CITY OF KEIZER MISSION STATEMENT

KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES TO THE COMMUNITY IN A COORDINATED, EFFICIENT AND LEAST COST FASHION

AGENDA

KEIZER CITY COUNCIL/URBAN RENEWAL AGENCY

EXECUTIVE SESSION

Monday, November 3, 2003
12:00 p.m. (Noon)
Keizer City Hall
Keizer, Oregon 97303

1. CALL TO ORDER

2. ROLL CALL

3. DISCUSSION

   a. Pursuant to ORS 192.660(1)(e) (To conduct deliberations with persons designated by the governing body to negotiate real property transactions)
   b. Pursuant to ORS 192.660(1)(f) (To consider records that are exempt by law from public inspection.

4. ADJOURN

Upon request, auxiliary aids and/or special services for those with disabilities will be provided. To request services, please contact us at (503) 390-3700 or through Oregon Relay 1-800-735-2900 at least two working days(48 hours) in advance.

The Oregon Public Meeting Law authorizes governing bodies to meet in executive session in certain limited situations. An executive session is defined as any meeting or part of a meeting of a governing body which is closed to certain persons for deliberations on certain matters as defined by ORS 192.660. These sessions are closed to the public and under certain circumstances the media also. The governing body is not allowed to take any final action or make any final decisions during the executive sessions. Any final action or decision must be made after returning or at the next regularly scheduled meeting.

CITY OF KEIZER MISSION STATEMENT

KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES TO THE COMMUNITY IN A COORDINATED, EFFICIENT AND LEAST COST FASHION

AGENDA

URBAN RENEWAL AGENCY OF THE CITY OF KEIZER

Monday, November 3, 2003
6:00 p.m.
Robert L. Simon Council Chambers
Keizer, Oregon

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PUBLIC TESTIMONY**

   This time is provided for citizens to address the Urban Renewal Agency on any matter not scheduled for public hearing.

4. **PUBLIC HEARING**

5. **ADMINISTRATIVE ACTION**

   a. Approving Property Improvement Grant for 120 Chemawa Road NE, Keizer

   b. RESOLUTION – Authorizing Mayor to Enter Development Disposition Agreement with Northwest National LLC

6. **CONSENT CALENDAR**

7. **OTHER BUSINESS**

   This time is provided to allow Urban Renewal Agency members the opportunity to bring matters before the Agency that are not on tonight's agenda.

8 **AGENDA INPUT**

9. **ADJOURN**

Upon request, auxiliary aids and/or special services will be provided to participants with disabilities. To request services, please contact us at (503) 390-3700 at least two working days (48 hours) in advance.

City of Keizer, Oregon

URBAN RENEWAL AGENCY BOARD
November 3, 2003

AGENDA ITEM 6a

APPROVING PROPERTY IMPROVEMENT GRANT FOR 120 CHEMAWA ROAD NE, KEIZER

URBAN RENEWAL AGENCY MEETING November 3, 2003

AGENDA ITEM NUMBER: ____________

MEMORANDUM

To: **Urban Renewal Agency**

Thru: **Christopher Eppley, City Manager**

From: **Nate Brown, Community Development Director**

Date: **October 31, 2003**

Re: **Property Improvement Grant for 120 Chemawa Rd N**

BACKGOUND

Rob Titus of Keizer Outdoor Power Equipment, located at 120 Chemawa Rd N, requested the Keizer Urban Renewal Board (KURB) recommend approval of a Property Improvement Grant for improvements to the frontage of his property. Mr. Titus is developing his current location of 120 Chemawa Rd N and the adjoining property he acquired from the City of Keizer. In acquiring this property a purchase agreement was executed on July of 2002 stipulating that Mr. Titus "...shall complete right of way and sidewalk improvements over the entirety of both the subject property as well as Buyer's adjoining property in a manner reasonably acceptable..." The City has agreed to provide engineering for storm water drainage, sidewalk and curb approaches.

With the applicant's approval, staff presented to KURB a request for a landscaping grant and a "demonstration project" along the street frontage of his property. The applicant has agreed to grant the City an easement allowing the sidewalk to be placed on private property. This would move the sidewalk and pedestrian amenities away from Chemawa Road therein creating a landscaped area between the sidewalk and street surface. At their October 22nd, 2003 meeting Keizer Urban Renewal Board's (KURB) voted unanimously to recommend to the Urban Renewal Agency approval of a Property Improvement Grant including a "Special Project" for the cost of frontage improvements in the area located between the building and the street on the following basis:

- 50% Cost of the landscaping, design and sidewalk installation costs

CONDITIONS

1. Approval may include a maximum 120 days completion period, unless formally approved for an extension by KURB. Conditions may be placed on the approval and may include an agreement for maintenance. The maintenance agreement should include that the property owner should be responsible for the perpetual maintenance of the improvements funded by the grant. If an improvement is not maintained, the City may cause the maintenance to occur and bill the property owner, placing a lien on the property if necessary.

2. The applicant shall agree to participate in a sidewalk access agreement to be signed by the property owner and the City and recorded onto the property.

3. The property owner shall allow staff, prior to completion of project, to approve minor deviations from the plan, mutually agreed to between the property owner and City staff.

FISCAL IMPACT

The fiscal impact of the project may include the following:

- 50% of lowest bid for installation ($9,224)............................$4,612
- The Agency may wish to consider an addition of the amount of landscape design costs of this project which the applicant has apparently already incurred of $960 for the design of the project with Hanssen Landscape Co—50% of which would be $480
- Total sidewalk costs ($4009)... $2005

RECOMMENDATIONS

It is recommended the Agency discuss and determine if this project meets the requirements of a Property Improvement and Special Project grant as outlined in Resolution UR 2003-071 and 96-022. This determination should be based upon the benefits this project can contribute to the Urban Renewal District; its uniqueness; or, if it will be a community wide benefit to the City. If the Agency determines this project meets the requirements, the Agency should move to approve the Property Improvement Grant for 120 Chemawa Rd N in the amount of $7,097.00 with the conditions outlined in this staff report.

Attachments:

- Copy of UR 2003-071 and 96-022
- Minutes from KURB meeting October 22, 2003
- Staff report to KURB dated October 17, 2003
- Grant Application
- Sale Agreement and receipt for earnest money
- Applicant's Bid proposal for landscaping.
- Bid sheet for public improvements

URBAN RENEWAL AGENCY, CITY OF KEIZER, STATE OF OREGON

Resolution UR2003-071

AMENDING RESOLUTION ESTABLISHING PROPERTY IMPROVEMENT FUNDING REQUESTS TO ALLOW LESS THAN THREE BIDS (**AMENDING RESOLUTION UR96-022**)

WHEREAS, the Urban Renewal Agency adopted Resolution UR96-022, Establishing a Process for Review and Approval of Property Improvement Funding Requests on June 17, 1996;

WHEREAS, grants for improvements required three bids for total project costs in excess of $500.00;

WHEREAS, in unique situations, it is appropriate to allow less than three bids or other evidence of costs in determining award of a grant;

NOW, THEREFORE,

BE IT RESOLVED that the Urban Renewal Agency makes the following amendments to Resolution UR96-022:

Section 1. AMENDMENT OF SECTION I(D). Resolution UR96-022, Section I(D) is amended as follows:

> D. Three bids are required for any project with a total project cost exceeding $500.00, unless in a unique situation the Agency Board considers it appropriate in its sole discretion to award grant requests based on other sufficient evidence of costs.

///

///

FMAGIC

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

Section 2. AMENDMENT OF SECTION II(C). Resolution UR96-022, Section II(C) is amended as follows:

> C. Three bids are required for any project with a total project cost exceeding $500.00, unless in a unique situation the Agency Board considers it appropriate in its sole discretion to award grant requests based on other sufficient evidence of costs.

Section 3. AMENDMENT OF SECTION III(B). Resolution UR 96-022, Section III(B) is amended as follows:

> B. Special Project grants are to fund projects of community wide significance, or that are unique, or that give a discernable benefit to the District. Examples include the creation of a publicly accessible fountain or plaza or the development of a transit shelter.

Section 4. CHANGE OF NAME OF ADVISORY BOARD. Resolution UR96-022 is amended where appropriate to change the name of "River Road Redevelopment Board" to "Keizer Urban Redevelopment Board" and "R3B" to "KURB".

PASSED this 3rd day of February, 2003.

SIGNED this 3rd day of February, 2003.

Agency Chair

City Recorder

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

URBAN RENEWAL AGENCY OF THE CITY OF KEIZER, OREGON

RESOLUTION 96-_022_

ESTABLISHING A PROCESS
FOR REVIEW AND APPROVAL
OF PROPERTY IMPROVEMENT FUNDING REQUESTS

WHEREAS, the Urban Renewal Agency has established a program to provide financial assistance to property owners desiring to make improvements to their sites and buildings that will help implement the design objectives of the Urban Renewal Plan, the River Road Design Plan, and the Cherry Avenue Design Plan; and

WHEREAS, in order to minimize the time necessary to process such request;

WHEREAS, in order to provide for a fair review of each proposal based on its merits; and

WHEREAS, guidelines need to be established to guide the decision making process used for grant requests; NOW THEREFORE

IT IS HEREBY RESOLVED THAT The Urban Renewal Agency establishes the following process for review and approval of sign grant requests:

1. The grant request is received by the Community Development Department on a form developed by the Department. Requests will include property owner information, the project design, at least three bids if multiple bids are required, otherwise one bid, and the amount of funds requested. Additional information may be required at the time of application or any time during the consideration of the request.

2. The River Road Redevelopment Board will review the request relative to the guidelines established below and recommend approval, approval with conditions, or denial of the request. Said review will include a site visit by staff to verify conditions.

3. The Community Development Director will take the grant request and R3B recommendation to the Agency Board for consideration and approval. Action on the grant request is solely at the discretion of the Agency Board which will apply the guidelines in decision making, but may also consider any other factor including available funds, other pending projects, qualifications of the applicant to complete the work, and the appropriateness of the proposal at its site or within the context of the entire renewal district.

IT IS FURTHER RESOLVED that the following guidelines are established for consideration of property improvement funding requests:

I. Grants for Frontage Improvements

A. Grants may be given for improvements to a property's frontage including construction of sidewalks, installation or upgrading of landscaping, installation of street furniture, and other improvements. Grants will not be made for maintenance of existing facilities and sidewalks.

B. Grants may only be given to upgrade an existing development. They will not be given when a property is the site of a proposed new building.

C. Grants may not exceed 50% of the total cost of the proposed improvement.

D. Three bids are required for any project with a total project cost exceeding $500.00.

E. Property frontage is defined as the area between the building and/or parking lot and the street.

F. The property owner will be responsible for perpetual maintenance of the improvements funded by the grant. If an improvement is not maintained, the city may cause the maintenance to occur and bill the property owner, placing a lien on the property if necessary.

G. An agreement will be executed between the City and grantee detailing the conditions of the grant.

II. Grants for Driveways

A. Grants may be made for the closure and consolidation of driveways covering all the costs to remove the old driveway, replace it with sidewalks, install new landscaping, and revise internal drives to match the new driveway up to $1,200 per original driveway.

B. Actual costs above $1,200 may be eligible for grants in accordance with Section I above.

C. Three bids are required for any project with a total project cost exceeding $500.00.

III. Grants for Special Projects

A. Special projects may be fully or partially funded by Property Improvement Program grants.

B. Special Project grants are to fund projects of community wide significance that are unique within the renewal district boundaries. Examples include the creation of a publicly accessible fountain or plaza or the development of a transit shelter.

C. The property owner will be responsible for perpetual maintenance of the improvements funded by the grant. If an improvement is not maintained, the city may cause the maintenance to occur and bill the property owner, placing a lien on the property if necessary.

IV. <u>General Provisions</u>

A. A single property may have multiple grants for discrete projects in accordance with these standards.

B. The applicant has the sole financial responsibility for payment to contractors. The Agency will have no responsibility or obligation to pay the costs of the project. Rather, the Agency's role is to reimburse some of the applicant's expenses, through a loan or grant, after the work is completed and all financial obligations fulfilled. These provisions will be reflected in agreements with each applicant.

C. Grant payments will be made upon presentation of a bill from the applicant not exceeding the grant award amount and after final inspection of the work by the Staff to determine its conformance to the approved request with any conditions of approval. Payments will not be made until proof is provided showing the applicant has fulfilled his or her obligations to pay all contractors.

D. The award of grants is solely at the discretion of the Urban Renewal Agency Board of Directors and is not a matter of right solely because the proposal meets the criteria.

PASSED THIS 17th DAY OF JUNE, 1996

MAYOR

ATTEST:

CITY RECORDER

Keizer Urban Renewal Board
Minutes
Wednesday, October 22, 2003 @ 5:30 p.m.
Keizer City Hall - Conference Room B

1. **CALL TO ORDER**
   The meeting was called to order at 5:30 p.m.

2. **ROLL CALL**

   Present:
   Greg Frank, Chair
   Greg McLeod
   Brian Butler
   Stuart Crosby
   Christine Stimson
   Greg Rands
   Stan Compton

   Also Present:
   Debbie Lockhart, Recording Secretary
   Nate Brown, Community Development Director

   Absent:
   Marlene Kelly
   Tom Callahan

3. **APPROVAL OF MINUTES.**
   - *July 23, 2003* – Chair Greg Frank noted that the adjournment time was not accurate, stating that the meeting was adjourned at 6:50 pm, not 7:50. Stuart Crosby moved for approval of the July 23, 2003 minutes as corrected. Brian Butler seconded the motion.

     The motion passed unanimously as follows:

     AYES: Frank, McLeod, Butler, Crosby, Stimson, Rands and Compton (7)
     NAYS: None (0)
     ABSENT: Kelly and Callahan (2)
     ABSTENTIONS: None (0)

4. **APPEARANCE OF INTERESTED CITIZENS**
   Mr. Rob Titus was in attendance in order to answer questions and hear the results of his grant application.

5. **OTHER BUSINESS**
   Nate Brown, Community Development Director, introduced himself to members of the Board noting that he was excited about the Urban Renewal Projects.

6. NEW BUSINESS

- **Grant Request: Frontage Improvements, Keizer Outdoor Power Equipment**
  Mr. Brown summarized the grant application from Keizer Outdoor Power Equipment, a request for a dollar for dollar matching grant to assist in landscaping and site improvements. Copies of the grant application and bids submitted were sent to Board members earlier for review (attached). Additionally, Board was given Public Works bids for Public Improvements. Mr. Titus acquired the property by an agreement that requires the new property owner to complete, as their obligation, right-of-way and sidewalk improvements over the entirety of both the subject property as well as the buyers adjoining property in a manner reasonably acceptable to the City. The owner has agreed to grant the City an easement allowing the sidewalks to be placed on private property. For this reason staff recommendation is that the City of Keizer grant participation in the development of the sidewalks. Staff recommendation is that the participation be limited to the sidewalks since public improvements would be limited to the public right-of-way. The amount that staff recommends the Board grant to the applicant, is 50% of low cost for the landscaping installation ($9,224); and 50% for the design ($960). Mr. Brown distributed the design drawing which the bids were generated off of (attached).

  Stan Compton moved to approve the applicants request for a dollar for dollar grant (50% of $9,224) in the amount of $4,612, plus (50% of $960) $480. Stan Compton seconded the motion.

  The motion passed unanimously as follows:

  AYES: Frank, McLeod, Butler, Crosby, Stimson, Rands and Compton (7)
  NAYS: None (0)
  ABSENT: Kelly and Callahan (2)
  ABSTENTIONS: None (0)

  A detailed discussion of the sidewalk ensued.

  Stuart Crosby moved for approval for a Grant to Reimburse 50% of the Sidewalk Costs ($4,009) which would be $2,005. Stan Compton seconded.

  The motion passed unanimously as follows:

  AYES: Frank, McLeod, Butler, Crosby, Stimson, Rands and Compton (7)
  NAYS: None (0)
  ABSENT: Kelly and Callahan (2)
  ABSTENTIONS: None (0)

  Stuart Crosby questioned why the sidewalks could not be moved back in that area and Nate responded saying they will be moved because a bike path is being added.

- ***Keizer 21st Century Renewal Strategy Review***
  Mr. Brown reported that a representative of the Urban Renewal Board needed to be on the River Road Renaissance Committee. The first meeting will be on November 19. The Urban Renewal Board would be asked to give direction as to what they thought that corridor should be. The old plan will be incorporated into the new plan, with more specific guidelines. He continued noting that the Transit District is considering using River Road as a demonstration project for express mass transit service.

  It was the consensus of the Board that Stuart Crosby was the best candidate to represent the Urban Renewal Board on the River Road Renaissance Committee.

- ***Investigation of Additional Grant Opportunities***
  Mr. Brown encouraged the Board to investigate the different grants that would be available for improvements on River Road. He asked them to consider if at some time in the future the City would want to expand the scope of grants allowed. He concluded that this would be an issue to address in the future.

  Stan Compton asked for an updated map of the Urban Renewal District and Nate Brown responded that he would take care of that for him.

- ***Recognition of Volunteers***
  In place of a member of the Volunteer Coordinating Committee, Community Development Director, Nate Brown, passed out Certificates of Appreciation to members of KURB in recognition of their continued volunteer efforts, while Recording Secretary, Debbie Lockhart, passed out cookies and offered coffee.

7. OLD BUSINESS
None

8. ADJOURN

The meeting was adjourned at 6:15 p.m.

Next Meeting- Wednesday, December 4, 2003

Memo To: Keizer Urban Renewal Board

From: Nate Brown, Community Development Director

Date: October 17, 2003

Re: Landscaping Grant Application for 120 Chemawa Rd. N.

Rob Titus, representing Keizer Outdoor Power Equipment, has submitted the enclosed application for an Urban Renewal Landscape Grant for property located at 120 Chemawa Rd. N, also known as Keizer Outdoor Power Equipment. The request is for a $1 to $1 match grant to assist with the landscaping and site improvements

The applicant is developing the parcel which was acquired from the City with a purchase agreement executed 7/02. This agreement required the property owner "...shall complete right of way and sidewalk improvements over the entirety of both the subject property, as well as Buyer's adjoining property in a manner reasonably acceptable.." The City has agreed to provide engineering for storm water drainage, sidewalk and curb approaches.

The applicant included with his application three bids for site preparation and installation of the plant and landscaping materials, and finish work. An additional amount for design work has also been included

The Keizer Urban Renewal Board is requested to evaluate the landscape improvement plans for the proposed project and entertain a recommendation to the Keizer Urban Renewal Agency. The Board may elect to award a grant to match funding for up to 50% of the total cost of the project. Approval may include a maximum 120 days completion period. unless formally approved for an extension by KURB. Conditions may be placed on the approval and may include an agreement for maintenance. Section 2.309.06 *Planting & Maintenance* of the Keizer Development Code requires the landscaping to continually be maintained upon development.

CONDITIONS:

Approval of the grant application may include:

1. A maximum of 120 days to complete the project, unless formally approved for an extension by KURB. Conditions may also be placed on the approval and may include an agreement for the maintenance of the proposed project. The maintenance agreement should include a requirement that the property owner is responsible for the perpetual maintenance of the improvements funded by the grant. If an improvement is not maintained, the City may cause the maintenance to occur and would then invoice the property owner, placing a lien of the property if necessary.

2. The applicant shall agree to participate in a sidewalk access agreement to be signed by the property owner and the city and recorded as a notice on the title of the property.

3. The property owner shall allow staff, prior to completion of the project to approve minor deviations from the plan, mutually agreed to between the property owner and City staff.

FISCAL IMPACT

The fiscal impact of the project may include the following:

- 50% of low cost bid for installation ($9,224)............................$4,612
- The Board may wish to consider an addition of the amount of landscape design costs of this project which the applicant has apparently already incurred of $960 for the design of the project with Hanssen Landscape Co—50% of which would be $480
- Total sidewalk costs ($4009)... $2005

Enclosed Copies of:

Grant Application
Applicant's Bid proposal for landscaping.
Bid sheet for public improvements

URB RENEWAL GRANT API CATION

Application #

Applicant Name: Rob Titus

Home Address: 12491 Jefferson Hwy S.E.

Home Phone: 503-581-5256

Business Name: Keizer Outdoor Power Equipment

Project Address: 120 Chemawa Rd. N. Keizer, OR

Work Phone: 503-393-6471 **Mobile:** 503 931-0106

Project Description

Briefly describe the intended project

PROJECT TO INCLUDE NEW SIDEWALK, CURB, BIKE PATH AND LANDSCAPING AS PER SUBMITTED PLAN.

RECEIVED
CITY OF KEIZER
OCT - 7 2003
COMMUNITY DEVELOPMENT

Please ensure that the following documents are affixed to your application

- Site and Landscaping Design Plan as per the attached City of Keizer Development Bulletin.
- Copies of at least three bids for the work to be completed

Grant Terms Requested *(Please check one)*

☑ $1 to $1 Match (Typical)

☐ Other Methodology. **(Please read Below)**

Urban Renewal Grants are typically awarded on a 1 to 1 cost sharing basis meaning that the grant will match $1 for each $1 the property owner puts into the project. The Keizer Urban Renewal Board (KURB) may make exceptions to this standard on a case by case basis depending on the merits of the project. Please list below any additional comments to support your request for non-typical grant terms and affix any additional supporting documentation to your application.

I, the undersigned, agree to abide by the terms and conditions set forth by the Keizer Urban Renewal Board (KURB) and the City of Keizer and to fulfill my obligations in relation to the Keizer Urban Renewal Grant program.

