

**CITY OF TIGARD, OREGON
CITY CENTER DEVELOPMENT AGENCY
RESOLUTION NO. 15-02**

**A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OF THE
CITY CENTER DEVELOPMENT AGENCY TO EXECUTE A DISPOSITION
AND DEVELOPMENT AGREEMENT WITH DIG TIGARD LLC AND
CAPSTONE GREEN LIGHT PARTNERS LLC TO REDEVELOP THE
ASH/BURNHAM PROPERTIES AT 12780 AND 12800 SW ASH AVENUE**

WHEREAS, Goal 5 of the City Center Urban Renewal Plan is to “promote high quality development of retail, office and residential uses that support and are supported by public streetscape, transportation, recreation and open space investments;” *and*

WHEREAS, Section VIII, paragraph B of the City Center Urban Renewal Plan authorizes the City Center Development Agency (CCDA) to dispose of property to support development or redevelopment of retail, office, housing and mixed use project within the Urban Renewal Area; *and*

WHEREAS, the CCDA is the owner of three contiguous properties on the southwest corner of Ash Avenue and Burnham Street (“the Ash/Burnham properties”); *and*

WHEREAS, the CCDA and the developers DIG Tigard LLC and CAPSTONE GREEN LIGHT PARTNERS LLC have jointly funded pre-development, due diligence, and development feasibility work to develop approximately 157 market rate housing units in a mixed use development on the Ash/Burnham properties; *and*

WHEREAS, the CCDA and DIG Tigard LLC and CAPSTONE GREEN LIGHT PARTNERS LLC have negotiated in good faith a Disposition and Development Agreement (DDA) attached hereto as Exhibit A; *and*

WHEREAS, the DDA commits the CCDA to prepare the site for development by relocating the existing dog park and public works facilities, demolishing the structures, and obtaining a No Further Action letter from the Oregon Department of Environmental Quality to deliver the site in a shovel-ready state; *and*

WHEREAS, the DDA commits DIG Tigard LLC and CAPSTONE GREEN LIGHT PARTNERS LLC to commence construction within thirty days of closing and substantially complete the project 18 months after closing.

NOW, THEREFORE, BE IT RESOLVED, by the Tigard City Center Development Agency that:

SECTION 1: The Executive Director of the City Center Development Agency is authorized to execute the Ash/Burnham Disposition and Development Agreement attached as Exhibit ‘A’, subject to final legal review.

SECTION 2: The Executive Director of the City Center Development Agency may approve editing or similar changes to Exhibit 'A' that do not materially alter the rights or responsibilities of the parties.

SECTION 3: The Executive Director is authorized to take such steps as reasonably are necessary to administer the Disposition and Development Agreement pending further action by this Board as provided for in the Agreement.

SECTION 4. This resolution is effective immediately upon passage.

PASSED: This 14th day of April, 2015.



Chair – City of Tigard
City Center Development Agency

ATTEST:



Recorder – City of Tigard City Center Development Agency

Exhibit 'A'

AMONG: City Center Development Agency of the City of Tigard, Oregon (CCDA)

AND: DIG Tigard LLC, an Oregon limited liability company ("Diamond") and CAPSTONE GREEN LIGHT PARTNERS LLC, an Oregon limited liability corporation. ("Capstone" and sometimes hereinafter Capstone and Diamond are collectively referred to as "Developer")

AGREEMENT

RECITALS

A. Pursuant to the Charter of the City of the City of Tigard, Tigard Municipal Code 2-64 and ORS Chapter 457, the City adopted the City Center Urban Renewal Plan on November 22, 2005, by Ordinance No. 05-17 (including all amendments thereto, the "UR Plan"). The UR Plan establishes an urban renewal area ("UR Area") within which the CCDA will focus efforts to encourage private development, cure blight, and enhance economic development opportunities.

B. On April 24, 2007, by Ordinance No. 07-07, the City Council adopted the Downtown chapter as a Special Planning Area of the Tigard Comprehensive Plan. CCDA is responsible for coordinating and guiding development of the Downtown Special Planning Area on behalf of the City in accordance with the vision and goals of the City Center Urban Renewal Plan.

C. The property that is the subject of this Agreement lies within the UR Area and is described in the attached Exhibit "A" (the "Property").

D. On or about April, 2013, the City, in coordination with Diamond, applied for and was awarded a CET Grant from Metro to conduct various pre-development activities for two sites in Downtown Tigard.

E. Consistent with the grant IGA, the CCDA and Diamond have undertaken environmental investigations; obtained appraisals and land surveys; conducted market studies for 2 sites; prepared conceptual designs and cost estimates; and evaluated development feasibility.

F. Diamond has participated in the pre-development activities specified in the Memorandum of Understanding dated November 11, 2013 and revised December 9, 2013 between Diamond and the City/CCDA. The City has established a Vertical Housing Development Zone, which the Property is within.

G. The Parties have engaged in planning for the development of the Property and in good faith negotiations over the terms of this Agreement. Developer has made substantial investments and expenditures in pre-development work for the Property, in reliance on the good faith negotiations among the Parties, and with the expectation that agreement could be achieved on the terms of this Agreement. Similarly, the City and CCDA have made substantial investments and expenditures, staff costs and other costs, in pre-development work for the Property, in reliance on the good faith negotiations among the Parties and with the expectation that agreement could be achieved on the terms of this Agreement.

H. The Parties contemplate that the development conducted pursuant to this Agreement

will transform the Property into a vibrant, sustainable mixed-use residential areas. The development provided for in this Agreement is consistent with Goal 5 of the UR Plan and shall “promote high quality development of retail, office and residential uses that support and are supported by public streetscape, transportation, recreation and open space investments.”

I. ORS 457.170 authorizes CCDA to convey real property in accordance with the City Center Urban Renewal Plan where such real property is not needed for public use and when the public interest will be served.

J. The purpose of this Agreement is to memorialize the Parties’ understanding of their respective roles and commitments in the development of the Property, including a strategy for assuring that private development projects achieve financial feasibility.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

AGREEMENT

SECTION 1. DEFINED TERMS

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Agreement. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. Defined terms may be used in the singular or the plural.

“Developer” means DIG Tigard, LLC and Capstone Green Light Partners, LLC, each of whom is jointly and severally liable and responsible for compliance with the obligations of Developer under the terms of this Agreement, subject to Developer’s right to assign its interest in this Agreement pursuant to Section 12.25.

SECTION 2. DESCRIPTION OF THE PROJECT

The “Project” is a mixed use multi-family residential and commercial development that will include open space for residents’ use and active ground floor commercial uses. The CCDA has entered into this Agreement with the expectation that the Project will achieve all of the public goals desired for the Property, act as a catalyst for development in the UR Area, and fully capitalize the public investments.

The Project shall be designed and constructed so as to qualify as a Vertical Housing Development Project pursuant to ORS 285C.450 to 285C.480 and applicable administrative rules. It is contemplated that Building 2 will include approximately 2,000 square feet of space on the ground floor at the Ash/Burnham corner for commercial use. The materials used, fit, finish and overall construction quality of the buildings shall be substantially comparable in quality to that used in the “Cannery Row” apartments developed by Capstone in Sherwood, Oregon.

