AGENDA BILL
Beaverton City Council
Beaverton, Oregon

SUBJECT: Authorize the Mayor to Execute the Canterbury Group Disposition and Development Agreement for Lot 3 of the Former Westgate Site

FOR AGENDA OF: 12-12-17 BILL NO: 17246

MAYOR’S APPROVAL: 

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 12-05-17

CLEARANCES: City Attorney CAO Finance Development

PROCEEDING: ACTION ITEM

EXHIBIT: Resolution with Canterbury Disposition and Development Agreement (without exhibit)

BUDGET IMPACT

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<th>EXPENDITURE REQUIRED</th>
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RECOMMENDED ACTION:
City Council adopts the resolution attached authorizing the Mayor to execute in a form acceptable to the City Attorney a Disposition and Development Agreement (DDA), substantially in the form of the attached Exhibit, with Canterbury Group, Inc., to develop Parcel 3 of Partition Plat 2016-054 (the former Westgate Theater site) located on the west side of SW Rose Biggi Avenue, north of the light rail line, south of the future SW Crescent Street extension, specifically identified as Washington County Assessor Map 1S1 16AA Tax Lot 9200.

HISTORICAL PERSPECTIVE:
In November 2005, the City of Beaverton (City) purchased the nearly four-acre Westgate Property for $4.9 million. Shortly thereafter, Metro and Beaverton entered into an intergovernmental agreement (2005 Westgate IGA) to coordinate the rights and responsibilities of the two parties regarding the acquisition, joint ownership, disposition and development of the property.

During the economic downturn, the City completed significant planning for Beaverton and the Creekside District. These plans include the Community Vision, Civic Plan and most recently, the Creekside District Master Plan. The Creekside District Master Plan, completed in 2014, calls for the creation of a vibrant, attractive downtown residential and employment center and catalyst for continued growth in the downtown Beaverton area; a thriving, well-connected hub of transit-oriented development and pedestrian-friendly urban form; and a downtown creek system that is a beautiful destination and focal point for people who live, work and visit the Creekside District.

To that end, in March 2015, the City released the Beaverton Central Creekside Redevelopment Request for Qualifications (RFQ). The Westgate Property and The Round are critical to implementing the community's vision for the Creekside District, and the City hopes that redevelopment of the Westgate Property will catalyze additional development in the core area of the Creekside District.
On June 9, 2015, the City Council authorized the Mayor to sign an Exclusive Negotiation Agreement (ENA) with Rembold Properties to redevelop the Westgate Property with a proposal that included the following separate projects: a residential mixed-use component, a hotel project, and the possibility of developing an Arts Center and parking garage on lots 2 and 3 of The Round. On June 21, 2016, and subsequently on September 20, 2016, Council approved a Disposition and Development Agreement (DDA) and an Amendment to the DDA with Rembold Properties to develop two of the three parcels on Westgate, with 230 residential mixed-use buildings.

The original partner to develop the hotel site did not move forward; thus a new RFQ was issued on July 19, 2016, for a Hotel Development Opportunity at Westgate.

Canterbury Group, Inc., was selected and Council authorized the Mayor to begin exclusive negotiations between Canterbury and the City for a six-month period to refine the preliminary concept and begin high-level due diligence and preliminary negotiations leading to a DDA. The Mayor has signed an extension of the ENA through December 31, 2017.

INFORMATION FOR CONSIDERATION:
The Disposition and Development Agreement outlines the negotiated terms and conditions between City staff and Canterbury Group, Inc. Major points of the DDA include but are not limited to:

a. Scope of Development
   - Five-story, high-quality, upscale lodging facility of approximately 120 rooms
   - Amenities to be consistent with other upscale lodging facilities, including a spacious lobby, lobby bar, fitness facility, business center, sundry shop, guest laundry facilities, boardroom, and an outdoor terrace with a swimming pool
   - 3,000 square foot retail space for a third-party operator for a high-quality local or regional restaurant use
b. City Financial Participation
   - $0 purchase price for the property, substantiated by a residual value appraisal
   - BURA payment of $150,000 in System Development Charges backfill as an incentive towards infrastructure improvements (subject to city IGA with BURA)
   - Restaurant Tenant Improvement incentive of $25,000
c. Metro Transit Oriented Development Grant
   - Assumes a Metro TOD Grant – Grant Amount is To Be Determined
d. Community Benefit
   - Disadvantaged Business Enterprise Participation – goal to fulfill a 10% DBE contract goal between the contractor and developer, as long as the DBE is certified by the State of Oregon Certification Office of Business Inclusion and Diversity
   - Apprenticeship Program – contractor shall target a 20% apprentice to journeyman construction apprenticeship program and developer will evaluate strategies for hotel operations-related apprenticeships
e. Conditions Precedent
   - Developer financial resources, capacity, and staffing can complete the project
   - Design of the project meets internal and regulatory permitting review and approval
   - Hotel and operator are approved by the City
   - City and BURA to enter into IGA regarding SDC backfill
f. Project Schedule
   - Submit for land use in February 2018
   - Obtain site development and building permits in September 2018
   - Begin Construction in October 2018

Agenda Bill No: 17246
RESOLUTION NO. 4478

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE DISPOSITION AND DEVELOPMENT AGREEMENT FOR CITY-OWNED PROPERTY DESCRIBED AS PARCEL 3 OF PARTITION PLAT 2016-054, RECORDED ON NOVEMBER 18, 2016 AS INSTRUMENT NO. 2016-095859, WASHINGTON COUNTY PARTITION PLAT RECORDS

WHEREAS, on November 2005, the City of Beaverton (City) purchased the nearly four-acre Westgate Property for $4.9 million. Shortly thereafter, Metro and Beaverton entered into an intergovernmental agreement (2005 Westgate IGA), whereupon the two became joint owners of the Westgate property as tenants in common, with Metro owning an undivided 4/9ths of the property and Beaverton owning the remaining 5/9ths interest; and

WHEREAS, a principal objective of the 2005 Westgate IGA was to develop a “high quality showcase TOD Program Transit-Oriented Development catalyst project in accord with Metro TOD Program criteria.” In 2007, Beaverton and Metro jointly issued a request for proposals for redevelopment of the Westgate Property into a transit-oriented, mixed-use development consistent with the principal objective of the 2005 Westgate IGA. A developer was selected and initial pre-development planning work began. Because of the Great Recession in 2007-2009, the project did not move forward; and

WHEREAS, since 2008, the City has completed significant planning for Beaverton and the Creekside District. These plans include the Community Vision, Civic Plan and most recently, the Creekside District Master Plan. The Creekside District Master Plan, completed in 2014, calls for the creation of a vibrant, attractive downtown, residential and employment center and catalyst for continued growth in the downtown Beaverton area; a thriving, well-connected hub of transit-oriented development and pedestrian-friendly urban form; and a downtown creek system that is a beautiful destination and focal point for people who live, work and visit the Creekside District; and

WHEREAS, on June 9, 2015, the City Council authorized the Mayor to sign an Exclusive Negotiation Agreement (ENA) with Rembold Properties to redevelop the Westgate Property with a proposal that included the following separate projects: a residential mixed-use component, a hotel project, and the possibility of developing an Arts Center and parking garage on lots 2 and 3 of The Round. The City Council approved a Disposition and Development Agreement (DDA) on June 21, 2016, and an Amendment to the DDA on September 20, 2016, with Rembold Properties to develop two of the three parcels on Westgate, with 230 residential mixed-use buildings; and

WHEREAS, the original partner to develop the hotel site did not move forward, and a new RFQ was issued on July 19, 2016, for a hotel development opportunity at Westgate; and

WHEREAS, Canterbury proposed a high-quality, urban-style, business-class destination hotel and restaurant on Parcel 3 of the re-platted Westgate Property, adjacent to the ongoing residential construction of two mixed-use buildings by Rescore Westgate, LLC and near a proposed arts center and parking garage on lots 2 and 3 of The Round; and
WHEREAS, on December 13, 2016, the City Council authorized the Mayor to sign an initial six-month Exclusive Negotiation Agreement (ENA) with Canterbury, to refine the preliminary concept and begin high-level due diligence and preliminary negotiations leading to a DDA; and

WHEREAS, the ENA was subsequently extended by the parties through December 31, 2017, while a DDA was being negotiated; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BEAVERTON, OREGON:

Section 1. The Mayor is hereby authorized to sign the DDA in a form approved by the City Attorney and any other documents necessary to enter into the agreement of the parties.

Adopted by the Council this_______day of December, 2017

Approved by the Mayor this_______day of December, 2017

Ayes:______  Nays:___________

ATTEST:

__________________________  APPROVED:

__________________________

Catherine Jansen, City Recorder  Denny Doyle, Mayor
AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

BETWEEN

THE CITY OF BEAVERTON

AND

CANTERBURY GROUP, INC

DATED

December ___, 2017
AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

THIS AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY IN THE CITY OF BEAVERTON ("Agreement" or "DDA") is entered into as of December __, 2017 (the "Effective Date") between the CITY OF BEAVERTON, a municipal corporation of the State of Oregon ("City"), and CANTERBURY GROUP, INC., an Oregon corporation ("Developer"). The City and Developer are referred to jointly in this Agreement as "Parties" and individually as a "Party."