Robert N. Titus, 10-06-03

Applicant signature, Date

Official use only. Do not write below line

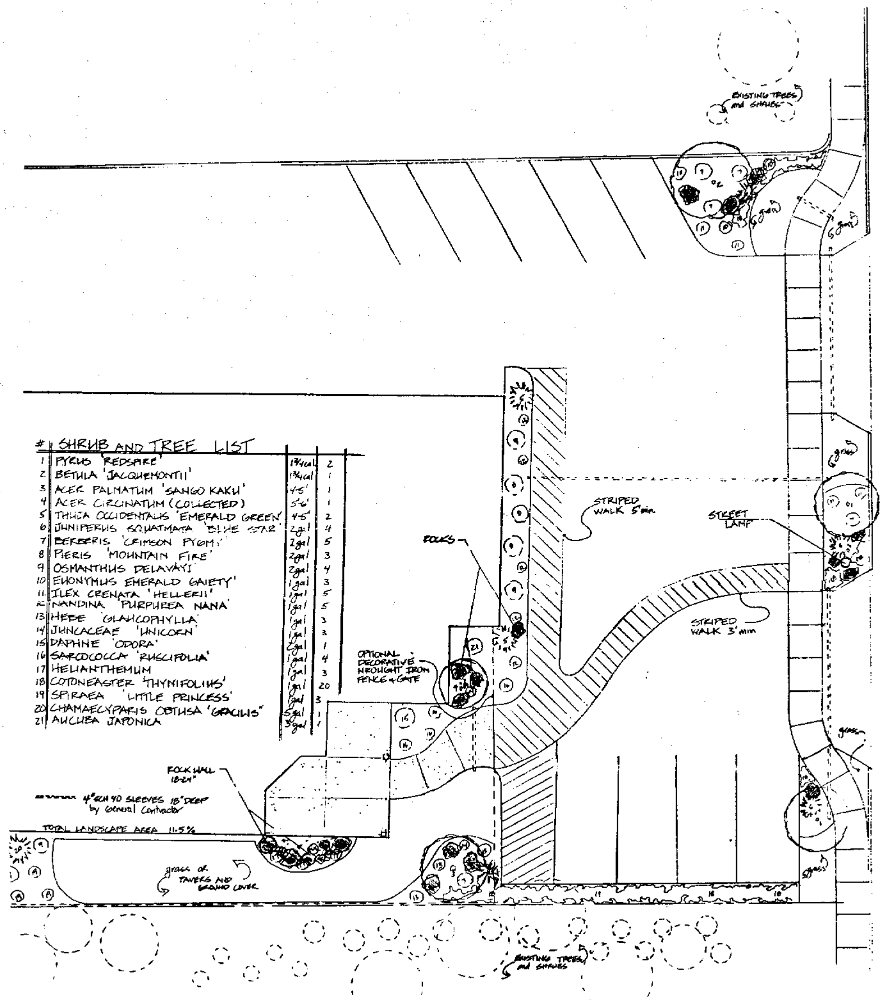
Staff Comment:

☐ Approved

☐ Not approved

City of Keizer Planning Director, Date

KURB Chair Person, Date



#	SHRUB AND TREE LIST		
1	PYRUS 'REDSPIRE'	1¾cal	2
2	BETULA 'JACQUEMONTII'	1¾cal	1
3	ACER PALMATUM 'SANGO KAKU'	4-5'	1
4	ACER CIRCINATUM (COLLECTED)	5-6'	1
5	THUJA OCCIDENTALIS 'EMERALD GREEN'	4-5'	2
6	JUNIPERUS SQUAMATA 'BLUE STAR'	2gal	4
7	BERBERIS 'CRIMSON PYGMY'	2gal	5
8	PIERIS 'MOUNTAIN FIRE'	2gal	3
9	OSMANTHUS DELAVAYI	2gal	4
10	EUONYMUS EMERALD GAIETY'	1gal	3
11	ILEX CRENATA 'HELLERII'	1gal	5
12	NANDINA 'PURPUREA NANA'	1gal	5
13	HEBE 'GLAUCOPHYLLA'	1gal	3
14	JUNCACEAE 'UNICORN'	1gal	3
15	DAPHNE 'ODORA'	2gal	1
16	SARCOCOCCA 'RUSCIFOLIA'	1gal	4
17	HELIANTHEMUM	1gal	3
18	COTONEASTER 'THYMIFOLIUS'	1gal	20
19	SPIRAEA 'LITTLE PRINCESS'	1gal	3
20	CHAMAECYPARIS OBTUSA 'GRACILIS'	5gal	1
21	AUCUBA JAPONICA	3gal	1

SCALE 1/8"=1'-0"

LANDSCAPING OF
KEIZER OUTDOOR POWER EQUIPMENT
120 CHEMAWA ROAD NORTH KEIZER, OREGON
DESIGNED BY BRIAN HANSSEN • APRIL 28, 2003 preliminary
REVISED MAY 6, 2003
REVISED MAY 22, 2003
REVISED OCT. 6 2003

REGISTERED 250 Brian F. Hanssen OREGON 11/18/88 LANDSCAPE ARCHITECT

KEIZER OUTDOOR

POWER EQUIPMENT

October 6, 2003

City of Keizer
Keizer Urban Renewal Board

Re: Urban Renewal Grant

Thank you for the opportunity to enhance our building and landscape project with Urban Renewal funds. We respectfully request matching grant funds to improve sidewalk, curb, bike path, and landscaping to our property at 120 Chemawa Rd N. (S.W. corner of River and Chemawa roads). This money will help us adapt into the City of Keizer's vision to enhance our community. The requested money will help us continue the improvements the City of Keizer initiated by locating the focal point on the corner. Currently our landscape plans and appropriate bids have been submitted to the Keizer Planning department and our building project has already started.
If you have any question, please feel free to call me at (503) 393-6471.

Thanks,

Rob Titus

Rob Titus
President
Keizer Outdoor Power Equipment

SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY

SELLER: URBAN RENEWAL AGENCY OF THE CITY OF KEIZER, an Oregon municipal corporation
PO Box 21000
Keizer, OR 97307

BUYER: KEIZER SAW & MOWER, INC., an Oregon corporation 393-6471
120 Chemawa Road N.
Keizer, OR 97303

RECITAL:

Seller desires to sell to Buyer and Buyer desires to purchase from Seller certain real property located in Marion County, Keizer, Oregon (the "Property"):

See Exhibit "A" attached hereto and by this reference incorporated herein.

AGREEMENT:

Now, therefore, for valuable consideration, the parties agree as follows:

1. **Sale and Purchase.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of $34,330.00 the "Purchase Price").

2. **Earnest Money.** Seller hereby acknowledges receipt of the sum of $2,000.00 paid by Buyer as earnest money. The earnest money shall be applied to the Purchase Price on the Closing Date, as that term is defined below.

3. **Payment of Purchase Price.** The Purchase Price shall be paid as follows:

3.1 At closing, the earnest money shall be credited to the Purchase Price.

3.2 At closing, Buyer shall pay the balance of the purchase price in cash.

4. **Closing.** Closing shall take place on or before ninety (90) days after the date of Seller's execution of this Agreement (the "Closing Date"), at the offices of Fidelity National Title.

5. **Buyer's Conditions/Preliminary Title Report.** The sale is conditioned on the following:

5.1 Upon Buyer's receipt of Seller's written acceptance and execution of this Sale Agreement (the "Notification Date"), Buyer shall have sixty (60) days to determine if the Property is contaminated by hazardous or toxic wastes. Buyer's determination shall include but not be limited to access to the property for inspections, the ability to take soil/water samples for testing and analysis, and access to all of Seller's records and reports concerning the Property with regard to hazardous, toxic, and/or petroleum wastes.

5.2 Within fifteen (15) days after full execution of this Agreement, Seller shall furnish to Buyer a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). Buyer will have five (5) days from receipt of the Title Report to review the Title Report and to notify Seller, in writing, of Buyer's disapproval of any exceptions shown in the Title Report. Those exceptions not objected to by Buyer are referred to below as the "Permitted Exceptions." ~~Zoning ordinances, building restrictions, taxes due and payable for the current tax year, and reservations in federal patents and state deeds shall be deemed Permitted Exceptions~~. If Buyer notifies Seller of disapproval of any exceptions, Seller shall have fifteen (15) days after receiving the disapproval notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes. If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within fifteen (15) days after expiration of such 15-day period, in which event the earnest money shall be refunded to Buyer and this Agreement shall be null and void.

The foregoing conditions are for the benefit of Buyer and may be waived, in whole or in part, by Buyer only. Any waiver must be in writing. Unless waived, if any condition is not satisfied by the date specified, this Agreement may be terminated, at the option of Buyer, by written notice, in which event the earnest money shall be refunded to Buyer and this Agreement shall be null and void.

6. **Right-of-Way Dedication/Easement.** Prior to closing, Seller will dedicate a portion of right-of-way adjacent to the subject property. At the time of closing, and as a condition of this Agreement, Buyer shall dedicate additional right-of-way as set forth on Exhibit "B" across the Chemawa Road frontage of Buyer's adjoining property. At the time Buyer develops its adjoining property, or one (1) year after the closing Date, whichever is earliest, Buyer shall complete right-of-way and sidewalk improvements over the entirety of both the subject property, as well as Buyer's adjoining property in a manner reasonably acceptable in writing by Seller and subject to all applicable regulatory standards. If improvements are not finished by such date, Buyer authorizes Seller to go onto the subject property and adjoining property and complete such improvements at Buyer's expense. Buyer shall remit all reasonable costs for such improvements within thirty (30) days of receipt of invoice from Seller. The provisions of this Section shall survive closing and the conveyance of the Property to Buyer. As used herein, the time "Buyer develops its adjoining property" shall mean when Buyer receives any building permit for that property.

7. **Deed.** On the Closing Date, Seller shall execute and deliver to Buyer a deed in the form attached as Exhibit "C".

8. **Title Insurance.** Within fifteen (15) days after closing, Buyer shall be furnished, at Seller's expense, with an owner's policy of title insurance in the amount of the purchase price, standard form, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions, plus all exceptions, conditions, covenants and restrictions set forth in the attached deed.

9. **Costs and Expenses.** Seller shall pay for all premiums for the title insurance policy, one-half of all escrow fees and costs, and Seller's share of prorations. Buyer shall pay for all document recording charges, one-half of all escrow fees and costs, and Buyer's share of prorations. Buyer and Seller shall each pay their own legal and professional fees respectively. All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in Marion County, Oregon.

10. **Taxes; Prorates.** Real property taxes, if any, for the current tax year and other usual items shall be prorated as of the Closing Date.

11. **Possession.** Buyer shall be entitled to possession immediately upon closing.

12. **Property Included.** The Property is bare land only. No fixtures are part of the Property.

13. **Personal Property.** No personal property is included as part of the Property being sold to Buyer.

14. **Property Sold "AS IS".** Buyer has had and has exercised a full and complete opportunity to inspect and investigate the property. No representations or warranties have been made by the Seller or anyone on Seller's behalf to the Buyer as to the environmental or other condition of the premises or the improvements, and it is understood and agreed that the premises are sold "as is" at the time this Agreement is closed.

Seller acknowledges that as between Seller and Buyer, Seller will be responsible to Buyer for any environmental hazard that was placed on the subject property from the time Seller acquired the property to the date of closing.

Buyer acknowledges and agrees that as between Seller and Buyer, Buyer will be responsible to Seller for any environmental hazard that was placed on the subject property after the date of closing.

As used herein, "environmental hazard" shall mean any and all hazardous or toxic substances, materials or wastes as defined or listed under any federal, state or local environmental laws, now existing or hereinafter enacted. The term "placed" shall mean any and all manner of placement of environmental hazard on the subject property whether from adjoining property or not, and whether accidentally or intentionally placed.

Buyer understands and acknowledges that the subject property has been used as a gasoline service station and it is possible that contamination by hazardous or toxic wastes may have occurred on the subject property. The past uses on the subject property or on the adjacent property may have led to soil and/or groundwater contamination. Seller makes no representation, warranty, guarantee or disclosure other than the disclosure contained herein. Please see Deed Conditions attached as Exhibit "C". The Provisions of this Section shall survive closing and shall not merge with the deed.

15. **Access and Use Limited.** Buyer understands and acknowledges that access to the Property is extremely limited. **Access will limited to one 24-foot wide driveway on Chemawa Road as far west on the property as possible. Such access shall be limited to "right-out" traffic only.** In addition, the property has

limitations on allowed uses, including, but not limited to a prohibition of "auto-related" uses. Buyer has reviewed and accepts any and all land use restrictions or prohibitions. Seller agrees that Buyer shall retain a minimum 24-foot driveway on Buyer's adjoining property for both ingress and egress. The provisions of this Section shall survive closing and the conveyance of the Property to Buyer.

16. **Seller Held Harmless as Municipal Government.** Buyer agrees and understands that Seller's responsibility and obligations under this Agreement do not and cannot bind Seller as to its duties as municipal government which are necessarily separate and apart from its obligations hereunder. To that end, with regard to any actions that may affect Buyer's operation of the Premises in any manner whatsoever, Buyer agrees that enforcement in good faith of any lawful ordinances or regulations or any other acts Seller may take with regard to the adoption of appropriate and necessary laws and ordinances, or any other acts Seller may take in its role as municipal government shall not be restricted by the fact that Seller entered into this Agreement. However, nothing in Section shall be interpreted to permit Seller to act or fail to act in any way inconsistent with any common law, constitutional or statutory rights of Buyer or the established duties and obligations of Seller as a municipal body. This provision shall survive closing and shall not merge with the deed. As used in this Section, the term "Seller" shall also include the City of Keizer.

17. **Disclosure/Disclaimer Not Required.** Pursuant to ORS 105.465(1)(a), Buyer hereby indicates to the Seller, and such indication is conclusive, that the real property will be used for purposes other than a residence for the Buyer or the Buyer's spouse, parent or child. Therefore, a statutory seller's disclosure or disclaimer form is not required.

18. **Binding Effect/Assignment Restricted.** This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns.

19. **Remedies.** Time is of the essence of this Agreement. If this Agreement does not close, through no fault of Seller, prior to the close of business on the closing date specified above, Buyer shall forfeit the earnest money to Seller as liquidated damages, and such forfeiture shall be Seller's sole remedy. If Seller cannot furnish marketable title at closing or otherwise fails to consummate this transaction, the earnest money shall be refunded to Buyer, and Buyer shall be entitled to its actual out-of-pocket

expenses. The refund of the earnest money and reimbursement of the expenses shall be Buyer's sole remedy.

20. **Attorney Fees**. In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

21. **Notices**. All notices and communications in connection with this Agreement shall be given in writing and shall be delivered personally or transmitted by facsimile and regular mail to the appropriate party at the address first set forth above. Any notice so transmitted shall be deemed effective on the date delivered personally or it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

22. **Entire Agreement**. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

23. **Applicable Law**. This Agreement shall be construed, applied, and enforced in accordance with the laws of the state of Oregon.

24. **Acceptance**. This Agreement shall be null and void unless accepted by Seller, by Seller's execution of it, on or before August 6, 2002. Buyer may not revoke this offer prior to such date.

25. **Required Statutory Warning**. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. 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 APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

26. **Agreement Preparation**. Buyer understands that the law firm of Lien & Johnson prepared this Contract on behalf of the Seller and in no way represents the Buyer.

BUYER HAS READ AND UNDERSTANDS ALL THE CONTENTS OF THIS SALE AGREEMENT. THIS IS A BINDING CONTRACT ONCE SIGNED BY SELLER. BUYER IS URGED TO SEEK LEGAL COUNSEL OF THEIR OWN CHOOSING.

SELLER:	BUYER:
Dated: 8-6-02	Dated: 07-22-02
URBAN RENEWAL AGENCY OF THE CITY OF KEIZER, an Oregon municipal corporation	KEIZER SAW & MOWER, INC., an Oregon corporation
By: ______________	By: ______________
Christopher C. Eppley, City Manager	Robert Titus

HANSSEN LANDSCAPE CO.
.35 Windsor Island Road N.
Salem, Oregon 97303
(503) 393-1681

1508

CUSTOMER'S ORDER NO.	DEPT.	DATE: MAY 12, 2003

NAME: KEIZER OUTDOOR POWER EQUIPMENT

ADDRESS: 120 CHEMAWA ROAD N.

CITY, STATE, ZIP: KEIZER, OREGON 97303

SOLD BY:	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RTD.	PAID OUT

QUANTITY		DESCRIPTION	PRICE	AMOUNT
	1	ESTIMATE FOR LANDSCAPING		
	2	(DESIGN DATED MAY 6, 2003)		
	3	Shrubs numbered 1 thru 20		$1,556.00
	4	Sod		253.00
	5	Rocks		364.00
	6	Fill Dirt		336.00
	7	Topsoil + Compost		870.00
	8	Sprinkler System - materials + labor		2,485.00
	9	Fir Barkdust		160.00
	10	Labor		3,200.00
	11			$9,224.00
	12	NOT RESPONSIBLE FOR LOSS DUE TO ADVERSE WEATHER CONDITIONS,		
	13	IMPROPER MAINTENANCE OR VANDALISM.		
	14	This estimate does not include maintenance after completion.		
	15	Terms: Payment in full on completion.		

RECEIVED BY:

KEEP THIS COPY FOR YOUR RECORDS

STATEMENT

©1998 REDIFORM® 8K872

HANSSEN LANDSCAPE CO.
7535 Windsor Island Road N.
Salem, Oregon 97303

October 6, 2003

Keizer Outdoor Power Equipment
120 Chemawa Road N.
Keizer, Oregon 97303

Attention: Rob Titus

PLEASE RETURN THIS STUB WITH YOUR REMITTANCE, YOUR CANCELLED CHECK IS YOUR RECEIPT. $________

DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
	Landscape Design			
	and Estimate			$320.00
	Irrigation Design			
	and Estimate			300.00
	Consultation 8.5 hours			340.00
				$960.00
	THANK YOU ...			

PAY LAST AMOUNT IN BALANCE COLUMN ▲

Commercial Care
Landscape Co.

October 2, 2003

Keizer Outdoor power equipment
120 Chemawa Rd. N.
Keizer Ore. 97303

Attention: Rob
We propose to fumish all materials and perform all necessary labor to complete the fallowing as per landscape plan provided be Keizer Outdoor Power.

1) Install fully automatic Irrigation system as per landscape plan.
2) Place approx. 80 yrds. fill dirt.
3) Place approx. 80 yrds. topsoil.
4) Place 8 yrds. Steer manure.
5) Prep soil for grass.
6) Haul and place 900 sq. ft. sod.
7) Deliver and place all rock material.
8) Deliver and place all shrubs and trees as per landscape plan

All work to be completed in a substantial and workmanlike manner for the sum of Nine Thousand Seven Hundred Fifty Five Dollars (9755.00). Payment to be paid in full upon completion.
Any alteration or deviation from the above specifications involving extra cost of material or labor will only be executed upon written orders for same, and will become an extra charge over the sum mentioned in this contract. All agreements must be made in writing.

Respectfully submitted,

By: Corey D. Tennant
Commercial Care
Landscape Co.
503 244-2211
LIC. # 6306

You are hereby authorized to fumish all materials and labor required to complete the work mentioned in the above proposal, for which we agree to pay the amount mentioned in said proposal, and according to the terms thereof.

ACCEPTED BY: ______________________________

DATE: ______________, 2003

Proposal

LANDSCAPES NORTHWEST

P.O. Box 20896
Keizer, OR 97307
Ph. (503) 393-6510
FAX (503) 390-1305
Lic. #7830

PROPOSAL SUBMITTED TO	PHONE	DATE
Keize Outdoor Power Equip.	393-6471	10-1-03
STREET: 120 Chemawa Rd. N	JOB NAME	
CITY, STATE and ZIP CODE: Keizer OR 97303	JOB LOCATION	
ARCHITECT / DATE OF PLANS: 5-6-03		JOB PHONE

We hereby submit specifications and estimates for:

1.) Haul + place fill dirt. (84 yrds.)
2.) Haul + place Compost + Topsoil. (81 yrds.)
3.) Install irrigation as specified on the plan.
4.) Haul + place boulders + stone as shown. (5 Tons)
5.) Prep + install aprox 900 sq. ft. of sod.
6.) Install plant material as specified on the plan.
7.) Haul + place fir barkdust. (8 yrds.)

Total $9650.00

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:
Nine Thousand Six Hundred Fifty dollars ($ 9650.00)

Payment to be made as follows:
50% down with the balance due upon completion

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature ____

Note: This proposal may be withdrawn by us if not accepted within 90 days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature ____

Date of Acceptance: ____

Signature ____

SCHEDULE OF CONTRACT PRICES					
PROJECT: PCC Curbs and Sidewalks at Keizer Corner PROJECT: # 0753 Owner: City of Keizer, Oregon					
Item	**Description**	**Quantity**	**Units**	**Unit Price**	**Amount**
SCHEDULE A STREET IMPROVEMENTS					
1	Mobilization	1	L.S.	1,200.00	1,200.00
2	Temporatry Traffic Control	1	L.S.	1,150.00	1,150.00
3	Erosion Control	1	L.S.	175.00	175.00
4	General Excavation - Off Site Disposal (cut)	55	Cu.Yds	21.00	1,155.00
5	Sawcut Existing HMAC	350	L.F.	1.60	560.00
6	3/4"-0 Aggregate Base	72	Tons	22.50	1,620.00
7	PCC Curb & Gutter - Type "A" (includ'g demolish exist'g)	212	L.F.	15.50	3,286.00
8	19mm HMAC (plug)	7	Tons	80.00	560.00
9	12.5mm HMAC	7	Tons	80.00	560.00
10	PCC Sidewalk (includ'g demolish exist'g & aggregate base)	716	S.F.	5.60	4,009.60
11	24' Driveway Drop (6" thick PCC)	2	Ea.	600.00	1,200.00
12	ADA Ramps	2	Ea.	700.00	1,400.00
13	~~Relocate Existing Street Light~~	~~1~~	~~Ea.~~		N
14	Restoration and Cleanup	1	L.S.	600.00	600.00
SUB-TOTAL SCHEDULE A					17,475.60
SCHEDULE B STORM DRAIN IMPROVEMENTS					
1	Remove Catch Basin, Replace with 22.5° Bend	1	Ea.	275.00	275.00
2	Remove Area Drain and Extend Pipe	1	Ea.	250.00	250.00
SUB-TOTAL SCHEDULE B					525.00
TOTAL					18,000.60

WRITE OUT TOTAL FROM ABOVE ON LINE BELOW:

Eighteen Thousand dollars and Sixty Cents

Morse Bros.

