

**CITY OF COOS BAY URBAN RENEWAL AGENCY**  
**Agenda Staff Report**

MEETING DATE	AGENDA ITEM NUMBER
July 15, 2014	

TO: Chair Daily and Board Members

FROM: Rodger Craddock, City Manager

ISSUE Hollering Place Disposition and Development Agreement

**BACKGROUND**

The Urban Renewal Agency purchased the property formerly owned by Crowley Marine, and the property formerly occupied by the Bay Club in 2001. These properties are also known as the Hollering Place. The Hollering Place is situated at the junction of Newmark Avenue and Empire Boulevard. The site terminates at a vista as one travels west on Newmark Avenue through the Empire District before making a left turn to continue south on Empire Blvd. The site is comprised of four lots (tax lot numbers 6000, 6700, 300 and 301).

Hollering Place is a historically significant site. Prior to the arrival of the first Europeans, the site was the center for transportation, commerce, and communication for local Native American populations. The site was the first European settlement in what would later become Empire City and the first Coos County seat. Hollering Place was the site of the original courthouse, and it overlooked the waterfront.

Hollering Place is still highly valued by local citizens and Native American populations due to the site's historical significance. The Confederated Tribe of Coos, Lower Umpqua and Siuslaw Indians (Tribe), and local citizens played an important role in developing the 2008 Hollering Place Master Plan. The Hollering Place Master Plan led the City of Coos Bay staff to rezone the site with its own unique zoning district in 2010.

In August 2013, staff issued a Request for Proposals (RFP) for the Hollering Place site; and by the end of the RFP period, staff had received two proposals. On October 15, 2013, the Agency authorized the City Manager to enter into negotiations with the Tribe regarding their proposal to build a three story resort with guest rooms, upscale restaurant, meeting rooms, conference facilities, spa and a parking area on the lower portion of the property along with a visitor's center/cultural museum on the bluff-top portion of the property, and a pedestrian promenade linking the bluff-top portion to the building below (Project).

In December 2013, the Agency approved an Exclusive Negotiations Agreement with the Tribe. Since that time, staff (City Manager, Public Works Director, Community Development Director, Finance Director, and City Attorney) along with Jeannette Launer, an attorney who specializes in urban renewal related Disposition and Development Agreements (DDA), have been negotiating with the Tribes' negotiations team.

The results of these negotiations have produced tentative terms and conditions for transfer of the Hollering Place property and construction and operation of the Project which have been incorporated in the attached DDA. As you will see, the DDA is 30 pages in length, excluding the numerous exhibits. The highlights of the negotiated agreement include the following:

- The Tribe will invest at least \$15,000,000 to construct the Project described above and in the attached DDA.
- The Tribe will keep the development in property tax fee status for at least twenty years from completion of construction.
- The Tribe will collect and remit to the State and the City the required transient (hotel / motel) occupancy tax revenues for as long the development stays in fee status (at least twenty years from completion of the construction).
- The Tribe will maintain the improvements made to the Hollering Place Wayside which includes in part the monuments, historic marker, and interpretive signs.
- In return, the URA agrees to sell the involved properties to the Tribe for \$10,000 and will repay the Tribe up to \$1,500,000 plus interest for offsite public improvements which will be determined through the planning process.
- The development is contingent upon a number of factors which include the following as described in full in Sections 1.7.1 and 1.7.2 of the DDA:
  - The Tribe has secured funding (equity and loan funds) for the Project satisfactory to the Buyer;
  - Land use approvals and any other regulatory approvals are in place including the height variance proposed in the Concept Plans;
  - The Tribe has obtained the approval for the Project from the City's Planning Commission and has obtained City building permits;
  - The Agency has executed the Reimbursement Agreement described in Section 2.4.2 of the DDA;
  - The City has executed the Wayside Maintenance Agreement described in Section 5.2 of the DDA;
  - The Tribe has obtained any necessary permits from the applicable regulatory agencies to either reinforce the embankment or to repair or extend the seawall on the Property as required for the Project;
  - The Tribe has obtained Oregon State Marine Board approval to establish and use a service entrance to the Project adjacent to the Empire Boat Ramp;
  - Within one hundred eighty (180) days after the Effective Date, Buyer has satisfied itself as to the existence or non-existence of any hazardous substances on the Property;
  - Within one hundred eighty (180) days after the Effective Date, Tribe has satisfied itself that the Property is suitable for the Buyer's intended use, within the Buyer's sole

and absolute discretion;

- The off-site public improvements are reasonably estimated by the Tribe not to cost more than \$1,500,000.

Given the combined time involved in the land use process, environmental evaluation, permitting process, and the time required to secure financing, the DDA lists a closing date on or before March 31, 2016, a start of construction on or before October 1, 2016, and a projected substantial completion on or before April 1, 2018.

#### **ADVANTAGES:**

Approval of the DDA and completion of the Project will provide the following advantages:

- Put the vacant land back into productive use and thereby improve the economic conditions of the Empire District.
- Create a reoccurring revenue stream which can be reinvested in the Empire District to further economic development.
- Create an additional transient occupancy tax (Room Tax) revenue source.
- Fulfill the basic purpose of an Urban Renewal Agency...to assist with making something happen which would not happen on its own.

The proposed project is in keeping with the Agency's adopted Hollering Place Master Plan and the Empire Urban Renewal Plan.

#### **DISADVANTAGES:**

While the proposed Project may not be completed before 2018, staff does not see any glaring disadvantages in moving forward with the proposed Project.

#### **BUDGET IMPLICATIONS:**

Should the Project be completed, the URA would be required to repay the Tribe \$1,500,000 plus interest over the 20 year repayment period. Funds to pay this debt would be derived from a portion the property tax revenue (TIF) resulting from the development.

Completion of the project will not only create a reoccurring revenue stream (property tax) which can be used to undertake the district's urban renewal activities, it will create an additional transient occupancy tax revenue source which can be used to promote tourism throughout our community.

#### **RELATED CITY GOAL:**

The proposed Project is on point with the Council's 2014 Goal "To create a vibrant community for City citizens and entrepreneurs" by promoting and assisting "in the revitalization of the Empire URA District in an effort to provide development opportunities for businesses and industry."

#### **ACTION REQUESTED:**

If it pleases the Agency, authorize the City Manager to sign the attached Hollering Place Disposition and Development Agreement.

**AGREEMENT FOR DISPOSITION OF PROPERTY  
FOR DEVELOPMENT**

**HOLLERING PLACE**

This **AGREEMENT FOR DISPOSITION OF PROPERTY FOR DEVELOPMENT** (this “Agreement”) is made as of July\_\_\_\_, 2014 (“Effective Date”) by **THE CITY OF COOS BAY URBAN RENEWAL AGENCY** (“Agency”) and the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, a federally-recognized Indian tribe (“Buyer”). Agency and Buyer are referred to jointly in this Agreement as “Parties” and individually as a “Party.”

**RECITALS**

A. The Agency is the owner of certain real property situated at the junction of Newmark Avenue and Empire Boulevard (Cape Arago Highway), consisting of approximately 3.7 acres in the City’s Empire District (tax lots #6000, #6700, #301, and #300), commonly referred to as the Historic Hollering Place site (collectively, the “Property”).

B. On August 6, 2013, the Agency sent a request for proposals to the public entitled “Development Solicitation/ Request for Qualifications/ The Historic Hollering Place Development” (“RFP”), which solicited qualifications and a concept for the development of the Property. On September 13, 2013, Buyer submitted a response to the RFP, proposing a preliminary concept for the development of the Property, which has been and will be further refined, and thereafter constructed and operated according to this Agreement (“Project”). On October 18, 2013, the Agency reviewed the responses to the RFP and voted to move forward with Buyer to negotiate terms for the Project.

C. In December, 2013, the Parties entered into an Exclusive Negotiation Agreement (“ENA”), the purpose of which was to establish procedures and standards for the negotiation by the Agency and Buyer of a Disposition and Development Agreement (“DDA”) for the acquisition by Buyer of the Property and the development of the Project. The ENA period has been extended to complete negotiations.

D. The Agency has determined that the development of the Project according to this Agreement will support the goals of the Empire District Urban Renewal Plan, including to “Strengthen the Empire District’s economy by creating a more attractive living, working and shopping environment in the Empire District commercial area and along the waterfront.”

E. The Parties are now prepared to enter into this Agreement as the definitive DDA providing terms and conditions for transfer of the Property and construction and operation of the Project.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and the consideration set forth herein, the Parties agree as follows.

### 1. GENERAL TERMS OF CONVEYANCE

#### 1.1 Buyer Identity.

1.1.1 The Buyer is a federally-recognized Indian tribe.

1.1.2 Buyer hereby waives any defense to enforcement of this Agreement based on the Buyer's status as a sovereign nation. Buyer hereby expressly waives sovereign immunity from any suit, action, or proceeding and from any legal process thereof in the forum and jurisdiction set forth below, only to the extent necessary for the Agency to enforce the terms of this Agreement. The Agency's recourse is limited to injunctive relief and Buyer's interest in the Property and Buyer Deposit, and such waiver of sovereign immunity is not a waiver of any recourse to other assets of the Buyer or any assignee, affiliate, or component of the Buyer.

#### 1.2 Conveyance of Property.

Upon satisfaction of the Conditions Precedent to Closing in Section 1.7 hereof, and payment of the Purchase Price and other costs and expenses required to Close, the Agency will convey the Property in fee simple to Buyer pursuant to a Special Warranty Deed ("Deed") in substantially the form attached hereto as Exhibit A ("Closing"). The Closing shall occur in an escrow closing at the Coos Bay, Oregon office of Ticor Title Company ("Escrow Agent") not later than the date set forth in the Schedule of Performance attached hereto as Exhibit B unless the Parties agree to a later date.