RE bâtALS

A. The City is the current owner of Parcel 3 of Partition Plat 2016-054, which is described in Exhibit A (the "Property").

B. The Beaverton City Council adopted the Downtown Beaverton Regional Center Community Plan ("Plan") on February 2, 2002, by Ordinance No. 4187.

C. The Beaverton City Council adopted the Beaverton Community Vision Action Plan in September of 2010 by Resolution No. 4030, the Action Plan Update was adopted on February 21, 2012 by Resolution No. 4107, and in February 2016 a new Community Vision Action Plan was adopted by Resolution No. 4262 ("Community Vision").

D. The Beaverton City Council adopted the Beaverton's Civic Plan Strategies on July 12, 2011, by Resolution No. 4067 ("Beaverton Civic Plan").

E. The Beaverton City Council adopted the Central Beaverton Urban Renewal Plan on July 12, 2011 by Ordinance 4566, which established the Beaverton Urban Redevelopment Agency ("BURA"), and the voters approved the plan on November 4, 2011.

F. On November 18, 2014, the Beaverton City Council adopted the Beaverton Creekside Master Plan, which describes the barriers, opportunities and specific actions necessary to revitalize a 53-acre area including and surrounding the property located at then-addressed 3950 SW Cedar Hills Blvd, Beaverton, Oregon ("Westgate Property").

G. Metro Council Resolution No. 98-2619 ("For the Purpose of Authorizing Start-Up Activities for the Transit-Oriented Development Implementation Program at Metro") adopted on April 9, 1998, as amended by Metro Council Resolution No. 04-3479 ("For the Purpose of Amending the Transit-Oriented Development Program to Expand the TOD Program Area and Initiate an Urban Centers Program") adopted on July 15, 2004, authorizes the Metro acquisition and "Joint Development" of real property satisfying certain criteria and identified as "Opportunity Sites." Metro's Transit-Oriented Development/Urban Centers Program ("TOD" or "TOD Program") utilizes joint development tools such as land acquisition and development agreements to encourage the development of projects located in close proximity to rail transit stations, "Frequent Bus Stops" and in Urban Centers throughout the region.

H. The City finds that Developer's development of the Property as a hotel pursuant to this Agreement will help achieve the Community Vision of creating a vibrant downtown and
enhancing livability and will help to achieve the Beaverton Civic Plan goals of the Central City Strategy and the Housing Strategy and to implement the 2014 Creekside Master Plan.

I. City also finds that the fulfillment of this Agreement, and the intentions set forth herein, are in the best interests of the City and the health, safety, and welfare of its residents, and are in accordance with the public purposes and provisions of the applicable state and federal laws and requirements under which the Property has been acquired.

J. The completion of the Project according to the terms of this Agreement, including the Scope of Development (defined below) and the Schedule of Performance (defined below), is a material inducement to City to enter into this Agreement.

K. The City partitioned the Westgate Property on November 18, 2016 into three (3) legal parcels. Parcels 1 and 2 are being developed by Rescore Westgate, LLC (“Rescore”) into mixed-use apartment buildings, including fifteen (15) units of restricted-income housing. Rescore is expected to file a subsequent, more detailed final plat when the utilities required by each lot have been installed.

L. Developer will develop Parcel 3 into an urban, business-class hotel and independent restaurant.

M. The Parties have substantially completed their negotiations and now desire to enter into this Agreement setting forth the terms and conditions under which City will convey the Property to Developer.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises set forth above and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

DEFINITIONS

The following words and phrases have the designated meanings in this Agreement:

1. “Agreement” means this Agreement for the Disposition and Development of Property and all attached exhibits.


3. “Business Day” means any day other than a Saturday, Sunday or legal holiday on which banks in Beaverton, Oregon are closed.

4. “Certificate of Completion” means a certificate issued by the City to Developer pursuant to Section 3.13 of this Agreement.

5. “City” means the City of Beaverton, a municipal corporation of the State of Oregon.
6. "City’s knowledge" means the actual knowledge of the executive and managerial personnel of the City having responsibility for the supervision of the Property.

7. "Closing" means the completion of the transaction whereby title is transferred from the City to Developer, as set forth in Section 1.

8. "Closing Date" means the date on which the Closing occurs.


10. "Deed" means the form of Special Warranty Deed that will be used to convey fee simple title to the Property, attached to this Agreement as Exhibit B.

11. "DBE" means "Disadvantaged Business Enterprise," as that term is defined in ORS 200.005(3).

12. "DEQ" means the Oregon Department of Environmental Quality.

13. "Design Development Drawings" means the detailed plans submitted to the City of Beaverton Community Development Department to obtain applicable land use, site development, and building permits in accordance with the Beaverton Development Code and other applicable codes and statutes, including but not limited to:
   
   - Architectural and relevant dimensioned site, grading, utility, and landscape plans showing all structures upon the site, together with all connections to existing or proposed utilities, roads, alleys, parking layout, sidewalks, ingress/egress locations, and streetscape layout;
   
   - Proposed location, types of fixtures, and illumination pattern for exterior lighting;
   
   - Architectural elevations of the building to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials and finishes, of the building exteriors;
   
   - A preliminary exterior finish schedule and materials board as required by the City Planning Division;
   
   - A calculation of gross building areas, the number of units by unit type, the amount of commercial space, floor areas, height, parking spaces, amenity areas, and open spaces;
   
   - Location and dimensions for exterior signage and graphics; and
   
   - A description of service requirements, trash collection locations, off-street loading areas, utility vaults, and related functional areas.
14. "Effective Date" means the date stated in the first paragraph of this Agreement.

15. "Environmental Conditions" means the physical condition of the Property as measured by the standards of the Environmental Laws. Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

16. "Environmental Laws" means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Property or the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (as defined in the definition of Hazardous Substances, below), CERCLA (defined in the definition of Hazardous Substances, below), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.

17. "Environmental Due Diligence Reports" means reports of investigations performed as part of environmental due diligence, which may include Phase 1, Phase 2 and Hazardous Building Site Assessments and reports, documents or documentation of Recognized Environmental Conditions that the City has completed or the City has in its possession, completed by others. A complete list of the Environmental Due Diligence Reports is attached as Exhibit C.

18. "Escrow Agent" means Allison Swallow, Ticor Title, 111 SW Columbia Street, Portland, OR 97201.

19. "Final Construction Drawings and Technical Specifications" means documents, based upon the Design Development Drawings, which set forth the requirements for construction of the Project pursuant to the terms of this Agreement, approved by the appropriate City departments. Final Construction Drawings and Technical Specifications shall include drawings and specifications that establish the quality levels of materials and systems required for the Project.

20. "Final Permitted Exceptions" has the meaning set forth in Section 1.5.2.

21. "Final Project Budget" means the updated sources and uses of funds, cash flow and Project costs approved by the City prior to Closing. Unless the City approves modifications in writing, the Final Project Budget must be generally consistent with the Project Budget, with a variance of no more than ten percent (10%).

22. "Hazardous Substances" means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. ("CERCLA"), or any other Environmental Law.
23. "Infrastructure" means public streets, sidewalks, and driveway connections to parking areas, planting street trees, storm water mitigation, street and parking lot lighting, construction and connection of the Project to abutting potable water and sewer and storm sewer mains, connecting the Project to gas and electric and other necessary utility services, as further described in the Scope of Development set forth in Exhibit D.

24. "Mortgage" means a mortgage or deed of trust against the Property (or any portion thereof) to finance the Project that is approved by the City and recorded in the real property records of Washington County, Oregon.

25. "Mortgagee" means the holder of any Mortgage, together with any successor or assignee of such holder. The term "Mortgagee" shall include any Mortgagee as owner of the Property or any part thereof 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 but shall not include (a) any other person or entity who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale.

26. "Notice" means any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by DEQ, the United States Environmental Protection Agency, the City, or other federal, state or local authority or any other government having jurisdiction with respect to the Property.

27. "Notice of Termination" has the meaning set forth in Section 7.3.1.

28. "Oregon Prevailing Wage Law" has the meaning set forth in Section 3.7.

29. "Parcel 3" means the parcel shown as Parcel 3 on Exhibit E.

30. "Permitted Exceptions" has the meaning set forth in Section 1.5.2.

31. "Preliminary Plans and Drawings" means the site drawings for the Project including schematic, massing, feasibility and preliminary cost estimates for the Project submitted to the City on June 14, 2017 and August 17, 2017, which were the basis for entering into this Agreement.

32. "Project" means the Property, and the new improvements to be constructed by Developer on the Property, as described in the Scope of Development set forth in Exhibit D.

33. "Project Budget" means the summary financial analysis for the Project set forth in Exhibit F. The Project Budget represents the estimated sources and uses of funds, cash flow and Project costs as of the Effective Date.

34. "Project Manager" means the person charged with managing the Project for the City.

35. "Property" means Parcel 3, Partition Plat 2016-054, which is more fully described in Exhibit A.

36. "Purchase Price" means the price Developer shall pay to the City for the Property to be
conveyed by the City to Developer. The process for setting the Purchase Price is set forth in Section 1.4.

37. “Recognized Environmental Conditions” means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Property or into the ground, ground water, or surface water of the Property, whether or not the Release is in compliance with applicable law. Recognized Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

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

39. “Schedule of Performance” means the document describing the schedule by which construction and development of the Project will occur, attached hereto as Exhibit G.