9710 Wheatland Rd NE

503 390-6955

by: [signature] Estimator

Dan Kluver, Estimator

SCHEDULE OF CONTRACT PRICES					
PROJECT: PCC Curbs and Sidewalks at Keizer Corner					
PROJECT: # 0753					
Owner: City of Keizer, Oregon					
Item	Description	Quantity	Units	Unit Price	Amount
SCHEDULE A STREET IMPROVEMENTS					
1	Mobilization	1	L.S.	1,500.00	1,500.00
2	Temporatry Traffic Control	1	L.S.	1,200.00	1,200.00
3	Erosion Control	1	L.S.	250.00	250.00
4	General Excavation - Off Site Disposal (cut)	55	Cu.Yds	12.00	660.00
5	Sawcut Existing HMAC	350	L.F.	2.50	875.00
6	3/4"-0 Aggregate Base	72	Tons	15.00	1,080.00
7	PCC Curb & Gutter - Type "A" (includ'g demolish exist'g)	212	L.F.	20.00	4,240.00
8	19mm HMAC (plug)	7	Tons	~~200.00~~	~~1,400.00~~
9	12.5mm HMAC	7	Tons	200.00	1,400.00
10	PCC Sidewalk (includ'g demolish exist'g & aggregate base)	716	S.F.	4.50	3,222.00
11	24' Driveway Drop (6" thick PCC)	2	Ea.	350.00	700.00
12	ADA Ramps	2	Ea.	250.00	500.00
13	~~Relocate Existing Street Light~~	~~1~~	~~Ea.~~		
14	Restoration and Cleanup	1	L.S.	350.00	350.00
SUB-TOTAL SCHEDULE A					17,377.00
SCHEDULE B STORM DRAIN IMPROVEMENTS					
1	Remove Catch Basin, Replace with 22.5° Bend	1	Ea.	700.00	700.00
2	Remove Area Drain and Extend Pipe	1	Ea.	500.00	500.00
SUB-TOTAL SCHEDULE B					1,200.00
TOTAL					18,577.00

WRITE OUT TOTAL FROM ABOVE ON LINE BELOW:

Eighteen Thousand Five Hundred Seventy Seven Dollars 00 Cents

Salem Concrete Paving
7355 22nd Avenue N
Salem, OR 97303
(503)463-8317
(503)393-9488

Proposal

Job Description: Keizer Curbs

Proposal Date:
Time:

From: SALEM ROAD & DRIVEWAY CO.

Bid Item Number	Bid Item Description	Quantity	UM	Unit Price	Total Price
1	Mobilization	1.0000	LS	577.18	577.18
2	Temporary Traffic Control	1.0000	LS	6,120.62	6,120.62
3	Erosion Control	1.0000	LS	120.49	120.49
4	General Excavation	55.0000	CY	22.55	1,240.25
5	Sawcut	350.0000	LF	0.55	192.50
6	3/4 Inch Minus Aggregate	72.0000	TN	25.71	1,851.12
7	PCC Curb & Gutter	212.0000	LF	19.81	4,199.72
8	19mm HMAC	7.0000	TN	98.31	688.17
9	12.5mm HMAC	7.0000	TN	98.31	688.17
10	PCC Sidewalk	716.0000	SF	8.57	6,136.12
11	24 foot Driveway Drop	2.0000	EA	495.42	990.84
12	ADA Ramps	2.0000	EA	594.41	1,188.82
13	Relocate Existing Street Light	1.0000	EA	6,433.51	6,433.51
14	Restoration & Cleanup	1.0000	LS	694.08	694.08
				Subtotal	30,121.59
				Running Total	30,121.59
15	Remove Catch Basin	1.0000	EA	473.88	473.88
16	Remove Area Drain	1.0000	EA	274.97	274.97
				Subtotal	748.85
				Running Total	30,870.44
				GRAND TOTAL	30,870.44

City of Keizer, Oregon

URBAN RENEWAL AGENCY BOARD
November 3, 2003

AGENDA ITEM 6b

RESOLUTION – AUTHORIZING MAYOR TO ENTER DEVELOPMENT DISPOSITION AGREEMENT WITH NORTHWEST NATIONAL LLC

The Resolution and Agreement was not ready at Council packet production time. It should be available late Friday afternoon. It will be distributed to your box when ready. Thanks!

Clean Copy
10/31/03

AGREEMENT FOR DISPOSITION AND DEVELOPMENT

OF THE KEIZER STATION PROJECT

Table of Contents

Page No.

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF THE KEIZER STATION PROJECT

THIS AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF THE KEIZER STATION PROJECT is made as of _____, 2003, between **THE URBAN RENEWAL AGENCY OF THE CITY OF KEIZER** (the "**Agency**") and **NORTHWEST NATIONAL, LLC**, an Oregon limited liability company (the "**Developer**") (the Agency and the Developer sometimes hereinafter collectively referred to as the "**Parties**").

RECITALS

A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, the Agency has undertaken a program for the clearance and reconstruction of blighted areas in the City of Keizer. The Agency prepared and approved the North River Road Urban Renewal Plan for redevelopment of the North River Road Urban Renewal Area (the "**District**"). The Urban Renewal Plan was adopted on September 13, 1990, as amended from time to time and last amended on May 17, 1999 (which plan, as so amended and as it may hereafter be further amended from time to time pursuant to law, is hereinafter referred to as the "**Urban Renewal Plan**").

B. In order to enable the Agency to achieve the objectives of the Urban Renewal Plan, the Agency intends to make funds available for certain public improvements and to acquire and make certain land available for redevelopment by private enterprise in accordance with the uses specified in the Urban Renewal Plan.

C. The Agency selected Developer to redevelop portions of the District based on the Developer's willingness to acquire and redevelop its property in the area and its responsiveness to Agency goals. On January 16, 2001, the Agency and the Developer entered into a predevelopment agreement (the "**Predevelopment Agreement**") relating to the development of certain property more particularly described and shown on Attachment 1 hereto ("**Keizer Station**"). All of the parties' obligations under the Predevelopment Agreement have been fully satisfied and the parties acknowledge and agree that the agreement is no longer in effect.

D. On February 3, 2003, the City adopted the Keizer Station Plan, which is incorporated herein by reference (the "**Keizer Station Plan**").

E. The Developer continued to discuss redevelopment of Keizer Station with Agency through adoption of the Keizer Station Plan and made presentations to the Agency. The redevelopment proposed by the Developer is comprised of multiple buildings intended for hotel, sports, retail, office and industrial uses, all with surface parking. Upon completion of the presentations, the Agency tentatively accepted the Developer's proposal ("**Proposal**"). The Agency directed the Executive Director for the Agency (the "**Executive Director**") and the Agency attorney to begin negotiating this Agreement, as set forth in Resolution R2003-075.

F. The Proposal has been revised to expand the project to include a multi-purpose public pathway, four gathering plazas, and a public park.

G. The Agency is willing to acquire certain property for the purpose of constructing public improvements and for redevelopment generally in accordance with the Proposal. The Parties desire to make an integrated use of the project and to redevelop portions of Keizer Station as a first-class, high quality commercial center for both private and public uses.

H. Agency finds the undertaking and completion of the redevelopment of a portion of Keizer Station pursuant to this Agreement are in compliance with all applicable tribal, federal, state and local laws and furthers the purposes, goals and objectives of the Urban Renewal Plan. The Agency further finds that the redevelopment of Keizer Station and the fulfillment generally of this Agreement are in the best interests of the City and its residents.

I. The parties desire to proceed with this disposition and development agreement outlining the terms and conditions for the development of portions of Keizer Station.

AGREEMENT

Each of the Parties hereto, in consideration of the foregoing recitals which are incorporated herein by this reference, the promises and the agreements of the Parties set forth herein and other valuable consideration, the adequacy of which is hereby acknowledged, covenant and agree as follows:

Article 1 SUBJECT OF AGREEMENT

Section 101 Definitions.

"Acquisition Budget" shall have that meaning set forth in Section 303.

"Acquisition Parcels" shall mean those Project parcels listed on Attachment 4 that Developer is unable to acquire on or before the date set forth in Section 301 as well as those properties located in Area B which the Parties have mutually agreed are necessary for the public rights-of-way and utilities.

"Agency" shall mean the Urban Renewal Agency of the City of Keizer.

"Anchor Tenant" shall mean one of the two tenants of buildings or owners of properties identified in Elements 1 and 2 in the Scope of Development.

"Area" or **"Areas"** shall have that meaning set forth in the Keizer Station Plan.

"Attachment" shall mean each attachment, designated as such, to this Agreement.

"CEM" shall have the meaning set forth in Section 1301.

"City" shall mean the City of Keizer, Oregon, a municipal corporation and political subdivision of the State of Oregon.

"City Council" or **"Council"** shall be the council of the City of Keizer, Oregon.

"City Parcel" shall mean Tax Lot 06000 of Keizer Station Plan Area B, as shown on Attachment 2.

"Concept Design Plans" shall mean plans which illustrate the general number and location of buildings, improvements, and uses, and which illustrate the general design character of buildings sufficient to determine size and building style and utility and infrastructure needs.

"Condemnation Costs" shall have the meaning set forth in Section 304.B.

"Design Development Drawings" shall mean:

Engineering and architectural site plans showing all structures in relation to projected final topography of the Project, all proposed connections to existing or proposed roads, utilities, open space and parking areas, depicting the number and types of spaces.

Landscape plans showing the common and botanical name of plant species, the number and size of plantings and demonstrating the location and type of irrigation.

Plans, elevations, typical cross-sections and typical wall sections of all building areas.

Elevations of the buildings to determine the specific configuration and relationship of design elements of the building exterior, which describe the aesthetic and technical aspects of the building exterior, including materials.

Plans, elevations, typical cross sections of all entrance canopies, interior public courts, specialty areas, and service area layouts.

Proposed conceptual layouts for exterior signage and graphics.

Preliminary outline specifications describing exterior construction materials and methods, including indications of colors, finishes, and patterns.

An outline of amenities, including, but not limited to, public art, furniture, handrails, seating areas and food areas, if any.

A description of servicing requirements, trash compactors and related areas, loading docks, etc.

Calculation of gross building, parking and open space.

"**Developer**" shall mean Northwest National, LLC, an Oregon limited liability company.

"**Developer Parcels**" shall mean those parcels owned by Developer (either by deed or land sale contract), on or before the Final Developer Purchase Date, as defined in Section 301, and listed on Attachment 3.

"**Development Agreement**" shall mean an agreement pursuant to ORS 94.504 *et seq.* between Developer and City with respect to the Public Improvements, which shall be entered into by Developer and City if each concludes, in its sole discretion, that such agreement is advisable and feasible for the purpose of commencing the Public Improvements before the approvals for the Private Improvements are completed, provided, the subject of such agreement shall include a detailed site plan that depicts, to scale, certain features and characteristics of the Private Improvements, including building uses and locations, parking lot and landscaping improvements, and pedestrian circulation in reasonable detail. In the event the parties are unwilling or cannot enter into a Development Agreement within the timeframe specified in Section ___, then Developer shall provide the Agency with the Master Plan, as defined below, and all references within this Agreement to Development Agreement shall thereafter be construed to mean the Master Plan.

"**Development Code**" shall mean the Keizer Development Code.

"**District**" shall mean the North River Road Urban Renewal Area.

"**Effective Date**" shall mean the date first set forth above or, if no date is indicated, then November 1, 2003.

"**Executive Director**" shall mean the Executive Director of the Agency.

"**Final Termination Date**" shall have the meaning set forth in Section 1004B.

"**LID**" shall mean the local improvement district that Agency may request be formed by the City in accordance with the terms and conditions of this Agreement. The LID project shall consist of all of the Public Improvements.

"LID Cap" shall mean $18,300,000, the maximum total actual cost of the LID project, including the value of the land to be dedicated by Developer to City in accordance with Section 502; the total consists of the $13,800,000 LID assessment amount and the Agency's cash contribution of $4,50,000.

"**Master Plan**" shall mean the plan submitted by Developer and approved by the City and the Agency within the time prescribed under Section 311 and generally in accordance with this Agreement and the Keizer Station Plan.

"**Mortgagee**" shall mean any mortgagee under a mortgage and any trustee or beneficiary under a deed of trust, their successors and assigns .

"**Owner**" shall have the meaning set forth in Section 501E.

"**Pathway**" shall mean a multi-purpose pathway, which shall be at least twelve feet (12') in width, starting from Chemawa Road on the southern boundary of the Village Center Area and extending to the northern boundary thereof, constructed by the City or the Developer and owned by the Agency or the City, all in accordance with the terms and conditions of this Agreement.

"**Plazas**" shall mean the four (4) separate areas, none of which shall measure less than 1,000 square feet, and all of which together shall measure at least 8,000 square feet owned by the Developer and constructed by the Developer, all in accordance with the terms and conditions of this Agreement.

"**Predevelopment Agreement**" shall mean the prior agreement between the parties, dated January 16, 2001, which expired in accordance with its own terms on January 16, 2002 and has no further force and effect.

"Private Improvements" shall mean those improvements, including the Plazas, developed and constructed by the Developer pursuant to the terms and conditions of this Agreement and as shown and described in the Scope of Development.

"**Project**" shall mean both the Public Improvements and the Private Improvements.

"**Project Site**" shall mean the Village Center Area, a parcel owned by the City and located in Area B, identified on Attachment 2, a parcel owned by the Developer and located in Area B, identified on Attachment 3, and other property located in Keizer Station Plan Area B deemed necessary by both Parties for construction of the public right-of-way and utility improvements.

"**Proposal**" shall have the meaning set forth in Recital E.

"**Public Improvement Plan**" shall mean the plan for roads, rights-of-way, utilities and other public improvements intended for public use (including the Public Park and Pathway), which improvements shall be defined and approved in accordance and become a part of the Development Agreement and/or the Master Plan. The properties located in Area B of the District and deemed necessary by the Parties for construction and development of the public rights-of-way and utilities improvements shall be included in the Public Improvement Plan.

"**Public Improvements**" shall mean the Public Park, the Pathway and the other right-of-way and utility improvements constructed by the City or the Developer and owned by the Agency or the City, as set forth under this Agreement, and as included with more specificity in the Public Improvement Plan, the Master Plan and the Development Agreement.

"**Public Park**" shall mean the area measuring at least two (2) acres in size and consisting of public park day-use amenities (e.g., picnic tables, benches and related hardscape like Millennium Park in Lake Oswego), to be constructed by the City or the Developer and owned by the Agency or the City, all in accordance with the terms and conditions of this Agreement. The Public Park area shall be in addition to any area established to contain a wetlands/mitigation park-like environment. For purposes of satisfying the minimum acreage requirement, the Public Park may include any property immediately adjacent to Area A which Developer so improves.

"**Reimbursement**" shall have the meaning set forth in Section 1101.

"**Schedule of Performance**" shall mean the schedule for acquisition of the Acquisition Parcels and for construction and development of both the Public Improvements and the Private Improvements, as set forth in this Agreement and which shall be provided in more detail and approved as a condition of Section 311.

"**Scope of Development**" shall mean a general depiction of the Project improvements, to be approved as a condition of Section 311, and which shall be provided in more detail in the Master Plan.

"**Termination Date**" shall have the meaning set forth in Section 1004A.

"**Title Company**" or "**Escrow Agent**" shall have that meaning set forth in Section 307.

"**Tribal Approval**" shall mean the approval of the Confederated Tribes of Grand Ronde and the Confederated Tribes of Siletz.

"**Village Center Area**" shall mean the area generally described in Section 104, comprised of twenty-seven (27) parcels, as listed on Attachment 5.

Section 102 Purpose of Agreement.

The purpose of this Agreement is to provide for the development of the Project, including the assemblage of Project property through acquisition efforts of both the Developer and the Agency and the construction of improvements intended for public and private uses, all in accordance with the terms and conditions of this Agreement, the Urban Renewal Plan, the Keizer Station Plan and the Development Code.

Section 103The Project Site.

The Project Site consists of certain real property located in the City of Keizer the boundary of which property is shown and described on Attachment 1.

Section 104Keizer Station Areas Affected By The Project.

The Project consists of redevelopment of the Area A of the Keizer Station, a parcel owned by the City and located in Area B, identified on Attachment 2, a parcel owned by the Developer and located in Area B, identified on Attachment 3, and other property located in Keizer Station Plan Area B deemed necessary by both Parties for construction of the public right-of-way and utility improvements. The Project will affect other Areas of Keizer Station, including property owned by the Confederated Tribes of Grand Ronde and the Confederated Tribes of Siletz (with such tribal property located within the Commerce Center Area (or Area D). The Parties acknowledge that Area D is not located within the District. The Project Areas and other Areas impacted by the Project have the following uses:

Areas	Uses
Area A - Village Center (the "**Village Center Area**")	A variety of Employment General uses.
Area B - Retail Service Center (the "**Retail Service Center Area**" or "**Area B**")	Community-supporting services.
Area D - Commerce Center (the "**Commerce Center Area**" or "**Area D**")	A mix of industrial and business-related activities.

Section 105The Agency.

The Agency is an urban renewal agency of the City of Keizer, created pursuant to the provisions of Chapter 457 of the Oregon Revised Statutes. The principal office of the Agency is located at 930 Chemawa Road, Keizer, Oregon 97303.

Section 106The Developer.

The Developer is an Oregon limited liability company. The principal office of the Developer is located at 245 13th Street, Salem, Oregon 97301.

Section 107Schedule of Performance.

The Project, consisting of both the Private Improvements and the Public Improvements, shall be developed in accordance with the Schedules of Performance. The Private Improvements shall be developed in no more than seven (7) elements. Each element shall include, at a minimum, the Private Improvements listed in the Scope of Development.

Section 108 **General Description of the Project.**

The Project shall consist of:

A. The acquisition by the Developer of the Developer Parcels, with portions of certain of those parcels conveyed to the Agency for public uses;

B. The acquisition by the Developer, with the Agency's assistance, of the Acquisition Parcels;

C. The vacation of portions of Radiant Drive as and where such street is presently located;

D. The possible formation by the City of the LID, providing for the construction of the Public Improvements;

E. The construction of the Public Improvements by the City if the City forms the LID, the construction of the Public Improvements by the Developer if the City does not form the LID or the construction of the Public Improvements by either the City or the Agency if the Developer requests that an LID not be formed, pursuant to Sections 109, 311 and 501, but thereafter fails to construct to completion the Public Improvements; and

F. The construction and development by the Developer of the Private Improvements identified within the Scope of Development which shall include two nationally recognized retailers, each of which shall occupy buildings of at least 100,000 square feet in size as well as the general uses described, in part, within Section 602.

Section 109 **Nonperformance by the Agency.**

Subject to and in accordance with the conditions hereof, the Agency shall proceed with the acquisition of the Acquisition Parcels, and request that the City vacate the rights of way in accordance with the Development Agreement or the Master Plan, as applicable and, unless requested or notified by the Developer not to do so, form the LID in order to construct the Public Improvements. If the Agency is unable to complete the acquisition of the Acquisition Parcels or the City is unable to form the LID, the Developer shall indemnify and hold the City and the Agency, their respective appointed and elected officials, employees and agents harmless from all claims, causes of action, or damages of any nature that any third party may suffer resulting from the same, and hereby waives such claims, causes of action, costs or damages that may arise or that any of them may otherwise have for such reasons.

Article 2 PROPERTY WITHIN THE PROJECT SITE

The parcels of real property that comprise the Project Site within the Village Center Area are identified hereinafter by a letter designation, the Map Index, Tax Map and Tax Lot number. The Project Site also consists of a parcel owned by the City, identified on Attachment 2 and a parcel owned by the Developer, identified on Attachment 3, both of which are located in Keizer Station Plan Area B.

Article 3 PROVISIONS RELATING TO ACQUISITION PARCELS; DEVELOPER PARCELS

Section 301 Acquisition of Acquisition Parcels.

The Developer shall attempt to acquire all of the Project parcels in the Village Center Area and the property located in Area B of the Keizer Station Plan, as identified on Attachment 3, on or before December 31, 2003 (the "**Final Developer Purchase Date**"). On or before the Final Developer Purchase Date, Agency shall not formally or informally attempt to acquire the Acquisition Parcels in any manner whatsoever. After the Final Developer Purchase Date, Developer shall not formally or informally attempt to acquire the Acquisition Parcels in any manner whatsoever.

In the event Developer is unable to acquire all of the Project parcels on or before the Final Developer Purchase Date, Developer shall provide written notice to Agency within seven (7) days after the Final Developer Purchase Date. Such notice shall reference by tax lot and street address those portions of the Project Site that Developer has been unable to acquire (the "**Acquisition Parcels**") as well as details relating to Developer's failed efforts. Within thirty (30) days of receiving Developer's notice, Agency shall initiate the acquisition of the Acquisition Parcels.

Agency shall initiate, proceed and continue with acquisition only so long as Developer is in compliance with, in the Agency's sole judgment, the conditions set forth in this Article 3, including, but not limited to compliance with the financial obligations of Developer set forth in this Article, and the specific conditions set forth in Section 311.

Section 302 Site Feasibility Assessment.