#### 1.3 Property to be Conveyed.

1.3.1 The Property, including the Wayside Property, is legally described in Exhibit C, and depicted on Exhibit D;

1.3.2 The City will grant an easement to the Buyer to use air rights over a portion of Mill Street as shown on Exhibit D ("Air Rights Easement"). The Buyer will provide an initial draft of the Air Rights Easement to the Agency within ninety (90) days after the Effective Date and the parties will thereafter negotiate in good faith to complete the final form of the Air Rights Easement within one hundred eighty (180) days after the Effective Date. The Air Rights Easement will include the terms for public access over and along the improvements to be built in the Air Rights Easement area (the "Mill Street Walkway").; and

1.3.3 The Buyer will grant an Easement to the City for public access over and along certain accessways included in the Project, including but not limited to public access over and along: (a) the Wayside Property; (b) walkways designated in the Project, and elevator(s), for

access from the Mill Street Walkway to ground level; and (c) walkway(s) to any private beach area in front of the Project, all as shown in Exhibit D, the “Access Easement”). The Buyer will provide an initial draft of this Easement to the Agency within ninety (90) days after the Effective Date and the parties will thereafter negotiate in good faith to complete the final form of the Access Easement within one hundred eighty (180) days after the Effective Date.

#### 1.4 Title Review.

1.4.1 Within fifteen (15) days after the Effective Date, the Agency will deliver to Buyer a preliminary title report for the Property from the Escrow Agent (the “Title Report”) together with copies of all documents listed as title exceptions as provided by the Escrow Agent. Within twenty (20) days following its receipt of the Title Report, Buyer shall object to any exceptions to title by giving written notice to the Agency. Within ten (10) days of Buyer’s written notice to the Agency described in the preceding sentence, the Agency shall notify Buyer in writing of its intention to remove or not remove the objectionable exceptions to title prior to Closing. If the Agency notifies the Buyer of its intention to remove some or all of the objected to exceptions, Agency shall do so at or before Closing. If the Agency notifies the Buyer of its intention to not remove some or all of the objected to exceptions or if Agency does not respond in writing within the above timeframe, Buyer may terminate this Agreement by giving the Agency notice of termination within five days after the receipt of the Agency’s notice given pursuant to this sentence, or Buyer may proceed to close subject to same. If Buyer does not give notice of termination pursuant to this Section 1.4.1, Buyer shall close subject to the objected to exceptions.

1.4.2 Agency covenants and agrees that it shall not further encumber the Property (other than those exceptions appearing on the Title Report on the date provided to Buyer) without the written consent of Buyer. Buyer may obtain an update to the Title Report at any time prior to the Closing and Buyer shall promptly provide Agency with a copy of any such updated Title Report. Within twenty (20) days following its receipt of the updated Title Report, Buyer shall object to Agency in writing to any exceptions to title. Within ten (10) days after Buyer’s written notice to Agency described in the preceding sentence, Agency shall notify Buyer in writing of its intention to remove or not remove the objectionable exceptions to title prior to Closing. If the Agency notifies the Buyer of its intention to not remove some or all of the objected to exceptions or if Agency does not respond in writing within the above timeframe, Buyer may terminate this Agreement by giving the Agency notice of termination within five days after the receipt of the Agency’s notice given pursuant to this sentence, or Buyer may proceed to close subject to same. If Buyer does not give notice of termination pursuant to this subsection 2.4.2, Buyer shall close subject to the objected to exceptions.

1.4.3 Buyer may obtain an ALTA survey (“Survey”) of the Property within one hundred eighty (180) days after the Effective Date, and Buyer shall promptly provide Agency with a copy of any such Survey. Within twenty (20) days following its receipt of the Survey,

Buyer shall object to Agency in writing to any matters referenced in the Survey. Within ten (10) days after Buyer's written notice to Agency described in the preceding sentence, Agency shall notify Buyer in writing of its intention to remove or not remove the objectionable matters prior to Closing. If the Agency notifies the Buyer of its intention to not remove some or all of the objected to matters or if Agency does not respond in writing, Buyer may terminate this Agreement by giving the Agency notice of termination within five days after the receipt of the Agency's notice given pursuant to this sentence, or Buyer may proceed to Close subject to same. If Buyer does not give notice of termination pursuant to this Section 1.4.3, Buyer shall close subject to the objected to exceptions.

1.4.4 Any exceptions in the Title Report and Survey to which Buyer does not timely object in writing, or otherwise accepts at Closing, are the "Final Permitted Exceptions."

#### 1.5 Closing Activities, Costs and Prorations.

1.5.1 Upon satisfaction of the Conditions Precedent to Closing set forth in Section 1.7 below, the Escrow Agent shall perform the following activities, which shall constitute the "Closing":

- (a) Pay all costs of Closing and collect the cost of Title Insurance as described herein;
- (b) Record the Deed;
- (c) Record the Air Rights Easement;
- (d) Record the Access Easement;
- (e) Record the Declaration described in Section 5 below;
- (f) Record the Reimbursement Agreement; and
- (g) Record the Wayside Maintenance Agreement.

1.5.2 The Agency, at its expense, shall provide Buyer with a standard coverage ALTA Owner's Policy of Title Insurance, issued by Escrow Agent, covering the Property insuring Buyer in the amount of the Purchase Price, all free and clear of encumbrances except the standard exceptions and the Final Permitted Exceptions. Buyer, at its option and its expense, may elect to obtain extended coverage under such policies of title insurance and any endorsements to the policy that Buyer desires, and the Agency agrees to execute any affidavits or other documents required by the Escrow Agent to enable Buyer to obtain such coverage.

1.5.3 The Buyer will pay the costs for recording a Memorandum of this Agreement, the Deed, the Air Rights Easement, the Declaration, the Reimbursement Agreement,

and the Wayside Maintenance Agreement and any other documents required by Buyer to be recorded. Agency will pay no costs for recording.

1.5.4 The Buyer shall pay any escrow fees charged by Escrow Agent. In addition, Buyer shall be obligated to pay all property taxes from and after the Closing Date, including any property taxes due on the Property as a result of its transfer to the Buyer and the subsequent loss of the public ownership tax exemption. Any assessments on the Property shall be prorated as of the Closing Date, except that the Agency shall be obligated to pay installments due through the Closing Date for any assessments that may be paid in installments, and Buyer shall be responsible for installment payments due after the Closing Date. Buyer will pay all other Closing costs.

#### 1.6 Purchase Price.

The Purchase Price for the Property is Ten Thousand and no/100 Dollars (\$10,000.00) and other consideration ("Purchase Price"). Buyer has paid to the Agency the sum of \$10,000.00 as a deposit to secure the Buyer's obligation to purchase the Property ("Buyer Deposit"). The Buyer Deposit will be credited to the Purchase Price at Closing.

1.7 Conditions Precedent to Closing. Buyer and the Agency are not obligated to Close unless the following conditions are satisfied to the reasonable satisfaction of the benefited Party. The Party benefited by a particular condition shall not unreasonably withhold, condition or delay acknowledgment that the condition has been satisfied. The Parties shall act diligently and in good faith to satisfy conditions over which they have control or influence.

1.7.1 Buyer. Buyer is not obligated to purchase the Property until, to Buyer's satisfaction:

- (a) Buyer has secured funding (equity and loan funds) for the Project satisfactory to the Buyer;
- (b) Land use approvals and any other regulatory approvals are in place, including the height variance proposed in the Concept Plans;
- (c) Buyer has obtained the approval for the Project from the City Planning Commission;
- (d) Buyer has obtained City building permits;
- (e) The Agency has executed the Reimbursement Agreement described in Section 2.4.2 below, and two fully executed originals have been deposited into Escrow;
- (f) The City has executed the Wayside Maintenance Agreement described in Section 5.2, and two fully executed originals have been deposited into Escrow;



(g) The Buyer has obtained any necessary permits from the applicable regulatory agencies to either reinforce the embankment or to repair or extend the seawall on the Property as required for the Project;

(h) Buyer has obtained Oregon State Marine Board approval to establish and use a service entrance to the Project adjacent to the Empire Boat Ramp;

(i) Buyer has executed and deposited into Escrow the Declaration of Post-Completion Covenants;

(j) There is no injunction in any pending litigation to prevent the Closing;

(k) Within one hundred eighty (180) days after the Effective Date, Buyer has satisfied itself as to the existence or non-existence of any hazardous substances on the Property;

(l) Within one hundred eighty (180) days after the Effective Date, Buyer has satisfied itself that the Property is suitable for the Buyer's intended use, within the Buyer's sole and absolute discretion;

(m) Agency has cured any objectionable exceptions or matters that it has agreed to cure pursuant to Sections 1.4.1, 1.4.2, or 1.4.3;

(n) The Public Infrastructure as defined below are reasonably estimated by the Buyer not to cost more than One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000); and

(o) Agency's representations and warranties described in Section 1.8 are true and correct as of Closing.