40. “Schematic Design Drawings means those drawings, renderings and detailed site plans that refine the Preliminary Plans and Drawings, are based upon land use submittal requirements, and are submitted to the City for the Project Manager’s Preliminary Review prior to submission for land use approval and prior to the completion of the detailed Design Development Drawings.

41. “Scope of Development” means the description of the improvements to be built comprising the Project, attached hereto as Exhibit D.

42. “Title Report” has the meaning set forth in Section 1.5.1.

43. “Unforeseen Environmental Conditions” means the presence of a Hazardous Substance on the Property that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by the DEQ.

1. GENERAL TERMS OF CONVEYANCE OF PROPERTY

1.1 Closing. Subject to the terms, covenants, and conditions of this Agreement, the conveyance of the Property to Developer by the City, shall occur in a single escrow Closing at the office of the Escrow Agent not later than the deadline for Closing set forth in the Schedule of Performance, which is attached hereto as Exhibit G and incorporated herein by this reference, and which may be extended as set forth in Section 1.10.

1.2 Conveyance by Deed. Subject to satisfaction of the Conditions Precedent to Conveyance set forth in Section 1.8 hereof and upon Developer’s delivery of Payment, at the Closing City will convey the Property to the Developer by Special Warranty Deed, a draft of which is attached hereto as Exhibit B and incorporated herein by this reference.
1.3 Payment of Purchase Price. Subject to satisfaction of the Conditions Precedent to Conveyance set forth in Section 1.8 hereof, at the Closing Developer shall accept the conveyance of the Property and pay the Purchase Price to City. The payment terms are specific to Developer’s unique characteristics and are not assignable except as allowed under Section 5 below.

1.4 Purchase Price. The Purchase Price for the Property shall be $0, based on the following factors: 1) appraised value; 2) Project requirements; 3) Project sources and uses; 4) other public subsidy; and 5) the residual value of the Property as calculated pursuant to Section 3.7 of this Agreement.

1.5 Title Review.

1.5.1 Within ten (10) Business Days after the Effective Date, the City will deliver to Developer a preliminary title report on the Property and copies of all exception documents (“Title Report”). Developer will have twenty (20) Business Days after receiving the Title Report to notify the City in writing if Developer objects to any item in the Title Report. Those items to which Developer does not object shall be the “Permitted Exceptions.” If Developer objects to any item, then the City shall have twenty (20) Business Days after receiving Developer’s written objection to notify Developer in writing of its intention to remove or not remove the objected-to exceptions to title prior to Closing. If the City does not respond to Developer’s objections within the twenty (20) Business Day time period or if the City refuses to remove any such objected to exceptions, Developer shall have twenty (20) Business Days to terminate this Agreement by written notice to the City. If this Agreement is not terminated in accordance with the preceding sentence, the Permitted Exceptions shall also include those exceptions, if any, that Developer originally objected to and that the City refused to remove or failed to respond to.

1.5.2 Developer may obtain an update to the Title Report at any time prior to the Closing. Developer shall promptly give to the City a copy of any updated Title Report. Within ten (10) Business Days after receiving an updated Title Report, Developer shall give the City notice, in writing, of any objections to the exceptions (that are not Permitted Exceptions) to title that appear on the updated Title Report as a result of the City’s actions or inactions. Within twenty (20) Business Days of Developer’s written notice to the City described in the preceding sentence, the City shall notify Developer in writing of its intention to remove or not remove the objected-to exceptions to title prior to Closing, provided, however, that any City-created exceptions appearing on the updated Title Report shall not be Permitted Exceptions, and the City shall be required to remove such exceptions. If the City does not respond to Developer’s objections within the twenty (20) Business Day time period or if the City refuses to remove any such objected to exceptions, Developer may terminate this Agreement by written notice to the City or Close subject to the exceptions. The Permitted Exceptions together with any other exceptions that Developer accepts at Closing are the “Final Permitted Exceptions.”

1.6 Title Insurance, Survey, Property Taxes and Closing Costs.

1.6.1 The City, at its expense, shall provide Developer with a standard coverage ALTA Owner’s Policy of Title Insurance, issued by Escrow Agent and covering the Property when conveyed, and insuring Developer in the amount of the Purchase Price, free and clear of encumbrances, except Final Permitted Exceptions. Developer, at its option and its expense, may
elect to obtain extended coverage under such policy of title insurance and the City agrees to execute any affidavits or other documents reasonably required by the Escrow Agent to enable Developer to obtain such coverage. Developer may also elect to obtain a survey at its own expense.

1.6.2 The costs for recording a Memorandum of this Agreement, a form of which is attached as Exhibit H and incorporated herein by this reference, the Deed and any other documents required by Developer to be recorded will be paid by Developer. Each Party shall pay one-half (1/2) of any escrow fees charged by Escrow Agent. All other costs related to the Closing, if any, shall be allocated in accordance with the customary practice in Washington County.

1.7 Property Taxes. The Property is currently exempt from real property taxes. Real property taxes and assessments for the current year will begin to accrue as of the date of Closing. Developer shall pay any property taxes accruing to the Property as a result of the transfer of the Property from public ownership, which changes the Property’s status from tax exempt to taxable. In addition, Developer will pay all real property taxes and assessments assessed and levied against the Property allocable to the period from and after closing. City will cooperate and support Developer’s efforts to obtain construction period abatements and vertical housing development tax credits.

1.8 Conditions Precedent to Conveyance. Developer and the City are not obligated to close the Conveyance unless the following conditions are satisfied to their reasonable satisfaction. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied. Failure to satisfy or waive a condition precedent shall not constitute a default under this Agreement. The Parties shall act diligently and in good faith to satisfy conditions over which they have control or influence.

(a) To the Satisfaction of both the City and Developer:

(i) City shall have received a Final Determination Letter from the Oregon Bureau of Labor and Industries (“BOLI”) stating that the Project is not subject to ORS 279C.800-870, as set forth in Section 3.9. City shall apply for the BOLI determination within ten (10) business days of the date of this Agreement.

(ii) Metro has delivered a commitment letter to Developer recognizing the Project as a Transit-Oriented Development and has agreed to fund the Project through an easement in an amount no less than $500,000.

(iii) Developer has secured all land use and development review approvals for the Project required by the City and no appeal of any such required approvals has been filed, and the time for any such appeal shall have expired. If an appeal has been filed, it has been finally resolved. In the event of the filing of such an appeal, Developer may extend this contingency, and the Closing, for a period not to exceed one hundred and eighty days (180) days, or both Parties may mutually agree in writing to any period of extension.

(iv) The Parties have agreed to the final form of the Deed, the Escrow Deposit Instructions, and any other documents necessary to close the Conveyance.
The City is ready to issue the site development permit for the project upon payment of system development charges ("SDCs") and permit fees.

The City is ready to issue all required building permits for the Project once SDCs and permit fees are paid.

The City and BURA have entered into an intergovernmental agreement providing $150,000 from BURA to the City for the City to use to partially pay SDCs on behalf of Developer.

No litigation is pending that prevents the City or Developer from performing its respective obligations under this Agreement.

All tasks shown on the Schedule of Performance to be completed as of Closing have been completed.

Developer shall have obtained an unconditional commitment for financing the construction of the hotel satisfactory to City and Developer.

To Developer’s Satisfaction:

Developer is satisfied that the City has title to the Property subject only to the Final Permitted Exceptions.

Escrow Agent has issued to Developer a binding commitment, satisfactory to Developer, to issue to Developer a standard coverage Owner’s Policy of Title Insurance covering the Property in an amount not less than the Purchase Price, subject only to the Final Permitted Exceptions.

The City’s representations and warranties set forth in Section 1.12 hereof are true and correct as of the Closing.

The City is not in default under this Agreement. At the Closing, the City shall represent to Developer that City is not in default under this Agreement and that no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of the City under this Agreement.

Developer has approved the condition of the Property, including but not limited to all Environmental Conditions on the Property.

To the City’s Satisfaction:

Developer has provided to City documentation, satisfactory to City, that (a) Developer is an Oregon business corporation, (b) the Articles of Incorporation and Bylaws of the Developer have not been altered since the Effective Date in any manner that may adversely affect the City’s interests after the Closing, (c) Developer has full power and authority to enter into
and perform its obligations under this Agreement and (d) this Agreement has been executed and delivered for and on behalf of Developer by an authorized individual.

(ii) Developer has maintained the necessary financial resources and staffing anticipated for Developer to complete the Project.

(iii) The City has determined that the final construction budget for the Project is in substantial conformance with the Final Project Budget.

(iv) Developer has submitted documentation for the Project Manager's Preliminary Review, as provided in Section 3.3, and such documentation evidences a design that substantially conforms to the Scope of Development, which is attached hereto as Exhibit D and incorporated herein by this reference.

(v) Developer has demonstrated to the City the financial feasibility of the Project and Developer's financial capacity to complete the Project consistent with the Project Budget by providing to the City proof that Developer has obtained sufficient equity capital and mortgage financing for the Project.

(vi) Developer has provided an executed operating agreement between Developer and Intermountain Management Group, Inc. ("Intermountain"), an Oregon business corporation, or between Developer and a comparable third-party operator approved by the City.