Prior to the acquisition of any of the Acquisition Parcels by the Agency or conveyance of portions of the Developer Parcels by the Developer to the Agency, Developer, at Developer's expense, shall cause to be prepared by a consultant or consultants selected by the Developer and approved by the Agency, a Level I hazardous materials assessment, and, if the Level I assessment indicates a need or includes a recommendation for a Level II assessment, the Developer shall cause a Level II assessment to be conducted at the Developer's sole expense.

The Developer shall conduct, at the Developer's sole expense, such other studies and assessments, including, but not limited to, soils and geotechnical investigations, economic, cultural resources surveys, and investigations of the structural integrity of existing buildings, as the Developer determines are reasonably necessary for the development of the Project. For this purpose, the Agency will request that the City provide access to the City Parcel and the Agency shall provide access to the Acquisition Parcels, to the extent that it has the authority to grant such rights of access. The Developer shall save and protect the City, its elected and appointed officials, employee and agents, against any claims resulting from such preliminary work, access or use and execute such documents as are customarily required by the City for entry onto such property.

Copies of data, reports, surveys and tests obtained or made by the Developer during the course of said preliminary work shall be filed with the City and the Agency within fifteen (15) days after receipt by the Developer. Any preliminary work by the Developer shall be undertaken only after securing all necessary permits from the appropriate governmental agencies.

Section 303 Development of Acquisition Budget.

Prior to the Agency initiating acquisition of the Acquisition Parcels, the Agency and the Developer will establish a budget for the Agency's acquisition and conveyance to the Developer of the Acquisition Parcels (the "**Acquisition Budget**"). The Agency shall develop the procedure to monitor the Acquisition Budget and shall report the status thereof to Developer, in writing and on a monthly basis.

Section 304 Acquisition and Payment Process.

The Agency shall attempt to acquire the Acquisition Parcels in the following manner:

A. Voluntary Acquisitions. Agency shall first attempt to voluntarily acquire the Acquisition Parcels. If successful, Agency shall enter into a purchase and sale agreement with the respective owners and proceed to close the transaction pursuant to the terms of a purchase and sale agreement. Agency shall provide a copy to Developer of each such purchase and sale agreement upon the parties' full execution of the agreement.

Developer shall pay the purchase price together with any and all costs and expenses incident to such purchase, including, but not limited to, appraisals, commissions, relocation costs, title insurance premiums, escrow fees, Agency's legal expenses, environmental assessments and closing costs. The purchase price and other costs shall be deposited in the applicable closing escrow by Developer prior to the scheduled closing date, in accordance with the requirements of the purchase and sale agreement. Agency's obligations to acquire title to any Acquisition Parcels and convey such parcels to the Developer is conditioned on the payment by Developer in a timely manner as set forth herein.

B. Involuntary Acquisitions. Should Agency not be successful in acquiring any particular Acquisition Parcel voluntarily, Agency may initiate the condemnation procedure set forth in Section 305. At such time as Agency determines it will condemn one or more Acquisition Parcels, it shall notify Developer by providing Developer with a copy of the resolution or ordinance described in Section 305 and an itemized list of Condemnation Costs. Within thirty (30) days of receiving such notice, Developer shall provide evidence acceptable to Agency, in its sole discretion, that Developer has or will have within an additional thirty (30) day period sufficient funds to pay all Condemnation Costs, as estimated by the Agency. Within five (5) days of demand by Agency, Developer shall pay to Agency the reasonable Condemnation Costs except for the deposit necessary to obtain prejudgment possession. Such deposit shall be paid to Agency at least five (5) days prior to filing of the condemnation complaint.

As used herein, "**Condemnation Costs**" shall mean all estimated costs and expenses of acquiring the Acquisition Parcels or any portion thereof by eminent domain, including, but not limited to, appraisals, commissions, filing fees, witness fees, court costs, deposits necessary to obtain orders of prejudgment possession, satisfaction of judgment, severance damages, pre-condemnation damages and attorneys' fees.

Should any additional funds be necessary, at any point in the condemnation process, Developer shall pay the Condemnation Costs within ten (10) days of demand by Agency. Prior to conveyance by Agency to Developer of the Acquisition Parcels, Developer shall pay any and all remaining actual Condemnation Costs. Upon conclusion of the condemnation, Agency shall refund any overpayment by Developer of Condemnation Costs subject to the setoff with regard to any financial obligation then owed by Developer to Agency under this Agreement.

C. Election by Developer. With respect to the acquisition of property by Agency, through condemnation or otherwise, in the event that the estimated acquisition cost for an Acquisition Parcel exceeds the Developer's projected acquisition cost, Developer may elect in writing to terminate this Agreement; provided, however, that Developer may elect to terminate this Agreement pursuant to this Section 304 only if Agency receives such written termination notice prior to Agency's acquisition of any of the Acquisition Parcels. Developer's right to terminate this Agreement pursuant to this Section 304 shall automatically expire upon the earlier of Agency's filing of a complaint to condemn or upon closing of escrow of any of the Acquisition Parcels.

Section 305 Agency Condemnation Procedure.

The Agency shall use reasonable efforts to acquire the Acquisition Parcels, including acquiring certain of the Acquisition Parcels through condemnation. Prior to initiating condemnation proceedings, Agency must, in its sole discretion, be satisfied that Developer has met the conditions set forth in this Agreement, including those conditions of Articles 3 and 4.

Upon proceeding with condemnation proceedings for purposes of acquiring one or more of the Acquisition Parcels, Agency shall use the following procedure:

A. The Agency shall declare by resolution or ordinance the necessity for acquiring the property and the purpose for which it is required. The resolution or ordinance declaring the public necessity for the acquisition of the property shall be presumptive evidence of the public necessity of the proposed use and that the proposed use is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

B. Agency shall obtain an appraisal prior to commencing condemnation.

C. Agency shall present the property owner with a written offer to purchase the property, accompanied by the written appraisal. The amount of the Agency's offer shall not constitute an admission of just compensation.

D. The property owner shall have forty (40) days, calculated from the date the written offer to purchase the property is received, to accept or reject the Agency's offer.

E. The property owner may reject the Agency's offer and obtain a separate appraisal, with a copy of such appraisal provided to the Agency not less than sixty (60) days prior to trial or arbitration.

F. Notwithstanding any other provision of this Agreement, Agency may abandon condemnation efforts at any time prior to filing a condemnation action. If Agency desires to abandon condemnation efforts, Agency shall provide the property owner with written notice revoking any written offers to purchase the property and shall provide Developer with a copy of such notice. In the event Agency abandons condemnation efforts, Developer shall remain obligated to pay all Condemnation Costs.

G. Agency may, in its discretion, obtain immediate possession of the property by filing a motion for an order of immediate possession along with the condemnation complaint, in addition to filing the amount estimated to be the just compensation for the property.

H. Developer shall pay all Condemnation Costs then demanded by Agency as set forth in Section 304.

I. The Acquisition Parcels may thereafter be used only for the purpose for which they were acquired. Developer acknowledges and agrees that the Acquisition Parcels acquired by Agency pursuant to condemnation shall not be transferred or conveyed to Developer or any other person or entity without a covenant being recorded against the property, requiring that such property be used in accordance with the terms of this Agreement.

J. Unless the Agency has secured the waiver of reversionary rights from an owner of an Acquisition Parcel, then, before such Acquisition Parcel is conveyed to the Developer, the Agency and the Developer shall enter into an agreement giving the Agency the right to repurchase the Parcel (the "Repurchase Agreement"). The Repurchase Agreement shall include terms that are consistent with applicable state law, including a provision that indicates that the entire Parcel has not been used for the public purpose for which it was acquired within ten (10) years after title to such Acquisition Parcel was conveyed to the Agency through condemnation, shall be acquired by the Agency for a price equal to the sum of the compensation and damages paid by the Agency for the real property at the time such Parcel was condemned. In the event only a portion of the Acquisition Parcel has not been used for the public purpose for which it was condemned within ten (10) years, then the Agency shall be entitled to repurchase such portion of property for a price equal to the fair cash market value of the portion as of the date of the commencement of condemnation. Each Repurchase Agreement shall be recorded in the Marion County recorder's office, shall be a covenant running with the property, and shall provide that it will expire at such time as the Acquisition Parcel is used for the public purpose for which it was condemned.

Section 306<u>**Conveyance of Title and Delivery of Possession**</u>**.**

Agency's acquisition and conveyance of title to the Acquisition Parcels to the Developer shall be completed upon the latter of the Developer's timely payment of funds pursuant to Section 304 and the delivery of the deed for a particular Acquisition Parcel from an owner to the Agency. In addition, prior to conveyance of the Acquisition Parcel(s), Agency shall determine those portions of the Developer or Acquisition Parcels–that are intended for public use and shall have legal descriptions prepared for the same.

Notwithstanding any other provision of this Article 3, the Acquisition Parcels shall only be conveyed to Developer after Developer executes and delivers to escrow a deed or dedication for all the portions of the Developer or Acquisition Parcels intended for public use.

The Agency's conveyance and the Developer's acceptance of the Acquisition Parcels shall be subject to the terms and conditions of Articles 3 and Article 5 and all other applicable provisions of this Agreement.

Section 307<u>**Condition of Title**</u>**.**

The City or Agency shall cause Key Title Company at 222 High Street SE, P.O. Box 71, Salem, Oregon 97308-0071, or another title company mutually agreeable to the parties (the "**Title Company**") to prepare a preliminary title report with respect to each Acquisition Parcel in connection with the policies of title insurance to be issued pursuant to Section 309. The Developer shall be provided with a copy of each preliminary title report and shall approve the condition of title stated therein with respect to each Acquisition Parcel. Developer shall cause the Title Company to prepare a preliminary title report with respect to each Developer Parcel, or portion thereof, in connection with the policies of title insurance to be issued pursuant to Section 309. The Agency and the City shall be provided with a copy of each preliminary title report and shall approve the condition of title stated therein with respect to each Developer Parcel or portion thereof intended for public use.

The Agency shall convey to the Developer fee title to the Acquisition Parcels subject to all recorded and unrecorded liens, encumbrances, covenants, assessments, easements, leases and taxes, other than those exceptions to title that the property owner is required to or that Developer elects, at Developer's expense, to remove at closing (the "**Permitted Exceptions**"). All Acquisition Parcels and Developer Parcels, or portions thereof, which will be used for public purposes will be deeded or dedicated to the City or Agency free of all exceptions to title other than those specifically approved in writing by City or Agency, as applicable.

Section 308Form of Deed.

The Agency shall convey title to the Acquisition Parcels to the Developer in the condition required by Section 307 by bargain and sale deed or deeds. Likewise, the Developer shall convey title to the Acquisition Parcels and the Developer Parcels, or portions thereof to be used for public purposes, in the condition provided in Section 307, to the Agency or the City by bargain and sale deed or dedication.

Section 309Title Insurance.

Concurrently with recordation of each deed, the Title Company shall provide and deliver to the Developer, at the Developer's expense, an ALTA title insurance policy issued by the Title Company insuring that the title to the Acquisition Parcels are vested in the Developer in the condition required by Section 307 of this Agreement together with such endorsements as are required by the Developer, including, but not limited to, an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the applicable Acquisition Parcel, including the costs of demolition, site clearing, grading, and installation of infrastructure improvements.

The Title Company shall provide the Agency with a copy of each title insurance policy. The Title Company shall also provide the Agency and the City with an ALTA title insurance policy or policies issued by the Title Company insuring that the title to those portions of the Acquisition Parcels and the Developer Parcels intended for public use is vested in the City or the Agency in the condition required by Section 307, together with such endorsements as are required by the Agency or the City.

Section 310 Physical Condition of the Acquisition Parcels; Developer Parcels.

A. As-Is Condition. The Acquisition Parcels shall be conveyed to the Developer in an "as-is" condition. The Agency shall not be responsible for the cost of any items of site work nor for any condition whatever that may be discovered on the parcels. The Agency makes no representation whatsoever regarding the condition of the Acquisition Parcels or their suitability for the construction and operation of the Project thereon. It shall be the sole responsibility of the Developer, at the Developer's sole expense, to investigate and determine the soil and geologic conditions of the Acquisition Parcels and the Developer Parcels and the suitability and economic feasibility of the parcels for the construction of the Project.

B. Environmental Liabilities. It is the express intent of the parties that any liability that may arise after execution of this Agreement under any federal, state, or local environmental laws, for known or unknown environmental conditions on, under or relating to the parcels in the Project Site, shall be the sole responsibility of the Developer. The Developer hereby agrees to defend, indemnify and hold the Agency and City, their appointed and elected officials, employees and agents harmless from any such liability. The Agency represents and warrants that it has not received any notices or violations or advisory actions by regulatory agencies regarding any environmental condition or permit compliance with respect to the Acquisition Parcels or any portion thereof.

Section 311 Conditions for the Agency Acquisition of Property and Formation of LID.

Notwithstanding all other provisions of this Article 3 and in addition to other conditions set forth in this Agreement, and within three hundred one hundred eighty (180) days of the Effective Date, the Developer shall meet the following conditions and shall demonstrate the following to the Agency in a manner that the Agency, in its sole discretion, finds acceptable in both form and substance:

A. The Developer has obtained the City's and the Agency's approval of the Public Improvement Plan and the Development Agreement, both of which shall include descriptions, elements and necessary Tribal Approval and governmental, including but not limited to ODOT, approvals relating to the transportation infrastructure, pedestrian circulation, the Public Park, the Pathway and all Private Improvements. Agency's approval of the Public Improvement Plan and the Development may be based, in part, on the inclusion of pedestrian-friendly design elements, extensive landscaping and streetscaping elements and other architectural design features to provide a first class, attractive development.

B. The Parties have agreed to the form of covenant referred to in Section 305I., and the form of the repurchase agreement referred to in Section 305J.

C. The Developer and the Agency have agreed upon the Schedule of Performance and the Scope of Development.

D. The Developer has provided Agency a performance and payment bond in an amount equal to $4,700,000. The bond, which shall be in a form agreed upon by the parties, shall secure Developer's performance and payment obligations as a property owner of properties benefited by the LID project at the time the project is undertaken as well as its reimbursement obligations under Sections 602 and 1101 of this Agreement. The Developer shall indemnify the Agency, the City and their elected and appointed officials, officers, agents, employees and volunteers against any claim and damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the Developer's performance under this Agreement. The bond shall provide protection for such indemnification.

Notwithstanding the foregoing indemnification obligations of the Developer, the amount of the bond shall be reduced at such times as permitted by the issuing company, (1) in the amount of any reduction of the Developer's obligations under Section 1101, as such obligations decrease, and (2) in the amount of full assessment payments made by the Developer, and the Developer's successors and assigns, on all properties owned by the Developer, and the Developer's successors and assigns, at the time the LID is formed. The Developer shall notify the Agency of any such reductions.

In addition to other conditions set forth in this Agreement, prior to the Agency either initiating the acquisition of one (1) or more of the Acquisition Parcels or requesting that the City form an LID in accordance with the terms and conditions of this Agreement, the Developer shall meet the following conditions and shall demonstrate the following to the Agency in a manner that the Agency, in its sole discretion, finds acceptable in both form and substance:

E. The Developer has met the conditions listed above under Sections 311A, 311B, 311C and 311D.

F. The Developer is a limited liability company duly organized, existing and in good standing in the state of Oregon and has full authority to do business in Oregon and in the City of Keizer and to enter into and perform this Agreement.

G. The Developer is not in default under any material term or condition of this Agreement.

H. The Developer has provided the following, on a confidential basis, to the attorney for the Agency, who, subject to the Public Records Law, shall not disclose such information to any third party, including the City and the Agency, without the prior written consent of the Developer, which shall not be unreasonably withheld:

(1) A true copy of a letter of intent to buy or lease, which shall contain all material terms, with economic terms blacked out, executed by the Developer and one of the Anchor Tenants;

(2) Current financial statements for the Developer and every member thereof;

(3) Evidence of financing, including a lender's commitment letter and/or evidence of equity contributions to the Developer, or funding to be provided by the Anchor Tenants if such entities are purchasers of the Project property described in Elements 1 and 2, in the aggregate sufficient for the Developer to complete the purchase of all land within the Village Center Area, including the Acquisition Parcels, and to develop and construct all of the Private Improvements in at least one of the two elements described in the Scope of Development as Element 1 and Element 2;

(4) The Developer's then current business plan for completing the private development of the Project which shall include, at a minimum, an updated schedule of performance; and

(5) The Developer's marketing plan for the Project.

I. The Developer has provided Agency with copies of deeds or land sale contracts for at least 20 of 27 parcels comprising the entire Village Center Area, as listed on Attachment 5, and has acquired in fee all Project parcels other than the Acquisition Parcels; needed for the Public Improvements.

J. In the event the parties are unable or unwilling to enter into the Development Agreement for any reason, then Developer has obtained the City's and the Agency's approval of the Master Plan. The Agency's approval of the Master Plan may be predicated upon the inclusion of pedestrian friendly design elements, extensive landscaping and streetscaping elements and other architectural design features to provide a first class, attractive development. In the event the parties enter into a Development Agreement pursuant to the terms and conditions of this Agreement, then Developer shall nevertheless submit a Master Plan application no more than one hundred eighty (180) days after Agency's approval of the Development Agreement and Developer shall not withdraw such application and shall thereafter cooperate with City in completing the application and approval process.

K. All necessary Tribal Approval and governmental approvals have been obtained, and no appeal of any such approval or of the Development Agreement or Master Plan, as applicable, has been filed and the time for appealing the same has expired.

L. The Parties have approved the manner in which all urban services shall be provided to the Project Site.

M. No litigation or ballot measure is pending that, if enacted or successfully prosecuted, would prevent or would substantially increase the costs of either or both parties in carrying out their respective obligations under this Agreement.

N. The Developer has executed agreements of nonremonstrance as provided in Sections 501I., 606 and 608 and Article 12.

O The Developer shall continue to meet or exceed the conditions set forth in Sections 311D, 311F, 311G, 311I, 311J, 311K and 311M through completion of the Project.

P. The Developer has provided all other information reasonably requested by Agency to demonstrate Developer's ability to perform its obligations under this Agreement.

Within sixty (60) days after receipt of all materials provided by Developer pursuant to this Section 311, the Agency will provide Developer written notice that the Agency approves or disapproves of the same. Any disapproval shall state in writing the reasons for such disapproval. The Developer, upon receipt of such disapproval, shall revise such disapproved documents or portions of documents; or provide additional materials in a manner responsive to the stated reasons for disapproval and resubmit the same to the Agency or the City, as applicable, within thirty (30) days after receipt of the notice of disapproval. In the event Developer fails to revise or provide additional materials to the Agency or the City, as applicable, as prescribed in this section, then Developer may be in default, in accordance with the provisions of Article 10.

Within fifteen (15) days after Agency has indicated that Developer has satisfied all of the other conditions set forth in this Section 311, Developer shall notify the Agency, in writing, of Developer's request that Agency proceed with acquisition of the Acquisition Parcels and of Developer's request that either the City thereafter proceed with the LID or refrain from forming the LID. If Developer requests that an LID not be formed, the provisions of Article 12 shall apply.

Article 4 ESCROW

To accomplish the purchase and transfer of the Acquisition Parcels, the City or the Agency shall open one or more escrows ("**Escrow**") with the Title Company (also referred to hereinafter as the "**Escrow Agent**") in Marion County, Oregon. The City, the Agency and the Developer shall provide escrow instructions as shall be necessary for and consistent with this Agreement.

Upon delivery of the deeds to the Escrow Agent by the City or the Agency, and the fulfillment by the Developer of its obligations under the Escrow and this Agreement, the Escrow Agent shall record such deeds when title to the Acquisition Parcels can be vested in the Developer in accordance with the terms and provisions of this Agreement, and when the Title Company is committed to issuing its title policies.

The City, the Agency and the Developer shall each deposit in Escrow such instruments as are required by the Escrow Agent or otherwise required to close the Escrow and consummate the purchase of the parcels in accordance with this Agreement.

Article 5 THE LOCAL IMPROVEMENT DISTRICT

Section 501 Formation.

At such time as the conditions set forth in Section 311 have been met, Developer has demonstrated its continued compliance with Section 311 and all of the Acquisition Parcels have been acquired, and if the Developer has requested that the City proceed with the LID, the Agency shall request that City form the LID pursuant to this Article 5 pursuant to an intergovernmental agreement between the City and the Agency.

A. The LID shall be initiated by the City Council by resolution, with direction given to the City Engineer to prepare an engineering report. The engineer reporting shall provide the following:

(1) A map or plat showing the general nature, location and extent of the Public Improvements and the land, including the property listed on Attachments 3 and 4 (the "Benefited Properties"), to be assessed for payment of all or any part of the costs thereof.

(2) Plans, specifications and estimates of work to be done.

(3) An estimate of probable cost of the Public Improvements, including legal, administrative and engineering costs.

(4) An estimate of unit cost of the Public Improvements to the Benefited Properties, per square foot, per front foot or another unit of cost.

(5) A recommendation concerning the method of assessment to be used to arrive at a fair apportionment of the whole or a portion of the costs of the improvement to Benefited Properties.

(6) A description of each lot, parcel of land, or portion of land to be benefited, with names of the record owners and, when readily available, names of contract purchasers as shown on books and records of the Marion County Tax Assessor. To describe each lot or parcel of land under provisions of this section, it shall be sufficient to use the tax account number assigned to the property by the Tax Assessor or by book and page designations shown on books and records of the Marion County Clerk.