1.7.2 Agency. Agency is not obligated to sell the Property until, to Agency's satisfaction:

(a) Buyer has provided evidence of funding for the construction of the Project satisfactory to the Agency; a signed letter of intent from a community development corporation (a "CDC") providing for new market tax credit financing together with a term sheet from a bona fide third party lender are alone sufficient evidence of funding, without limiting what evidence may be sufficient in such circumstances or in other circumstances;

(b) Land use approvals and any other regulatory approvals are in place;

(c) Buyer has obtained City building permits;

(d) The Buyer shall have executed the Reimbursement Agreement described in Section 2.4.2 below, and two fully executed originals have been deposited into Escrow;

(e) The Buyer has executed the Wayside Maintenance Agreement described in Section 5.2, and two fully executed originals have been deposited into Escrow;

(f) The Buyer has obtained any necessary permits from the applicable regulatory agencies to either reinforce the embankment or to repair or extend the seawall on the Property as required for the Project;

(g) Buyer has obtained Oregon State Marine Board approval to establish and use a service entrance to the Project adjacent to the Empire Boat Ramp;

(h) Buyer has executed and deposited into Escrow the Declaration of Post-Completion Covenants;

(i) Buyer is a legal entity; and

(j) There is no injunction in any pending litigation to prevent the Closing.

1.7.3 Elections upon Non-Occurrence of Conditions. Except as provided below, if any condition in Section 1.7.1 or 1.7.2 is not fulfilled to the satisfaction of the benefited Party or Parties on the earlier of (i) the date designated for satisfaction of the condition, or (ii) on the date scheduled for Closing in the Schedule of Performance, subject to any extension that may be granted pursuant to this Section 1.7.3, then such benefited Party or Parties may elect to:

(a) Terminate this Agreement, which termination shall become effective sixty (60) days after the notice of termination is sent ("Termination Date") unless, before the sixty (60) day period ends, the other Party fulfills such condition or conditions to the reasonable satisfaction of the benefited Party or Parties; or

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

(c) Extend the Termination Date by which the applicable condition may be satisfied, but only if the other Party agrees in writing to the extension.

#### 1.7.4 Final Termination Date.

(a) If all of the conditions precedent under Section 1.7.1 or 1.7.2 have not been satisfied, waived or otherwise resolved pursuant to this Agreement on or before March 1, 2016, then this Agreement shall automatically terminate on March 31, 2016 ("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 8.8 below (Unavoidable Delay).

(b) If the Final Termination Date is extended for a period of Unavoidable Delay, the maximum period of Unavoidable Delay shall be no longer than 180 days.

1.7.5 If the Agreement is terminated for failure of satisfaction of the conditions precedent without breach by the Agency, after the opportunity to cure described above, then the obligations of the Parties to each other under this Agreement shall terminate, and the Agency shall retain the Buyer Deposit, as compensation for the Agency's costs incurred in pursuing the conveyance of the Property to the Buyer, and for holding the Property off the market through the scheduled Closing Date. If the Agreement is terminated for failure of satisfaction of the conditions precedent due to a breach by the Agency, after the opportunity to cure described above, the Buyer Deposit shall be returned to the Buyer. Neither the Agency nor the Buyer shall have any other recourse against the other for failure of satisfaction of the conditions precedent without breach by the other Party.

#### 1.8 Agency Representations and Warranties.

Agency represents that:

1.8.1 The Agency is not a foreign person within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

1.8.2 The Agency has full power and authority to enter into and perform this Agreement in accordance with its terms, and the Agency has taken all requisite entity action in connection with the execution of this Agreement.

1.8.3 No representation, warranty or statement of the Agency in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or, to the Agency's knowledge, omits a material fact necessary to make the statements of facts contained herein not misleading.

1.8.4 Agency has provided Buyer full and complete copies, to the extent in its possession and to the extent related to all or any portion of the Property, of all: (i) third party reports, (ii) surveys, (iii) appraisals, (iv) environmental reports, inspections, or correspondence with the Oregon Department of Environmental Quality or other regulatory or government agency, and (v) agreements related to the use or operation of the Property. Agency is not aware of any of the foregoing documents that that it has obtained or ordered but are no longer in its possession.

1.8.5 As of the date hereof there are no breaches by the Agency under this Agreement or events that with the passage of time would constitute a breach of the Agency under this Agreement.

1.8.6 To the Agency's knowledge, the Agency has received no notice from any municipal, state or federal government ("Authority") that the Property is in violation of, or subject to any existing, pending, or threatened investigation or inquiry by any Authority or of any remedial obligations under any applicable laws, statutes, regulations, rules, ordinances, codes, permits or orders of any governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and their political subdivisions and all applicable judicial, administrative and regulatory decrees and judgments pertaining to the protection of health or safety or the environment.

1.8.7 The Property is not subject to any leases which will survive Closing.

1.8.8 To the Agency'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, Agency's ability to perform its obligations under this Agreement, or Buyer's ability to develop the Project according to all applicable laws, ordinances, rules and regulations.

1.8.9 Other than as described in any reports or written correspondence provided to Buyer, Agency is not aware of any spill or release of hazardous substances at the Property, and Agency has no knowledge of any underground storage tanks currently located on the Property. Agency has not received any written notice regarding the presence of any hazardous substances at the Property. A hazardous substance for purposes of this Agreement is any substance whose nature or quantity of existence, use, manufacture, disposal, or effect render it subject to Federal, state, or local regulation, investigation, remediation, or removal as potentially injurious to public health, safety or welfare.

1.8.10 Other than the Final Permitted Exceptions, Agency has no knowledge of any encumbrances or liens on the Property.

1.8.11 Prior to the Closing Date, the Agency shall notify Buyer of any material change in the Agency's representations and warranties or in any information furnished to Buyer pursuant to this Agreement from the date hereof to the Closing Date. After such notification, Buyer shall have thirty (30) days to give the Agency notice of termination of the Agreement based on the material change stated in the Agency's notice, with a termination date not less than ten (10) days after the date of the Agency notice, and if the Agreement is thereafter terminated, the Escrow Agent shall pay the Buyer Deposit to the Buyer. If Buyer does not provide the notice of termination pursuant to this subsection, then the transaction shall proceed to Closing.

1.8.12 "Agency's knowledge" shall mean the actual knowledge of (a) the Agency's Manager, Rodger Craddock, or his successor, and (b) as to Sections 1.8.6 and 1.8.8, the City Attorney, and as to Section 1.8.9, Jim Hossley, each with no duty of investigation or inquiry.

## 1.9 Buyer Representations and Warranties.

Buyer represents that:

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

1.9.2 No representation, warranty or statement of Buyer 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 statements of facts contained herein not misleading.

1.9.3 As of the date hereof there are no breaches by Buyer under this Agreement or events that with the passage of time would constitute a breach of Buyer under this Agreement.

1.9.4 Except for Agency's representations made in Section 1.8, Buyer enters into this Agreement without reliance upon any verbal representation of any kind by Agency, its employees, agents or consultants regarding any aspect of the site, the Project, its feasibility, financing or compliance with any governmental regulation.

1.9.5 To the Buyer's knowledge, there is no litigation, action, or suit, pending or threatened, which may affect the Buyer's ability to perform its obligations under this Agreement, or Buyer's ability to develop the Project according to all applicable laws, ordinances, rules and regulations.

1.9.6 Prior to the Closing Date, the Buyer shall notify Agency of any material change in the Buyer's representations and warranties from the date hereof to the Closing Date. After such notification, Agency shall have thirty (30) days to give the Buyer notice of termination of the Agreement based on the material change stated in the Buyer's notice, with a termination date not less than ten (10) days after the date of the Buyer notice, and if the Agreement is thereafter terminated, the Escrow Agent shall pay the Buyer Deposit to the Agency. If Agency does not provide the notice of termination pursuant to this subsection, then the transaction shall proceed to Closing.

## 2. PUBLIC IMPROVEMENTS AND INFRASTRUCTURE

2.1 Utility Service. The Parties agree that development of the Project will require certain on-site and off-site utility improvements ("Utility Improvements"). The final size, location and configuration of the Utility Improvements will be determined by City regulatory review and approval.

2.2 Street Improvements. The Parties agree that development of the Project will require certain on-site and off-site street improvements ("Street Improvements"). The final size, location and configuration of the Street Improvements will be determined by City regulatory

review and approval. Specifically, but not exclusively, the Street Improvements may be modified based on a Transportation Improvement Analysis prepared for the Project and/or as required by land use approvals.

The Utility Improvements and the Street Improvements may be referred to jointly as “Public Infrastructure”.

### 2.3 Public Infrastructure Construction Obligations.

2.3.1 The Buyer will provide for construction of all on-site and off-site Public Infrastructure according to plans and conditions approved by the City permitting process. Buyer will comply with ORS 279.800 et. seq. in completing the off-site Public Infrastructure.

2.3.2 The Buyer will provide for construction of all on-site Public Infrastructure according to plans and conditions approved by the City permitting process.

### 2.4 Public Infrastructure Funding Obligations.

2.4.1 Buyer will pay the cost of construction of all Public Infrastructure according to its construction contracts, subject to the Reimbursement Agreement described below.

2.4.2 Reimbursement Agreement. At or before Closing, the Agency and the Buyer will execute a Reimbursement Agreement that includes the following terms:

(a) Beginning in the first tax year after the value of the completed Project is included on the Coos County property tax roll, and continuing until the Maximum Reimbursement has been paid, Agency shall pay to Buyer the annual payment for that tax year set forth in an exhibit to the Reimbursement Agreement (“Amortization Schedule”). The Amortization Schedule will assume an annual interest rate equal to the Wall Street Journal prime rate determined on the Closing Date. Agency’s obligation to pay according to the Amortization Schedule and this Section 2.4.2 is the “Reimbursement Obligation”.

(b) Each annual payment described in subsection (a) of this section shall be made not later than June 30<sup>th</sup> of the tax year. Agency may prepay all or a portion of the Reimbursement Obligation at any time. Upon any partial prepayment, the Buyer will adjust the Amortization Schedule to reflect any reduction in the principal of the Reimbursement Obligation, and the resulting reduction of annual payments, and provide the adjusted Amortization Schedule to the Agency.