(vii) Developer has provided an executed management agreement between Developer and Intermountain. Should a different management company be selected to operate the Hotel, the Developer will be required to receive approval from the City.

(viii) Developer has provided documentation satisfactory to the City, in the form of an executed license agreement with the Hyatt Hotels Corporation ("Hyatt"), showing that all Hyatt approvals needed to construct the project have been received and that the hotel will be managed as a "Hyatt House."

(ix) Developer has provided additional documentation, satisfactory to the City, that Developer has received all necessary approvals from Hyatt to construct the hotel in a style and form acceptable to the City.

(x) If, due to unforeseen circumstances prior to construction, the hotel cannot be constructed and operated as a Hyatt House, the City must approve any other hotel company or brand selected by Developer. Following construction, any changes to the brand or operator of the hotel must be approved by the City and must be of equivalent quality to a Hyatt House. This condition survives termination of this Agreement under Section 1.10.
(xi) The Final Construction Drawings and Technical Specifications for the Project have been approved by all required governmental entities and agencies.

(xii) Developer's representations and warranties set forth in Section 1.13 hereof are true and correct as of the Closing.

(xiii) Developer is not in default under this Agreement. At the Closing, Developer shall represent to the City that no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Developer under this Agreement.

1.9 Elections upon Non-Satisfaction of Conditions. If any condition in Section 1.8 is not fulfilled to the satisfaction of the benefited Party or Parties on the earlier of (i) the date scheduled for the satisfaction of the condition, as set forth in the Schedule of Performance, or (ii) on the date scheduled for Closing in the Schedule of Performance (or such later date, if any, designated pursuant to Section 1.9(c) below), then such benefited Party or Parties may elect to:

(a) Terminate this Agreement effective thirty (30) days after providing written notice to the other Party and allowing the other Party the opportunity to cure any non-satisfied condition;

(b) Waive in writing the benefit of that condition precedent to the Closing and proceed in accordance with the terms hereof; or

(c) Designate in writing a later date for Closing, to allow additional time for the condition to be satisfied, if the condition can be satisfied and the other Party agrees in writing to satisfy the condition by the later date.

1.10 Termination Date. This Agreement will be automatically terminated in the following circumstances:

(a) If all of the conditions precedent to Closing set forth in Section 1.8 have not been satisfied, waived or otherwise resolved by the later of (a) the Closing Date, or (b) such later Closing date, if any, designated pursuant to Section 1.9(c), then this Agreement shall automatically terminate thirty (30) days after the later of the foregoing dates (the "Final Termination Date") unless the date for satisfying the unsatisfied condition(s) is extended by agreement of the Parties prior to the Final Termination Date, or unless the failure of satisfaction of the conditions precedent is the result of an Unavoidable Delay, as described in Section 7.8.

(b) If this Agreement is not terminated because of the Parties' failure to satisfy, waive or otherwise resolve all of the conditions precedent, it will terminate automatically upon the City's issuance of a Certificate of Completion, as provided in Section 3.13.2.

1.11 Effect of Termination for Non-Satisfaction of Conditions Precedent. If this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to Closing and neither
Party is in default under this Agreement, then all rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Washington County. If a Party is in default under this Agreement on the date this Agreement terminates, then the rights and remedies accruing to the other Party under this Agreement as a result of such default shall survive termination of this Agreement.

1.12 City Representations and Warranties. City’s representations and warranties under this Agreement are limited to the following, each of which shall be deemed made as of the Effective Date, shall be deemed remake and effective as of Closing and shall survive for a period of one year after Developer receives a Certificate of Completion substantially in the form of Exhibit I. City represents that:

(a) City is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986 (“IRC”), as amended.

(b) City has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by City to authorize the execution of this Agreement and the transactions contemplated hereby.

(c) To City’s knowledge, no representation, warranty or statement of City in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.

(d) To City’s knowledge, except as otherwise disclosed in writing to Developer, the Property is in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements. City has not received or given any notice stating that the Property is in violation of any applicable laws, rules, regulations, ordinances or other governmental requirements. To City’s knowledge, based upon a reasonable investigation, utility connections are available to the Property.

(e) To City’s knowledge, except as has been disclosed to Developer in the Environmental Due Diligence Reports, there are no underground storage tanks existing on the Property, there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, Release or production of Hazardous Substances on the Property, except in compliance with Environmental Laws currently in effect, and City has not received notice of the Release of any Hazardous Substances on the Property. City has not caused any Release on or about the Property.

(f) There is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or, to City’s knowledge, threatened, which may affect the Property, City’s ability to perform its obligations under this Agreement, or Developer’s ability to develop the Project.
(g) As of the Effective Date, City is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of City under this Agreement.

(h) City is the legal and beneficial fee simple titleholder to the Property and have the authority to convey the beneficial fee simple title to the Property, the Property is free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments or other matters, except as disclosed by the Title Report.

(i) “City’s knowledge” shall mean the actual knowledge of the City’s Community Development Director, Cheryl Twete, or her successors, or of Tyler Ryerson, the City’s Senior Project Development Manager, or his successors, without duty of inquiry.

1.13 Developer Representations and Warranties. Developer’s representations and warranties under this Agreement are limited to the following, each of which shall be deemed made as of the Effective Date, shall be deemed remade and effective as of Closing and shall survive for a period of one (1) year after Developer receives a Certificate of Completion. Developer represents that:

(a) Developer has full power and authority to enter into and perform this Agreement in accordance with its terms and all requisite action has been taken by Developer to authorize the execution of this Agreement and the transactions contemplated hereby. Developer’s execution and delivery of this Agreement and the performance of its obligations hereunder do not require the consent of any third party that has not been obtained.

(b) To Developer’s knowledge, no representation, warranty or statement of Developer in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.

(c) As of the Effective Date, Developer is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of Developer under this Agreement.

(d) Developer enters into this Agreement without reliance on verbal representations by City, its employees, agents or consultants, regarding any aspect of the Property, the Project or its feasibility or financing, or compliance with any governmental regulation.

2. INFRASTRUCTURE, UTILITIES AND LAND CONDITION

2.1 Infrastructure Improvements. The City will pay $150,000 in SDCs on Developer’s behalf if the Beaverton Urban Redevelopment Agency agrees in an intergovernmental agreement with the City to fund the City’s $150,000 payment, it being acknowledged that said intergovernmental agreement is a condition to the closing of the Conveyance pursuant to Section
1.8(a)(vii). Developer shall pay all additional SDCs and all other costs for the Infrastructure required by the City Code through the building and site development permitting processes. Developer shall bear the costs of required improvements, if any, to the rights-of-ways established adjacent to the Property, unless specifically waived by the City.

2.2 **Partition.** At its sole cost and expense, and subject to the requirements of Washington County, the approval of the City, and the previous actions of Rescore, Developer may subsequently file a more detailed final plat for Lots 1, 2 and 3.

2.3 **City Site Preparation.** Prior to Conveyance, City will require that Rescore honor its previous contractual obligation to replace and restore as nearly as practicable the surface of the Property to its undisturbed condition and to vacate the Property. Rescore, at its sole expense, will remove all supplies, debris, loose asphalt, loose concrete, loose rock and other materials from the Property unless Developer requests that such materials remain on the Property. Asphalt, concrete, and landscaping, if any, will not be removed.

2.4 **Developer Site Preparation.** Except for the City Site Preparation, Developer will, at its own cost, complete all necessary site preparation as required by City Code, and any applicable permits or land use approvals in accordance with the Schedule of Performance.

2.5 **Utility Service.** As part of the Project, Developer shall install, connect, and upgrade new and existing utilities necessary to serve the Project as required by City Code, and any applicable permits or land use approvals in accordance with the Schedule of Performance.

2.6 **Subsurface, Surface and Building Conditions.** City shall convey the Property to Developer, and Developer shall accept the Property, in "AS IS" condition on the Closing date, without warranty of any kind except as otherwise specifically set forth in this Agreement. The City shall provide Developer with all of its environmental records concerning the Property. However, the City makes no warranties or representations that the soil conditions, Environmental Conditions or any other conditions of the Property or structures thereon are suitable for any improvements. Developer acknowledges that it has not relied on any verbal representations made by the City as to the soil conditions, Environmental Conditions or any other conditions of the Property. Developer acknowledges that it has had free access to City’s records with respect to the condition of the Property, specifically including the Environmental Due Diligence Reports.

3. **DEVELOPMENT**

3.1 **Scope of Development.** Developer will build the Project as described in the Scope of Development set forth in Exhibit D.

3.2 **Project Financing.** Developer will be responsible for obtaining all funds and financing necessary to acquire the Property and construct and operate the Project. The Parties anticipate that the Project financing will be structured generally as shown in the Project Budget. The parties acknowledge and agree that the Project Budget is only a projection and that a number of factors may change this projection including interest rates, lender requirements, market shifts, and the soft and hard development costs.
3.2.1 Developer shall arrange for or provide equity and obtain from third parties all construction and permanent financing necessary to complete the Project at a total construction and acquisition cost generally set forth in the Project Budget, which is attached as Exhibit F and incorporated herein by this reference.

