



Tigard City Center Development Agency

The City of Tigard's Urban Renewal Agency

M E M O R A N D U M

TO: Chair Cook and the Directors of the City Center Development Agency Board
FROM: Sean Farrelly, Redevelopment Project Manager
RE: Burnham/Ash Redevelopment Disposition and Development Agreement Executive Summary
DATE: March 31, 2015

This memo outlines the key provisions of the development and disposition agreement (DDA) for the sale and redevelopment of the former public works yard and dog park sites.

1. **Consideration.** Capstone/Diamond will pay the updated appraised fair market value for the site. The consideration also includes development of the site as provided in the agreement. Earnest money is \$25,000. Section 3.2.

a. CCDA will pay the SDC's for the developer up to the market value of the land at sale. Payment of SDC's does not trigger prevailing wage. Section 3.10

b. Consideration is based on the assumption that the project will fully qualify for the 10 year vertical housing partial property tax exemption. Although we will have a preliminary indication from the state prior to closing, the final decision cannot be issued until after the project is complete. Accordingly, Section 4.2 provides that if the tax exemption is denied or partially denied for reasons beyond the developer's reasonable control, CCDA will make annual reimbursement payments for ten years to developer to for property taxes paid up to the lesser of:

- i. the amount of the lost or reduced exemption; or
- ii. the amount necessary to achieve a 6.89% return on cost after one year of occupancy.

2. **Project Description.** The agreement commits the developer to build approximately 157 housing units and 2,000 square feet of commercial space in two buildings. The DDA describes the project in general terms to provide flexibility. As a condition precedent to closing, the City will have opportunities to review and approve design details at:

a. CCDA staff review and public open house on detailed plans. CCDA Board then reviews and approves plans or provides comment. If the parties are unable to agree, the design issue is submitted for dispute resolution. Section 3.6.1 a.

b. Land use approval. This is a staff approval with opportunity for appeal to a hearings officer. Any appeal could delay the project. Section 3.6.1 c.

3. **Contingencies.** Additional contingencies beyond the standard ones (such as property inspection and clear title) include:

a. CCDA has cleared removed the existing structures on the site. Section 3.6.2 e.

b. Developer has received final construction plan approvals and building permits are ready to be issued. Section 3.6.1 d

c. Developer has demonstrated financial feasibility of Project by submitting binding financing commitments and other documentation reasonably demanded by CCDA. Section 3.6.3 e.

d. Receipt of no further action letter from DEQ and purchase of environmental insurance. Section 3.6.2 j. k.

e. Receipt of BOLI determination concluding that this is not a prevailing wage project. Section 3.6.2 i.

4. Property sold as is. Developer waives and releases City and CCDA from environmental or other claims relating to condition of property. Section 3.9

5. Schedule:

a. Closing no sooner than July 1, 2015 but no later than July 1, 2016. Section 3.3

b. Developer to commence construction 30 days from closing. Section 6.

c. Substantial completion 15 months from closing. Section 6.

d. Schedule changes must be approved by CCDA; approval shall not unreasonably be withheld. Section 6.

6. Remedies:

a. Pre-closing default by Developer: payment of \$40,000 liquidated damages to CCDA. Section 10.1.

b. Pre-closing default by CCDA: payment of \$40,000 liquidated damages to developer or developer may sue for specific performance. Section 10.1

c. Post-closing default by Developer. For most defaults, city has all remedies available by law. In addition, if Developer fails to commence construction within 1 year of the due date, or fails to complete within 3 years of commencement, city may repurchase the property and all improvements for 50% of developer's actual costs less any liens or assessments against the property. Section 10.3

d. Post-closing default by CCDA: Developer has remedies available by law. Section 10.1.

7. Miscellaneous.

a. CCDA must approve any assignment or transfer to a third party except normal financing and except to a company formed by Capstone and Diamond to develop the site. Section 12.25.

b. CCDA has reasonable access to site during construction to monitor conformance with design and construction specifications. Section 5.2.