(c) The Agency’s total annual payments, not including the portion of the annual payments that represents interest, shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00), (“Maximum Reimbursement”).

(d) Except as otherwise provided in Section 2.4.2(f) below, if the tax increment funds received by Agency in any tax year on account of the value of the Project (“TIF Receipts”) are less than a required annual payment for the tax year as shown in the Amortization

Schedule, Agency will remain obligated to pay the Buyer the amortized annual payment. “TIF Receipts” means the amount dedicated to Agency that is shown on Buyer’s tax statement issued by the Coos County Assessor.

(e) Upon Agency payment of the Maximum Reimbursement, the Agency’s Reimbursement Obligation shall terminate.

(f) The Agency is not obligated to make an annual payment to the extent that Buyer, or its transferee or assignee, fails to make timely property tax payments to the Coos County Tax Collector in each tax year the Reimbursement Agreement is in effect or fails to rebuild improvements on the Property after a casualty loss.

(g) The Agency may make payments equal to TIF Receipts and be forgiven for the remainder of the annual payment in the Amortization Schedule in excess of the TIF Receipts to the extent that the Buyer, or its transferee or assignee fails to rebuild improvements on the Property after a casualty loss, but only in the event that (i) the rebuilt improvements are not at least equal in real market value to the improvements as of the date of the casualty and (ii) to the extent that the TIF Receipts are less than the TIF Receipts prior to the casualty loss,

(h) If the Buyer chooses to rebuild the improvements after a casualty loss, during the period of reconstruction until the rebuilt improvements are on the tax rolls, the Agency may suspend annual payments to the extent that the Buyer is not paying real property taxes on the pre-casualty loss improvements. Any annual payments suspended will be reamortized into the remaining balance of the Reimbursement Obligation, and the Buyer will adjust the Amortization Schedule to reflect any increase in the principal of the Reimbursement Obligation, and the resulting increase of annual payments, and provide the adjusted Amortization Schedule to the Agency.

2.5 Subsurface, Surface and Building Conditions. Except for the representations of Section 1.8, the Property shall be conveyed to Buyer “AS IS”. Agency makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Property or structures thereon for any improvements to be constructed by the Buyer, and Buyer warrants that it has not relied on any representations or warranties outside this Agreement, made by Agency as to the environmental condition of the Property, the suitability of the soil conditions or any of the conditions of the Property for any improvements to be constructed by the Buyer. The parties acknowledge that the existing seawall is deteriorating, and the Agency has no obligation to the Buyer to maintain the seawall or any other portion of the property after execution of this Agreement and until and through Closing. Unless the Agency has breached Section 1.8, Buyer agrees that the Agency will not be liable for any loss, cost or damage which may be caused or incurred by Buyer by reason of any such soil or physical conditions on the Property. Agency has allowed Buyer free access to Agency’s records with respect to conditions of the soils.

### **3. DEVELOPMENT**

3.1 Scope of the Development. Parties have agreed to the design concept attached hereto as Exhibit E (“Concept”). The parties agree that the Concept is not a strict requirement for the Project, as there will be additional permitting, approvals, designs, drawings, specifications, and changes to the Project. The parties do agree, however, that the Project will at a minimum include the improvements described below in this Section 3.1. The Buyer will complete the design and construct the Project in compliance with the following and the Schedule.

3.1.1 Hotel guestrooms in a three-story building with parking on the ground floor.

3.1.2 An arrival and lobby entrance near the west end of Newmark Avenue.

3.1.3 Service and delivery access from the parking lot on the south side of the Project.

3.1.4 A restaurant.

3.1.5 Meeting rooms.

3.1.6 A visitor’s center/cultural museum on the bluff-top portion of the Project.

3.1.7 A pedestrian promenade linking the bluff-top portion of the Coos channel waterfront.

3.1.8 A pedestrian pathway along the waterfront.

3.2 Project Financing. Except for the Agency’s Reimbursement Obligation, Buyer will provide all funding and financing for the hard and soft costs of the Project at its own expense.

3.3 Plans, Drawings and Design Review. Buyer will prepare all plans and drawings for the Project necessary to obtain State and federal permits, City land use and design review approvals, and a City building permit.

3.4 Diligent Completion; Schedule. The Buyer has prepared and the Agency has approved the Schedule for development attached hereto as Exhibit B. Except for Unavoidable Delay, and its effects, as described in Section 8.8 below, the Buyer will commence and complete development of the Project according to the City-approved drawings and the Schedule. The Project and Public Infrastructure shall cost the Buyer not less than \$15,000,000.00.

3.5 Project Team. The Buyer has notified the Agency of the names and contact information for the Buyer’s architect, structural engineer, general contractor, and project manager (“Project Team”). These persons/firms are listed on Exhibit F. Buyer will notify Agency of any changes to the Project Team. Agency may contact any member of the Project Team directly to obtain information about the design and construction of the Project at any time. Each Project Team member is authorized by this Agreement to provide Agency with any Project information requested by Agency if Buyer is authorized to release such information and if such information does not include any confidential Project information, provided Agency's request does not result



in charges for providing the information, or if the Project Team member intends to charge for providing the information that Agency agrees in advance with the Project Team member to pay such charges. The term “confidential Project information” as used in the previous sentence includes without limitation information about the Project financing, pro forma projections, Project participants other than the architect, structural engineer, general contractor, and project manager, and such other information that is not directly relevant to the design and construction of the Project,

### 3.6 Inspection and Property Access.

3.6.1 Before Conveyance of Property. Before conveying the Property to Buyer, the Agency shall allow Buyer and Buyer’s employees, agents and consultants to enter upon the Property at all reasonable times whenever and to the extent necessary to carry out the purposes of this Agreement on the following terms:

(a) After entry, Buyer will, if applicable, at its sole cost and expense, promptly remove any equipment, products or facilities that it installed or caused to be installed on the Property, promptly repair any damage to the Property that might have been caused by its activities on the Property, and promptly restore the Property to substantially the same condition it was in prior to the initial entry upon the Property except as the Parties may otherwise agree. The repair of damage and restoration of the Property will include the required clean-up of any release of hazardous substances (as defined by applicable law) to the extent resulting from the Buyer’s activities, provided however, that Buyer will not be liable for the clean-up of hazardous substances existing on the Property prior to its entry, except to the extent of the degradation of the environmental condition of the Property resulting from its activities.

(b) Buyer will, for itself and any of its contractors entering the Property, obtain and maintain insurance coverage with financially reputable insurers that are licensed to do business in the State of Oregon in the following types and amounts of coverage: (a) workers’ compensation as provided for under any workers’ compensation law or similar law; (b) comprehensive commercial general liability, with a limit of not less than \$1,000,000 combined single limit per occurrence for bodily injury, property damage and personal injury liability, and \$2,000,000 umbrella / excess insurance; (c) employer’s liability insurance with a limit of not less than \$500,000; and (d) business vehicle insurance covering the ownership, maintenance or use of any owned, non-owned or hired vehicle with a limit of not less than \$1,000,000 combined single limit per accident for bodily injury, property damage and personal injury liability. This insurance will include endorsements or other provisions stating that Buyer’s insurance is the primary insurance. Not later than five days before Buyer’s entry on the Property, Buyer will furnish Agency with a copy of a certificate of insurance evidencing the insurance required under this Section 3.6.1(b), certifying that it is in full force and effect, providing for 30 days prior notice to Agency of any cancellation or modification of the insurance and naming Agency as an additional insured.

(c) Buyer's activities upon the Property shall be without expense to Agency.

(d) Buyer shall indemnify, hold harmless and at Agency's request, defend Agency and its officials, agents, and employees from and against any and all liability or alleged liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of any negligent act or performance, or error or omission of Buyer or anyone acting on behalf of Buyer in connection with or incidental to the Buyer's entry on the Property; provided however, that nothing herein shall be construed to require indemnification of Agency to the extent of any liability attributable to Agency's negligence or misconduct or as to any pre-existing environmental conditions. This indemnification will survive the Closing, the expiration or termination of this Agreement and the recording of the Deed.

### 3.6.2 After Conveyance of Property.

(a) After conveying the Property to Buyer during construction of the Project, and until a final Certificate of Occupancy is issued, Buyer's work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of the Agency. Agency agrees not to interfere with the work occurring on the Property. In the event that Agency or its representatives enter the Property pursuant to this Section 3.6.2, they shall do so at their own risk and shall comply with all construction site rules established by Buyer and Buyer's contractors. In addition, Agency shall not be entitled to indemnification for any losses, liability or injury arising in connection with entry to the Property pursuant to this Section 3.6.2, except to the extent the same arises out of the gross negligence or willful misconduct of Buyer.

(b) Agency will, for itself and any of its contractors entering the Property pursuant to this Section, obtain and maintain insurance coverage with financially reputable insurers that are licensed to do business in the State of Oregon in the following types and amounts of coverage: (a) workers' compensation as provided for under any workers' compensation law or similar law; (b) comprehensive commercial general liability, with a limit of not less than \$1,000,000 combined single limit per occurrence for bodily injury, property damage and personal injury liability, and \$2,000,000 umbrella / excess insurance; (c) employer's liability insurance with a limit of not less than \$500,000; and (d) business vehicle insurance covering the ownership, maintenance or use of any owned, non-owned or hired vehicle with a limit of not less than \$1,000,000 combined single limit per accident for bodily injury, property damage and personal injury liability. This insurance will include endorsements or other provisions stating that Agency's insurance is the primary insurance. Not later than five days before Agency's entry on the Property, Agency will furnish Buyer with a copy of a certificate of insurance evidencing the insurance required under this Section certifying that it is in full force and effect, providing for

30 days prior notice to Buyer of any cancellation or modification of the insurance and naming Buyer as an additional insured.