3.3 Plans, Drawings, Specifications and City Review.

3.3.1 General Assistance. The Project Manager will assist Developer in obtaining the approvals from the City necessary to commence construction and complete the Project as set forth in this Agreement. The Parties understand and agree that the City cannot guarantee such approvals, but the City shall use reasonable efforts in working with the City and any other parties necessary to accomplish the Project.

3.3.2 Design and Permitting Work. Developer shall diligently pursue the design and permitting work necessary to construct the Project. Developer and City shall work closely throughout the design and permitting process to achieve a Project that meets the Scope of Development requirements set forth in Exhibit D and is high quality, functional, financially feasible and supported by market conditions. Developer and City shall jointly address issues and concerns to achieve a successful Project.

3.3.3 Preliminary Plans and Drawings. Developer and City have agreed to the Preliminary Plans and Drawings that identify the major components of the Project that form the foundation for entering into this Agreement. The Beaverton City Council’s authorization to dispose of the Property pursuant to this Agreement is based in part on information provided to the City Council in the form of the Scope of Development and the Preliminary Plans and Drawings. Developer’s subsequent design work entailing the submittal of plans, drawing and specifications to the City in connection with the Project shall be compatible with the Preliminary Plans and Drawings and the Scope of Development previously submitted to the City unless otherwise approved by the City.

3.3.4 Schematic Design Review. Developer shall prepare drawings, renderings and detailed site plans that refine the Preliminary Plans and Drawings and shall submit the completed Schematic Design Documents to the City for the Project Manager’s Preliminary Review as described in Section 3.3.8 below.

3.3.5 Land Use Approval. Developer shall prepare the Design Development Drawings required by the City to review Developer’s land use application for the Project. Before submitting those plans for review to the City’s Community Development Department, Developer shall submit the plans, drawings and specifications to the Project Manager for a Preliminary Review as described in Section 3.3.8.

3.3.6 Site Development Permits. Developer shall prepare the Final Construction Drawings and Final Specifications plans required by the City to review Developer’s site development permit applications for the Project. Before submitting those plans for review to the City’s Department of Public Works, Developer shall submit the plans, drawings and specifications to the Project Manager for a preliminary review as described in Section 3.3.8.
3.3.7 Building Permits. Developer shall prepare the Final Construction Drawings and Final Specifications required by the City to review Developer's building permit submittal for the Project. Before submitting those plans for review to the City's Community Development Department, Developer shall submit the plans, drawings and specifications to the Project Manager for a preliminary review as described in Section 3.3.8.

3.3.8 Scope of Project Manager's Preliminary Reviews. Prior to Developer's submission of final documents for land use approval, site development permits and building permits, the Project Manager shall conduct a preliminary review and approve (a) Schematic Design Documents, then (b) Design Development Drawings, and thereafter (c) Final Construction Drawings and Technical Specifications for compatibility with the Scope of Development and the Preliminary Plans and Drawings.

3.3.9 Subsequent Approvals. Notwithstanding the Project Manager's approval of Design Development Drawings and Final Construction Drawings and Technical Specifications submitted for preliminary approval, the City does not represent or warrant that such preliminary approval shall guarantee in any way whatsoever the subsequent approval of any submitted applications or issuance of any required permits by the City's Community Development Department.

3.3.10 Timing of Preliminary Reviews. The City shall respond to a request for each preliminary review within 10 Business Days of a request. City's failure to timely respond to the request shall be deemed an approval or acceptance of the submitted Drawings, Plans and Specifications. If any request is disapproved, such disapproval must specify the reasons therefor in writing and state what changes are required that will result in an approval.

3.3.11 Good Faith. The City may not unreasonably reject or withhold, delay or condition its preliminary approval of any drawing, plan or specification for the Project.

3.3.12 Changes in Approved Drawings. If Developer seeks to make a material alteration to the Schematic Design Documents, Design Development Drawings or Final Construction Drawings and Technical Specifications after their initial approval by the Project Manager, Developer shall submit the subsequent proposed changes to the Project Manager for review and approval. As used in this section, a material alteration means any material change that would, in the City's reasonable view, have a significant impact on the function, appearance or cost of the Project. The Project Manager shall review proposed changes consistent with standards and procedures as described in Section 3.3.8. Developer acknowledges that in addition to Project Manager review and approval, it may be required to secure additional, separate City approval of such changes. If the proposed change is subject to City land use, site development, or building permit approval, any separate City approval shall be sought after the Project Manager has approved the change.

3.4 Construction Staging and Construction Parking. Prior to beginning construction, Developer shall propose, subject to City approval, the logistics of construction staging and construction parking. Developer, with the assistance of the City, shall also develop a communication plan to address neighborhood concerns during all phases of development.
3.5 **Construction Coordination.** Developer agrees to coordinate construction efforts with Rescore, the adjacent property owner. If the City is constructing the Beaverton Center for the Arts and the Beaverton Central Parking Garage on adjacent property during the Project’s construction, the parties will coordinate their construction efforts as well to maximize efficiency and minimize impact to the Beaverton Central District.

3.6 **Diligent Completion.** Subject to the terms and conditions of this Agreement, Developer covenants to complete the development of the Project in substantial conformance with the Final Construction Drawings and Technical Specifications and in accordance with the Schedule of Performance. Developer shall complete development of the Project no later than the date for completion of construction set forth in the Schedule of Performance, with the exception of any extensions due to delays caused by weather, labor issues, or other force majeure causes outside of Developer’s control, construction of which Project shall comply with all terms and conditions of land use, site development and building permit approvals. Developer agrees to keep the City informed of its progress with respect to development of the Project during construction until the City issues the Certificate of Completion for the Project.

3.7 **Oregon Prevailing Wage Law.** Developer shall not use $750,000 or more in “funds of a public agency,” as that phrase is used in ORS 279C.800 to 279C.870 and the administrative rules adopted thereunder (the “Oregon Prevailing Wage Law”), for the Project without the prior written consent of the City and amendment of this Agreement, as the City determines necessary or desirable in its sole discretion, to implement compliance with the Oregon Prevailing Wage Law in the construction of the Project. For purposes of determining whether the $750,000 trigger has been reached, the funds provided by all public agencies for the Project shall be aggregated.

3.8 **Calculation of “Funds of a Public Agency.”** Developer shall cooperate with City and Metro in calculating the difference between (a) the value of the Property as determined on or about the date of Closing, after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the City imposes on the development of the Property; and (b) the fair market value of the Property if the Property were not subject to these limitations. The City and Metro shall employ Jerry Johnson, an economist and appraiser, to assist in these calculations. As provided in ORS 279C.810(1), the reduction in value as a result of the City restrictions shall not be considered “funds of a public agency” for purposes of the Oregon Prevailing Wage Law.

3.9 **Review by Oregon Bureau of Labor and Industries ("BOLI")**

3.9.1 The City and Developer agree to submit this Agreement to BOLI for review and to seek a favorable determination letter from BOLI stating that Oregon prevailing wage rate laws, including ORS 279C.800-870 and related regulations, do not apply to this transaction and the Project set forth herein. 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 “Final Determination Letter”). The City agrees to promptly provide Developer with a copy of the determination letter and written confirmation from BOLI set forth above upon receipt. Developer acknowledges that the Final Determination Letter is a nonbinding expression of BOLI’s current opinion in this matter, which may be reversed at any time and at BOLI’s sole discretion,
and the City specifically disclaims any representation and warranty, implied or expressed, in regard to the application of prevailing wage laws to the Project. Developer is strongly encouraged to obtain its own independent counsel on this matter and not to rely solely upon the Final Determination Letter.

3.9.2 If the determination letter is not favorable to Developer and the Project, or in the event BOLI reverses a previously favorable determination prior to the Closing Date, then Developer shall notify the City within ten Business (10) Days whether Developer chooses to terminate this Agreement (without additional liability or costs to City or Developer) or whether Developer chooses to permit the City the option to seek a clarification and/or reconsideration of the BOLI determination. If Developer does not choose to terminate this Agreement, then the City shall notify Developer within ten Business (10) Days thereafter whether it will employ legal counsel to assist it in seeking a reversal of the unfavorable determination letter. If the City chooses, in its sole discretion, to seek a reversal of the BOLI determination, then this Agreement shall not terminate. If the City chooses to seek a reversal of the determination letter and that effort is not successful, then Developer shall notify the City within ten Business (10) Days after receipt of notice of the same as to whether Developer chooses to terminate this Agreement.

3.9.3 To the extent that the City is in the process of seeking a reversal of the BOLI determination pursuant to Section 3.9.2, it shall, for the purposes of Section 1.10(a) and Section 7.8, be deemed an Unavoidable Delay.

3.10 Inspection and Property Access.

3.10.1 Before Conveyance of Property. Before Closing and upon reasonable notice to Rescore, the City shall allow Developer and Developer’s employees, agents and consultants to enter upon the Property pursuant to a written permit of entry.

3.10.2 Prior to Commencement of Construction. Prior to construction, Developer shall give reasonable notice to the City, which shall then give reasonable notice to Rescore, that the surface of the Property must be restored as nearly as practicable to its condition at the time of Rescore’s commencement of use for construction purposes.

3.10.3 After Conveyance of Property. After Closing, during construction of the Project, and until the Certificate of Completion is issued for the Project, Developer’s work shall, upon reasonable notice, be accessible at reasonable times, upon two days’ prior notice, for inspection by representatives of the City.