B. Within thirty (30) days after the report is completed, the Agency shall request that the City shall either approve the report as submitted or direct that it be amended and approve the report as amended. if the City intends to make the Public Improvements, such intention shall be declared by resolution; provided, however, that the City may abandon the process if the estimated cost of such improvements for the Project exceeds the LID Cap and Developer has not funded such excess or demonstrated to the Agency's and City's satisfaction that it will have funds available for payment of such excess. Unless, within fifteen (15) days after approving the report and before adopting the resolution to declare its intention to make the Public Improvements, the City and the Agency receive a written request of Developer to abandon the process, the City shall declare its intention to make the improvements and proceed with the LID in accordance with applicable local laws and the terms and conditions of this Agreement. In the event the LID process is abandoned, the construction of the Public Improvements shall be subject to the provisions of Article 12, and all other conditions hereunder consistent therewith.

C. If the City thereafter proceeds, it shall publish notice, once each week for two (2) successive weeks in a newspaper of general circulation, that it intends to make the Public Improvements. The notice shall specify the time and place where the City Council will hear and consider objections. The notice shall also provide a description of the type and scope of the improvements, a description of the location of the proposed district, the estimated cost and the formula for assessing each of the Benefited Properties, a statement that the plans are available for public inspection, that written remonstrances may be filed against the proposed improvements, and a statement that the proposal could be modified as a result of testimony at the hearing.

D. At the hearing, the City Council shall hear oral objections to the proposed Public Improvements and shall consider written remonstrances thereto.

E. After the City initiates formation of the LID, written remonstrances of the Owners of two-thirds (2/3) of the land to be specially assessed for the improvements shall suspend the proposed improvements, in which event no further action to effect the Public Improvements shall be taken for at least six (6) months. For purposes of this Section 501,"**Owner**" shall mean the record holder of the legal title to the land in question or, where land is being purchased under a land sale contract recorded or verified to the Marion County Recorder in writing by the record holder of legal title to the land, then such purchaser shall be deemed the Owner.

F. The City shall submit notice of the estimated assessment, via first class mail or personal delivery to the Owner of each lot proposed to be assessed. Any mistake, error, omission or failure with respect to the mailing shall not be jurisdictional or invalidate the assessment proceedings. The notice shall state the amounts of the estimated assessment proposed on that property and shall fix a date by which time written objections shall be filed with the recorder. The written statement must assert the grounds for the objection. The City Council shall hold a hearing, but may choose to combine this hearing with the hearing required for the formation of the LID.

G. Once the final assessment is determined, the City Council shall send notice to the Owner of each of the Benefited Properties if the City Council wishes to proceed with the improvements. Any mistake, error, omission or failure with respect to the mailing shall not be jurisdictional or invalidate the assessment proceedings. The City Council may also abandon the procedure and the Public Improvements in the event Developer has breached this Agreement or if the City Council determines that it is in the public interest to abandon the procedure and the Public Improvements.

H. The City Council shall consider objections at the hearing and may adopt, correct, modify or revise the assessment against each lot in the LID according to special and peculiar benefits accruing to it from the improvement. The City Council shall then adopt an ordinance or resolution spreading the final assessment.

I. The Developer, and Developer's successors and assigns, hereby specifically waive any and all right to remonstrate against formation of the LID. The Developer shall execute a nonremonstrance agreement, and with respect to those Developer Parcels for which Developer is a vendee under a land sale contract, Developer shall cause the vendor to execute a nonremonstrance agreement, to affect all Acquisition Parcels and Developer Parcels and record the same with the Marion County Recorder's Office to serve as notice for all subsequent property owners.

J. Within ten (10) days after the City passes the ordinance levying assessments, the City Recorder shall send a notice of assessment to each Owner of assessed property by regular or certified mail and publish notice of the assessment twice in a newspaper of general circulation in the City. The first publication of notice shall be not later than twenty (20) days after the date of the assessment ordinance. The notice of assessment shall include the name of the Owner, a description of the assessed property, the amount of the assessment, and the date of the assessment ordinance, and shall state the time within which such assessments must be paid or bonded and that assessments which are not paid or bonded within the time stated in the notice shall bear interest and that the property so assessed is subject to foreclosure if such assessments are not paid within the time stated in the notice.

K. The Owner of any property to be so assessed, at any time within ten (10) days after notice of final assessment is first published, may file with the recorder a written application to pay:

(1) The whole of the final assessment in installments; or

(2) If part of the final assessment has been paid, the unpaid balance of the assessment in installments.

L. An installment application shall state that the applicant does thereby waive all irregularities or defects, jurisdictional or otherwise, in the proceedings to cause the local improvement for which the final assessment is levied and in the apportionment of the actual cost of the local improvement.

M. The application shall provide that the applicant agrees to pay the final assessment over a period of not less than ten (10) years nor more than thirty (30) years and according to such terms as the City Council may provide. The City Council may provide that the owner of the assessed property may elect to have the final assessment payable over a period of less than ten (10) years and according to such terms as the City Council may provide.

N. The application shall also provide that the applicant acknowledges and agrees to pay interest at the rate provided by the City or as set by the City Recorder on all unpaid assessments, together with an amount, determined by the City Council, sufficient to pay a proportionate part of the cost of administering the bond assessment program and issuing the bonds authorized under ORS 223.235, including but not limited to legal, printing and consultant's fees.

O. The application shall also contain a statement, by lots or blocks, or other convenient description, of the property of the applicant assessed for the improvement.

P. In connection with the final assessments for any local improvement, the City may establish a procedure by which an Owner of assessed property may irrevocably elect in writing to have the final assessment levied for a number of years less than ten (10), which shall be determined by the City Council. The written election shall:

(1) Be signed by the owner or a duly authorized representative of the Owner;

(2) Contain a description of the assessed property and the local improvement for which the assessment is made; and

(3) Contain a statement by the Owner acknowledging that the improvement is a local improvement as described under ORS 223.001(9), that payment of the final assessment against the properties benefited by the local improvement plus interest may be spread over at least ten (10) years and that, notwithstanding any provision of law, the Owner consents to make payments over a period of less than ten (10) years and to have the assessment levied on the benefited property accordingly.

Such election shall be recorded in the bond lien docket for the local improvement to which the assessment relates. From and after the time at which the written election is so recorded, it shall be valid and binding upon all subsequent owners of the property or any part thereof.

Q. Estimated and final assessments shall become a lien upon the property assessed from and after the passage of the resolution or ordinance spreading the same and entry in appropriate lien record of the City. The estimated assessment lien shall continue until the time the estimated assessment becomes a final assessment. All unpaid final assessments together with accrued and unpaid interest and penalties are a lien on each lot or parcel of land or other property, respectively, in favor of the City, and the lien shall have priority over all other liens and encumbrances whatsoever.

R. The City Council may enforce collection of such assessments as provided by ORS 223.505 and 223.650, namely by the sale of real property.

Section 502 LID Requirements.

Pursuant to applicable state and local laws, the City will award all contracts required to construct the public improvements contained within the LID through a process of competitive bidding.

A. The City may, in its sole discretion, direct the City Recorder, upon the basis of the approved engineer's report, to advertise for bids and designate the time at which such bids shall be open, which time may be the time of the first hearing held upon the decision to initiate LID formation.

B. The City may provide by resolution the time and manner of doing the work of such improvement, and may provide for the City to do the work or it may award the work on contract. In the event that the work is done under contract, bids shall be received after advertisement for such time as the Council may determine on all such work and the Council shall proceed in accordance with procedures of state law for public contracting. The contract shall be let to the lowest responsible bidder, provided that the City shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory. The City shall provide for taking security by bond for the faithful performance of any contract let under its authority, and the provisions thereof, in case of default, shall be enforced by action in the name of the City.

C. If the City finds upon opening bids for the work of such improvement that the lowest responsible bid substantially exceeds the engineer's estimate, it may, in its discretion, hold a special hearing of objections to proceeding with the improvement on the basis of such bid and may direct the City Recorder to publish reasonable notice thereof in a newspaper of general circulation in the City. The City Council may abandon the improvement or allow Developer to pay the difference between the estimated amount and the engineer's estimate. In the event the City Council allows Developer to pay such difference, full payment must be received by the City within five (5) days prior to the City Council awarding a contract for the work.

D. If the initial LID assessment has been made on the basis of estimated cost, and upon the completion of the work the cost is found to be greater than the estimated cost, the Developer shall pay the additional cost. The additional cost shall be paid through a reduction in the amount allocated toward land acquisition costs, with the amount paid to Developer for the land reduced by an amount equal to the additional cost of the work, unless Developer elects to pay such additional costs. In the event a reduction to the land cost is not sufficient to pay the additional cost, Developer shall immediately pay to City additional funds to make up the difference. If Developer is unwilling or unable to perform its obligations under this Section 502, then, in addition to pursuing all other remedies available under the terms and conditions of this agreement and by law, City may make a deficit assessment for the additional cost. Proposed assessments upon the respective lots within the assessment district for the proportionate share of the deficit shall be made; and notices shall be sent; opportunity for objections shall be given; such objections shall be considered; and determination of the assessment against each particular lot, block or parcel of land shall be made as in the case of the initial assessment; and the deficit assessment spread by resolution. If assessments have been made on the basis of estimated cost, and upon completion the cost is found to be less than the estimated cost, provision shall be made for refund of the excess or overage.

Upon the request of Agency or City, Developer shall convey to Agency or City those portions of the Developer Parcels on which the Public Improvements will be located, as set forth on the legal descriptions prepared pursuant to Section 306 and, to the extent Developer holds title to any Acquisition Parcel, or portion thereof, on which the Public Improvements will be located, then Developer shall also convey to Agency or City those portions of the Acquisition Parcels. In consideration therefor, and after the total actual costs of the LID have been determined, Agency or City shall pay to Developer an amount equal to the lesser of (i) $8.50 per square foot or (ii) the appraised value of such Parcels or portions thereof on which the Public Improvements will be constructed. The value of such property shall be determined by appraisals obtained by the Developer, at Developer's sole cost, no more than six (6) months prior to the formation of the LID.

Notwithstanding the foregoing, the parties agree that the amount paid to the Developer pursuant to this Section 502 shall be adjusted downward if the total actual LID cost, including such land cost, exceeds the LID Cap and the Developer has not previously agreed and demonstrated to Agency's satisfaction Developer's ability to pay the amount of such excess. If the Developer has not so agreed and demonstrated, the downward adjustment in the price hereunder shall be equal to the amount of such excess.

Article 6 DEVELOPMENT OF THE PROJECT

Section 601 Development and Construction of Public Improvements.

Subsequent to Developer meeting all of the conditions set forth in Articles 3, 4 and 5, and if an LID is formed pursuant to this Agreement, then subject to all of the applicable terms and conditions of this Agreement, and in consideration of the Developer constructing and developing the Private Improvements, the Agency shall cause the City to construct the Public Improvements described and depicted in the Scope of Development.

Section 602 Development and Construction of Private Improvements.

In consideration of the development activities of the Agency and the City's formation of an LID, if one is formed pursuant to this Agreement, and the agreements and covenants herein contained, the Developer shall construct and develop the Private Improvements, as set forth in the Scope of Development. The Developer shall commence and complete construction of the Private Improvements in accordance with the Schedule of Performance. Developer may perform the Scope of Development in as many as (but no more than) seven (7) separate elements in whatever order Developer prefers (for instance, Element 3 as presented in the Scope of Development may be substituted for Element 5 in terms of the order in which the elements may be constructed). The Scope of Development shall describe the work to be performed by Developer in each element of redevelopment and shall further specifically identify the improvements that shall be constructed during the development of Element 1, as identified on the Scope of Development.

A. Developer Design Drawings and Construction Drawings for the Project; Related Documents. Developer shall prepare Concept Design Plans for the Project. Subsequent to receiving Agency approval of the Concept Design Plans, Developer shall prepare Design Development Drawings and Construction Drawings for redevelopment of the Project (including the Public Improvements) and shall submit such Drawings to Agency and the City for approval of development permits. The Design Development Drawings shall comply with all Agency and City design guidelines and requirements. All concept design plans, design development drawings and construction drawings, including plans and specifications, referred to in this Section 602A are referred to herein as the "Drawings".

Agency, in its sole discretion, may withhold its approval of any Drawings that fail to meet the following standards:

1. The Public Improvement Plan, the Development Agreement and Master Plan;

2. The Urban Renewal Plan objectives;

3. All applicable State and City codes and standards, including but not limited to the development standards of the Development Code; and

4. Agency's expectations as to inclusion of pedestrian-friendly design elements, extensive landscaping and streetscaping elements and other architectural design features to provide a first class, attractive development.

B. **General Design Standards**. As a benchmark for comparison but not as a substitution for compliance with the Keizer Station Plan or the Development Code, the drawings submitted by Developer for the Anchor Tenants in the Village Center Area will be expected to be substantially similar to or better than the design employed by the major tenants within Argyle Square in Wilsonville, Oregon.

C. **Changes to the Drawings**. If the Developer desires to make any substantial change to any Drawings after approval by the Agency, the proposed changes shall be submitted to the Agency for approval. The Developer acknowledges and agrees that it may be required to secure separate Agency approval of such changes. As used in this subparagraph, "substantial change" means a change which alters the layout or scope of the Private Improvements or changes to a lesser quality previously approved materials.

D. **First Element - Timeline for Submittal of Design Development Drawings**. The Developer shall submit complete Design Development Drawings for City and Agency review for Element 1 of the Private Improvements within one hundred eighty (180) days from the date the Master Plan is approved by the City; provided, however, the Developer shall be entitled to a one-time extension of not greater than an additional one hundred eighty (180) days from the expiration of the original period. If the Developer does not furnish such complete drawings within such second 180-day period, Developer shall immediately submit to Agency a Reimbursement payment described in Section 1101A.

E. **First Element - Timeline for Completion of Construction**. The Developer shall complete construction drawings (which shall be substantially consistent with the approved Design Development Drawings for Element 1), obtain all applicable approvals and permits, commence and complete construction of Element 1 of the Private Improvements within three hundred sixty-five (365) days of the Developer's obtaining design review approval from the City and the Agency for such element. If the Developer does not commence construction (and do all things necessary to complete construction, as set forth in this Section 602E) within such 365-day period, Developer shall immediately submit to Agency a Reimbursement payment described in Section 1101A.

F. **Second Element - Timeline for Submittal of Design Development Drawings**. The Developer shall submit complete Design Development Drawings for City and Agency review for the second element of the Private Improvements on or before one hundred eighty (180) days after expiration of the combined time allowed in subsections D and E for the design and completion of the first Element. If the Developer does not furnish such complete drawings within such 180-day period. Developer shall immediately submit to Agency a Reimbursement payment described in Section 1101A.

G. **<u>Second Element - Timeline for Completion of Construction</u>**. The Developer shall complete construction drawings (which shall be substantially consistent with the approved Design Development Drawings for the second element), obtain all applicable approvals and permits, commence and complete construction of the second element of the Private Improvements on or before three hundred sixty-five (365) days of the Developer's obtaining design review approval from the City and the Agency for such element. If the Developer does not complete construction (and do all things necessary to complete construction, as set forth in this Section 602G) within such 365-day period, Developer shall immediately submit to Agency a Reimbursement payment described in Section 1101A.

H. **<u>Third and Fourth Elements B Applicable Timelines</u>**. The timelines for the third and fourth elements for completion of the Design Development Drawings and construction shall be the same as those for the second element, such timelines being measured from the scheduled completion dates of the prior stages of each element.

I. **<u>Remaining Elements - Applicable Timelines</u>**. The Developer shall complete Design Development Drawings for City and Agency review for each of the fifth through and including the seventh elements of the Private Improvements on or before one hundred twenty (120) days after the date of scheduled completion of construction of the immediately preceding element (as set forth in the Schedule of Performance). Developer shall complete construction drawings (which shall be substantially consistent with the approved Design Development Drawings for each respective element), obtain all applicable approvals and permits, commence and complete construction of each of the third through and including the seventh elements of the Private Improvements on or before two hundred forty (240) days of the Developer's obtaining design review approval from the City and the Agency for each element.

J. **<u>Definition of Completion</u>**. For purposes of meeting the construction deadlines set forth in this Section 602, the Developer shall be deemed to have completed construction of a particular element of the Private Improvements as follows:

Anchor Tenant 1 Element	Upon issuance of certificate of occupancy
Anchor Tenant 2 Element	Upon issuance of certificate of occupancy
Power Center Element	65% of allowed building area and 100% of the Plazas intended for the element completed
Radiant Pads Element	65% of allowed building area and 100% of the Plazas intended for the element completed
Chemawa Pads Element	65% of allowed building area and 100% of the Plazas intended for the element completed
I-5 Commercial Element	Upon issuance of certificate of occupancy for either hotel or offices and 100% of the Plazas intended for the element completed
Neighborhood Element	Grocery store or 65% of allowed building area and 100% of the Plazas intended for the element completed

provided, however, that with respect to the completion of any of the seven (7) elements, an element shall be deemed to have been completed if 75% or more of the allowed building area and 100% of the Plazas for all elements in the aggregate have been completed. For purposes of Sections 602 and 1101, "allowed building area" shall mean gross square footage of buildings pursuant to the Master Plan.

K. **Developer's Reimbursement Obligation**. Developer's failure to meet any of the Design Development Drawings submittal or construction completion deadlines for any individual element shall result in Developer's further obligation to make a Reimbursement payment described in Section 1101A. Developer's failure to meet any one of the deadlines shall not serve to modify the Developer's obligations to meet the deadlines for any of the other elements. In the event Developer fails to meet its obligations relating to the deadlines for any of the stages of any of the elements, such failure shall constitute default by Developer pursuant to Section 1001A, entitling Agency to pursue Reimbursement as well as all other available remedies.

L. **Completion of All Private Improvements - 10 Year Period**. Notwithstanding any other provision of this Agreement, Developer shall complete construction of all elements of the Private Improvements within ten (10) years from the earlier of (i) condemnation of any Acquisition Parcel by the Agency for which the Agency was unable to obtain a waiver from the condemnee; and (ii) the date the Master Plan is approved by the Agency.

M. **Acknowledgment of Public Purpose**. At such time as any Acquisition Parcel acquired through condemnation is used for the public purpose for which it was acquired, the Agency shall execute, in recordable form, all documents necessary to terminate and remove from title the applicable Repurchase Agreement described in Section 305J..

Section 603 Construction of Public Park, the Plazas, and the Pathway.

A. Construction. The parties agree that the following areas shall be included within the Project:

(1) The Public Park;

(2) The Plazas; and

(3) The Pathway.

The exact size and location of the Public Park, the Plazas and the Pathway shall be in accordance with the Development Agreement and the Master Plan. The construction and all construction costs (including land costs), of the Public Park and the Pathway shall be included within the LID project, if the LID is formed, or, if not, shall be borne by the Developer which construction and construction costs shall be further subject to the provisions of Article 12.

B. **Additional Development Costs.** The Developer shall bear all development and construction costs of the Plazas and all costs of developing and constructing the an public area attributable to wetlands mitigation and/or storm water retention facilities, if any.

C. **Dedication, Easement.** In the event Developer and Agency decide to locate the Public Park or the Pathway on one or more of the Developer Parcels, or portions thereof, such areas shall be dedicated to the Agency prior to and as a condition of formation of the LID if an LID is formed. The Developer shall grant a perpetual easement to the public for purposes of providing pedestrian and vehicular access and parking to and for the Public Park and the Pathway all as provided in the Public Improvement Plan, the Development Agreement and the Master Plan.

Section 604Cooperation.

The Agency and the Developer shall cooperate in accordance with the Schedules of Performance in effecting the redevelopment of the Project Site.

Section 605Rights of Access.

For the purpose of ensuring compliance with this Agreement and all applicable laws, representatives of the City and Agency shall have the right of access to and over the Project Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements, so long as such representatives comply with all safety rules. The Developer will not be responsible in any manner whatsoever for any liabilities arising from the negligence, or willful misconduct, of the City, the Agency or any of their agents, servants, employees and contractors in connection with the exercise of the right of access granted hereunder.

Section 606Taxes, Assessments, Encumbrances and Liens.

The Developer covenants that it shall pay when due all real estate taxes and assessments, including LID assessments, if any, assessed and levied on Parcels owned by the Developer, its assigns and successors within the Project Site. The Developer further covenants that it shall execute and file with the City all agreements of nonremonstrance as provided in this Agreement.

Section 607Water Rights.

In consideration of the Agency's covenants herein, the Developer shall assign the City any and all water rights associated with any existing functioning wells in the Village Center Area, subject to the conditions that (1) use of such rights shall not interfere with, or increase the costs of, the Developer's development of such Area, (2) the Developer shall have unlimited use of such wells, free of charge, for its landscaping needs in Area A in Keizer Station. Notwithstanding the foregoing, the Developer's use of such wells shall be subject to applicable City ordinances, the Keizer Station Plan, and all rules of the Oregon Water Resources Department.

Section 608 Nonremonstrance Covenant as to Entertainment & Sports Area.

The parties acknowledge and agree that the area in Keizer Station known as Area A - Entertainment & Sports Center (the "**Entertainment & Sports Center Area**") may be developed to include a public indoor aquatic facility, a public outdoor aquatic and family recreation park, public meeting and classrooms, a private fitness and tennis club, and common areas incidental to the foregoing.

The Developer covenants on behalf of itself, its successors and assigns, that it shall not remonstrate against the formation of any local improvement district with respect to the Entertainment & Sports Area that is developed substantially in conformance with the foregoing description provided that such covenant shall only be enforceable against Developer when all of the following conditions are met: (1) the assessed value of the property assessed equals or exceeds $300,000,000; and (2) the maximum allowable assessment in the aggregate does not exceed $4,500,000, which may include the capitalized cost of ongoing operating subsidies. The Developer shall execute a nonremonstrance agreement that provides for the foregoing and that shall affect all the Acquisition Parcels and the Developer Parcels, and record it with the Marion County Recorder's Office.