(c) Subject to, and to the extent of, the Oregon Tort Claims Act (ORS 30.260-.300), Agency shall indemnify, hold harmless and at Buyer's request, defend Buyer and its officials, agents, and employees from and against any and all liability or alleged liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of any negligent act or performance, or error or omission of Agency or anyone acting on behalf of Agency in connection with or incidental to the Agency's entry on the Property; provided however, that nothing herein shall be construed to require indemnification of Buyer to the extent of any liability attributable to Buyer's negligence or misconduct or to any pre-existing environmental conditions. This indemnification will survive the Closing, the expiration or termination of this Agreement and the recording of the Deed.

(d) After Closing, Buyer shall indemnify, hold harmless and at Agency's request, defend Agency and its officials, agents, and employees from and against any and all liability or alleged liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of any negligent act or performance, or error or omission of Buyer or anyone acting on behalf of Buyer in connection with or incidental to the Buyer's development of the Project; provided however, that nothing herein shall be construed to require indemnification of Agency to the extent of any liability attributable to Agency's negligence or misconduct or as to any pre-existing environmental conditions. This indemnification will survive the Closing, the expiration or termination of this Agreement and the recording of the Deed.

### 3.7 Liens.

Buyer agrees that in the event any statutory lien shall be filed against the Property prior to Agency's issuance of a certificate of Completion, by reason of labor, services, or materials supplied to or at the request of Buyer or pursuant to any construction in the Project, it shall pay and discharge the same of record within thirty (30) days after the filing thereof, subject also to the provisions of the following sentence. Buyer shall have the right to contest the validity, amount or applicability of any such respective liens by appropriate legal proceedings, and so long as it shall furnish bond or indemnity as hereinafter provided, and be prosecuting such contest in good faith, the requirement that it pay and discharge such items within said thirty (30) day period shall not be applicable, provided, however, that in any event, Buyer shall within thirty (30) days after the filing thereof, bond in accordance with applicable laws, or in the alternative indemnify against such liens in amount and form satisfactory to induce the Escrow Agent to insure over such liens or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such liens and, further, the Buyer shall indemnify and save harmless the Agency from all loss, damage, liability, expense or claim whatsoever

(including attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such liens. In the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to the Buyer, Buyer shall within five (5) days thereafter cause the lien(s) to be discharged of record.

### 3.8 Certificate of Completion.

3.8.1 When Buyer is Entitled to Certificate of Completion. Upon Substantial Completion of the Project as described in this Section 3.8 on or before the date for completion of the construction set forth in the Schedule of Performance and provided Buyer is not in default under this Agreement, Agency will furnish Buyer with a Certificate of Completion for the Project. The Project will be deemed to be substantially complete when:

(a) Agency reasonably determines that the Project is complete in substantial form according to the Final Construction Drawings, except for punch-list items that do not materially affect the use of the Project for the purposes intended under this Agreement; and

(b) The City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project.

3.8.2 Form and Effect of the Certificate of Completion. A Certificate of Completion shall be substantially in the form of Exhibit G and in a form that can be recorded in the real property records of Coos County. The Certificate of Completion shall provide for termination of obligations under this Agreement and limitation of remedies of Agency as expressly provided for in the Certificate of Completion. At Buyer's request, the Certificate of Completion shall state which terms and conditions of this Agreement are of no further force and effect.

3.8.3 Procedure Where Agency Refuses to Issue. If Agency refuses or fails to provide a Certificate of Completion in accordance with this Section 3.8, then Agency, within thirty (30) days after written request by Buyer for such Certificate of Completion, shall provide Buyer with a written statement indicating in detail in what respects Buyer has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts Buyer must take or perform to obtain such Certificate of Completion. Agency's failure to furnish Buyer with such detailed written statement within such thirty (30) day period shall be deemed Agency's approval of Buyer's request for the Certificate of Completion.

## 4. ENVIRONMENTAL MATTERS

4.1 Indemnification. Buyer shall comply with all Environmental Laws with respect to its construction, business and the operation of the Project from and after the date of Conveyance, except for matters caused in whole or in part by the act or failure to act of the Agency or its employees, agents, contractors, or invitees. Buyer shall defend, indemnify and hold harmless the

Agency, its successors and assigns, against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by the Agency or asserted against the Agency, and its successors or assigns, by any other party or parties, including, without limitation, a governmental entity, to the extent arising out of a violation of Environmental Laws by Buyer. The indemnity set forth in this Section 4.1 shall survive the issuance of the final Certificate of Occupancy.

4.2 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 to this Agreement for a violation of Environmental Laws by Buyer.

## **5. POST COMPLETION AGREEMENT AND COVENANTS.**

5.1 **Declaration of Covenants.** At Closing, Escrow Agent will record a Declaration of Covenants (“Declaration”) executed by Buyer that will be effective upon Completion of the Project and will run with the Property, and in a form agreed to by the Agency. Agency shall provide an initial draft of the Declaration within ninety (90) days after the Effective Date and the parties will thereafter negotiate in good faith to complete the final form of the Declaration within one hundred eighty (180) days after the Effective Date. “Completion” of the Project means the City’s issuance of a temporary or final certificate of occupancy for the Project. The Declaration shall at a minimum, provide:

5.1.1 The Agency shall be the sole beneficiary of the covenants with a right to enforce and to approve any changes to the Declaration;

5.1.2 Buyer shall waive any sovereign immunity that would prevent injunctive enforcement of the covenants by the Agency or its successors;

5.1.3 Buyer shall retain the Property and Project in fee simple ownership for a period of twenty years after first tax year that the value of the Completed Project is included on the Coos County property tax roll (“Fee Period”). The “Completed Project” means all buildings and improvements on the Property having been issued a Certificate of Occupancy by the City;

5.1.4 If after such Fee Period the Buyer seeks to transfer the Property and the Project into tribal trust, prior to such transfer the Buyer shall:

(a) Not later than ninety (90) days before the date the Buyer intends to transfer the Property and the Project into tribal trust, the Buyer will enter into good faith negotiations with the City to reach agreement for payment in lieu of property taxes to compensate the City for public services provided to the Project and the Property after the Fee Period. After at least four negotiation meetings within the ninety day period, either the Buyer or

the City may terminate negotiations if no agreement is reached and thereafter, the Buyer may transfer the Property and the Project into tribal trust without a requirement for any payment in lieu of taxes; and

(b) Negotiate payment of Transient Lodging Taxes as part of the negotiations in Section 5.1.4(a).

**5.2 Wayside Maintenance Agreement.** At or before Closing, the Agency and the Buyer will execute a Wayside Maintenance Agreement in form acceptable to the Parties pursuant to which the Buyer shall maintain and operate the Hollering Place Wayside. The Agency will provide an initial draft of this Easement to the Agency within ninety (90) days after the Effective Date and the parties will thereafter negotiate in good faith to complete the final form of the Access Easement within one hundred eighty (180) days after the Effective Date. The Wayside Maintenance Agreement will be recorded at Closing, will run with the Property, and will bind all future owners of the Project. The Wayside Maintenance Agreement will include at least the following terms:

5.2.1 The Wayside includes the Camp Castaway memorial, memorial bench(es), interpretive signs, the Historic Marker, and the parking lot infrastructure (pavement and sidewalks), all as existing on the Effective Date;

5.2.2 Buyer shall maintain and repair or cause to be maintained and repaired the Wayside in good, clean condition, including but not limited to the above stated improvements, the elevator, and the electrical systems, facilities and components to the extent the same are a part of or serve the Wayside. Maintenance shall include, but not be limited to:

(a) Re-striping of the parking spaces as needed as needed due to wear and tear.

(b) Repainting of painted surfaces;

(c) Replacing light bulbs and repairing light fixtures;

(d) Cleaning the Wayside and keeping the Wayside clean and free from rubbish, trash, refuse, debris, dust, and dirt.

(e) Providing for the adequate sanitary handling and disposal of all trash, garbage and other refuse resulting from the use of the Wayside;

(f) Removing snow and ice that unduly interferes with the safe movement and parking of cars, or the safe movement of pedestrians to and from the Wayside; and

(g) Maintenance of the Wayside landscaping.

5.2.3 Buyer shall (a) repair or cause to be repaired all damage to the Wayside; and (b) rebuild, reconstruct or replace or cause to be rebuilt, reconstructed or replaced any

destroyed, dysfunctional or obsolete part of the Wayside, after consultation with and approval of the City.

5.3 Buyer shall maintain its uses and operations adjacent to the Empire Boat Ramp in a manner consistent with the terms of any grant agreements between the City and the Oregon State Marine Board; and

5.4 Buyer shall have the right to petition the County Assessor for a reduction in the assessed value of the Project. If the revised valuation by the County Assessor results in TIF receipts from the Project being lower than 110% of the annual payment according to the Amortization Schedule under the Reimbursement Agreement, the difference between 110% of the amount owed under the scheduled annual payment and the TIF receipts as result of the reassessment is forgiven, and does not need to be repaid by the Agency.

## **6. ASSIGNMENT PROVISIONS.**

6.1 No Assignment. Unless approved by the express written consent of Agency, no assignments of interest in this Agreement shall be permitted, or transfer of the Property shall be permitted until after the City has issued a final Certificate of Occupancy for the Project. Agency may condition its approval of a transfer or assignment as Agency finds necessary in its reasonable discretion.

