregon Hazardous Waste and Hazardous Materials I Laws, ORS Chapter 465, the Oregon Hazardous Waste and Hazardous Materials II Laws, ORS Chapter 466, the Oregon Air Quality Laws, ORS Chapter 468A, the Oregon Water Quality Laws, ORS Chapter 468B, and the Hazardous Materials Radiation Sources Laws, ORS Chapter 453; (h) regulations promulgated pursuant to said laws or any replacement thereof; and (I) any similar Laws applicable to the Project or Property.

26. **"Environmental Reports"** means the *Phase I Environmental Site Assessment Report,* by Farralon Consulting, dated September 29, 2023, *Phase II Environmental Site Assessment Report,* by Farralon Consulting, dated September 29, 2023, both of which are incorporated herein by this reference.

27. **"Escrow Agent"** means Lori Medak, Fidelity National Title Insurance Company, 900 SW Fifth Avenue, Lobby Level, Portland, OR 97204, lori.medak@fnf.com, 503.796.6660.

28. **"Final Permitted Exceptions"** has the meaning set forth in Section 2.7.6 of this Agreement.

29. **"Final Termination Date"** has the meaning set forth in Section 2.10.6.1 of this Agreement.

30. "**Hazardous Materials**" means and includes: (a) any asbestos or insulation or other material containing asbestos; (b) any pollutants, flammable explosives, radioactive materials, hazardous, toxic, or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited, or regulated by any Environmental Laws, including but not limited to radioactive materials, polychlorinated biphenyls ("PCBs"), petroleum products and by-products (including but limited to crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, or any mixture thereof), urea formaldehyde foam insulation, and radon gas; (c) any solid, liquid, gaseous, or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals, or waste; (d) substances that are defined or listed as "hazardous materials," "hazardous wastes," or "toxic substances," or similarly identified in, pursuant to, or for the purposes of the Environmental Laws; and (e) materials which are otherwise toxic, hazardous, undesirable, or subject to regulation and that may need to be specially treated, handled, or removed from the Property under current or future Laws or guidance.

31. **"Initial Final Determination Letter"** has the meaning set forth in Section 4.4.1 of this Agreement.

32. **"Inspections"** has the meaning set forth in Section 2.9.3 of this Agreement.

33. **"Laws"** means any applicable governmental rule, regulation, code, law, statute, ordinance, order, policy, or similar binding pronouncement enacted by any local, state, or federal government agency, bureau, department, or government.

34. **"Lender"** has the meaning set forth in Section 2.10.3.4 of this Agreement.

35. **"MMC"** means the McMinnville Municipal Code as set forth in Section 6.2.1 of this Agreement.

36. **"Mortgage"** means a mortgage or deed of trust against the Property, or any portion thereof, securing a loan of funds for the purpose of Developer acquiring the Property or developing or

operating the Project, recorded or to be recorded in the real property records of Yamhill County, Oregon.

37. **"Mortgagee"** means the holder of any Mortgage affecting or encumbering the Property, together with any successor or assignee of such holder including the first purchaser from Mortgagee if Mortgagee acquires the Property at a foreclosure sale or from Mortgagee following a deed in lieu of foreclosure from Developer. The term "Mortgagee" shall include any Mortgagee as owner of the Property as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a Mortgage as well as (a) any other person or entity who thereafter obtains title to the Property from or through a Mortgagee or (b) any other purchaser at a foreclosure sale.
38. **"MOU"** has the meaning set forth in Recital G of this Agreement.
39. **"New Exception Review Period"** has the meaning set forth in Section 2.7.5 of this Agreement.
40. **"New Objection Response"** has the meaning set forth in Section 2.7.5 of this Agreement.
41. **"New Title Objections Notice"** has the meaning set forth in Section 2.7.5 of this Agreement.
42. **"Non-appealable"** has the meaning set forth in Section 2.10.2.1 of this Agreement.
43. **"OHCS"** means the Oregon Housing and Community Services as set forth in Section 2.9.8 of this Agreement.
44. **"Owners"** means the Agency and the City collectively.
45. **"Party"** means any one of Agency, City, or Developer; and Agency, City, and Developer are referred to jointly in this Agreement as the "**Parties.**"
46. **"Permit Fees"** has the meaning set forth in Section 6.3.1 of this Agreement.
47. **"PILOT"** means the Payment in Lieu of Taxes as set forth in Section 2.10.2.9 of this Agreement.
48. **"Project Financing"** has the meaning set forth in Section 2.9.8 of this Agreement.
49. **"Project"** generally means the Property, fixtures and the buildings, and other improvements to be newly constructed by Developer on the Property as initially described in the Approved Design and refined through the City-approved Drawings.
50. **"Property"** has the meaning set forth in Recital B and as legally described in Exhibit A.
51. **"Public Access Easement"** has the meaning set forth in Section 5.7.1 of this Agreement.
52. **"Purchase Price"** has the meaning set forth in Section 2.4 of this Agreement.
53. **"PWR Laws"** has the meaning set forth in Section 4.4.1 of this Agreement.
54. **"Revised Final Determination Letter"** has the meaning set forth in Section 4.4.2 of this Agreement.
55. **"RFQ"** has the meaning set forth in Recital F of this Agreement.
56. **"Schedule of Performance"** means the document attached hereto as Exhibit D.
57. **"Scope Change Amendment"** has the meaning set forth in Section 4.4.2 of this Agreement.
58. **"Scope of Development"** means the document attached hereto as Exhibit C.

59. **"SDCs"** means the Transportation System Development Charges as set forth in Section 6.2.1 of this Agreement.
60. **"Settlement Statement"** has the meaning set forth in Section 2.6.1.4 of this Agreement.
61. **"Survey"** has the meaning set forth in Section 2.8.2 of this Agreement.
62. **"Termination Date"** has the meaning set forth in Section 2.10.5.1 of this Agreement.
63. **"Title Report"** has the meaning set forth in Section 2.7.1 of this Agreement.
64. **"Unavoidable Delay"** has the meaning set forth in Section 9.8.1 of this Agreement.
65. **"Waived Amount"** has the meaning set forth in Section 6.3.1 of this Agreement.