3.11 Safety Matters and Indemnification. Developer shall:

3.11.1 Safety. Comply with all safety laws and take all safety measures necessary to protect its 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.

3.11.2 Indemnity from Liability Claims. Indemnify, defend (at City’s request) and hold harmless City, its agents, officials, and employees, as well as its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in
connection with the death of, or, injury, loss or damage whatsoever caused to, any person or to the
property of any person as occurs in the process of the construction work, except for those caused
by the negligence or intentional acts of the City. The indemnity set forth in this Section 3.11.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

3.11.3 Indemnity from Liens. Indemnify, defend (at City’s request) and hold harmless City, and its successors and assigns, except to the extent caused or created by the City, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics’, materialmen’s, laborers’ or other construction or statutory liens filed against any portion of the Property or the Project or arising from or related to construction on the Property or the Project performed by or at the request of Developer or Developer’s contractors or agents. The indemnity set forth in this Section 3.11.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement for a period of one (1) year after either such event.

3.12 Liens. If any statutory lien shall be filed, prior to the Closing Date, against any portion of the Property or the Project by reason of labor, services or materials supplied to or at the request of Developer or Developer’s contractors or agents in connection with any construction on the Property or the Project, Developer shall, within thirty (30) days after the filing thereof, take whatever action is necessary and proper (including posting a bond or a cash deposit and taking such further action as may be required by the Oregon Construction Lien Law), to discharge the same of record so that the Property and the Project shall thereafter be entirely free of the lien. Alternatively, Developer may elect to leave the lien of record and to contest its validity, amount or applicability by appropriate legal proceedings, but only if Developer shall, within the 30-day period following the filing of the lien, furnish an indemnity against such lien in an amount and form satisfactory to induce the title insurance company which insured title to the Property to insure over such lien or 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) Developer shall indemnify and hold harmless City from all loss, damage, liability, expense or claim whatsoever (including attorneys’ fees and other costs of defending against the foregoing) resulting from the assertion of any such lien, and (ii) in the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Developer, Developer shall within fifteen (15) days thereafter cause the lien to be discharged of record.

3.13 Certificate of Completion.

3.13.1 When Developer is Entitled to Certificate of Completion. Upon substantial completion of the Project as described in this Section 3.13 on or before the date for completion of the construction set forth in the Schedule of Performance and provided Developer is not in default under this Agreement, the City will furnish Developer with a Certificate of Completion for the Project, substantially in the form of Exhibit I attached hereto and incorporated herein by this reference. The Project will be deemed to be substantially complete when (i) City determines that the Project has been completed according to the Final Construction Drawings and Technical Specifications, except for punch-list items that do not materially affect the use of the Project for the purposes intended under this Agreement, (ii) Developer has completed all environmental remediation and abatement on the Property, if any, required of Developer under Section 4.1.2, (iii) the City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the
Project, and (iv) City determines that any other improvements required by this Agreement have been completed in all material respects.

3.13.2 Meanings and Effect of the Certificates of Completion. The Certificate of Completion shall provide for termination of obligations under this Agreement and limitation of remedies of City as expressly provided for in the Certificate of Completion.

3.13.3 Form of Certificate of Completion; Procedure Where City Refuses to Issue. A Certificate of Completion shall be in a form that can be recorded in the real property records of Washington County, a draft of which form is attached as Exhibit I. At Developer’s request, the Certificate of Completion for the Project shall state which terms and conditions of this Agreement are of no further force and effect. If the City refuses or fails to provide a Certificate of Completion in accordance with this section, 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. City’s failure to furnish Developer with such detailed written statement within such fifteen (15) day period shall be deemed City’s approval of Developer’s request for the Certificate of Completion.

4. ENVIRONMENTAL CONDITIONS, RESPONSIBILITY AND DEVELOPER, INDEMNITY

4.1 Environmental Conditions of the Property and Parties’ Responsibilities.

4.1.1 Environmental Due Diligence Reports. Developer acknowledges receipt of copies of all Environmental Due Diligence Reports, a list of which documents is attached as Exhibit C and incorporated herein by this reference.

4.1.2 Post-Closing Environmental Compliance, Indemnity. Developer shall be responsible for compliance with all Environmental Laws with respect to the Property, its business and the operation of the Project from and after Closing, including but limited to compliance with all restrictions, limitations, conditions and obligations imposed by DEQ pursuant to any No Further Action Letter, Underground Storage Tank Closure Letter or Easement and Equitable Servitude applicable to the Property, if any, except for matters Developer has proved were caused in whole or in part by the act or failure to act by the City, its employees, agents, contractors, or invitees, in which case the City shall defend (at Developer’s request), indemnify and hold harmless Developer, its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities, including without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by Developer, its successors or assigns, or asserted against Developer, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity. Developer shall be responsible for all environmental remediation and abatement of Recognized Environmental Conditions and Unforeseen Environmental Conditions on the Property not created by the City or during the City’s ownership of the Property. The Developer shall defend (at City’s request), indemnify and hold harmless City, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and
other expenses which may be imposed on or incurred by City, its successors or assigns, or asserted against City, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer, Developer’s failure to comply with a restriction, limitation, condition or obligation imposed by DEQ pursuant to a No Further Action Letter, Underground Storage Tank Closure Letter or Easement and Equitable Servitude applicable to the Property, if any, or Developer’s failure to complete any environmental remediation or abatement of Recognized Environmental Conditions or Unforeseen Environmental Conditions on the Property, provided however, Developer shall not indemnify the City if Developer proves any such violations in this sentence were caused in whole or in part by the act or failure to act by the City. The indemnity set forth in this Section 4.1.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

4.1.3 Contribution. The foregoing indemnity does not limit any rights of contribution that the Parties may have against others under applicable law or agreement. The indemnity is intended only as an allocation of responsibility between the Parties.

5. ASSIGNMENT AND TRANSFER PROVISIONS

5.1 No Assignment.

5.1.1 Because the City is a municipal corporation with authority to acquire, possess and dispose of real property, the City is uniquely benefited by completion of the Project. Developer is uniquely qualified to construct and manage the Project. Accordingly, the City and Developer agree and acknowledge that the anti-assignment provisions of this Section 5 are reasonable and necessary to provide to each Party the benefit of the transaction implemented through this Agreement. This Section 5.1 shall apply to transfers that become effective prior to the issuance by the City of a Certificate of Completion. Except as provided in Section 5.2, 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 without the prior written approval of the City, to be granted in the City’s sole discretion. Arvind and Ash Patel shall retain an ownership or management interest in Developer and retain control of the management of the operations of Developer. The City may require as absolute conditions to its approval of a transfer or assignment that:

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

5.1.1.2. Any proposed transferee or assignee shall have qualifications and financial responsibility equal to or superior to those of Developer as determined by the City in its sole discretion, any proposed transferee or assignee shall assume without limitation all obligations of Developer set forth in this Agreement, and Developer guarantees transferee’s/assignee’s performance hereunder in a form satisfactory to the City. The foregoing notwithstanding, (a) a Mortgagee shall not be required to assume Developer’s obligations under this Agreement during any period in which the Mortgagee does not hold title to the Property but merely a lien on title for security purposes, (b) if a Mortgagee succeeds to the ownership of the Property as a result of a foreclosure or by deed-in-lieu of foreclosure, then the Mortgagee’s liability shall only commence upon taking title to the Property and shall cease when the Mortgagee is no longer in title and a
successor owner has assumed the obligations of Developer under this Agreement; and (c) if a Mortgagee forecloses upon the Property and the Mortgagee is not the purchaser at the foreclosure sale, then the purchaser at the foreclosure shall be deemed, without further act, by bidding at the foreclosure sale, to have automatically assumed all of Developer’s obligations under this Agreement; and the transfer or assignment will not cause a material delay in the completion of the Project and will not change the Final Construction Plans or character of the Project.

5.1.1.3. The transfer or assignment will not cause a material delay in the completion of the Project and will not change the Final Construction Plans or character of the Project.

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

5.1.3 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 Property consistent herewith.

5.1.4 Developer shall not be relieved of its obligations under this Agreement by reason of such permitted transfers except as provided in Section 5.2 below or otherwise expressly agreed to in writing by the City.

5.2 Approved Pre-Completion Transfers. Notwithstanding Section 5.1, and provided that Developer provides the City with copies of all agreements related to a proposed transfer at least thirty (30) days prior to the Effective Date of the proposed transfer, and provides to the City any other information reasonably requested by the City to determine that such proposed transfer complies with the requirements of this Agreement as set forth in Sections 5.2.1, and 5.2.2, the City hereby consents to:

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

5.2.2 Any transfer to a partnership, limited liability company or joint venture in which (a) Developer maintains a controlling membership or management interest, or (b) Developer enters into a development management agreement with the new entity agreeing that Developer will manage the construction of the Project.

5.2.3 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 the City.
5.3 Transfers after Completion; Surviving Obligations. After the City’s issuance of a Certificate of Completion for the Project, Developer may transfer its interest or portions of its interest in the Property without restriction, consent or approval by the City.

6. PERMITTED MORTGAGES


6.1.1 Effect of Revesting on Mortgages. Any reversion and revesting of the Property or any portion thereof in the City pursuant to this Agreement shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, except as expressly set forth herein, any mortgage approved in writing by City and authorized by this Agreement.