(a) Permitted Assignment or Transfer. Notwithstanding Section 6.1, “assignment or transfer” shall not include any Mortgage(s) which Buyer may cause to attach to the Property. Buyer may additionally assign or transfer all or any part of its rights and obligations under this Agreement to an entity or instrumentality formed for the purposes of owning the Property or operating the Project, so long as the Confederated Tribe of Coos, Lower Umpqua, and Siuslaw Indians is an owner or manager of such entity or instrumentality, or so long as the Confederated Tribe of Coos, Lower Umpqua, and Siuslaw Indians owns 100% of the owner or manager of the entity or instrumentality, and provided that such assignee has assumed all terms of this Agreement and of the Air Rights Easement, the Declaration, the Reimbursement Agreement, and the Wayside Maintenance Agreement; provided that the assignee need not assume any such instrument to the extent that the Confederated Tribe of Coos, Lower Umpqua, and Siuslaw Indians remains subject to the rights and obligations of the Buyer under such instrument.

## **7. MORTGAGEE PROTECTION PROVISIONS**

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

7.2 Mortgagee Not Obligated To Construct. Notwithstanding any of the provisions of the Agreement, except those that are covenants running with the Property, if any, 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.

7.3 Copy of Notice of Default to Mortgagee. If Agency delivers a notice or demand to Buyer with respect to Buyer's breach of this Agreement, Agency shall at the same time send a copy of such notice or demand to each Mortgagee approved by Agency, at the last address of such holder shown in the records of Agency. Failure of Agency to send a copy of such notice or demand to a Mortgagee shall not prevent or limit in any way Agency's rights and remedies under this Agreement or create any liability for Agency.

7.4 Mortgagee's Options to Cure Defaults. After Buyer's default of this Agreement and if Buyer fails to cure or remedy said default within the required time period, then each Mortgagee shall have thirty (30) days after passage of the latest date for Buyer's cure or remedy of the default, to cure or remedy the default itself, if cure or remedy thereof is permitted by this Agreement. If a Mortgagee does cure or remedy the default 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 default is with respect to construction of 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 Agency in writing of its intention to complete the Project according to the approved Final Construction Drawings that are the basis for the city building permit. Any Mortgagee who properly completes the Project shall be entitled to issuance of a Certificate of Completion, upon written request made to Agency following the procedures set forth in Section 3.80 above.

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

## **8. DEFAULT AND REMEDIES**

### **8.1 Default and Cure.**



8.1.1 Default by Buyer. Buyer shall be in default under this Agreement if Buyer breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Buyer receives written notice from Agency specifying the breach or such longer time as may be specified in this Agreement. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Buyer shall be in default under this Agreement if Buyer does not commence the cure of the breach within thirty (30) days after Buyer receives written notice from Agency and thereafter diligently prosecute to completion such cure within sixty (60) days after the written notice from Agency.

Buyer shall also be in default under this Agreement if Buyer 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.

Buyer shall also be in default under this Agreement and Agency shall be irreparably harmed by such default, if Buyer constructs or operates any portion of the Project prior to the issuance of the Certificate of Completion in a manner materially inconsistent with Final Construction Drawings.

8.1.2 Default by Agency. Agency shall be in default under this Agreement if Agency breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Agency receives written notice from Buyer specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Agency shall be in default under this Agreement if Agency does not commence the cure of the breach within thirty (30) days after Agency receives written notice from Buyer and thereafter diligently prosecute to completion such cure within sixty (60) days after the written notice from Buyer.

8.2 Agency's Pre-Conveyance Remedies. If a Buyer default (as described in Section 8.1.1) occurs before the Property is conveyed to Buyer, Agency may, at its option: (i) terminate this Agreement by written notice to Buyer and retain the Buyer Deposit, or (ii) specifically enforce the obligations of Buyer under this Agreement. If Agency terminates this Agreement as provided in this Section 8.1.2, then Buyer shall deliver to Agency within thirty (30) days after termination, copies of all Project design documents, and engineering documents prepared for Buyer by unrelated third parties, and which Buyer is authorized to release. Agency may use any of the foregoing documents in any manner that Agency deems appropriate with the consent of any party having approval rights thereunder. Agency shall pay no compensation to Buyer for the foregoing Project documents.

8.3 Agency's Post-Conveyance Remedies. If a Buyer default (as described in Section 8.1.1) after the Property is conveyed to Buyer, including but not limited to Buyer's failure to complete the Project as required by Section 3.4, then Agency shall have the following remedies:

8.3.1 Subject to the Mortgagee protections specified in Section 7, Agency shall have the right to re-enter and take possession of the Property and to terminate (and revest in Agency) the estate conveyed by the Deed, terminate Buyer's right to develop the Project, and resell the Property pursuant to Section 8.3.2 and 8.4 below. The conveyance of the Property to Buyer shall be made upon, and the Deed shall provide for, a condition subsequent to the effect that, in the event of a Buyer default (as described in Section 8.1.1), Agency, at its option, may, upon 30 days written notice of termination to Buyer and the Escrow Agent declare a termination of Buyer's rights, title, and interest in the Property. After delivery of such notice of termination, and in the event Buyer fails to remedy, end or abrogate such default within the 30-day period in the manner stated in the notice of termination, all the title and rights and interest in the Property conveyed to Buyer by the Deed, or to any successors or permitted assigns of Buyer, shall be reconveyed to Agency by quitclaim deed and pursuant to the escrow instructions, each as set forth in Exhibit H. Any delay by Agency in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 8.3.1 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 Agency 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 Agency with respect to any specific default by the Buyer be considered or treated as a waiver of the rights of Agency with respect to any other defaults by the Buyer or with respect to any particular default except to the extent specifically waived.

8.3.2 Buyer shall deliver to Agency within thirty (30) days after reconveyance of the Property pursuant to Section 8.3.1, copies of all Project design documents and engineering documents prepared for Buyer by unrelated third parties, and which Buyer is authorized to release. Agency may use any of the foregoing documents in any manner that Agency deems appropriate with the consent of any party having approval rights thereunder. Agency shall pay no compensation to Buyer for the foregoing Project documents.

8.4 Agency Resale. If title to the Property revests in Agency in accordance with the provisions of Section 8.2, Agency may, at its option, bring the improvements to a state of completion deemed by Agency as reasonably necessary to protect the improvements from the elements or other dangers, and shall, pursuant to its responsibilities under Oregon Revised Statutes, Chapter 457, 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) as soon and in such a manner as Agency shall find feasible and consistent with the objectives of such laws and the Urban Renewal Plan, to a qualified and responsible party or parties (as determined by Agency 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 Agency. Upon such resale, the proceeds thereof shall be applied as follows:

8.4.1 Agency Reimbursement. First, to Agency on its own behalf to reimburse Agency 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) Salaries of personnel or professional fees paid in connection with the recapture, management and resale of the Property;

(b) Any expenditures made or costs incurred in completing the construction of the Project;

(c) Any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property at the time of revesting of title thereto in Agency or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Buyer, its successors or transferees, excluding any Mortgage if the Property or improvements are sold subject to such Mortgage; and

(d) All taxes, assessments and water and sewer charges with respect to the Property or part thereof.

8.4.2 Buyer Reimbursement. Second, to reimburse Buyer, its successor or transferee, up to the amount equal to the sum of:

(a) The Purchase Price of the Property; and

(b) Third party development costs for the Project or part thereof paid by Buyer, or for which Buyer remains liable, less any gains or income withdrawn or made as to the Project.

8.4.3 Balance to Agency. Third, any balance remaining after the reimbursements described above shall be retained by Agency.

8.5 Buyer's Pre-Conveyance Remedies. If an Agency default (as described in Section 8.1.2) occurs before Agency conveys the Property to Buyer, Buyer may, at its option: (i) terminate this Agreement by written notice to Agency without waiving any cause of action Buyer may have against Agency, (ii) specifically enforce the obligations of Agency under this Agreement, or (iii) seek monetary damages against Agency. Notwithstanding the preceding sentence, Buyer shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from Agency in connection with Agency's default.

8.6 Buyer's Post-Conveyance Remedies. If a Agency default (as described in Section 8.1.2 occurs after Agency conveys the Property to Buyer, Buyer may specifically enforce the obligations of Agency under this Agreement, or seek monetary damages against Agency. Notwithstanding the preceding sentence, Buyer shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from Agency in connection with Agency's default.

8.7 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.

#### 8.8 Unavoidable Delay.

8.8.1 Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation ("Unavoidable Delay") is a result of conditions unforeseeable, beyond the Party's reasonable control, and without the Party's fault or negligence, including, events such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, strike, malicious mischief, or explosion.

8.8.2 A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party's obligation must, 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 estimated time of correction. The Party must thereafter do everything in its power to resume performance of the delayed obligation.

8.8.3 Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay. In no event will the time or times for performance of an obligation be extended for more than 180 days in the aggregate.

### 9. MISCELLANEOUS PROVISIONS

9.1 **Agency Project Manager.** For the purposes of managing the implementation of the provisions of this Agreement on behalf of Agency, Agency shall designate a Project Manager. At the Effective Date, the Agency Project Manager is Rodger Craddock, City Manager or his successor or appointee.

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

9.3 **Notice.**

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

Agency: Coos Bay Urban Renewal Agency  
500 Central Avenue  
Coos Bay, OR 97420  
Attn: Rodger Craddock  
Email: rcraddock@coosbay.org

With a copy to: Nate McClintock, City Attorney  
500 Central Avenue  
Coos Bay, OR 97420  
Email: nmcclintock@epuerto.com

Buyer: Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians  
1245 Fulton Avenue  
Coos Bay, OR 97420  
Attn: Tribal Chair  
Email: bgarcia@ctclusi.org

With a copy to: Harrang Long Gary Rudnick  
1001 SW Fifth Avenue, Flr 16  
Portland, OR 97204  
Attn: John T. Witherspoon  
Email: john.witherspoon@harrang.com

Notices shall be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof; provided that notices sent by email shall be deemed given on the date received if and only if delivered prior to 5:00 p.m. Pacific Time and if simultaneously sent by another means allowed hereunder. 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. Notices may be given by counsel to a Party.