The on-site parking ratio is to be a minimum of one parking stall per unit and is to be located on a surface lot adjacent to Building 1 as well as “tuck under” stalls along the eastern wing and on a portion of the ground floor of Building 2.

A Conceptual Design dated March 4, 2015 for the Project that meets these requirements and is attached as Exhibit "B"

shall only be a guide for the proposed development, but is not binding on the Parties.

SECTION 3. CONVEYANCE

3.1 Deed.

Upon satisfaction of the Conditions Precedent to Closing set forth in Section 3.6, and payment of the amount set forth in Section 3.2, CCDA agrees to convey the Property to Developer by statutory warranty deed, free and clear of all encumbrances except Final Permitted Exceptions as described in Section 3.4.

3.2 Consideration and Earnest Money.

The consideration for the conveyance of the Property by CCDA to Developer shall: (a) be the greater of (the "Purchase Price"): (i) \$1,609,000 or (ii) the fair market value of the Property as determined by an appraisal to be obtained by CCDA, and shall be payable by Developer at Closing, and (b) further includes completion of the Project in accordance with this Agreement. The parties agree that the purchase price is the fair market value of the Property.

Within five (5) days after the Effective Date of this Agreement, Developer shall deposit with Escrow Agent (as defined below) earnest money in the amount of \$25,000 (the "Earnest Money").

3.3 Closing.

Subject to the terms, covenants, and conditions of this Agreement, the conveyance of the Property to Developer shall occur in an escrow Closing at the office of Chicago Title Company of Oregon, 1211 SW Fifth Ave., Suite 2130, Portland, OR 97204, Attention: Kelly Norton (503) 973-7402 (the "Escrow Agent") not later than September 1, 2016 but no sooner than July 1, 2015, unless extended by mutual agreement of the parties, which shall not unreasonably be withheld.

3.4 Title Review.

3.4.1 Within twenty (20) days after the Effective Date, CCDA will cause the Escrow Agent to deliver to Developer a preliminary title report on the Property and copies of all exception documents (the "Title Report"). Developer will have twenty (20) days after receiving the Title Report to notify CCDA in writing if Developer objects to any item in the Title Report. Those items to which Developer does not object are the "Permitted Exceptions". If Developer objects to any item, then CCDA shall have twenty (20) 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 CCDA does not give its response to Developer's objections within the twenty (20) day time period or if CCDA refuses to remove any such objected to exceptions, Developer shall have twenty (20) days to terminate this Agreement by written notice to CCDA. If this Agreement is not terminated in accordance with the preceding sentence, the Permitted Exceptions together with the exceptions, if any, that Developer originally objected to and that CCDA refused to remove or failed to respond to will be deemed the "Final Permitted Exceptions". CCDA shall not cause any additional exceptions to be recorded against the Property without the written consent of Developer, which consent may be

withheld in its sole discretion. CCDA promptly shall notify Developer of any third party exceptions recorded against the Property.

3.4.2 Developer may obtain an update to the Title Report at any time prior to the Closing. Developer shall promptly give to CCDA a copy of any updated Title Report. Developer shall give CCDA notice, in writing, of any objections to the exceptions (that are not Permitted Exceptions) to title that appear on the updated Title Report. Within ten (10) days of Developer's written notice to CCDA described in the preceding sentence, CCDA shall notify Developer in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing; provided, however, CCDA must remove any additional exception not consented to by Developer that is caused by CCDA. If CCDA refuses to remove any such objected to exceptions, Developer may terminate this Agreement, by written notice to CCDA, or Close subject to same. Any additional exceptions that Developer accepts at Closing, together with the previous Permitted Exceptions, are the "Final Permitted Exceptions".

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

3.5.1 CCDA, at its expense, shall provide Developer with a standard coverage 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 CCDA 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.

3.5.2 The costs for recording 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. CCDA shall pay any Washington County Transfer Tax. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Washington County. CCDA shall pay only the annual payments due through the Closing for any special assessments that have been paid in annual installments. Developer shall assume liability for payment of any annual payments due after the Closing for any special assessments that have been paid in annual installments. CCDA shall pay any property taxes accruing to the Property as a result of the transfer of the Property from public ownership, and therefore the change of the Property's status from tax exempt to taxable. Developer shall pay property taxes levied on the Property from and after the Closing.

3.6 Conditions precedent to Closing.

Developer and CCDA 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 and such party may waive the condition in its sole discretion, provided such waiver shall be in writing to the other party to be effective. The parties shall act diligently and in good faith to satisfy conditions over which they have control or influence.

3.6.1 To the satisfaction of both CCDA and Developer

(a) Developer has prepared and submitted to CCDA Project plans with sufficient detail to demonstrate compliance with the City Center Urban Renewal Plan and this Agreement. The plans shall demonstrate that structures will be built with quality design and materials, with particular focus on ground floor, pedestrian areas and attractive useable open space. CCDA staff will review and will provide tentative approval within ten (10) days after receiving Project plans with sufficient detail to demonstrate compliance with the City Center Urban Renewal Plan and this Agreement. CCDA shall, within 30 days of tentative approval of the submittals, conduct a public open house, with the attendance and cooperation of Developer. After the open house, the parties shall consider and incorporate public comments into any revisions reasonably determined to be appropriate. Upon completing any revisions, the parties shall provide the revisions to CCDA staff, which will then review the revisions and provide the submittals with staff recommendations to the CCDA Board for its review within 14 days of receiving the revisions from the parties. The CCDA Board shall then review and either accept or provide final comments on the Project plans within 45 days after receiving the revised site plan. Failure to respond within that timeframe shall constitute acceptance. CCDA staff shall not unreasonably withhold a recommendation that the Board approve the design. Approval shall be submitted for Dispute Resolution if the parties are unable to agree.

(b) City/CCDA has consolidated the three (3) lots described in Exhibit "A" into one (1) lot. CCDA shall make reasonable and good faith efforts to obtain consolidation and the failure of the satisfaction of this condition may be asserted by CCDA only if, despite CCDA's best efforts, consolidation is not obtained due to circumstances beyond CCDA's reasonable control.

(c) Developer has submitted the approved project plans and obtained site design approval pursuant to TMC 18.610 and all land use approvals and permits for the Project required by the Code of the City of Tigard have been secured, no appeal of any required approval or permit has been filed and the time for any such appeal has expired. If an appeal is filed, this condition shall be satisfied on final resolution of the appeal, except that final resolution shall not be required if the issue(s) involved in the appeal is such that customary bonding or indemnification represents a reasonable basis for proceeding with the Project.

(d) The final construction plans and specifications for the Project have been approved by all required governmental entities and agencies and the City of Tigard is ready to issue building permits that are required to construct the Project, subject only to Developer's ownership of the Property.

(f) The Parties have agreed to the final form of the Deed and any other conveyancing documents necessary to close the Conveyance.

(g) No litigation is pending that presents a substantial risk that CCDA or Developer will be precluded from performing their respective obligations under this Agreement.

3.6.2 To Developer's satisfaction:

(a) Developer is satisfied that CCDA has title to the Property subject only to the Final Permitted Exceptions.

(b) 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 Policy

covering the Property in an amount not less than the Market Valuation, subject only to the Final Permitted Exceptions.