Article 7 SPECULATION AND ASSIGNMENT PROVISION

Section 701 No Speculation.

The Developer represents its acquisition of the Acquisition Parcels and the Developer Parcels is for redevelopment and not for speculation in land holding.

Section 702 Assignment.

A. <u>General Prohibition on Developer Assignment</u>. Primarily because of the location of the Project within the District and the existing relationship between Agency and Developer, the qualifications and identity of the Developer are of particular concern and importance to the Agency. The Developer recognizes that it is because of its qualifications and identity that the Agency is entering into this Agreement and, in so doing, is further accepting and relying on the obligations of the Developer for the faithful performance of all undertakings and covenants to be performed by it under this Agreement. For the foregoing reasons, except as provided in Section 702 B., the Developer shall not partially or wholly dispose of or agree to dispose of more than 49% of the Developer's interest in the Project Site nor shall the Developer partially or wholly transfer or assign its interests in this Agreement without the prior written approval of the Agency; provided, however, that at the time the Agency and the City have been released from all liability for repayment of the bonds issued following the formation of the LID, or, if no LID is formed, upon completion and approval of the Public Improvements, then the Developer shall be free to transfer any or all of its interests in the Project Site or in this Agreement.

Any proposed transferee shall be subject to all the conditions and restrictions contained in this Agreement, as they apply to the property or interests so transferred.

B. <u>Approved Developer Transfers</u>. Notwithstanding Section 702 A., the Agency hereby consents to:

(1) Any mortgage which the Developer may cause to attach to the Project Site, provided that:

a. None of the Project Site owned by the City or the Agency (including improvements thereon) or identified for siting Public Improvements shall be used as security for such mortgage;

b. The terms of this Agreement and the Agency's and the City's interest in the Project Property shall not be subordinated to such mortgage;

c. The mortgagee's loan documents shall indicate that any person acquiring an interest in the Project as a result of the sale, assignment or other transfer of the mortgagee's interest, including a transfer of title as a result of foreclosure, shall be subject to the terms of this Agreement and the Master Plan;

d. The Developer provides the Agency with copies of all agreements related to the mortgage at least ten (10) days prior to the effective date of closing or funding of the mortgage loan, and any other information necessary for the Agency to determine whether such transfer complies with the requirements of this Agreement.

(2) A transfer to a partnership or limited liability company of which the Developer or one of its members is the general partner of the partnership, or managing member of the limited liability company and controls 51% or more of the partnership or limited liability company.

Article 8 COVENANTS; NONDISCRIMINATION

Section 801 Covenants as to Uses.

The Developer covenants and agrees that during construction and thereafter, the Developer shall devote the Project Site to the uses specified in the Master Plan, as generally identified in the Scope of Development. The Public Improvement Plan, the Development Agreement, the Master Plan and the Scope of Development shall be in compliance with the Urban Renewal Plan, the Keizer Station Plan and the Keizer Development Code. The foregoing covenant shall run with all of the Project property now owned or later acquired by Developer. The parties shall agree on a form of covenant to be recorded against the Project Site, as provided in Section 305.I.

Section 802 Nondiscrimination.

The Agency and the Developer covenant that they shall not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, handicap, gender, sexual preference, marital status, national origin, or ancestry in the development, construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Site, nor shall they establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project Site. The covenants set forth in this section shall run with the land.

Article 9 FINANCING OF THE PROJECT

Section 901 Financial Commitments by the City and the Agency.

A. Subject to the terms and conditions of this Agreement and an intergovernmental agreement between the City and the Agency, Agency shall pay $4,500,000 toward the costs of the Public Improvements.

B. Subject to the terms and conditions of this Agreement, including the conditions set forth in Section 311, initiate the formation of the LID to generate bond proceeds, from the sale of bonds, with a payment period consistent with applicable laws, and use such proceeds for construction of the Public Improvements; provided, however, that in no event shall the appraised value of the Benefited Properties after the construction of the Public Improvements contemplated by this Agreement be less than three times the LID Cap. The value of such property shall be determined by appraisals obtained by the Developer, at Developer's sole cost, no more than six (6) months prior to the formation of the LID. If no LID is formed, the provisions of Article 12 shall apply.

C. The Agency shall request that the City disclose to, and set up all arrangements for collection by, the Developer of all rebates and refunds, if any, available to the Developer by reason of Private Improvement infrastructure costs incurred by Developer in the development of the Project, including, but not limited to, for the oversizing of utilities.

D. Developer understands that the Agency or the City may impose taxes, fees or other charges on the privately-owned property in the Village Center Area that reimburses the City of Keizer and the Keizer Fire District for additional public safety resources needed to serve the area due to its development. The taxes, fees or other charges will be fair and only pay or reimburse the City and the Keizer Fire District for their true costs of providing service to this area. One example includes a tax per square foot of leasable building with a differential rate depending on the type of activity that is intended to occur at each location (the intent being to recognize that different uses create different demands for service from different service providers.) Taxes, fees or other charges shall sunset at such a time as the Village Center Area is removed from the Keizer Urban Renewal District or a power generation facility creating at least $200,000,000 in assessed taxable value comes on line at Keizer Station. The Developer, its successor and assigns, waives any right it has to remonstrate against the creation of a financing district, to the extent a financing district is formed for purposes of this Section 901D.

Section 902 Financial Commitments by the Developer.

A. Developer shall pay for, and bear the entire cost of purchasing, the Developer Parcels and the Acquisition Parcels in accordance with the terms and conditions of this Agreement.

B. Developer shall pay for such signage and identification as the Developer and its tenants within the Project deem necessary and appropriate for its successful development, subject to the Agency's approval, which shall not be unreasonably withheld, and in accordance with all applicable state and local laws.

C. Developer shall pay all other costs relating to the construction and development of all of the Private Improvements.

Article 10 DEFAULT AND REMEDIES; TERMINATION

Section 1001 Default/Cure.

A. **Default by the Developer.** The following shall constitute defaults on the part of the Developer:

(1) Any breach of provisions of this Agreement, whether by action or inaction, which continues and is not remedied within thirty (30) days after the Agency has given notice to the Developer specifying the breach; provided that if such breach cannot with due diligence be cured within a period of thirty (30) days, the Agency shall allow the Developer a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the Developer diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the Agency;

(2) Any assignment by the Developer for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over the Developer;

(3) The failure of the Developer to pay when due any tax, assessment, lien or other charge having priority over the Agency's interests in the Project. However, the Developer shall not be deemed in default under this Agreement for failure to pay a tax, assessment, lien or other charge if the Developer is contesting the same in good faith and, if necessary to avoid foreclosure, has furnished an appropriate bond of other undertaking to assure payment in the event the Developer's contest is unsuccessful; or

(4) The failure of the Developer to pay when due any amount owing to the Agency or City under this Agreement.

B. Default by the Agency. The Agency shall be in default under this Agreement if it breaches any of the provisions of this Agreement, and such breach continues and is not remedied within thirty (30) days after the Developer has given notice to the Agency specifying the breach; provided that if such breach cannot with due diligence be cured within a period of thirty (30) days, the Developer shall allow the Agency a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the Agency diligently proceeds to affect the cure and the cure is accomplished within the longer period of time granted by the Developer.

Section 1002 Remedies Before City Formation of LID, Commencement of Construction of Public Improvements, or Agency Acquisition of Acquisition Parcels.

In the event either Party defaults prior to the earlier of (i) the Agency's acquisition of one or more of the Acquisition Parcels, (ii) if an LID is formed, the formation of the LID; and (iii) if no LID is formed, commencement of construction of the Public Improvements, the non-defaulting Party or parties may, as an exclusive remedy, terminate this Agreement, and all rights and obligations of the parties under or arising from this Agreement shall immediately terminate.

Section 1003 Remedies Subsequent to City Formation of LID, Commencement of Construction of Public Improvements, or Agency Acquisition of Acquisition Parcels.

In the event either Party defaults after the earlier of (i) if an LID is formed, formation of the LID; (ii) if no LID is formed, commencement of construction of the Public Improvements; and (iii) after the Agency's acquisition of one or more of the Acquisition Parcels, the non-defaulting Party shall be entitled to such remedies for breach of contract as may be available under applicable law including (without limitation) the remedy of specific performance. In addition, the Agency shall have the right to make a claim on the bond provided by Developer pursuant to and for the purposes set forth in Section 311, and, subject to the right of any Mortgagee to cure the default, to take any and all actions as may be allowed, at law or in equity, for the enforcement of this Agreement.

Section 1004 Termination.

A. Elections upon Non-Occurrence of Conditions. Except as provided in Section 1004B, if any condition in Section 311 is not fulfilled in the sole discretion of Agency on or before the dates set forth in this Agreement, including but not limited to those established within the Schedule of Performance, Agency may elect to:

(1) Terminate this Agreement, which termination shall become effective thirty (30) days after the notice of termination is sent (the "**Termination Date**") unless, before the thirty (30) day period ends, the Developer fulfills such condition or conditions to the satisfaction of the Agency in its sole discretion; or

(2) Waive in writing the benefit of that condition and proceed in accordance with the terms hereof; or

(3) Extend the Termination Date by which the Developer must satisfy the applicable condition, if the condition can be satisfied by the Developer and if the Developer agrees in writing to the extension.

B. Final Termination Date. If all of the conditions under Section 311 have not been satisfied, waived or otherwise resolved pursuant to this Agreement three hundred sixty-five (365) days after the Agency's and City's approval of the Development Agreement or the Master Plan, as applicable ("**Final Termination Date**"), then the parties' rights and obligations to develop the Project under this Agreement shall automatically terminate on such date unless the date is extended by agreement of the parties prior to the Final Termination Date.

C. Effect of Termination for Failure of Conditions Precedent. If this Agreement is terminated for failure of satisfaction of the conditions set forth in Section 311, and such failure is not the result of a breach of this Agreement by either Party, then termination shall be the parties' sole remedy. Notwithstanding the foregoing or any other provision, Developer's indemnification obligations shall survive termination of this Agreement.

Section 1005 Mortgagee Provisions.

A. Mortgagee Not Obligated To Construct. Notwithstanding any of the provisions of this Agreement, excepting those which are covenants running with the land, a Mortgagee authorized under this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion.

(1) Nothing in this paragraph or any other paragraph or provision of this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the Project Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the Public Improvement Plan, the Development Agreement, the Master Plan, the Urban Renewal Plan, the Keizer Station Plan and in this Agreement. All improvements constructed by such Mortgagee shall be consistent with and conform to the terms and conditions of this Agreement. The Parties agree that the covenants of this paragraph (1) shall survive conveyance of property, if any, from the Agency. The Developer agrees to execute and record any restrictive covenants to put third parties on notice of the foregoing conditions for development or use of the Project Site.

(2) For purposes of this paragraph A, the term "Mortgagee" shall include any mortgagee or any other party as owner of the Project Site or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a mortgage.

B. Copy of Notice of Default of Mortgagee. Whenever the Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement, the Agency shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder shown in the records of the Agency. Failure of Agency to deliver such notice shall not in any way limit Agency's rights under this Agreement.

C. Mortgagee's Option to Cure Defaults. After any default in or breach of this Agreement by the Developer, or its successor in interest, each Mortgagee shall (insofar as the rights of the Agency are concerned) have the right after the failure of the Developer to cure or remedy said default or breach, at its option, to cure or remedy such breach or default within sixty (60) days, and if permitted by its loan documents, to add the cost thereof to the mortgage debt and the lien of its mortgage. If the breach or default is with respect to construction of the Private Improvements, nothing contained in this paragraph or any other paragraph of 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 Private Improvements, provided that the Mortgagee notifies the Agency in writing of its intention to complete such improvements according to the provisions of this Agreement.

Section 1006 Nonexclusive Remedies.

The rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by either of the Parties of any 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 breach or of any of its remedies for any other default or breach by the other Party including, without limitation, the right to compel specific performance.

Section 1007 Force Majeure.

For the purposes of any of the provisions of this Agreement neither the Agency nor the Developer, as the case may be, nor any successor in interest to either of them shall be considered in breach of or default in its obligations with respect to the preparation of any element of the Project Site for development, preparation and submission of plans and drawings, the beginning and completion of construction of the Project, or any other obligations created hereunder or progress in respect thereto, in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault, acts of God or of the public enemy, acts of the government (provided that the Agency's or the Developer's acts will not relieve it from responsibility hereunder), acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of suppliers or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay the time or times for performance of the obligations of the Agency or the Developer, as the case may be, shall be extended for the period of the delay; provided, however, that neither Party shall be excused under this Section from performance of any of its obligations for a period longer than one (1) year in the aggregate; and provided, further, that in no event shall the financial incapability of a party relieve it from its obligations hereunder.

Article 11 REIMBURSEMENTS BY THE DEVELOPER

Section 1101 Reimbursement Amounts.

If the Developer fails to meet the design development drawings or construction deadlines as provided in Section 602, it shall reimburse the Agency a portion of the Agency's contribution of (the "**Reimbursement**"). The total Reimbursement amount shall be equal to $2,500,000 and shall be divided into fourteen (14) equal amounts of $178,571. Developer's reimbursement obligations shall arise and Developer shall pay Agency $178,571 for each stage of each element of the Private Improvements (i.e., the submittal of the Design Development Drawings and the construction of each such element) that is not completed by Developer in accordance with the Schedule of Performance and Section 602. The Reimbursement payments shall be the property of the Agency, held in a separate interest-bearing account until the earlier of completion of all Private Improvements or the tenth anniversary of the earlier of (i) the Agency's approval of the Development Agreement or the Master Plan, as applicable under Section 311, and (ii) the first acquisition of any of the Acquisition Parcels by condemnation, at which time all funds remaining in the account may be moved from the account, mingled with other Agency funds and used by

Agency.

Section 1102 Reconciliation of Reimbursement Payments.

To the extent Developer has has made Reimbursement payments, Agency shall return all such payments (less Agency's administrative costs associated with establishing and maintaining the account) to Developer if Developer completes construction of at least 90% of the Private Improvements within seven (7) years from the approval date of the Master Plan. Agency shall return 50% of such Reimbursement payments (less Agency's administrative costs associated with establishing and maintaining the account) if Developer completes construction of at least 65% of the Private Improvements within seven (7) years from the approval of the Master Plan.

Section 1103 No Building Permit During Outstanding Reimbursement; Nonexclusive Remedy.

Until the portion of the Reimbursement due hereunder is paid by the Developer, Developer shall be prohibited from submitting to the City an application for a building permit for any subsequent element of the Project. Neither Developer's payment nor Agency's rights pursuant to or under Article 11 shall limit or preclude the exercise by Agency of any of its other rights and remedies under this Agreement.

Article 12 PUBLIC IMPROVEMENTS WITH NO LID

In the event no LID is formed because Developer has made the request prescribed by Sections 109, 311 and 501, , then, once Agency has indicated that the conditions of Section 311 have been met to its satisfaction (or waived by Agency), the Developer shall design, obtain approvals and permits for, and complete construction of, the Public Improvements as described and depicted in the Scope of Development, the Public Improvement Plan, the Master Plan and the Development Agreement. Developer shall commence and diligently pursue through completion construction of the Public Improvements. The construction of the Public Improvements shall be consistent with the timelines established and set forth in the Schedule of Performance and, in any event, shall be completed on or before the date set for completion of Element 1 of the Private Improvements. The selection and awarding of a contract of and to a contractor shall be made pursuant to applicable state laws. In addition, the following shall apply to the Developer's construction of the Public Improvements.

A. The design of the Public Improvements shall be subject to the Agency's approval and in compliance with the Keizer Street Standards and the design standards of the Development Code. The Design Development Drawings and 100% construction drawings for the Public Improvements shall be submitted together and in accordance with the submittal of the documents relating to Element 1 of the Private Improvements under Section 602.

B. The construction contract shall be competitively bid and the contract awarded and the work performed in connection therewith. shall be in compliance with all applicable federal, state and local laws. including those set forth in Attachment 6..

C. Upon completion and acceptance by the City or Agency of, the Public Improvements, the Developer shall convey the Public Improvements to the City or the Agency. Upon conveyance, the Agency shall pay the Developer the sum of $4,500,000, which payment shall satisfy the requirements of Section 901A; provided, however, that the Agency shall not be obligated to pay such sum unless and until the Developer completes construction and the Agency or the City is prepared to accept the Public Improvements on or before the expiration of the 365-day period for completion of Element 1 of the Private Improvements, as provided in Section 602E. If, after requesting that an LID not be formed, the Developer fails to commence or complete the Public Improvements within such timeframe or if the Developer fails to complete them to the standards required under this Agreement and the Code, the parties agree that (i) the Developer shall, upon Agency request, execute all documentation necessary to confirm Agency or City ownership of the Project Site parcels on which the Public Improvements will be located; (ii) the City or the Agency may build or rebuild the Public Improvements or portions thereof, as applicable; and (iii) the costs of building or rebuilding the Public Improvements may be assessed against the privately-owned Village Center Area properties. The remonstrance agreements provided by the Developer under Section 311 shall be applicable to an LID established for purposes of building or rebuilding the Public Improvements.

D. The amount of the performance and payment required by Section 311 shall be reduced to $2,500,000, and the reduction of the amount of such bond, as provided in such section, shall occur only upon the reduction of the Developer's obligations under Section 1101.

E. The nonremonstrance agreement referred to in Section 501I. shall stay in effect until construction of the Public Improvements is complete, and the same has been accepted by the City or the Agency.

Article 13 GENERAL PROVISIONS

Section 1301 Project Managers.

A. **Agency Project Manager.** For the purposes of making determinations on or revising, where permitted, provisions of this Agreement on behalf of the Agency, or otherwise to represent the Agency with respect to the Project, the Agency shall designate a Project Manager, to be approved by the Developer. Upon the initial execution of this Agreement, the Agency Project Manager shall be the City Manager.

B. **Developer Project Manager.** For the purpose of making determinations on or revising, where permitted, provisions of this Agreement on behalf of the Developer, or otherwise to represent the Developer with respect to all elements of the Project, the Developer shall designate a Project Manager, to be approved by the Agency. Upon initial execution of this Agreement, the Developer Project Manager shall be RPS Development Company, Inc.

C. Selection of Contractor; CEM. If the LID is formed, the Agency Project Manager and the Developer Project Manager shall work together in a cooperative and efficient fashion to the greatest extent practicable. The Agency shall seek input from the Developer as Agency and City are considering engineering plans and other information pertinent to the general contractor construction bid package for the LID project.

Prior to completion of the engineering report contemplated by Section 501A., the Agency may elect to contract with an independent Construction Engineering Management firm ("**CEM**") to oversee the day-to-day operations of the construction of the Project. Due to the relationship of the Developer to the Project, and in recognition of the significant investment each party has made to promote the success of the Project, and understanding the necessity to seamlessly coordinate the public and private portions of the infrastructure improvements necessary to develop the Project, Developer shall be considered for such position in accordance with the selection process utilized by the Agency. The criteria likely to be considered by the Agency in making its selection shall include, but not be limited to the experience, capability and reputation of individuals or firms which could provide CEM services and the cost of such services (including the cost savings that may be available through contracting with Developer).

Section 1302 Conflict of Interests.

No member, official, or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No elected or appointed official, employee or agent of the Agency shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the Agency or for any amount which may become due to the Developer or its successor or on any obligations under the terms of this Agreement.

Section 1303 Notice.

A notice or communication under this Agreement by either Party to the other shall be deemed given or delivered forty-eight (48) hours after being dispatched and delivered by private messenger service, or registered or certified U.S. mail; postage prepaid, return receipt requested, and:

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

Northwest National, LLC
245 13th Street
Salem, Oregon 97301
Attn: Charles A. Sides

With copies to:
Richard W. Miller
Cosgrave Vergeer Kester LLP
805 S.W. Broadway, 8th Floor
Portland, Oregon 97205

And to:
Alan M. Roodhouse
RPS Development Company, Inc.
2653 High Heaven Road
McMinnville, Oregon 97128

B. In the case of a notice or communication to the Agency, addressed as follows:

Chris Eppley
Executive Director
930 Chemawa Road
Keizer, Oregon 97303

With a copy to:
E. Shannon Johnson
Lien & Johnson
4855 River Road North
Keizer, Oregon 97303

or addressed in such other way in respect to either party as that party may, from time to time, designate in writing dispatched as provided in this section. Notice given in any other manner shall be effective upon receipt by the party for whom the same is intended.

Section 1304 Merger and Integration.

None of the provisions of this Agreement are intended to or shall be merged by reason of a Deed transferring title to any parcel within the Project Site from the City to the Developer or from the Agency to the Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

Section 1305 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.

Section 1306 Waivers.

No waiver made by a party with respect to the performance, or manner or time hereof, of any obligation of another party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the party making the waiver. No waiver by the City, the Agency or the Developer or 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.

Section 1307 **Attorneys' Fees.**

In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law.

Section 1308 Time of the Essence.

Time is of the essence of this Agreement.

Section 1309 Choice of Law.

This Agreement shall be interpreted under the laws of the State of Oregon.

Section 1310 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.

Section 1311 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.

Section 1312 Entire Agreement.

This Agreement and the attachments hereto, which are incorporated herein by reference, are the entire agreement between the parties relating to the subject matter in this Agreement. There is no other oral or written agreement between the parties with regard to this subject matter. There are no oral or written representations made by either party, implied or express, other than those contained in this Agreement.

Section 1313 Modifications.

Any modifications to this Agreement shall be made in writing and executed by all parties to this Agreement.

Section 1314 Successors and Assigns.

The benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the heirs, successors and assigns of the Parties, including any Mortgagee permitted by this Agreement and anyone acquiring an interest in the Project, or any portion thereof, at foreclosure. The covenants, rights, benefits and obligations of the Agency and the Developer and their remedies for breach thereof shall be covenants and conditions running with the land.