6.1.2 Mortgagee Not Obligated To Construct. Notwithstanding any of the provisions of the Agreement, except those that are covenants running with the Property, 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 in the Property 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 to devote the Property or any part thereof to any uses, or to construct any improvements thereon other than those uses or improvements provided or permitted in this Agreement.

6.1.3 Copy of Notice of Default to Mortgagee. If the City delivers a notice or demand to Developer with respect to Developer’s breach of this Agreement, the City shall at the same time send a copy of such notice or demand to each mortgagee approved by the City, at the last address of such holder shown in the records of City.

6.1.4 Mortgagee’s Options to Cure Defaults. After Developer’s breach of this Agreement and if Developer fails to cure or remedy said breach within the required time period, then each mortgagee shall have thirty (30) days after passage of the latest date for Developer’s cure or remedy of the breach, to cure or remedy the breach itself, if cure or remedy thereof is permitted by this Agreement. If a mortgagee does cure or remedy the breach within said thirty (30) day period, the mortgagee may add the cost thereof to the mortgage debt and the lien of its mortgage, if permitted by its loan documents. If the breach is with respect to construction of the improvements comprising the Project, 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 improvements, provided that the mortgagee notifies City in writing of its intention to complete the Project according to the approved Final Construction Drawings and Technical Specifications. Any mortgagee who properly completes the Project shall be entitled to issuance of a Certificate of Completion, upon written request made to City following the procedures set forth in Section 3.13 above.

6.2 Failure of Mortgagee to Complete Improvements. In any case where, 180 days after default by Developer in completion of construction of Project improvements under this Agreement and notice from the City to the applicable mortgagee pursuant to Section 6.1.3, the holder of any mortgage has not exercised the option to construct afforded in Section 6.1.4, or has exercised such option but failed to proceed diligently with construction, the 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 Property has vested in the mortgage holder, the City, if it wishes, will be entitled to a conveyance by statutory bargain and sale deed from the mortgage holder to the City upon payment to the mortgage holder of an amount equal to the sum of the following: (a) the unpaid mortgage debt at the time title became vested in the mortgage holder (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 mortgage holder as a direct result of the subsequent management of the Property or part thereof; (d) the costs of any improvements made by such mortgage holder; 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 the City.

6.3 **Right of the City to Cure Mortgage Default.** In the event of a mortgage default or breach by Developer prior to the completion of the construction of the Project and the failure of the holder of any mortgage to exercise its option to construct pursuant to Section 6.1.4, the City may cure the default prior to completion of foreclosure. In such event, Developer will reimburse the City for all reasonable and proper costs and expenses incurred by the City in curing such default. The City will also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien will be subject and subordinate to the construction-financing mortgage.

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

7. **DEFAULT AND REMEDIES**

7.1 **Default and Cure**

7.1.1 **Default by Developer.**

(a) Developer shall be in default under this Agreement if Developer breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) Business Days after Developer receives written notice from City specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Developer shall be in default under this Agreement 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 within ninety (90) days after the written notice from the City.

(b) Developer shall also be in default under this Agreement if Developer makes an assignment for the benefit of creditors, or is adjudicated a 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.
(c) Developer shall also be in default under this Agreement, and City shall be irreparably harmed by such default, if Developer constructs a material portion of the Project in a manner materially inconsistent with Final Construction Drawings and Technical Specifications.

7.1.2 Default by City. The City shall be in default under this Agreement if City breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) Business Days after City receives written notice from Developer specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, City shall be in default under this Agreement if City does not commence cure of the breach within thirty (30) days after City receives written notice from Developer and thereafter diligently prosecute to completion such cure within ninety (90) days after the written notice from Developer.

7.2 City’s Pre-Conveyance Remedies. If a Developer default (as described in Section 7.1.1) occurs before the Property is conveyed to Developer, City may, at its option: (a) terminate this Agreement by written notice to Developer, without waiving any cause of action for monetary damages City may have against Developer, (b) seek monetary damages against Developer in an amount not to exceed $250,000, or (c) specifically enforce the obligations of Developer under this Agreement. If City terminates this Agreement as provided in this Section 7.2, then Developer shall deliver to City within thirty (30) days after such termination, copies of all Project design documents and engineering documents prepared for Developer by unrelated third parties, and which Developer is authorized to release. City may use any of the foregoing documents in any manner that City deems appropriate with the consent of any party having approval rights thereunder. City shall pay no compensation to Developer for the foregoing Project documents. If, prior to Closing, 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 condition as City shall reasonably approve.

7.3 City’s Post-Conveyance Remedies. If a Developer default (as described in Section 7.1.1) occurs after the Property is conveyed to Developer, including but not limited to Developer’s failure to complete the Project as required by Section 3.6, then City shall have the following remedies, which shall survive an earlier termination of this Agreement:

7.3.1 Right to Re-enter. Subject to the Mortgagee protections specified in Section 6.1, City shall have the right to re-enter and take possession of the Property and to terminate (and revest in City) the estate conveyed by the Deed, terminate Developer’s right to develop the Project, and resell the Property pursuant to Section 7.4 hereof. It is the intent of this provision together with other provisions of this Agreement, that the Conveyance of the Property to Developer shall be made upon, and that the Deed to the Property shall provide for, a condition subsequent to the effect that, in the event of a Developer default (as described in Section 7.1.1), City, at its option, may upon 90 days’ written notice (hereinafter “Notice of Termination”) to Developer and the Escrow Agent, declare a termination in favor of City of the title, and of all the rights and interest in the Property. After delivery of such Notice of Termination, and in the event Developer fails to remedy, end or abrogate such default within the 90-day period in the manner stated in the Notice of Termination, all the title and rights and interest in the Property conveyed to Developer by Deed, or to any successors or permitted assigns of Developer, shall be reconveyed to City by a statutory
bargain and sale deed and pursuant to escrow instructions, together set forth in Exhibit J and hereby incorporated by this reference. Any delay by City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 7.3 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that City should not be constrained because of concepts of waiver, laches or estoppel so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this section or otherwise to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by City with respect to any specific default by the Developer be considered or treated as a waiver of the rights of City with respect to any other defaults by the Developer or with respect to any particular default except to the extent specifically waived.

7.3.2 Return of Documents after Reconveyance. Developer shall deliver to City within thirty (30) days after reconveyance of the Property pursuant to Section 7.3.1, copies of all Project design documents and engineering documents prepared for Developer by unrelated third parties, and which Developer is authorized to release. City may use any of the foregoing documents in any manner that City deems appropriate with the consent of any party having approval rights thereunder. City shall pay no compensation to Developer for the foregoing Project documents.

7.4 City Resale. If title to the Property reverts to the City in accordance with the provisions of Section 7.3, City may, at its option, bring the improvements to a state of completion deemed by City as reasonably necessary to protect the improvements from the elements or other dangers, and shall use its best efforts consistent with prudent business practices and generally in accordance with the terms of this Agreement to resell at a reasonable price, the Property and such improvements (subject to any Mortgages permitted by this Agreement) as soon and in such a manner as City shall find feasible and consistent with its policy objectives, to a qualified and responsible party or parties (as determined by City in its sole discretion) who will assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to the City. Upon such resale, the proceeds thereof shall be applied, to the extent such proceeds are available, as follows:

7.4.1 Mortgages. First, to pay off any holder of a Mortgage permitted by this Agreement other than the City’s Mortgage.

7.4.2 City Reimbursement. Second, to City on its own behalf to reimburse City for all costs and expenses reasonably incurred by it in retaking, completing and selling the Property and its improvements, including, but not limited to, the following: (a) any expenditures made or costs incurred in completing the construction of the Project improvements that were Developer’s responsibility to construct but were done by or on behalf of City, (b) any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or the Project at the time title reverts to the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successor or transferees excluding any Mortgage if the Property or improvements are sold subject to such Mortgage, (c) all taxes, assessments and water and sewer charges with respect to the Property or part thereof, and any amounts owed to the City as lease or license fees, and any amounts otherwise owing City by Developer or its successor or transferee;
7.4.3 Developer Reimbursement. Third, to reimburse Developer, up to the amount equal to the sum of (a) any portion of the Purchase Price of the Property that Developer has paid to City and (b) the City-approved development costs for the Project paid by Developer, or for which Developer remains liable, that were not funded by City (if City provided financing for the Project), less any gains or income withdrawn or made as to the Project; and

7.4.4 Balance to City. Fourth, any balance remaining after the reimbursements described above shall be retained by the City.

7.5 Developer's Pre-Conveyance Remedies. If a City default (as described in Section 7.1.2) occurs before City conveys the Property to Developer, Developer may, at its option: (a) terminate this Agreement by written notice to City without waiving any cause of action Developer may have against City, (b) specifically enforce the obligations of City under this Agreement, or (c) seek monetary damages against City in an amount not to exceed $250,000. Notwithstanding the preceding sentence, Developer shall not seek consequential, incidental, indirect or special damages from City in connection with City's default.

7.6 Developer's Post-Conveyance Remedies. If a City default (as described in Section 7.1.2) occurs after City conveys the Property to Developer, Developer may specifically enforce the obligations of City under this Agreement and seek monetary damages against City.