(c) CCDA's representations and warranties set forth in this Agreement are true and correct as of the Closing.

(d) CCDA is not in default under this Agreement.

(e) CCDA has removed existing structures on the Property, including the "dog park".

(f) Developer is satisfied with the condition of the Property including environmental and geotechnical conditions.

(g) No material adverse change in the physical or legal condition of the Property has occurred.

(h) All commitments between Developer and other parties contemplated for Project financing are in effect.

(i) Receipt of a waiver or other form of written confirmation from the Oregon Bureau of Labor and Industries in form and substance as Developer reasonably requires that confirms, among other things, that there is no obligation for Developer to pay prevailing wages in connection with the development of the Project.

(j) Receipt of a "no further action" letter (the "NFA") from the Oregon Department of Environmental Quality ("ODEQ") in form and substance as Developer reasonably requires (including the terms of any conditions thereto) with respect to the environmental condition of the Property.

(k) Receipt of an environmental insurance policy (payment of the premium for which shall be a Developer obligation) in form and substance as Developer reasonably requires with respect to the environmental condition of the Property. CCDA shall make reasonable good faith efforts to cause ODEQ to issue the NFA.

(l) Receipt of such financial adjustment agreement from CCDA in such form and substance as Developer reasonably requires with respect to the financial adjustment or adjustments as described in Section 4.2.

(m) Land Use Approvals from the City of Tigard have enabled the Project described in Section 2 to be legally constructed under the Tigard Community Development Code. For purposes of this Section 3.6.2 (m), "Final Land Use Approval(s)" shall mean that no appeal has been filed and the time for any such appeal has expired. If an appeal is filed on either approval, this condition shall be satisfied on final resolution of the appeal, except that final resolution shall not be required if the issue(s) involved in the appeal is such that customary bonding or indemnification represents a reasonable basis for proceeding with the Project.

(n) Developer is satisfied that it has had adequate access to the Property to conduct its

due diligence and is fully satisfied with its knowledge, information and understanding of the Property conditions and suitability.

3.6.3 To CCDA's satisfaction:

(a) Developer has provided to CCDA reasonable proof that the entity that Developer will assign its interest in this agreement to take title to the Property is a limited liability company (the "Developer Purchasing Entity") existing in the state of Oregon and in which the principals of Capstone Green Light LLC and DIG Tigard LLC each hold an ownership and management interest, (b) the Developer Purchasing Entity has full power and authority to enter into and perform its obligations under the conveyance documents to be executed by it in connection with this Agreement and (c) the conveyancing documents to be executed by the Developer Purchasing Entity in connection with this Agreement has been executed and delivered, for and on behalf of the Developer Purchasing Entity, by an authorized individual.

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

(c) Developer is not in default under this Agreement.

(d) Developer has selected an architect for the Project reasonably satisfactory to CCDA: Developer shall provide CCDA with copies of architect CV's. CCDA shall review and comment on such submittal within 14 days and may, at its option, attend architect interviews. If requested by Developer, CCDA shall confirm in writing approval of the selected Project architect.

(e) Developer has demonstrated financial feasibility for the Project to the reasonable satisfaction of CCDA by providing to CCDA: (a) copies of binding commitment letters from private lenders for the construction financing for the Project, (b) written evidence of necessary equity commitments, (c) commitments from public funding sources, including the approval by the CCDA, if necessary, subject to standard underwriting practices, for the construction of the Project, and (d) such other documentation or assurances as may be reasonably required by CCDA.

3.7 Elections upon Non-Occurrence of Conditions.

Except as provided below, if any condition in this Section 3 is not fulfilled to the reasonable satisfaction of the benefited party or parties on the date scheduled for Closing as set forth in the Project Schedule, then such benefited party or parties may elect to:

3.7.1 Terminate this Agreement by written notice to the other Party, which termination shall become effective fifteen (15) days after the notice of termination is sent ("Termination Date") unless, before the fifteen (15) day period ends, such condition is fulfilled to the satisfaction of the benefited Party or Parties;

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

3.7.3 Designate in writing a later date for Closing, to allow additional time for the

condition to be fulfilled, if the condition can be fulfilled and the other party agrees in writing to the later date.

3.8 Effect of Termination for Failure of Conditions Precedent.

If this Agreement is terminated for failure of fulfillment 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 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. Within 10 days of such termination, CCDA shall instruct the Escrow Agent to return the Earnest Money. If a party is in default under this Agreement on the termination date, 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.

3.9 PROPERTY SOLD AS-IS.

Except for the representations expressly made by CCDA in this Agreement and in the conveyancing documents executed by CCDA at the Closing: (i) the Property shall be conveyed to Developer **“AS IS WITH ALL FAULTS”** and **CCDA makes no warranties or representations as to the suitability of the Property for any particular use or for soil or environmental conditions or any other conditions of the Property or structures thereon for any improvements to be constructed by Developer, (ii) Developer warrants that it has not relied on any representations or warranties outside the express terms of this Agreement, made by CCDA as to the environmental condition of the Property, the suitability of the soil conditions or any of the conditions of the Property and (iii) Developer expressly waives and releases CCDA, and CCDA will not be liable for any loss, cost or damage which may be caused or incurred by Developer by reason of any such soil, environmental or physical conditions of the Property.** CCDA has allowed Developer free access to CCDA's records with respect to the condition of the Property, including the No Further Action letter issued by DEQ, and Environmental Reports, and has allowed Developer access to the Property for inspection and testing by Developer, to its complete satisfaction. CCDA makes no representations or warranties whatsoever regarding the completeness, accuracy or reliability of such records. CCDA will assist in obtaining the cooperation of other public and private agencies having such information upon request by Developer. This Section 3.9 shall survive Closing.

3.10 Systems Development Charges.

CCDA shall pay to the City of Tigard the first systems development charges payable with respect to the Project in an amount equal to the Purchase Price. The parties shall cooperate to provide CCDA with notice of impending permit applications, credit details and other matters to ensure prompt payment. The obligations contained in this Section 3.10 shall survive Closing.

SECTION 4. POST-CLOSING OBLIGATIONS

4.1 Development.

Except as otherwise provided for in this Agreement, Developer will, at its own cost, design, construct and complete the Project without additional public funding participation, except for tax abatement programs generally available to similar projects within Downtown Tigard. Developer will use

commercially reasonable efforts to begin and to complete development of the Project as set forth in the Project Schedule as described in Section 6, subject to the terms of this Agreement.

CCDA is not the developer of the Project. This Agreement is not intended to be a contract providing for construction by CCDA either directly or through a contractor. Developer is solely responsible for selecting a construction contractor and the rights and responsibilities of Developer, the general construction contractor and any construction subcontractors, shall be provided for in a construction contract to which CCDA is not a party.

4.2 Financial Adjustment.

The parties accept the pro forma financial statement attached as Exhibit "C" hereto, as a reasonable and appropriate estimate of anticipated project costs and return. The parties further agree that 6.89% is a reasonable and appropriate return on cost for a Project of this nature.

Developer shall make reasonable good faith efforts to obtain a Vertical Housing partial tax exemption for the Project. It is understood, however, that the State of Oregon will not issue a final decision granting or denying the Vertical Housing partial tax exemption assumed in the pro forma until Project construction is complete, or the State of Oregon may grant a partial exemption less than the amount assumed.