Section 1315 Place of Enforcement.

Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Marion County, or the United States District Court for the District of Oregon.

Section 1316 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.

Section 1317 No Third Party Beneficiaries.

Neither anything in this Agreement contained nor 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.

Section 1318 Representation by Counsel.

Each of the parties has been represented by counsel in the negotiation and preparation of this Agreement. No presumption shall exist (i) in favor of a party by reason of the authorship of any provision of this Agreement or other transaction document by any other party or that party's counsel or (ii) against a party by reason of the authorship of any provision of this Agreement or other transaction document by that party or that party's counsel.

Section 1319 Nonwaiver of Government Rights.

Subject to and except as expressly set forth by the terms and conditions of this Agreement, by making this Agreement and delivery of the Deeds, the City and the Agency are specifically not obligating themselves, or any governmental agency with respect to any discretionary action relating to construction, development or operation of the improvements to be constructed on the Project Site, including, but not limited to, rezoning, variances, vacations, environmental clearances or any other governmental agency approvals which are or may be required.

Section 1320 Approvals.

Where approvals of the Agency or the City are required, the Agency will approve or disapprove or cause the City to approve or disapprove, within thirty (30) days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided herein to the contrary. Any disapproval shall state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are reserved to the Agency's or the City's sole discretion. The Developer, 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 the Agency or the City, as applicable, within thirty (30) days after receipt of the notice of disapproval, or, unless such disapproval is within the sole discretion of the Agency or the City.

Section 1321 Estoppel Certificates.

The Agency and the Developer shall at any time and from time to time, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the party which as requested the same or to any prospective mortgagee, tenant or subtenant designated by the Developer, a certificate stating that (i) the Agreement is in full force and effect and has not been modified, supplemented or amended in any way, and if there have been modifications, the Agreement is in full force and effect as modified, identifying such modification agreement; and if the Agreement is not in force and effect, the certificate shall so state; and (ii) all conditions under the Agreement to be performed by the Agency or the Developer, as the case may be, have been satisfied and, as of the date of such certificate, there are no existing defenses or offsets which the Agency or the Developer, as the case may be, has against the enforcement of the Agreement by the other party, or, if such offsets, the certificate shall so state.

Section 1322 **Good Faith and Fair Dealing Obligations.**

The parties intend that the obligations of good faith and fair dealing apply to all actions on the part of either party under ~~to~~ this Agreement, notwithstanding the ability of either party to act, or to refrain from acting, in its "discretion" or its "sole discretion.."

Section 1323 **Calculation of Time.**

All periods of time referred to herein shall be calendar days and 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 in the State of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or a legal holiday in the State of Oregon.

Section 1324 **Compliance with Laws.**

Developer shall comply with all applicable federal, state and local laws in the construction of the Project, including the Public Park, the Pathway and the Plazas which constitute public improvements and, as such, trigger specific state laws, and in fulfilling its obligations under this Agreement, including but not limited to, the Americans with Disabilities Act (42 USC Section 12101, *et seq.*). Developer represents and covenants that it is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under this Agreement. Developer further represents and covenants that it has filed federal and state income tax returns in the name of the business, for the previous year, for labor or services performed as an independent contractor in the previous year.

Section 1325 **Waiver of Surety Defenses.**

Developer and its successors and assigns, and all persons (except the Agency), who are or shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waive, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, whether real, personal, or otherwise, or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, all claims and defenses based upon extension of time, indulgence, or modification of terms of Agreement.

Section 1326 Pledging of Tax Increment Funds; Creation of Debt.

The parties acknowledge and agree that the Agency has not pledged any of its tax increment revenues to any amounts due under this Agreement. The parties further acknowledge and agree that the Agency's outstanding and future bonds, notes and other debt obligations have a superior lien on the tax increment revenues to any amounts due under this Agreement and that the obligations of the Agency do not constitute a debt of the Agency or the City or any other political subdivision of the state.

Section 1327 Statutory Disclosure.

THIS INSTRUMENT WILL 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 APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Section 1328 Recording.

An abstract of this Agreement shall be recorded in the deed records of Marion County.

URBAN RENEWAL AGENCY
OF THE CITY OF KEIZER

By:______________________________
Lore D. Christopher, Chair

NORTHWEST NATIONAL, LLC

By:______________________________

Charles A. Sides, Managing Manager

STATE OF OREGON)
) ss.
County of Marion)

This instrument was acknowledged before me on ____________-, 2003, by Lore D. Christopher, as the Chair of the Urban Renewal Agency of the City of Keizer.

____
Notary Public in and for the State of Oregon
My Commission expires: ________________

STATE OF OREGON)
) ss.
County of Marion)

This instrument was acknowledged before me on __________, 2003, by Charles D. Sides, the Managing Manager of Northwest National, LLC.

____
Notary Public in and for the State of Oregon
My Commission expires: ________________

LIST OF ATTACHMENTS

Attachment 1	-	Boundaries and Depiction of Project Site
Attachment 2	=	City Parcel
Attachment 3	-	Developer Parcels
Attachment 4	-	Acquisition Parcels
Attachment 5	-	List of 27 Parcels (for purposes of section 311)
Attachment 6		Required Contract Provisions

AGREEMENT FOR DISPOSITION AND DEVELOPMENT
OF KEIZER STATION

Attachment 1

Boundaries and Depiction of Project

AGREEMENT FOR DISPOSITION AND DEVELOPMENT
OF KEIZER STATION

Attachment 2
City Parcel

Letter Designation	Map Index	Tax Map	Tax Lot	Acres	Plan Area Designation
E	202-B	63 W 36BC	06000	3.10	B - Retail Service Area

AGREEMENT FOR DISPOSITION AND DEVELOPMENT

OF KEIZER STATION

Attachment 3

Developer Parcels

Letter Designation	Map Index	Tax Map	Tax Lot	Acres	Plan Area Designation
A	204-A	6 3 W 36BD	00100	2.18	A - Village Center Area
B	204-B	6 3 W 36AC	00500	2.69	A - Village Center Area
C	204-C	6 3 W 36AC	00600	0.47	A - Village Center Area
D	204-D	6 3 W 36AC	00700	0.47	A - Village Center Area
E	204-E	6 3W 36AB	00900	0.72	A - Village Center Area
F	204-F	6 3W 36AC	00100	1.48	A - Village Center Area
G	204-G	6 3W 36AC	00300	0.46	A - Village Center Area
H	204-H	6 3W 36AC	00400	1.38	A - Village Center Area
I	204-I	6 3W 36AB	01200	0.79	A - Village Center Area
J	204-J	6 3W 36AC	01400	2.92	A - Village Center Area
K	204-K	6 3W 36BD	00500	2.85	A - Village Center Area
L	204-L	6 3W 36AB	00400	1.80	A - Village Center Area
N	204-N	6 3W 36BC	06100	0.20	B - Retail Service Area
O	205-A	06 3W 36A	00500	15.17	A - Village Center Area
P	205-B	06 3W 36A	00600	12.61	A - Village Center Area
Q	205-C	06 3W 36A	00700	7.85	A - Village Center Area
R	205-D	06 3W 36AB	00100	5.38	A - Village Center Area
S	205-E	06 3W 36AB	00500	1.18	A - Village Center Area
T	205-F	06 3W 36AB	01300	2.98	A - Village Center Area
U	205-G	06 3W 36BD	00200	2.43	A - Village Center Area
V	205-H	06 3W 36BD	00400	1.04	A - Village Center Area
W	205-I	06 3W 36AC	00900	5.13	A - Village Center Area
X	205-J	06 3W 36AC	01100	2.71	A - Village Center Area
AP-K	206-L-6	06 3W 36AB	00700	1.00	A - Village Center Area
AP-L	206-M-6	06 3W 36AB	00600	0.92	A - Village Center Area
AP-M	206-N-6	06 3W 36AB	00800	3.02	A - Village Center Area
AP-N	206-O-7	06 3W 36AB	01000	0.48	A - Village Center Area
AP-O	206-P-8	06 3W 36BD	00900	0.82	A - Village Center Area
AP-R	206-S-9	06 3W 36AB	01100	0.80	A - Village Center Area

AGREEMENT FOR DISPOSITION AND DEVELOPMENT

OF KEIZER STATION

Attachment 4

Acquisition Parcels

Letter Designation	Map Index	Tax Map	Tax Lot	Acres	Plan Area Designation
A	206-A-1	06 3W 36AB	00200	0.60	A - Village Center Area
B	206-B-1	06 3W 36AB	00300	0.91	A - Village Center Area
C	206-C-2	06 3W 36AC	00800	0.59	A - Village Center Area
D	206-D-3	06 3W 36AC	01200	0.81	A - Village Center Area
E	206-E-3	06 3W 36AC	01300	1.86	A - Village Center Area
F	206-F-4	06 3W 36AC	01500	2.47	A - Village Center Area
G	206-G-4	06 3W 36BD	00600	0.43	A - Village Center Area
H	206-H-4	06 3W 36BD	00700	0.28	A - Village Center Area
I	206-I-4	06 3W 36BD	00800	1.11	A - Village Center Area
J	206-J-5	06 3W 36BD	00300	0.95	A - Village Center Area
P	206-Q-9	06 3W 25	04200	6.27	A - Village Center Area
Q	206-R-9	06 3W 25	04500	10.01	A - Village Center Area

AGREEMENT FOR DISPOSITION AND DEVELOPMENT

OF KEIZER STATION

Attachment 5

List of 27 Village Center Area Parcels

AGREEMENT FOR DISPOSITION AND DEVELOPMENT

OF KEIZER STATION

Attachment 6

Required Contract Provisions
Disposition and Development Agreement;
Public Improvements

A. Applicable Federal Laws.

1. Non-discrimination in employment on the basis of race, color, creed, religion, political ideology, age (except legitimate minimum age and retirement provisions), sex, marital status, sexual orientation, national origin, veteran status or the presence of any sensory, mental or physical handicap (unless based on a bona fide occupational qualification) in regard to any position for which the employee is qualified in compliance with all applicable federal, state and local laws, rules and regulations. This requirement shall apply to, but not be limited to the following: employment, recruitment or recruitment advertising, lay-off, demotion or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships. Any violation of this provision shall be considered an event of default;

2. Civil rights legislation including the Civil Rights Acts of 1964 and 1968, and Executive Order 11063 as amended by Executive Order 12259 and by Executive Order 12892, and prohibitions against discrimination on the basis of age under the Age Discrimination Act or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29;

3. The accessibility requirements of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973;

4. The equal employment opportunity provisions of Executive Order 11246 as amended by Executive Orders 11375, 12086, and 13279; and

5. The National Environmental Policy Act of 1969.

B. Applicable State Laws.

All requirements of Oregon Revised Statutes 279.310 through 279.430, 279.545 through 279.650 and 279.835 through 279.855, including but not limited to the following, as applicable, are incorporated herein by reference, and apply to Developer and to any contractors and subcontractors employed or hired by Developer for the construction of the Public Improvements, as follows:

1. If Contractor or Developer fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with the Contract for Public Improvements (the

"contract") as such claim becomes due, Agency may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Developer or Developer's contactor by reason of the contract. The payment of a claim in the manner authorized above shall not relieve the Developer or Developer's contactor or its surety from its obligation with respect to any unpaid claims;

2. If the Developer, Developer's contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from the Agency or Developer, the Developer, its contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279.445 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279.445. The rate of interest charged to the Developer, its contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from the Agency or from the Developer or Developer's contractor, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived;

3. If the Developer, its contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279.445;

4. Developer and its contractor and subcontractors, if any, are subject to Oregon Workers' Compensation Law, which requires all employers that employ subject workers who work under the Agreement, the contract to comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Developer shall ensure that each of its contractor and subcontractors, if any, complies with these requirements;

5. Developer and Developer's contactor shall, upon demand, furnish to the Agency, written proof of workers' compensation insurance coverage. Developer and Developer's contactor is required to submit written notice to the Agency thirty (30) days prior to cancellation of said coverage;

6. Neither Developer (with respect to the Agreement) nor any contractor or subcontractor (with respect to any construction contract) shall be eligible for any Federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid by Agency. Developer is not a contributing member of the Public Employee's Retirement System;

7. Developer is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under the and all contractors and subcontractors shall be engaged as independent contractors and be responsible for any federal or state taxes applicable to any payments made under all construction contracts;

8. Developer has filed federal and state income tax returns in the name of the business as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year and Developer shall obtain such certification from its contractor and subcontractors;

9. Developer agrees and certifies that it is a corporation in good standing and licensed to do business in the State of Oregon and Developer further agrees that it will obtain such certification from its contractor. Developer agrees and certifies that it has complied and will continue to comply with all Oregon laws relating to the performance of Developer's obligations under the Agreement;

10. Developer is not an employee of Metro, any special district, or local government, including Agency, the federal government or the State of Oregon;

11. Developer shall:

    11.1 Make payment promptly, as due, to all persons supplying to the Developer labor and material for the prosecution of the work provided for in the Agreement and any construction contract documents;

    11.2 Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of the Agreement;

    11.3 Not permit any lien or claim to be filed or prosecuted against the Agency on account of any labor or material furnished; and

    11.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167;

12. Developer shall promptly as due, make payment to any person, co-partnership or association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employee of such Developer, of all sums which the Developer agrees to pay for such services and all moneys and sums which the Developer collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. Developer shall require of its contractor the same assurances;

13. Developer will comply with 279.835 et seq. in the procurement of products and services from a nonprofit agency for disabled individuals;

14. For those employees of Developer covered or subject to Oregon employment laws, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime, and except when otherwise provided in a collective bargaining agreement between Developer and any labor organization:

    14.1 Persons employed under the construction contract shall receive at least time and a half pay for work performed on the legal holidays specified in ORS 279.334(1)(a)(C)(ii) to (vii) and for all overtime worked in excess of 40 hours in any one week;

    14.2 No person shall be employed for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where Agency absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279.051, the laborer shall be paid at least time and a half pay;

        14.2.1 for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

14.2.2 for all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; or

14.2.3 for work performed on Saturday and on any legal holidays specified in ORS 279.334.

14.3 For those employees that are covered or subject to Oregon employment laws, Developer must, pursuant to ORS 279.316(1)(b), give notice to employees whom perform work, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work;

15. To the extent any of Developer's employees are covered by the Oregon employment laws, such covered worker employed by Developer shall be foreclosed from the right to collect for any overtime under the Agreement unless a claim for payment is filed with Developer within ninety (90) days from the completion of the Agreement, providing Developer has:

15.1 Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and

15.2 Maintained such circular continuously posted from the inception to the completion of the Agreement on which workers are or have been employed;

16. Developer shall require its contractor demonstrate that an employee drug testing program is in place during the term of any construction contract;

17. Developer and its contractor are required to include in each subcontract for property or services entered into by Developer and its contractor and first-tier subcontractors, including material suppliers, for the purpose of performing any construction contract:

17.1 A payment clause that obligates Developer or its contractor to pay first-tier subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to Developer or its contractor by Agency under such contract; and

17.2 An interest penalty clause that obligates Developer or its contractor, if payment is not made within 30 days after receipt of payment from Agency, to pay to first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. Developer, its contractor or first-tier subcontractor shall not be obligated to pay an interest penalty if the only reason that Developer, its contractor or first-tier subcontractor did not make payment when payment was due is that Developer, its contractor or first-tier subcontractor did not receive payment from Agency or Developer or its contractor when payment was due. The interest penalty shall be:

17.2.1 For the period beginning on that day after the required payment date and ending on that date on which payment of the amount due is made; and

17.2.2 Computed at the rate specified in 279.314(2);

18. Developer and its contractor are further required to include in each of its subcontracts, for the purpose of performance of such construction contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of these sections and require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier;

19. A dispute between Developer or its contractor and a first-tier subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to subsection (4) or (5) of ORS 279.445 does not constitute a dispute to which Agency is a party. Agency shall not be included as a party in any administrative or judicial proceeding involving such dispute;

20. The Developer shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of construction work (including, but not limited to, any subcontractors of any tier) to the extent that the Agency has paid the Developer for such work. The Developer shall furnish to the Agency such releases of claims and other documents as the Agency may request from time to time to evidence such payment (and discharge). The Agency may, at its option, withhold payment, in whole or in part, to the Developer until such documents are furnished. The Developer may provide other security acceptable to the Agency, such as a bond, in lieu of paying disputed lien claims. The Developer may record a release bond executed by a surety authorized to issue surety bonds in the state of Oregon within 15 days after the Developer becomes aware of or is notified of the filing and making of the lien, in which event the Agency shall not withhold payment in whole or in part to the Developer for such lien;

21. Developer shall execute and deliver to the Agency a good and sufficient bond, to be approved by the Agency, in a sum equal to the contract price for the faithful performance of the contract;

22. The existing prevailing rate of wage which may be paid to workers in each trade or occupation required for such public work employed in the performance of the contract either by the Developer, its contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a provision that such workers shall be paid not less than such specified minimum hourly rate of wage; and

23. A fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279.375 (1), and the fee shall be paid to the commissioner pursuant to the administrative rule of the commissioner.

11/3/03

AGREEMENT FOR DISPOSITION AND DEVELOPMENT

OF THE KEIZER STATION PROJECT

Table of Contents

Page No.

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF THE KEIZER STATION PROJECT

THIS AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF THE KEIZER STATION PROJECT is made as of ______________, 2003, between **THE URBAN RENEWAL AGENCY OF THE CITY OF KEIZER** (the "**Agency**") and **NORTHWEST NATIONAL, LLC**, an Oregon limited liability company (the "**Developer**") (the Agency and the Developer sometimes hereinafter collectively referred to as the "**Parties**").

RECITALS

A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, the Agency has undertaken a program for the clearance and reconstruction of blighted areas in the City of Keizer. The Agency prepared and approved the North River Road Urban Renewal Plan for redevelopment of the North River Road Urban Renewal Area (the "**District**"). The Urban Renewal Plan was adopted on September 13, 1990, as amended from time to time and last amended on May 17, 1999 (which plan, as so amended and as it may hereafter be further amended from time to time pursuant to law, is hereinafter referred to as the "**Urban Renewal Plan**").

B. In order to enable the Agency to achieve the objectives of the Urban Renewal Plan, the Agency intends to make funds available for certain public improvements and to acquire and make certain land available for redevelopment by private enterprise in accordance with the uses specified in the Urban Renewal Plan.

C. The Agency selected Developer to redevelop portions of the District based on the Developer's willingness to acquire and redevelop its property in the area and its responsiveness to Agency goals. On January 16, 2001, the Agency and the Developer entered into a predevelopment agreement (the "**Predevelopment Agreement**") relating to the development of certain property more particularly described and shown on Attachment 1 hereto ("**Keizer Station**"). All of the parties' obligations under the Predevelopment Agreement have been fully satisfied and the parties acknowledge and agree that the agreement is no longer in effect.

D. On February 3, 2003, the City adopted the Keizer Station Plan, which is incorporated herein by reference (the "**Keizer Station Plan**").

E. The Developer continued to discuss redevelopment of Keizer Station with Agency through adoption of the Keizer Station Plan and made presentations to the Agency. The redevelopment proposed by the Developer is comprised of multiple buildings intended for hotel, sports, retail, office and industrial uses, all with surface parking. Upon completion of the presentations, the Agency tentatively accepted the Developer's proposal ("**Proposal**"). The Agency directed the Executive Director for the Agency (the "**Executive Director**") and the Agency attorney to begin negotiating this Agreement, as set forth in Resolution R2003-075.

F. The Proposal has been revised to expand the project to include a multi-purpose public pathway, four gathering plazas, and a public park.

G. The Agency is willing to acquire certain property for the purpose of constructing public improvements and for redevelopment generally in accordance with the Proposal. The Parties desire to make an integrated use of the project and to redevelop portions of Keizer Station as a first-class, high quality commercial center for both private and public uses.

H. Agency finds the undertaking and completion of the redevelopment of a portion of Keizer Station pursuant to this Agreement are in compliance with all applicable tribal, federal, state and local laws and furthers the purposes, goals and objectives of the Urban Renewal Plan. The Agency further finds that the redevelopment of Keizer Station and the fulfillment generally of this Agreement are in the best interests of the City and its residents.

I. The parties desire to proceed with this disposition and development agreement outlining the terms and conditions for the development of portions of Keizer Station.

AGREEMENT

Each of the Parties hereto, in consideration of the foregoing recitals which are incorporated herein by this reference, the promises and the agreements of the Parties set forth herein and other valuable consideration, the adequacy of which is hereby acknowledged, covenant and agree as follows:

Article 1 SUBJECT OF AGREEMENT

Section 101 Definitions.

"**Acquisition Budget**" shall have that meaning set forth in Section 303.

"**Acquisition Parcels**" shall mean those Project parcels listed on Attachment 4 that Developer is unable to acquire on or before the date set forth in Section 301 as well as those properties located in Area B which the Parties have mutually agreed are necessary for the public rights-of-way and utilities~~.~~; provided, however, that with regard to the Area B Acquisition Parcels, Agency shall only be obligated to acquire those Parcels or portions thereof intended for such public uses and Developer shall not be obligated to pay Agency for the acquisition costs (including Condemnation Costs) of such Parcels or portions thereof; and, provided further that the cost of acquiring the Area B Acquisition Parcels shall be paid from Agency's total financial contribution amount of $4,500,000.

"**Agency**" shall mean the Urban Renewal Agency of the City of Keizer.

"**Anchor Tenant**" shall mean one of the two tenants of buildings or owners of properties identified in Elements 1 and 2 in the Scope of Development.

"**Area**" or "**Areas**" shall have that meaning set forth in the Keizer Station Plan.

"**Attachment**" shall mean each attachment, designated as such, to this Agreement.

"**CEM**" shall have the meaning set forth in Section 1301.