9.4 **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 Agency to Buyer 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.

9.5 **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.

9.6 **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 Agency or Buyer 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.

9.7 **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 Coos 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 Eugene, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.

9.8 **Calculation of Time.** 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.

9.9 **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.

9.10 **Legal Purpose.** Buyer agrees that it shall use the Project solely for lawful purposes.

9.11 **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.

9.12 **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.

9.13 **Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties, and approved by the Agency Board. Notwithstanding this general requirement, the Agency Project Manager may approve minor modifications to this Agreement without Board approval. "Minor Modifications" include:

9.13.1 Changes in the Schedule of Performance when deemed warranted by the Project Manager which do not exceed sixty (60) days; and

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

9.14 **Successors and Assigns.** Subject to the provisions of Section 6, 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.

9.15 **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.

9.16 **Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, Agency is specifically not obligating itself, the City, 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.

9.17 **Approvals.** Where this Agreement requires the approval of Agency, Agency will approve or disapprove in writing within thirty (30) days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary. Failure by Agency to approve or disapprove within said period of time shall be deemed approval. Any disapproval shall state the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to Agency's sole discretion in this Agreement. Buyer, upon receipt of such disapproval, shall revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to Agency within forty-five (45) days after receipt of the notice of disapproval.

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

9.19 **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.

9.20 **Recording of Memorandum of Agreement.** Agency shall provide for recording a Memorandum of this Agreement within ten (10) days of the Effective Date. Buyer shall pay the recording costs pursuant to Section 1.5.3. The form of the Memorandum of Agreement is attached as Exhibit I to this Agreement. When Agency issues to Buyer a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record an Amended Memorandum of Agreement to reflect the surviving covenants of this Agreement.

9.21 **Confidentiality.** Buyer acknowledges that information provided to the Agency is subject to the Oregon Public Records Law (ORS 192.410 to 192.505). If the Buyer submits information to the Agency in confidence which should be reasonably considered to be confidential, such as Buyer's financial information, projected Project costs, Project pro forma statements, lender correspondence or documentation, information, or Buyer's or its members' personal information, and the Agency obliges itself in good faith not to disclose the information,

the Agency will consider whether such information is not subject to public disclosure under the Oregon Public Records Laws, and if so, to the extent allowed by state law, Agency will hold in confidence such information, and will not divulge such information to any third party, except for Agency's advisors and consultants. To be considered confidential information, any materials submitted must be marked as "Submitted in Confidence" on the first page of any such materials. As between the Parties, the Agency's decision to disclose or to hold information in confidence shall be final. In the event that Agency determines that it is required by law to make such disclosures, Agency shall notify Buyer as soon as possible before making such disclosure.

#### **10. Statutory Disclosure.**

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

In witness whereof, the Parties have executed this Agreement.

**City of Coos Bay Urban Renewal Agency**

**Confederated Tribes of Coos, Lower  
Umpqua and Siuslaw Indians**

By: \_\_\_\_\_

Rodger Craddock, City Manager

By: \_\_\_\_\_

Robert "Bob" Garcia, its Chairman

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBITS

Exhibit A – Deed

Exhibit B – Schedule

Exhibit C – Legal Description of the Property

Exhibit D – Depiction of the Property

Exhibit E – Design Concept

Exhibit F – Project Team

Exhibit G – Form of Certificate of Completion

Exhibit H – Form of Quitclaim Deed and Escrow Instructions

Exhibit I – Form of Memorandum of Agreement

**EXHIBIT A**  
**FORM OF DEED**

Unless a change is requested,  
send tax statements to:

---

---

---

After recording, return to:

---

---

---

**SPECIAL WARRANTY DEED**

Urban Renewal Agency for City of Coos Bay (as to Parcels 1, 2 and 4) also known as the City of Coos Bay Urban Renewal Agency (as to Parcel 3), a municipal corporation, Grantor, conveys and warrants to \_\_\_\_\_, Grantee, the following described real property free of encumbrances except as specifically set forth herein located in Coos County, Oregon:

See the legal description attached as Exhibit A

Tax Account Nos. 1527600, 1527601, 1786300 and 1786000

The true consideration for this transfer is \$10,000.

The title conveyed here in free and clear of all encumbrances except as specifically described as follows:

*[Insert Permitted Exceptions pursuant to the Agreement]*

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. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES

OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Grantor

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF OREGON )

) ss:

County of Coos )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon

## **EXHIBIT B**

### **SCHEDULE**

Closing:	March 31, 2016
Start of Construction:	October 1, 2016
Substantial Completion of Construction:	April 1, 2018

## **EXHIBIT C**

### **LEGAL DESCRIPTION OF PROPERTY**

**Parcel 1:**

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, Block 7; Lots 1, 2, 3, 5, 6, 7 and 8, Block 12, all in BELT LINE RAILROAD ADDITION to Empire City, Coos County, Oregon.

**Parcel 2:**

Lot 4, Block 12, EMPIRE CITY, Coos County, Oregon.

**Parcel 3:**

Lots 5, 6, 7 and 8, Block 25, CITY OF EMPIRE (ALSO KNOWN AS EMPIRE CITY), Coos County, Oregon.

**Parcel 4:**

Lots 2, 3, and 4, Block 25, EMPIRE CITY, Coos County, Oregon, together with the following described portion of vacated Holland Avenue, fronting and abutting upon said lots, which was vacated by Ordinance No.131, recorded June 3, 1947 in Book 169, Page 303, Deed Records of Coos County, Oregon being more particularly described as follows: Beginning on the South line of said Lot 2 a distance of 25 feet Easterly of the Southwest corner of said Lot 2; thence Southerly and parallel with the East line of said Lot 2 produced Southerly 35 feet; thence Easterly and parallel with the South line of said Lots 2 and 3 for a distance of 75 feet, more or less, to a point where said line intersects the West line of said Lot 4 produced Southerly; thence Northerly along the West line of said Lot 4 produced Southerly 5 feet; thence Easterly and parallel with the South line of said Lot 4 for a distance of 50 feet, more or less, to a point where the same intersects the East line of said Lot 4 produced Southerly; thence Northerly along the East line of said Lot 4 produced Southerly 25 feet, more or less, to the Southeast corner of said Lot 4; thence Westerly along the Southerly boundary of said Lots 4, 3 and 2 for a distance of 125 feet, more or less, to the point of beginning.

Together with that portion of vacated Holland Avenue, if any, vacated by Ordinance No. 131, recorded June 3, 1947 in Book 169, Page 303, Deed Records of Coos County, Oregon, which would inure thereto by reason of the vacation thereof.

## **EXHIBIT D**

### **DEPICTION OF THE PROPERTY**

See the Scheme: Site Plan-Preliminary dated June 2014 attached hereto.



## **EXHIBIT E**

### **DESIGN CONCEPT**

See the Aerial View from the Southwest: The Village at Hollering Place dated June 2014 attached hereto.





**AERIAL VIEW FROM THE SOUTHWEST  
THE VILLAGE AT HOLLERING PLACE  
June 2014**



**CROW/CLAY & ASSOCIATES INC.**  
ARCHITECTURE AND PLANNING  
LAND USE AND INTERIORS

**EXHIBIT F**  
**PROJECT TEAM**

Buyer's Architect:

Crow/Clay & Associates Inc.  
Attn: Mike Crow  
125 Central Ave.  
Coos Bay, OR 97420  
(541) 269-9388 (telephone)

Buyer's Structural Engineer: To be provided

Buyer's General Contractor: To be provided

Buyer's Project Manager:

Blue Earth Services & Technology, LLC  
Attn: CEO  
990 S. 2nd St.  
Coos Bay, OR 97420  
(541) 269-2964 (telephone)

Buyer:

Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians  
Attn: Tribal Chair  
1224 Fulton Ave.  
Coos Bay, OR 97420  
(888) 280-0726 (telephone)

## **EXHIBIT G**

### **FORM OF CERTIFICATE OF COMPLETION**

After recording return to:

City of Coos Bay Urban Renewal Agency  
500 Central Avenue  
Coos Bay, OR 97420  
Attn: Agency Manager

### **CERTIFICATE OF COMPLETION**

The CITY OF COOS BAY URBAN RENEWAL AGENCY, the duly designated urban renewal agency of the City of Coos Bay ("Agency") hereby determines that \_\_\_\_\_, a \_\_\_\_\_ ("Buyer"), has substantially completed construction of the Project as described in the Agreement for Disposition of Property for Development, dated \_\_\_\_\_, 20\_\_ (the "DDA"), a memorandum of which was recorded in the Records of Coos County, Oregon as Document No. \_\_\_\_\_ on \_\_\_\_\_, 20\_\_. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 3.8 of the DDA, Agency hereby determines that:

- (i) the Project is complete according to the Final Construction Drawings, except for punch-list items that do not materially affect the use of the Project for the purposes intended under the DDA, and
- (ii) the City of Coos Bay has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project.

This Certificate of Completion constitutes a conclusive determination of the satisfaction of all of the agreements, covenants and conditions contained in the DDA with respect to the obligations of Buyer, its successors and assigns, as to the construction of the Project, and such obligations shall automatically cease and become of no further effect, except as otherwise provided in this Certificate of Completion. This Certificate of Completion represents and determines the completion of Buyer's construction obligations described herein as to Agency only.