Accordingly, within 45 days of the Effective Date, the parties shall in good faith agree to a form of agreement (the "Financial Adjustment Agreement") whereby CCDA shall provide to Developer a financial adjustment in the form of an annual reimbursement of a portion of annual property taxes paid by Developer (the "Financial Adjustment") should the State deny or reduce the partial tax exemption for reasons beyond Developer's reasonable control despite Developer's reasonable and good faith efforts to obtain the partial tax exemption for the Project. The Financial Adjustment shall be limited to that amount necessary to provide the 6.89% return on cost based on actual project performance as of the date that is the later of: (i) Developer's receipt of the Washington County property tax statement based on "full assessment" of the completed Project, and (ii) one year from initial occupancy by a residential tenant (the "Anniversary Date"); provided, however, in no event shall the amount of the Financial Adjustment be more than the sum of an amount equal to a: (a) 60% discount on taxes calculated by the county assessor for the residential improvements comprised of Building 2 and (b) 80% discount on the taxes calculated by the county assessor for the residential improvements comprised of Building 1. Annual payments shall be made within 30 days of receipt of the tax statement by CCDA. In no event shall the Financial Adjustment exceed the amount anticipated as the partial tax exemption in the pro forma financial statement but not granted by the State of Oregon. Within 30 days of the Anniversary Date, Developer shall provide CCDA with a revised pro forma and such reasonable documentation as CCDA reasonably requires. If the parties are unable to agree on the amount of the Financial Adjustment within 30 days of receipt of the pro forma and documentation by CCDA, the matter shall be submitted to Dispute Resolution as provided in Section 11.

Except to the extent of the Financial Adjustment provided for in this Section, nothing in this Agreement shall be construed as a guarantee of any rate of return.

4.3 Compliance with Approvals.

All development will conform in all material respects to the Plans approved by CCDA (subject to such modifications as are approved by CCDA) and City development approvals. Staff approval or recommendation to the CCDA for approval of the Plans or modifications shall not be unreasonably withheld, conditioned or delayed. In the event that CCDA and Developer are unable to resolve a dispute regarding whether construction is in compliance in all material respects with the approval by CCDA, including the quality of construction and materials, it shall be submitted to Dispute Resolution. The parties recognize that any such dispute must be resolved expeditiously.

4.4 Resources.

Each party will commit resources as it determines in its business judgment is commercially reasonable to meet the deadlines in the Schedule set forth in Section 6, as amended.

4.5 Street.

It is understood that Developer may be required as a condition of development approval to dedicate right of way and construct local public street improvements. The parties agree that if fulfillment of such conditions of approval would significantly impede or preclude Developer from obtaining the Vertical Housing Tax Credit, CCDA and Developer will work together to obtain approval from City to permit Developer to provide access and through travel by the public via use of a private street built to public street standards or other acceptable mechanism.

4.6 Liens

From and after the date Developer acquires title to the Property until the date the construction of the Project is substantially completed (the "Construction Period"), Developer shall keep the property free clear of liens and encumbrances other than those related to financing and construction of the Project as determined in Developer's reasonable exercise of commercial judgment. In no event shall Developer use the Property during the Construction Period as collateral for, or cause or permit it to be encumbered by, any obligation or potential obligation of Developer unrelated to the Project and Developer shall promptly inform CCDA if any such lien or encumbrance is placed on the Property.

4.7 Survival.

The provisions of this Section 4 shall survive Closing.

SECTION 5. PROPERTY INSPECTION AND ACCESS

5.1 Before Conveyance of Property.

Before conveying the Property to Developer, CCDA shall allow Developer to enter upon the Property, at all reasonable times whenever and to the extent necessary to conduct reasonable inspections and testing and to carry out the purposes of this Agreement. Developer shall save, hold harmless and indemnify City, its officer's employees and agents against any claims arising from such access except to the extent such claims arise out of the gross negligence or willful misconduct of City; provided, further, that in no event shall Developer be required to indemnify CCDA with respect to any pre-existing conditions of the Property.

5.2 After Conveyance of Property.

After conveying the Property and until a temporary or final Certificate of Occupancy is issued, CCDA shall upon reasonable notice, be permitted access to evaluate conformance with the terms of this Agreement. CCDA agrees not to interfere with the work occurring on the Property. CCDA employees shall enter the Property at their own risk and shall comply with all construction site rules established by Developer and Developer's contractor. In addition, CCDA shall not be entitled to indemnification for any losses, liability or injury arising in connection with entry to the Property pursuant to this Section, except to the extent the same arises out of the gross negligence or willful misconduct of Developer or its contractor. This provision shall survive Closing.

SECTION 6. PROJECT SCHEDULE

6.1 Commencement of Construction.

Developer shall Commence Construction of the Project no later than 30 days after Closing. For purposes of this section, "Commence Construction", shall mean that Developer has entered into a binding contract providing for construction to start on or before the Commence Construction date and the contractor has mobilized equipment and labor on site or at an appropriate staging area and has commenced significant physical alteration of the site such as excavation or grading.

6.2 Substantial Completion.

Subject to force majeure events, Developer shall achieve Substantial Completion of the Project on or before the date that is fifteen (15) months from the Commence Construction date. For purposes of this section, "Substantial Completion" shall mean that the Project is sufficiently complete that the Developer obtains a temporary certificate of occupancy or certificate of occupancy, whichever first occurs.

6.3 Schedule changes.

Developer may request from CCDA an extension of either date specified in this Section, which shall not be unreasonably withheld. The dates specified in this Section 6 are subject to and shall be extended as provided in Section 12.26, Force Majeure.

6.4 Survival.

This Section 6 shall survive Closing.

SECTION 7. REPRESENTATIONS AND WARRANTIES

7.1 CCDA REPRESENTATIONS.

CCDA'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 Closing. CCDA represents that:

- (a) To CCDA's knowledge except as has been disclosed to Developer in the

Environmental Reports delivered by CCDA to Developer as identified below, there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, release or production of Hazardous Substances on the Property, or underground storage tanks existing on the Property, except in compliance with Environmental Laws currently in effect, and CCDA has not received notice of the Release of any Hazardous Substances on the Property. The Environmental Reports delivered by CCDA to Developer prior to Closing are:

- (i) Phase I Environmental Site Assessment issued by AMEC dated May 8, 2012;
- (ii) Phase II Environmental Site Assessment issued by AMEC dated September 17, 2012;
- (iii) Phase III Environmental Site Assessment issued by AMEC dated February 10, 2014;
- (iv) Pre-Demolition Regulated Building Materials Survey issued by AMEC dated February 10, 2014; and
- (v) Site Characterization Report issued by AMEC dated January 20, 2015

CCDA represents that the Environmental Reports are as received by CCDA. CCDA makes no further representation or warranty regarding the Environmental Reports, including but not limited to their accuracy, completeness or suitability for use. Receipt of the Environmental Reports listed in this subparagraph (a) is acknowledged by Developer.

(b) CCDA 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 CCDA to authorize the execution of this Agreement and the transactions contemplated hereby.

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

(d) To CCDA's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, CCDA's ability to perform its obligations under this Agreement, or Developer's ability to develop the Project.