7.7 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 and remedies 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. Any limitation of remedies set forth herein shall not limit or affect the obligations of a Party under any contractual indemnities set forth herein.

(a) Notwithstanding anything to the contrary in this Section 7, neither party shall seek consequential, incidental, indirect, or special damages from the other party in connection with any default by the other party.

7.8 Unavoidable Delay – Force Majeure.

7.8.1 Neither a Party nor a Party's successor in interest shall, to the extent described in Section 7.8.2 below, be considered in breach of any obligation created hereunder or progress in respect thereto if the delay in performance of such obligation (the "Unavoidable Delay") is due to causes that are unforeseeable, beyond its control, and without its fault or negligence, such as acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, earthquake, explosion, mob violence, riot, malicious mischief.

7.8.2 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 the obligations of the City or Developer, as the case may be, shall be extended for the period of the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section 7.8 shall, within thirty (30)
days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other
Party in writing of the cause or causes of the delay and the estimated time of correction and,
provided further, that in no event shall the time or times for performance of an obligation be
extended for more than 180 days in aggregate.

8. **RESTAURANT**

8.1 **Restaurant Tenant Recruitment.** The City and Developer will coordinate restaurant
tenant recruitment for the restaurant space consistent with a larger restaurant/retail strategy the
City develops for the Beaverton Central district, emphasizing high-quality local or regional
restaurants in lieu of national chain restaurants. Any selection of restaurant operator(s) by
Developer is subject to City approval.

8.2 **Developer-Provided Tenant Improvement Allowance.** In addition to building the space
for the restaurant to “warm shell,” as described in the Scope of Development, Developer will
provide $50/square foot as a tenant improvement allowance for a restaurant operator, to assist in
full build-out of the restaurant space.

8.3 **Tenant Improvement Grant Funds.** In addition, the City or BURA will provide up to
$25,000 in tenant improvement program grant funds to assist in building out the restaurant space
for a specific tenant’s needs, so long as the restaurant is approved by the City and consistent with
the Beaverton Central restaurant/retail strategy.

8.4 **Lease Rate.** Developer’s operating pro forma will be based on a lease rate consistent with
a high quality local or regional restaurant in Beaverton, consistent with the Beaverton Central
restaurant/retail strategy.

8.5 **Continuing Restaurant Recruitment Strategy.** If a tenant is not secured prior to the
termination of this Agreement, the parties, acting in good faith, will negotiate a subsequent
restaurant recruitment collaboration agreement on terms similar to those contained herein, which
will allow them to continue joint restaurant recruitment efforts. Any selection of restaurant
operator(s) by Developer following termination of this Agreement is subject to City approval.

9. **COMMUNITY BENEFIT**

9.1 **Disadvantaged Business Enterprise Participation.** In order to increase participation by
DBE firms certified by the State of Oregon Certification Office of Business Inclusion and
Diversity (“COBID”) in the contracts entered into between Developer and its contractors,
Developer’s contractors themselves will make best efforts to encourage solicitation of DBE
participation, using strategies that include, but are not limited to, community meet-and-greet events
and government databases. Contractors may use DBE subcontractors, suppliers, manufacturers or
professional service providers to fulfill a ten percent (10%) DBE contract goal, as long as the DBE
is certified by COBID in the types of work selected.

9.2 **Apprenticeship Programs.** Developer’s contractor shall target a twenty percent (20%)
apprentice to journeyman construction apprenticeship program and Developer shall evaluate
strategies for hotel operations-related apprenticeships.
10. SUSTAINABILITY ENHANCEMENTS

10.1 Developer Commitment. Throughout the design process, the City and Developer will work to identify and implement feasible project enhancement to achieve a high degree of sustainability. Developer agrees to emphasize sustainability and energy efficiency whenever possible.

10.2 LED Lighting. Developer agrees that it shall utilize LED Lighting throughout the hotel and other improvements to promote energy efficiency.

10.3 HVAC Systems. Developer shall install and incorporate energy efficient HVAC ventilation systems in all guestrooms and where possible, common facilities. The HVAC system shall utilize a high SEER rated ductless system. These systems are typically 30% more energy efficient in comparison to standard ducted systems.

10.4 Monitoring. Developer shall utilize available monitoring systems to limit usage of electricity throughout the hotel and improvements, including motion and light sensors in common facilities, and in guestrooms not in use (e.g. key card holder master switches for power to guestrooms).

10.5 Energy Efficient Window Glazing. Developer shall incorporate energy efficient glazing for all guestroom windows.

10.6 Roofing. Developer agrees to utilize a fully welded roofing system set over a high density foam insulation to prevent excessive heat transfer of the building.

11. MISCELLANEOUS PROVISIONS

11.1 Project Manager. For the purposes of managing the implementation of the provisions of this Agreement on behalf of the City, City shall designate a Project Manager. As of the Effective Date, the Project Manager is Tyler Ryerson.

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

11.3 Notice. Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail, postage prepaid, return receipt requested, or (b) when received if personally delivered, or (c) upon receipt of an electronic mail with an original to follow by either (a) or (b) above and:

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

Arvind Patel, President
Canterbury Group, Inc.
PO Box 56150
Portland, OR 97238
In the case of a notice or communication to City, addressed as follows:

Tyler Ryerson, Senior Project Development Manager  
City of Beaverton  
PO Box 4755  
Beaverton, Oregon 97076  
(503) 526-2520  
Email: tryerson@beavertonoregon.gov

with a copy to:

Peter Livingston, Assistant City Attorney  
City of Beaverton  
PO Box 4755  
Beaverton, Oregon 97076  
(503) 526-2215  
Email: plivingston@beavertonoregon.gov

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 given in any other manner shall be effective upon receipt by the Party for whom the same is intended.

11.4 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 the 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.

11.5 Headings. 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.

11.6 Waivers. 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 the 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.

11.7 **Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Washington County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.

11.8 **Calculation of Time.** Except where Business Days are specified, 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.

11.9 **Construction.** In construing this Agreement, 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.

11.10 **Legal Purpose.** Developer agrees that it shall use the Project solely for lawful purposes.

11.11 **Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

11.12 **Entire Agreement.** This Agreement and the exhibits and attachments hereto are the entire agreement between the Parties on the subject matter hereof. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no representations or warranties made by either Party, implied or express, other than those contained in this Agreement.

11.13 **Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties, and approved by the Beaverton City Council. Notwithstanding this general requirement, the Mayor may approve minor modifications to this Agreement without Council approval. “Minor Modifications” include:

(a) Changes in the Schedule of Performance when deemed warranted by the Mayor that do not exceed ninety (90) days; and

(b) Corrections of errors, clarifications, or minor modifications that do not change the substantive content of the Agreement.

The Mayor may also execute, deliver and record all documents, instruments and agreements as are necessary or as the Mayor determines to be desirable to consummate the transactions contemplated by this Agreement or to otherwise perform and secure the performance of the terms and conditions of this Agreement.
11.14 **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 permitted assigns of the Parties.

11.15 **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 other than that of independent contracting parties.

11.16 **Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, 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 or operation of the improvements to be constructed on the Property, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.

11.17 **Approval by Mayor.** Except as provided for elsewhere in this Agreement, whenever consent or approval by the City is required under the terms of this Agreement, all such consents or approvals shall be given in writing from the Mayor or his or her designee.

11.18 **Time of Essence.** Time is of the essence of this Agreement.

11.19 **No Third-Party Beneficiary Rights.** 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.

11.20 **Recording of Memorandum of Agreement.** City shall provide for recording a Memorandum of this Agreement within ten (10) days of the Effective Date. Developer shall pay the recording costs pursuant to Section 1.6 and will provide proof of recordation within ten (10) days of receiving the Memorandum of Agreement from the City. The form of the Memorandum of Agreement is attached as Exhibit H to this Agreement. When City issues to Developer a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record a release of the Memorandum of Agreement to reflect the termination of this Agreement.

**Further Assurances.** The parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereof or to carry out the intent of this Agreement.

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

Executed in multiple counterparts as of the day and year first above written.

CITY OF BEAVERTON,
a municipal corporation in the State of Oregon.

By: __________________________
    Denny Doyle, Mayor

CANTERBURY GROUP, INC.,
an Oregon corporation.

By: __________________________
    Arvind Patel, President

APPROVED AS TO FORM:

By: __________________________
    Peter Livingston
    Assistant City Attorney

APPROVED AS TO FORM:

By: __________________________
    Attorney for Canterbury Group
STATE OF OREGON  
)  
) ss.  
County of Washington  
)

On this day before me personally appeared Arvind Patel, the President of Canterbury Group, Inc., an Oregon corporation, and acknowledged this instrument to be the free and voluntary act and deed of such company, for the uses and purposes therein mentioned.

Given under my hand and official seal this ___ day of __________, 2017.

NOTARY PUBLIC for ____________________________
My Commission Expires: __________________________

STATE OF OREGON  
)  
) ss.  
County of Washington  
)

On this day before me personally appeared Denny Doyle, the mayor of the city of Beaverton, an Oregon municipal corporation, and acknowledged this instrument to be the free and voluntary act and deed of such city, for the uses and purposes therein mentioned.

Given under my hand and official seal this ___ day of __________, 2017.

NOTARY PUBLIC for ____________________________
My Commission Expires: __________________________