Further,

- (1) Any party acquiring or leasing any portion of the Project shall not (because of such purchase or lease) have any obligation under the DDA with respect to the

construction of the Project, and

- (2) The following Sections of the DDA shall survive and remain in effect for the periods identified in the DDA notwithstanding issuance of this Certificate of Completion ("Surviving Sections"): Section 3.6.1(d) and 3.6.2(d)(INDEMNITY FROM LIABILITY CLAIMS), Section 3.7 (INDEMNITY FROM LIENS), and Section 4.1 (ENVIRONMENTAL INDEMNIFICATION).

Other than its right to enforce the Surviving Sections, Agency shall hereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the DDA with respect to the construction of the Project, or as a result of a breach of any provisions of the DDA relating to construction by the Buyer, or by any successors in interest or assigns of Buyer. Without limitation, Agency confirms that Agency no longer has any right of entry to the Property or power to terminate Buyer's title to the Property and revest such title in Agency.

IN WITNESS WHEREOF, Agency has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF COOS BAY URBAN RENEWAL  
AGENCY, the duly designated urban renewal  
agency of the City of Coos Bay

By: \_\_\_\_\_

Name: \_\_\_\_\_

Agency Manager

STATE OF OREGON            )  
  ) ss.  
County of Coos             )

This instrument was acknowledged before me on \_\_\_\_\_, 201\_, by  
\_\_\_\_\_ Agency Manager of the CITY OF COOS BAY URBAN  
RENEWAL AGENCY, the duly designated urban renewal agency of the City of Coos Bay, on  
its behalf.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

## EXHIBIT H

### FORM OF QUITCLAIM DEED AND ESCROW INSTRUCTIONS

After recording return to and,  
until a changes is requested,  
all tax statements shall be sent to:

City of Coos Bay Urban Renewal Agency  
500 Central Avenue  
Coos Bay, OR 97420  
Attn: Agency Manager

### QUITCLAIM DEED

\_\_\_\_\_, a \_\_\_\_\_ (“Grantor”), releases and  
quitclaims to the CITY OF COOS BAY URBAN RENEWAL AGENCY, the duly designated  
Urban Renewal Agency of the City of Coos Bay (together with any successor public agency  
designated by or pursuant to law, “Grantee”), all right, title and interest in and to the real property  
located in Coos County, Oregon, as more particularly described in Exhibit A attached hereto (the  
“Property”)

Other property or value was either part or the whole consideration.

It is intended that the delivery of this Deed shall not effect a merger of the provisions of that  
certain Agreement for Disposition for Development of Property, dated [date], a memorandum of  
which was recorded on [date] as Document No. \_\_\_\_, Records of Coos County, Oregon (the  
“DDA”), that are intended to continue after delivery of this Deed.

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF COOS BAY URBAN RENEWAL AGENCY, the duly designated Urban Renewal Agency of the City of Coos Bay.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Agency Manager

STATE OF OREGON       )  
                                      ) ss.  
County of Coos        )

This instrument was acknowledged before me on \_\_\_\_\_, 201\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, a \_\_\_\_\_ on its behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

STATE OF OREGON       )  
                                      ) ss.  
County of Coos        )

This instrument was acknowledged before me on \_\_\_\_\_, 201\_, by  
\_\_\_\_\_, Agency Manager of the CITY OF COOS BAY URBAN  
RENEWAL AGENCY, the duly designated urban renewal agency of the City of Coos Bay, on its  
behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

# **EXHIBIT A TO QUITCLAIM DEED**

## **Description of Property**

**EXHIBIT H (Continued)**

**ESCROW INSTRUCTIONS FOR QUITCLAIM DEED**

\_\_\_\_\_ Title Insurance Company

\_\_\_\_\_  
\_\_\_\_\_  
Attention: [INSERT TITLE OFFICER]

Re: Escrow No. \_\_\_\_\_

The CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS, a federally-recognized Indian tribe ("Buyer"), has entered into that certain Agreement for Disposition of Property for Development in the Empire Urban Renewal Area (the "DDA") with the COOS BAY URBAN RENEWAL AGENCY ("Agency") dated as of \_\_\_\_\_, 20\_\_, a Memorandum of which was recorded \_\_\_\_\_, 20\_\_ as Document No. \_\_\_\_\_, Records of Coos County, Oregon, whereby Agency will convey to the Buyer or its assignees certain real property (the "Property"). The Property is the subject of this escrow and is described in the accompanying quitclaim deed ("Quitclaim Deed"). *[On \_\_\_\_, Buyer assigned its rights and obligations under the DDA to \_\_\_\_\_, and for purposes of this letter of instruction, \_\_\_\_\_ is now the Buyer.]*

Section 8.3 of the DDA provides that, under certain circumstances, Agency is entitled to reconveyance of the Property pursuant to a Quitclaim Deed and Escrow Instructions. This document constitutes those escrow instructions and is for the purpose of irrevocably instructing you as to the disposition of the accompanying Quitclaim Deed.

In the event that you receive from Agency a notice signed by Agency's Manager certifying that a copy of said notice has been delivered concurrently to Buyer and certifying that a termination of all rights, title and interest of Buyer in the Property has occurred, and that rights to the Property described in the Quitclaim Deed have reverted in Agency pursuant to the DDA ("Notice of Termination"), you shall at the end of thirty (30) days after receipt of said instructions record the subject Quitclaim Deed unless within said thirty (30) day period, you are notified by Agency that Agency has withdrawn the Notice of Termination.

In the event that you receive a copy of a Certificate of Completion issued by Agency with respect to the Project (either an original or one certified by Buyer as being a duplicate of the original), you will promptly return the Quitclaim Deed to Buyer. In the event that there still remains in your possession an undisposed Quitclaim Deed by **[insert date twenty-four (24) months after DDA scheduled date for completion of improvements]** you shall contact Agency and Buyer as to its disposition.

These instructions may not be withdrawn or in any way amended, modified or waived without the prior written consent of both of the parties hereto.



Please indicate your acceptance of and agreement to carry out these instructions as indicated below.

Very truly yours,

\_\_\_\_\_, a \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Very truly yours,

CITY OF COOS BAY URBAN RENEWAL AGENCY, the duly designated Urban Renewal Agency of the City of Coos Bay, Oregon.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and agreed to this \_\_\_\_ day of \_\_\_\_\_, 201\_\_

\_\_\_\_\_, Title Insurance Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT I**

### **FORM OF MEMORANDUM OF AGREEMENT**

**After recording return to:**

City of Coos Bay Urban Renewal Agency  
500 Central Avenue  
Coos Bay, OR 97420  
Attn: Agency Manager

#### **Memorandum of Agreement**

THIS MEMORANDUM OF AGREEMENT FOR DISPOSITION OF PROPERTY FOR DEVELOPMENT ("Memorandum") shall serve as notice to all persons that the CITY OF COOS BAY URBAN RENEWAL AGENCY, the duly designated urban renewal agency of the City of Coos Bay ("Agency"), with an address of Coos Bay Urban Renewal Agency, 500 Central Avenue, Coos Bay, Oregon 97420 and the CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS, a federally-recognized Indian tribe ("Buyer"), with an address of 1245 Fulton Avenue, Coos Bay, OR 97420, entered into an Agreement for Disposition of Property for Development in the Empire Urban Renewal Area, dated as of \_\_\_\_\_, 20\_\_ ("Agreement") relating to the real property located in Coos County, Oregon, as more particularly described in Exhibit A attached hereto (the "Property").

Among other things, the Agreement requires Agency to convey the Property to Buyer upon the satisfaction of certain conditions precedent, and requires Buyer to construct and complete certain infrastructure and project improvements on the Property, all as more particularly set forth in the Agreement.

As a condition subsequent to the Property conveyance, in the event of a default by Buyer before Agency issues a Agency Certificate of Completion, Agency shall have the option, upon 30 days written notice ("Notice of Termination") to Buyer and Escrow Agent, to declare a termination in favor of the Agency of all the title, rights and interests of Buyer in the Property. After delivery of such Notice of Termination and in the event Buyer fails to remedy, end or abrogate such default within the 30-day period in the manner stated in the Notice of Termination, Buyer shall reconvey the Property to Agency by quitclaim deed, pursuant to the escrow instructions in Exhibit H attached to the Agreement. After a Agency Certificate of Completion is recorded as to the Project, Agency shall thereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the Agreement with respect to the construction of the Project, or as a result of a default in or breach of any provisions of the Agreement by Buyer, or by any successors in interest or assigns of Buyer, except for those surviving sections described in the Agency Certificate of Completion. Agency shall thereafter have no further right of entry to the Property or power to terminate the title, rights and interests of Buyer in the Property as described above.

Agency and Buyer execute this Memorandum to acknowledge being bound by the Agreement and to give notice of the Agreement to third parties.

CITY OF COOS BAY URBAN RENEWAL AGENCY, the duly designated urban renewal agency of the City of Coos Bay.

By: \_\_\_\_\_

Name: Rodger Craddock

Title: Agency Manager

CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS, a federally-recognized Indian tribe

By: \_\_\_\_\_

Name: Robert "Bob" Garcia

Title: Tribal Chair

STATE OF OREGON            )  
  ) ss.  
County of Coos                )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by Rodger Craddock, Agency Manager of the CITY OF COOS BAY URBAN RENEWAL AGENCY, the duly designated urban renewal agency of the City of Coos Bay, on its behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

STATE OF OREGON                )  
  ) ss.  
County of Coos                )

This instrument was acknowledged before me on \_\_\_\_\_, 200\_\_, by Robert "Bob" Garcia, Tribal Chair of the CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS, a federally-recognized Indian tribe, on its behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

# **EXHIBIT A TO MEMORANDUM OF AGREEMENT**

## **Description of Property**