(e) To CCDA's knowledge and except as disclosed in writing to Developer, the Property is in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements.

(f) To CCDA's knowledge, CCDA 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.

(g) To CCDA's knowledge, no representation, warranty or statement of CCDA 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.

(h) As of the Effective Date, CCDA 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 CCDA under this Agreement.

(i) CCDA is the legal and beneficial fee simple titleholder to the Property and, to CCDA's knowledge, 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.

(j) There are no current leases or services contracts affecting the Property and at the time the Property is conveyed to Developer, the Property will be free and clear of any leases or services contracts.

(k) CCDA has not entered into any legally binding purchase and sale agreement (whether contingent or not) for the Property.

For purposes of this Section 7.1, "CCDA's knowledge" means the actual knowledge of a management employee of CCDA currently engaged in and responsible for acquisition, management or disposition of the Property for the CCDA, without duty of investigation or inquiry.

7.2 DEVELOPER REPRESENTATIONS.

7.2.1 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 Closing: 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) No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached 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 any oral or written representations by CCDA, its employees, agents or consultants, regarding any aspect of the Property, the Project or its feasibility or financing, or compliance with any governmental regulation except as expressly stated in this Agreement or documents referenced herein.

SECTION 8. TERM AND TERMINATION.

8.1 Effective Date.

This Agreement is effective when all parties have executed the Agreement, and this Agreement shall have an effective date which is the Effective Date first set forth above. The execution will be subject to entity authorization, which in CCDA's case will include CCDA Board approval.

8.2 Termination.

This Agreement shall terminate on the earlier of:

8.2.1 Developer provides notice of termination pursuant to Section 3.4;

8.2.2 Either party provides notice to the other that a Condition Precedent to Closing has not been fulfilled at Closing and the time to cure has elapsed as provided in Section 3.7.

8.2.3 By either party on 10 days written notice if Closing has not occurred within 15 days after the Closing Date, or any extension,

8.2.4 At any time upon mutual written agreement of the parties.

8.2.5 Either party terminates for breach as provided in Section 10.

SECTION 9. DEFAULT. CURE.

9.1 Default by Developer.

9.1.1 Any breach of the provisions of this Agreement, by Developer which occurs prior to the Closing and that is not remedied within sixty (60) days after CCDA has given notice to Developer specifying the breach, provided, however, that if the CCDA determines that it is more likely than not that the breach was not willful and cannot with due diligence be cured within a period of sixty (60) days, Developer shall have a reasonable period of time to cure such breach. In making its determination, CCDA shall act reasonably and in good faith, and shall consider the nature of the breach, whether Developer has proposed a reasonable course of action is or will diligently effect such cure and whether the cure may be accomplished within a reasonable period of time. CCDA may require that Developer periodically provide CCDA with a written assessment of the cure describing: the curative actions taken since the last written report, the estimated date by which the cure will be completed, the remaining impediments to completing the cure, and the planned curative acts for the next month.

9.1.2 Any assignment by Developer for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over any of such Parties. There shall be no cure for a breach under this Section.

9.2 Default by Developer After Closing

Any breach of a provision of this Agreement that survives Closing after the date of Closing, including, but not limited to, failure to construct the Project in conformance with the approved Project plans, which continues and is not remedied within sixty (60) days after CCDA has given notice to Developer specifying the breach; provided, however, that if such breach cannot with due diligence be

cured within a period of sixty (60) days, Developer shall have a reasonable period of time to cure such breach.

9.3 Default by CCDA.

Any breach of the provisions of this Agreement, including, without limitation, providing the Financial Adjustment, whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after Developer has given CCDA notice specifying the breach; provided, however, that if Developer determines that it is more likely than not that the breach was not willful and cannot with due diligence be cured within a period of sixty (60) days, CCDA shall have a reasonable period of time to cure such breach. In making its determination, Developer shall act reasonably and in good faith, and shall consider the nature of the breach, whether CCDA has proposed a reasonable course of action, is or will diligently proceed to effect such cure and whether the cure may be accomplished within a reasonable period of time. Developer may require that CCDA periodically provide Developer with a written assessment of the cure every month describing: the curative actions taken since the last written report, the estimated date by which the cure will be completed, the remaining impediments to completing the cure, and the planned curative acts for the next month.

SECTION 10. REMEDIES.

10.1 Pre-closing.

If Developer defaults prior to Closing such that the consummation of the transaction herein contemplated does not occur as herein provided by reason of any default of Developer, and Developer fails to complete the purchase of the Property, CCDA may terminate this Agreement by written notice to CCDA. Developer and CCDA agree that it would be impractical and extremely difficult to estimate the damages suffered by CCDA as a result of Developer's failure to complete the purchase of the Property pursuant to this Agreement, and that under the circumstances existing as of the date of this Agreement, the liquidated damages provided for in this Section represent a reasonable estimate of the damages which CCDA will incur as a result of such failure. **THEREFORE, DEVELOPER AND CCDA HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL DAMAGES THAT CCDA WOULD SUFFER IN THE EVENT THAT DEVELOPER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS \$40,000, AGAINST WHICH THE EARNEST MONEY SHALL BE CREDITED.**

SUCH AMOUNT WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY DEVELOPER, AND AFTER PAYMENT THEREOF TO CCDA, NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATION TO OR RIGHTS AGAINST THE OTHER.

If CCDA defaults under this Agreement prior to Closing, Developer will be entitled in addition to all other remedies available at law or in equity, (a) to seek specific performance of CCDA's obligation to Close under this Agreement; or (b) to terminate this Agreement by written notice to CCDA and Escrow Agent and CCDA shall pay \$40,000. If Developer terminates this Agreement pursuant to this Section, the escrow will be terminated, the Earnest Money Note or Earnest Money (as applicable) shall immediately be returned to Developer, all documents will be immediately returned to the party who deposited them, and neither party will have any further rights or obligations under this

Agreement, except as otherwise provided in this Agreement.

10.2 Post-Closing Remedies of CCDA for Developer Default Other Than For Failure to Timely Commence or Complete Construction.

If Developer defaults under this Agreement after Closing (other than timely commencement or completing construction of the Project), CCDA may seek specific performance or other remedy provided by law.

10.3 Post-Closing Repurchase Right of CCDA for Developer Failure to Timely Commence or Complete Construction.

Subject to force majeure delays, if Developer fails to commence construction within one (1) year of the date provided for in Section 6.1, or fails to complete the Project by the date that is three (3) years after the date Developer commences construction of the Project, CCDA shall have the right to repurchase the Property by written notice exercising such repurchase right no later than (60) days after the date such repurchase right accrues (and if not timely exercised, such repurchase right shall automatically be deemed waived) on the following terms and conditions:

(a) Payment of the purchase price for the Property to Developer together with 50% of the total amount of all hard costs of construction plus soft costs, including design, permitting and other directly related costs as of the date of re-conveyance;

(b) Reduced by: the amount of any assessments, liens or other charges against the property that Developer has not paid as of the date of re-conveyance, payment or assumption of any mortgage including any payment or assumption costs; the cost of an ALTA title insurance policy in the amount of the purchase price insuring CCDA as owner and any other closing costs.

(c) If there are unasserted, contingent or disputed claims that CCDA reasonably determines may result in liens against the property or otherwise reduce the value thereof; CCDA may deposit a reasonable estimate of such claims into escrow to be released to Developer only upon resolution of such claims.

(d) Upon receipt of notice that CCDA has elected to repurchase, Developer shall promptly provide CCDA with accurate, current statements itemizing all costs and amounts owed and claims asserted or likely as described above. After review the statements, CCDA may rescind the purchase or elect to proceed by providing written notice to Developer.

(e) Upon receipt of notice that the CCDA will proceed with the purchase Developer will thereafter take all action, including the payment of all debts and the execution of all documents necessary to re-convey marketable title to the Property to the City, free and clear of all liens and encumbrances other than the lien of any Mortgages and the Final Permitted Exceptions. In addition, CCDA may accept other title exceptions or obligations that are the result of Developer's pursuit of the development of the Project, Developer shall re-convey the Property by statutory warranty deed to CCDA in escrow through the offices of the Escrow Agent.

(f) At closing of the re-conveyance, Developer will provide CCDA with a copy of

and the right, without any representation and warranty, to use any work product produced by any third parties for Developer to the extent Developer has obtained an appropriate reliance letter, including copies of all Property market research, design documents, engineering documents, and which Developer is authorized to release; and design and construction contracts which CCDA may use in any manner that it deems appropriate with respect solely to the Property with the consent of any party having approval rights thereunder.

SECTION 11. DISPUTE RESOLUTION

With respect to any provision of this Agreement where Dispute Resolution is referenced as a means to resolve disagreements among the parties, then the provisions of this Section shall apply. When a disagreement exists, the parties shall first use good faith efforts to resolve such disagreement. If such disagreement is not resolved within fifteen (15) days after written notice seeking a meeting to resolve such disagreement in good faith, then any party whose agreement, consent or approval is required may initiate this dispute resolution process by written notice to the other party whose agreement, consent or approval is required. The affected parties shall select a person (a "Dispute Resolver") to resolve the dispute; provided, that if the parties cannot agree on the Dispute Resolver, such Dispute Resolver shall be selected in accordance with the rules of the Arbitration Service of Portland, using mediation first, and if mediation does not resolve such dispute, arbitration. The Dispute Resolver shall set the timing, procedures and rules for resolving the dispute. The Dispute Resolver shall be independent of the parties and shall not have had a business relationship with any party within the last five (5) years. The Dispute Resolver shall be a person who (a) is a resident of the Portland metropolitan area, and (b) has substantial experience in resolving complex business issues in a public or private context. If after ten (10) days the affected parties cannot agree on the person who will be the Dispute Resolver, then the affected parties shall meet and each shall submit two (2) qualified candidates' names, the resulting names will be placed in a vessel, and the first name drawn will be the Dispute Resolver. The Dispute Resolver's fees shall be paid equally by the affected parties.

SECTION 12. MISCELLANEOUS PROVISIONS

12.1 Good Faith and Fair Dealing.

The parties shall have imputed to all of their duties, obligations, and acts performed under this Agreement, a standard of conduct of good faith and fair dealing.

12.2 Inspection of Records; Confidentiality.

12.2.1 Each Party agrees that, upon the reasonable prior notice from another requesting Party, it will make available to the requesting Party its records, reports and information pertaining to the Project for review, but not copying (unless agreed upon by the non-requesting Party), so as to inform the requesting Party and to enable the requesting Party to determine the other Party's compliance with the terms of this Agreement. Nothing herein requires disclosure of any information protected by the attorney-client or other privilege.

12.2.2 Each party agrees to keep as confidential any document or information marked by the other party as confidential, including the reason the document is considered confidential. This shall not preclude a party from sharing such information with any partner, lender, consultant, employee or agent when reasonably necessary in the normal course of carrying out the obligations of the party

under this Agreement. In the event that CCDA is served with a request for the production information marked confidential by Developer or deemed so by the CCDA, the CCDA shall inform Developer and provide Developer at least five (5) days to contest disclosure prior to disclosure. However, the parties acknowledge that, as a public entity, CCDA must and will comply with ORS 192.410, *et. seq.*

12.3 Discrimination.

Developer agrees that in performing its obligations under this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.

12.4 Governing Law; Venue; Jurisdiction.

This Agreement shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. Any action or suit to enforce or construe any provision of this Agreement by either party shall be brought in the Circuit Court of the State of Oregon for Washington County.

12.5 Third parties.

CCDA and Developer are the only parties to this Agreement and are the only parties entitled to enforce its terms. There are no third-party beneficiaries of this Agreement.

12.6 Notices.

All notices given under this Agreement shall be in writing and may be delivered by electronic mail, personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

CCDA:	City Center Development Agency City of Tigard 13125 SW Hall Blvd. Tigard, OR 972232 Attn: Marty Wine, Exec. Director Email: marty@tigard-or.gov
With a copy to:	Jordan Ramis Two Centerpointe Drive, 6 th Floor Lake Oswego, OR 97035 Attn : Tim Ramis Email: tim.ramis@jordanramis.com
Developer:	Capstone Green Light Partners 1015 NW 11 th Ave., Suite 243 Portland, OR 97209 Attn: Jeff Sackett email: jsackett@capstone-partners.com

With a copy to: Ball Janik LLP
 101 SW Main Street, Suite 1100
 Portland, OR 97204
 Attn: Brad Miller
 email: bmiller@bjllp.com

Notices shall be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

12.7 Time is of the Essence.

Time is of the essence in the performance of and adherence to each and every provision of this Agreement.

12.8 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 CCDA and Diamond or Capstone Partners.

12.9 Non-waiver.

Waiver by any party of strict performance of any provision of this Agreement shall not be deemed a waiver of or prejudice a party's right to require strict performance of the same or any other provision in the future. A claimed waiver must be in writing and signed by the party granting a waiver. A waiver of one provision of this Agreement shall be a waiver of only that provision. A waiver of a provision in one instance shall be a waiver only for that instance, unless the waiver explicitly waives that provision for all instances.

12.10 Non-waiver of Government Rights.

Subject to the terms and conditions of this Agreement, by making this Agreement, CCDA is specifically not obligating itself, the City of Tigard, or any other agency with respect to any police power or regulatory actions relating to development or operation of the Project and other improvements to be constructed in the Project, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required.

12.11 Survival.

Any covenant or condition set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination but which by its terms is to survive the termination of this Agreement, shall survive the expiration or earlier termination of this Agreement and shall remain fully enforceable thereafter.

12.12 Partial Invalidity.

If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If a material provision of this Agreement is held invalid or unenforceable such that a party does not receive the benefit of its bargain, then the other parties shall renegotiate in good faith terms and provisions that will effectuate the spirit and intent of the parties' agreement herein.

12.13 Calculation of Time.

Unless referred to as Business Days, all periods of time shall include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or legal holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday, or Legal Holiday. "Business Days" shall mean Monday through Friday, and "Legal Holiday" shall mean any holiday observed by the State of Oregon.

12.14 Headings, Table of Contents.

The section headings and Table of Contents are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

12.15 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

12.16 Legal Purpose.

CCDA and Developer each agree that it shall use its interest in the Project solely for lawful purposes.

12.17 Amendments.

This Agreement may be modified only by a writing signed by the parties.

12.18 Approvals.

12.18.1 Where this Agreement requires the approval(s) of CCDA, CCDA will approve or disapprove within fourteen (14) days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided in this Agreement, and except where the approval requires action by the Urban Renewal Agency Board or CCDA Board, and in that case, the approval period shall be forty-five (45) days. Failure by CCDA to approve or disapprove within the applicable period of time shall be deemed approval. Any disapproval shall state in writing the reasons for such disapproval. Staff approvals will not be unreasonably withheld or conditioned, except where rights of approval are expressly reserved to CCDA's sole discretion in this Agreement.

12.18.2 Where this Agreement requires the consent or approval of Developer, Developer will approve or disapprove within fourteen (14) days after receipt of the material to be approved, except when a longer period of time is specifically provided in this Agreement. Failure by Developer to

approve or disapprove within such period of time shall be deemed approval. Any disapproval shall state the reasons for such disapproval. Approvals will not be unreasonably withheld or conditioned, except where rights of approval are expressly reserved to Developer's sole discretion.

12.19 Attorneys' Fees.

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U. S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover its attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

12.20 Entire Agreement.

This Agreement constitutes the entire agreement between the parties as to the subject matter covered by this Agreement.

12.21 Interpretation of Agreement; Status of Parties.

This Agreement is the result of arm's-length negotiations between the parties and shall not be construed against any party by reason of its preparation of this Agreement. Nothing contained in this Agreement shall be construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar relationship between the parties.

12.22 Future Assurances.

Each of the parties shall promptly execute and deliver such additional documents and shall do such acts that are reasonably necessary, in connection with the performance of their respective obligations under this Agreement according to the Schedule so as to carry out the intent of this Agreement.

12.23 Mutual Representations.

The parties each warrant and represent to the other that this Agreement constitutes a legal, valid, and binding obligation of that party. Without limiting the generality of the foregoing, each Party represents that its governing authority and, in the case of CCDA, its Board, has authorized the execution, delivery, and performance of this Agreement by it. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting. Each party represents to the other that neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby will: violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, government agency, or court to which it is subject or any provision of its charter or bylaws; or conflict with, result in a breach of, or constitute a default under any other agreement to which it is a party or by which it is bound. No Party needs to give any notice to, make any filing with, or obtain the consent of any other entity or person to consummate the transaction contemplated by this Agreement.

12.24 Exhibits.

The following Exhibits attached to this Agreement are an integral part of this Agreement and are fully incorporated into this Agreement where they are referenced in the text of this Agreement:

Exhibit A – Description of Property

Exhibit B – Conceptual Design

Exhibit C – Pro Forma Financial Statement

12.25 Assignment.

CCDA has entered into this Agreement based on the reputation and qualifications of Developer. Developer shall not assign or otherwise transfer any interest in this Agreement without the prior written approval of CCDA which may be granted in CCDA's sole discretion. "Assignment or transfer" shall not include any mortgage or other normal and customary financing obtained by Developer nor shall it include assignment to a partnership, joint venture or similar entity of which Developer is a member provided that such assignment shall not be a novation or in any way excuse or diminish Developer's obligations and responsibilities to CCDA provided for herein.

This Agreement shall bind each party's respective successors and assigns.

12.26 Force Majeure.

Neither party shall have liability to the other on account of the following acts (each of which is an "Excused Delay" and jointly all of which are "Excused Delays") which shall include: (a) the inability to fulfill, or delay in fulfilling, any obligations under this Lease by reason of strike, lockout, other labor trouble, dispute or disturbance; (b) governmental regulation, moratorium, action, preemption or priorities or other controls; (c) shortages of fuel, supplies or labor; or (d) for any other reason, whether similar or dissimilar to the above, or for act of God beyond a party's reasonable control. If this Agreement specifies a time period for performance of an obligation of a party (including, without limitation, the Project Schedule), that time period shall be extended by the period of any delay in the party's performance caused by any of the events of Excused Delay described herein.

12.27 Statutory Disclaimer.

"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.”

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year first set forth above.

CCDA: CCDA OF TIGARD

By: _____
Printed Name: _____
Its: _____

Approved as to form: CCDA Attorney

By: _____
Printed Name: _____
Its: _____

Developer: DIG Tigard an Oregon limited liability company

By: _____
Printed Name: _____
Its: _____

CAPSTONE GREEN LIGHT LLC, an Oregon limited liability company

By: Sapient Advisory Corporation, an Oregon corporation, Member

By: _____
Christopher J. Nelson, President

By: Triangle Development Company, an Oregon corporation, Member

By: _____
Jeffrey M. Sackett, President

EXHIBIT A

Description of Property

Three (3) parcels in the City of Tigard, Washington County, Oregon

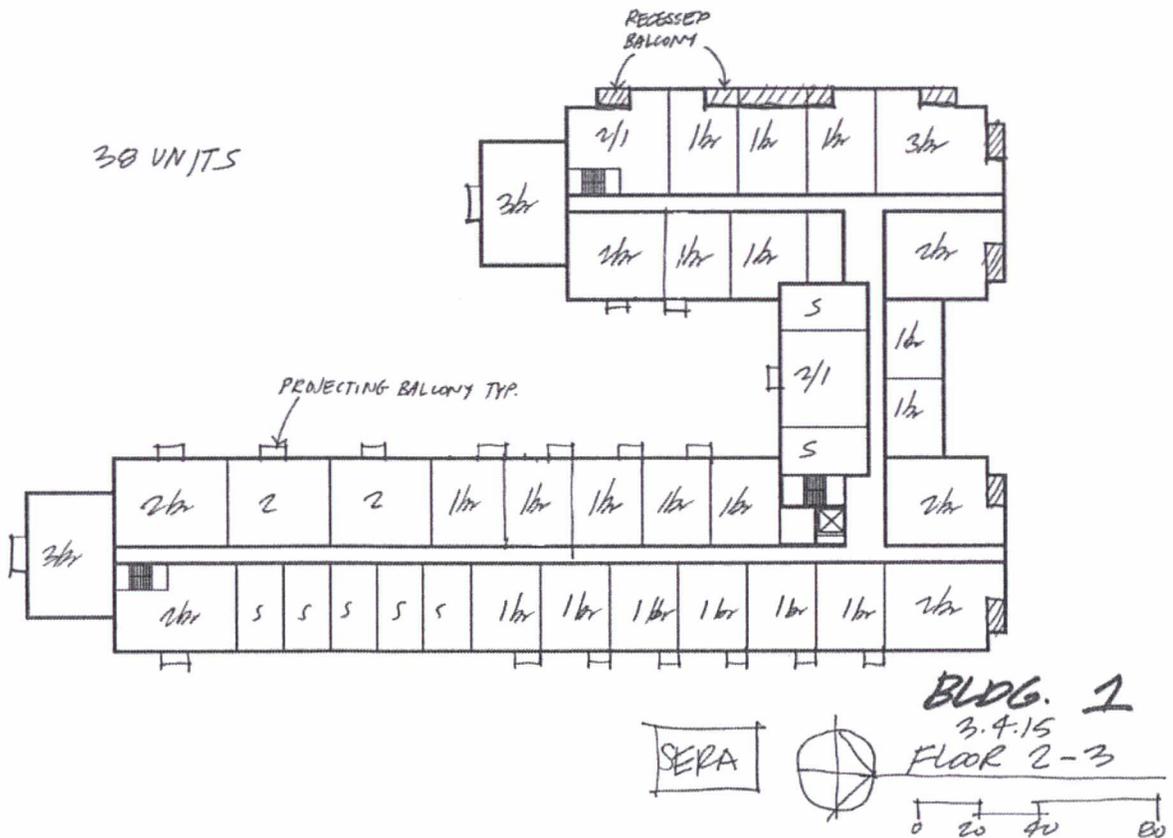
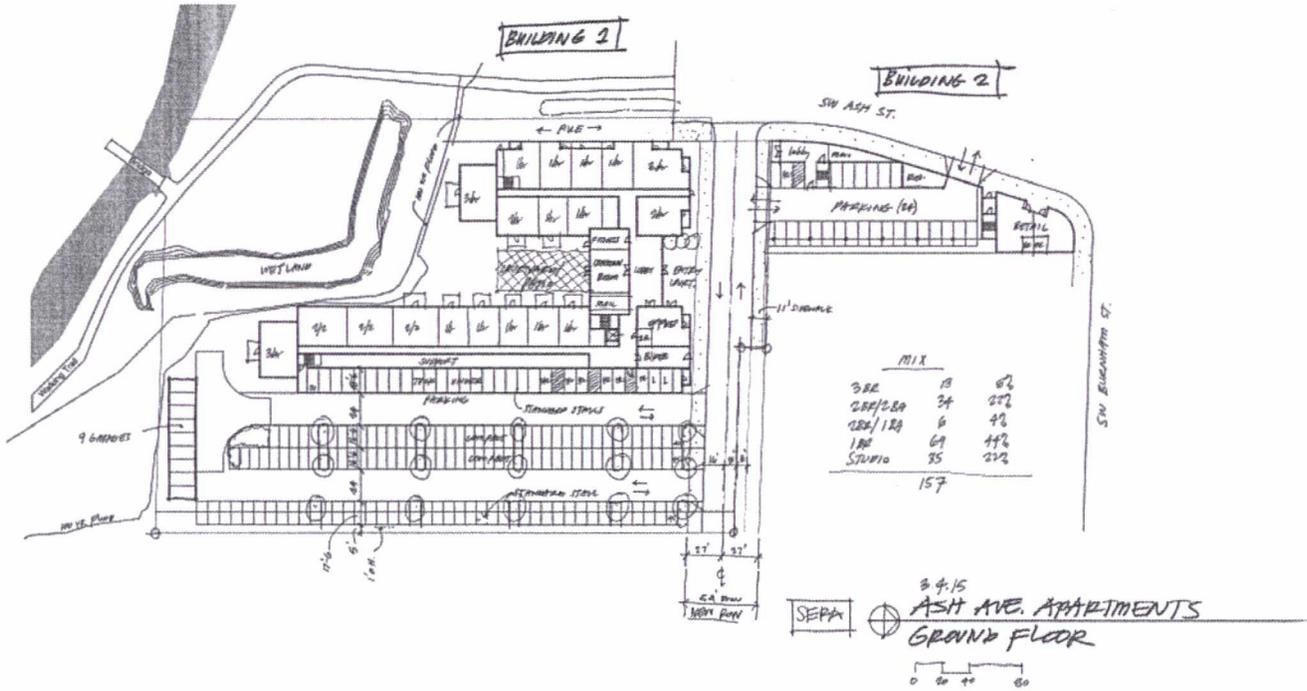
2S102AD02800, consisting of .16 acres (m/l) at 9020 SW Burnham Street

2S102AD02900, consisting of .19 acre (m/l) at 1227 SW Ash Ave.

2S102AD03000, consisting of 3.26 acres (m/l) at 12800 SW Ash Ave.

EXHIBIT B

Conceptual Design



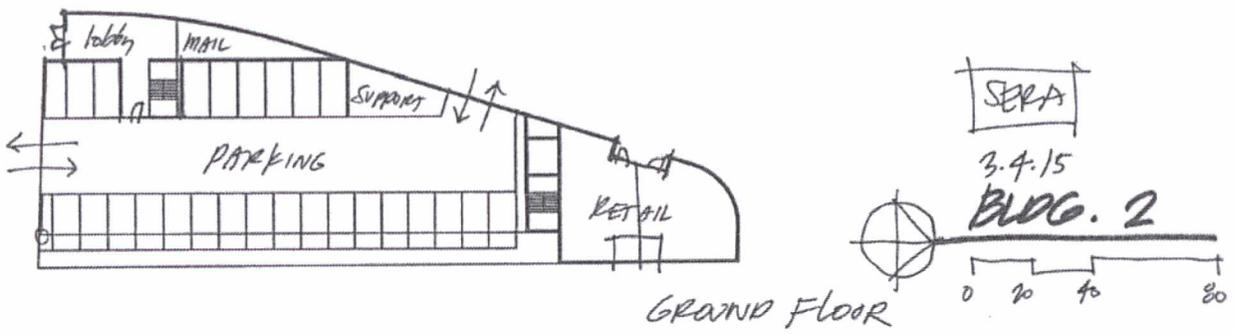
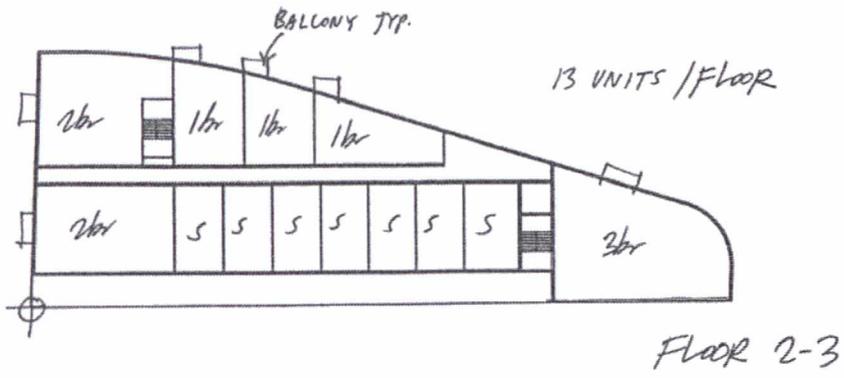


EXHIBIT C

Pro Forma Financial Statement

Mixed Use Multi-family Apartment & Retail Project
SW Ash Ave. & Burnham St.
Tigard, OR

March 22, 2015

Project Costs

Land	\$1,609,000	to be adjusted by appraisal
Construction	18,270,743	
Soft Costs	6,778,357	
SDC Reimbursement by CCDA	-1,609,000	to be adjusted to match land value.
Contingencies	1,202,019	
Operating Capital Surplus to Break-Even	-55,305	
	<hr/>	
Total Project Cost		\$26,195,814

Initial Stabilized Income

Rents & Other Income	2,635,064	
Less:		
Vacancy & Credit Loss	-131,753	
Operating Expenses (gross)	-811,700	
VHTA Tax Abatement	146,286	
Reserves	-31,900	
	<hr/>	
Net Operating Income		\$1,805,997
Initial Stabilized Pre-tax Return		<u>6.89%</u>