"**City**" shall mean the City of Keizer, Oregon, a municipal corporation and political subdivision of the State of Oregon.

"**City Council**" or "**Council**" shall be the council of the City of Keizer, Oregon.

"**City Parcel**" shall mean Tax Lot 06000 of Keizer Station Plan Area B, as shown on Attachment 2.

"**Concept Design Plans**" shall mean plans which illustrate the general number and location of buildings, improvements, and uses, and which illustrate the general design character of buildings sufficient to determine size and building style and utility and infrastructure needs.

"**Condemnation Costs**" shall have the meaning set forth in Section 304.B.

"Design Development Drawings" shall mean:

Engineering and architectural site plans showing all structures in relation to projected final topography of the Project, all proposed connections to existing or proposed roads, utilities, open space and parking areas, depicting the number and types of spaces.

Landscape plans showing the common and botanical name of plant species, the number and size of plantings and demonstrating the location and type of irrigation.

Plans, elevations, typical cross-sections and typical wall sections of all building areas.

Elevations of the buildings to determine the specific configuration and relationship of design elements of the building exterior, which describe the aesthetic and technical aspects of the building exterior, including materials.

Plans, elevations, typical cross sections of all entrance canopies, interior public courts, specialty areas, and service area layouts.

Proposed conceptual layouts for exterior signage and graphics.

Preliminary outline specifications describing exterior construction materials and methods, including indications of colors, finishes, and patterns.

An outline of amenities, including, but not limited to, public art, furniture, handrails, seating areas and food areas, if any.

A description of servicing requirements, trash compactors and related areas, loading docks, etc.

Calculation of gross building, parking and open space.

"**Developer**" shall mean Northwest National, LLC, an Oregon limited liability company.

"Developer Parcels" shall mean those parcels owned by Developer (either by deed or land sale contract), on or before the Final Developer Purchase Date, as defined in Section 301, and listed on Attachment 3.

"Development Agreement" shall mean an agreement pursuant to ORS 94.504 *et seq.* between Developer and City with respect to the Public Improvements, which shall be entered into by Developer and City if each concludes, in its sole discretion, that such agreement is advisable and feasible for the purpose of commencing the Public Improvements before the approvals for the Private Improvements are completed, provided, the subject of such agreement shall include a detailed site plan that depicts, to scale, certain features and characteristics of the Private Improvements, including building uses and locations, parking lot and landscaping improvements, and pedestrian circulation in reasonable detail. In the event the parties are unwilling or cannot enter into a Development Agreement within the timeframe specified in Section ~~—~~311, then Developer shall provide the Agency with the Master Plan, as defined below, and all references within this Agreement to Development Agreement shall thereafter be construed to mean the Master Plan.

"Development Code" shall mean the Keizer Development Code.

"District" shall mean the North River Road Urban Renewal Area.

"Effective Date" shall mean the date first set forth above or, if no date is indicated, then November 1, 2003.

"Executive Director" shall mean the Executive Director of the Agency.

"Final Termination Date" shall have the meaning set forth in Section 1004B.

"LID" shall mean the local improvement district that Agency may request be formed by the City in accordance with the terms and conditions of this Agreement. The LID project shall consist of all of the Public Improvements.

"LID Cap" shall mean $18,300,000, the maximum total actual cost of the LID project, including the value of the land to be dedicated by Developer to City in accordance with Section 502; the total consists of the $13,800,000 LID assessment amount and the Agency's cash contribution of $4,50,000.

"Master Plan" shall mean the plan submitted by Developer and approved by the City and the Agency within the time prescribed under Section 311 and generally in accordance with this Agreement and the Keizer Station Plan.

"Mortgagee" shall mean any mortgagee under a mortgage and any trustee or beneficiary under a deed of trust, their successors and assigns .

"Owner" shall have the meaning set forth in Section 501E.

"Pathway" shall mean a multi-purpose pathway, which shall be at least twelve feet (12') in width, starting from Chemawa Road on the southern boundary of the Village Center Area and extending to the northern boundary thereof, constructed by the City or the Developer and owned by the Agency or the City, all in accordance with the terms and conditions of this Agreement.

"Plazas" shall mean the four (4) separate areas, none of which shall measure less than 1,000 square feet, and all of which together shall measure at least 8,000 square feet-owned by the Developer and constructed by the Developer, all in accordance with the terms and conditions of this Agreement.

"Predevelopment Agreement"" shall mean the prior agreement between the parties, dated January 16, 2001, which expired in accordance with its own terms on January 16, 2002 and has no further force and effect.

"Private Improvements" shall mean those improvements, including the Plazas, developed and constructed by the Developer pursuant to the terms and conditions of this Agreement and as shown and described in the Scope of Development.

"Project" shall mean both the Public Improvements and the Private Improvements.

"Project Site" shall mean the Village Center Area, a parcel owned by the City and located in Area B, identified on Attachment 2, a parcel owned by the Developer and located in Area B, identified on Attachment 3, and other property located in Keizer Station Plan Area B deemed necessary by both Parties for construction of the public right-of-way and utility improvements.

"Proposal" shall have the meaning set forth in Recital E.

"Public Improvement Plan" shall mean the plan for roads, rights-of-way, utilities and other public improvements intended for public use (including the Public Park and Pathway), which improvements shall be defined and approved in accordance and become a part of the Development Agreement and/or the Master Plan. The properties located in Area B of the District and deemed necessary by the Parties for construction and development of the public rights-of-way and utilities improvements shall be included in the Public Improvement Plan.

"Public Improvements" shall mean the Public Park, the Pathway and the other right-of-way and utility improvements constructed by the City or the Developer and owned by the Agency or the City, as set forth under this Agreement, and as included with more specificity in the Public Improvement Plan, the Master Plan and the Development Agreement.

"**Public Park**" shall mean the area measuring at least two (2) acres in size and consisting of public park day-use amenities (e.g., picnic tables, benches and related hardscape like Millennium Park in Lake Oswego), to be constructed by the City or the Developer and owned by the Agency or the City, all in accordance with the terms and conditions of this Agreement. The Public Park area shall be in addition to any area established to contain a wetlands/mitigation park-like environment. For purposes of satisfying the minimum acreage requirement, the Public Park may include any property immediately adjacent to Area A which Developer so improves.

"**Reimbursement**" shall have the meaning set forth in Section 1101.

"**Schedule of Performance**" shall mean the schedule for acquisition of the Acquisition Parcels and for construction and development of both the Public Improvements and the Private Improvements, as set forth in this Agreement and which shall be provided in more detail and approved as a condition of Section 311.

"**Scope of Development**" shall mean a general depiction of the Project improvements, to be approved as a condition of Section 311, and which shall be provided in more detail in the Master Plan.

"**Termination Date**" shall have the meaning set forth in Section 1004A.

"**Title Company**" or "**Escrow Agent**" shall have that meaning set forth in Section 307.

"**Tribal Approval**" shall mean the approval of the Confederated Tribes of Grand Ronde and the Confederated Tribes of Siletz.

"**Village Center Area**" shall mean the area generally described in Section 104, comprised of twenty-seven (27) parcels, as listed on Attachment 5.

Section 102 **__Purpose of Agreement__.**

The purpose of this Agreement is to provide for the development of the Project, including the assemblage of Project property through acquisition efforts of both the Developer and the Agency and the construction of improvements intended for public and private uses, all in accordance with the terms and conditions of this Agreement, the Urban Renewal Plan, the Keizer Station Plan and the Development Code.

Section 103 **__The Project Site__.**

The Project Site consists of certain real property located in the City of Keizer the boundary of which property is shown and described on Attachment 1.

Section 104 **__Keizer Station Areas Affected By The Project__.**

The Project consists of redevelopment of the Area A of the Keizer Station, a parcel owned by the City and located in Area B, identified on Attachment 2, a parcel owned by the Developer and located in Area B, identified on Attachment 3, and other property located in Keizer Station Plan Area B deemed necessary by both Parties for construction of the public right-of-way and utility improvements. The Project will affect other Areas of Keizer Station, including property owned by the Confederated Tribes of Grand Ronde and the Confederated Tribes of Siletz (with such tribal

property located within the Commerce Center Area (or Area D). The Parties acknowledge that Area D is not located within the District. The Project Areas and other Areas impacted by the Project have the following uses:

~~Areas~~	~~Uses~~
Area A - Village Center (the "**Village Center Area**") ~~uses.~~	A variety of Employment General uses.
Area B - Retail Service Center (the "**Retail Service Center Area**" or "**Area B**")	Community-supporting services.
Area D - Commerce Center (the "**Commerce Center Area**" or "**Area D**") ~~related~~	A mix of industrial and business-related activities.

Section 105 **The Agency.**

The Agency is an urban renewal agency of the City of Keizer, created pursuant to the provisions of Chapter 457 of the Oregon Revised Statutes. The principal office of the Agency is located at 930 Chemawa Road, Keizer, Oregon 97303.

Section 106 **The Developer.**

The Developer is an Oregon limited liability company. The principal office of the Developer is located at 245 13th Street, Salem, Oregon 97301.

Section 107 **Schedule of Performance.**

The Project, consisting of both the Private Improvements and the Public Improvements, shall be developed in accordance with the ~~Schedules~~Schedule of Performance. The Private Improvements shall be developed in no more than seven (7) elements. Each element shall include, at a minimum, the Private Improvements ~~listed~~shown and described in the Scope of Development.

Section 108 **General Description of the Project.**

The Project shall consist of:

A. The acquisition by the Developer of the Developer Parcels, with portions of certain of those parcels conveyed to the Agency for public uses;

B. The acquisition by the Developer, with the Agency's assistance, of the Acquisition Parcels;

C. The vacation of portions of Radiant Drive as and where such street is presently located;

D. The possible formation by the City of the LID, providing for the construction of the Public Improvements;

E. The construction of the Public Improvements by the City if the City forms the LID, the construction of the Public Improvements by the Developer if the City does not form the LID or the construction of the Public Improvements by either the City or the Agency if the Developer requests that an LID not be formed, pursuant to Sections 109, 311 and 501, but thereafter fails to construct to completion the Public Improvements; and

F. The construction and development by the Developer of the Private Improvements identified within the Scope of Development which shall include two nationally recognized retailers, each of which shall occupy buildings of at least 100,000 square feet in size as well as the general uses described, in part, within Section 602.

Section 109 <u>**Nonperformance by the Agency**</u>.

Subject to and in accordance with the conditions hereof, the Agency shall proceed with the acquisition of the Acquisition Parcels, and request that the City vacate the rights of way in accordance with the Development Agreement or the Master Plan, as applicable and, unless requested or notified by the Developer not to do so, form the LID in order to construct the Public Improvements. If the Agency is unable to complete the acquisition of the Acquisition Parcels or the City is unable to form the LID, the Developer shall indemnify and hold the City and the Agency, their respective appointed and elected officials, employees and agents harmless from all claims, causes of action, or damages of any nature that any third party may suffer resulting from the same, and hereby waives such claims, causes of action, costs or damages that may arise or that any of them may otherwise have for such reasons.

Article 2 PROPERTY WITHIN THE PROJECT SITE

The parcels of real property that comprise the Project Site within the Village Center Area are identified hereinafter by a letter designation, the Map Index, Tax Map and Tax Lot number. The Project Site also consists of a parcel owned by the City, identified on Attachment 2 and a parcel owned by the Developer, identified on Attachment 3, both of which are located in Keizer Station Plan Area B.

Article 3 PROVISIONS RELATING TO ACQUISITION PARCELS; DEVELOPER PARCELS

Section 301 <u>**Acquisition of Acquisition Parcels**</u>.

The Developer shall attempt to acquire all of the Project parcels in the Village Center Area and the property located in Area B of the Keizer Station Plan, as identified on Attachment 3, on or before December 31, 2003 (the "**Final Developer Purchase Date**"). On or before the Final Developer Purchase Date, Agency shall not formally or informally attempt to acquire the

Acquisition Parcels in any manner whatsoever. After the Final Developer Purchase Date, Developer shall not formally or informally attempt to acquire the Acquisition Parcels in any manner whatsoever.

In the event Developer is unable to acquire all of the Project parcels on or before the Final Developer Purchase Date, Developer shall provide written notice to Agency within seven (7) days after the Final Developer Purchase Date. Such notice shall reference by tax lot and street address those portions of the Project Site that Developer has been unable to acquire (the "**Acquisition Parcels**") as well as details relating to Developer's failed efforts. Within thirty (30) days of receiving Developer's notice, Agency shall initiate the acquisition of the Acquisition Parcels.

Agency shall initiate, proceed and continue with acquisition only so long as Developer is in compliance with, in the Agency's sole judgment, the conditions set forth in this Article 3, including, but not limited to compliance with the financial obligations of Developer set forth in this Article, and the specific conditions set forth in Section 311.

Section 302 <u>**Site Feasibility Assessment**</u>.

Prior to the acquisition of any of the Acquisition Parcels by the Agency or conveyance of portions of the Developer Parcels by the Developer to the Agency, Developer, at Developer's expense, shall cause to be prepared by a consultant or consultants selected by the Developer and approved by the Agency, a Level I hazardous materials assessment, and, if the Level I assessment indicates a need or includes a recommendation for a Level II assessment, the Developer shall cause a Level II assessment to be conducted at the Developer's sole expense.

The Developer shall conduct, at the Developer's sole expense, such other studies and assessments, including, but not limited to, soils and geotechnical investigations, economic, cultural resources surveys, and investigations of the structural integrity of existing buildings, as the Developer determines are reasonably necessary for the development of the Project. For this purpose, the Agency will request that the City provide access to the City Parcel and the Agency shall provide access to the Acquisition Parcels, to the extent that it has the authority to grant such rights of access. The Developer shall save and protect the City, its elected and appointed officials, employee and agents, against any claims resulting from such preliminary work, access or use and execute such documents as are customarily required by the City for entry onto such property.

Copies of data, reports, surveys and tests obtained or made by the Developer during the course of said preliminary work shall be filed with the City and the Agency within fifteen (15) days after receipt by the Developer. Any preliminary work by the Developer shall be undertaken only after securing all necessary permits from the appropriate governmental agencies.

Section 303 **Development of Acquisition Budget.**

Prior to the Agency initiating acquisition of the Acquisition Parcels, the Agency and the Developer will establish a budget for the Agency's acquisition and conveyance to the Developer of the Acquisition Parcels (the "**Acquisition Budget**"). The Agency shall develop the procedure to monitor the Acquisition Budget and shall report the status thereof to Developer, in writing and on a monthly basis.

Section 304 **Acquisition and Payment Process.**

~~The~~Except for the Area B Acquisition Parcels, the Agency shall attempt to acquire the Acquisition Parcels in the following manner:

A. **Voluntary Acquisitions.** Agency shall first attempt to voluntarily acquire the Acquisition Parcels. If successful, Agency shall enter into a purchase and sale agreement with the respective owners and proceed to close the transaction pursuant to the terms of a purchase and sale agreement. Agency shall provide a copy to Developer of each such purchase and sale agreement upon the parties' full execution of the agreement.

Developer shall pay the purchase price together with any and all costs and expenses incident to such purchase, including, but not limited to, appraisals, commissions, relocation costs, title insurance premiums, escrow fees, Agency's legal expenses, environmental assessments and closing costs. The purchase price and other costs shall be deposited in the applicable closing escrow by Developer prior to the scheduled closing date, in accordance with the requirements of the purchase and sale agreement. Agency's obligations to acquire title to any Acquisition Parcels and convey such parcels to the Developer is conditioned on the payment by Developer in a timely manner as set forth herein.

B. **Involuntary Acquisitions.** Should Agency not be successful in acquiring any particular Acquisition Parcel voluntarily, Agency may initiate the condemnation procedure set forth in Section 305. At such time as Agency determines it will condemn one or more Acquisition Parcels, it shall notify Developer by providing Developer with a copy of the resolution or ordinance described in Section 305 and an itemized list of Condemnation Costs. Within thirty (30) days of receiving such notice, Developer shall provide evidence acceptable to Agency, in its sole discretion, that Developer has or will have within an additional thirty (30) day period sufficient funds to pay all Condemnation Costs, as estimated by the Agency. Within five (5) days of demand by Agency, Developer shall pay to Agency the reasonable Condemnation Costs except for the deposit necessary to obtain prejudgment possession. Such deposit shall be paid to Agency at least five (5) days prior to filing of the condemnation complaint.

As used herein, **"Condemnation Costs"** shall mean all estimated costs and expenses of acquiring the Acquisition Parcels or any portion thereof by eminent domain, including, but not limited to, appraisals, commissions, filing fees, witness fees, court costs, deposits necessary to obtain orders of prejudgment possession, satisfaction of judgment, severance damages, pre-condemnation damages and attorneys' fees.

Should any additional funds be necessary, at any point in the condemnation process, Developer shall pay the Condemnation Costs within ten (10) days of demand by Agency. Prior to conveyance by Agency to Developer of the Acquisition Parcels, Developer shall pay any and all remaining actual Condemnation Costs. Upon conclusion of the condemnation,
Agency shall refund any overpayment by Developer of Condemnation Costs subject to the setoff with regard to any financial obligation then owed by Developer to Agency under this Agreement.

C. **Election by Developer.** With respect to the acquisition of property by Agency, through condemnation or otherwise, in the event that the estimated acquisition cost for an Acquisition Parcel exceeds the Developer's projected acquisition cost, Developer may elect in writing to terminate this Agreement; provided, however, that Developer may elect to terminate this Agreement pursuant to this Section 304 only if Agency receives such written termination notice prior to Agency's acquisition of any of the Acquisition Parcels. Developer's right to terminate this Agreement pursuant to this Section 304 shall automatically expire upon the earlier of Agency's filing of a complaint to condemn or upon closing of escrow of any of the Acquisition Parcels.

Section 305 **Agency Condemnation Procedure.**

The Agency shall use reasonable efforts to acquire the Acquisition Parcels, including acquiring certain of the Acquisition Parcels through condemnation. Prior to initiating condemnation proceedings, Agency must, in its sole discretion, be satisfied that Developer has met the conditions set forth in this Agreement, including those conditions of Articles 3 and 4.

Upon proceeding with condemnation proceedings for purposes of acquiring one or more of the Acquisition Parcels, Agency shall use the following procedure:

A. The Agency shall declare by resolution or ordinance the necessity for acquiring the property and the purpose for which it is required. The resolution or ordinance declaring the public necessity for the acquisition of the property shall be presumptive evidence of the public necessity of the proposed use and that the proposed use is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

B. Agency shall obtain an appraisal prior to commencing condemnation.

C. Agency shall present the property owner with a written offer to purchase the property, accompanied by the written appraisal. The amount of the Agency's offer shall not constitute an admission of just compensation.

D. The property owner shall have forty (40) days, calculated from the date the written offer to purchase the property is received, to accept or reject the Agency's offer.

E. The property owner may reject the Agency's offer and obtain a separate appraisal, with a copy of such appraisal provided to the Agency not less than sixty (60) days prior to trial or arbitration.

F. Notwithstanding any other provision of this Agreement, Agency may abandon condemnation efforts at any time prior to filing a condemnation action. If Agency desires to abandon condemnation efforts, Agency shall provide the property owner with written notice revoking any written offers to purchase the property and shall provide Developer with a copy of such notice. In the event Agency abandons condemnation efforts, Developer shall remain obligated to pay all Condemnation Costs.

G. Agency may, in its discretion, obtain immediate possession of the property by filing a motion for an order of immediate possession along with the condemnation complaint, in addition to filing the amount estimated to be the just compensation for the property.

H. Developer shall pay all Condemnation Costs then demanded by Agency as set forth in Section 304.

I. The Acquisition Parcels may thereafter be used only for the purpose for which they were acquired. Developer acknowledges and agrees that the Acquisition Parcels acquired by Agency pursuant to condemnation shall not be transferred or conveyed to Developer or any other person or entity without a covenant being recorded against the property, requiring that such property be used in accordance with the terms of this Agreement.

J. Unless the Agency has secured the waiver of reversionary rights from an owner of an Acquisition Parcel, then, before such Acquisition Parcel is conveyed to the Developer, the Agency and the Developer shall enter into an agreement giving the Agency the right to repurchase the Parcel (the "Repurchase Agreement"). The Repurchase Agreement shall include terms that are consistent with applicable state law, including a provision that indicates that if the entire Parcel has not been used for the public purpose for which it was acquired within ten (10) years after title to such Acquisition Parcel was conveyed to the Agency through condemnation, it shall be acquired by the Agency for a price equal to the sum of the compensation and damages paid by the Agency for the real property at the time such Parcel was condemned. In the event only a portion of the Acquisition Parcel has not been used for the public purpose for which it was condemned within ten (10) years, then the Agency shall be entitled to repurchase such portion of property for a price equal to the fair cash market value of the portion as of the date of the commencement of condemnation. Each Repurchase Agreement shall be recorded in the Marion County recorder's office, shall be a covenant running with the property, and shall provide that it will expire at such time as the Acquisition Parcel is used for the public purpose for which it was condemned.

Section 306 **Conveyance of Title and Delivery of Possession.**

Agency's acquisition and conveyance of title to the Acquisition Parcels to the Developer shall be completed upon the latter of the Developer's timely payment of funds pursuant to Section 304 and the delivery of the deed for a particular Acquisition Parcel from an owner to the Agency. In addition, prior to conveyance of the Acquisition Parcel(s), Agency shall determine those portions of the Developer or Acquisition Parcels that are intended for public use and shall have legal descriptions prepared for the same.

Notwithstanding any other provision of this Article 3, the Acquisition Parcels shall only be conveyed to Developer after Developer executes and delivers to escrow a deed or dedication for all the portions of the Developer or Acquisition Parcels intended for public use.

The Agency's conveyance and the Developer's acceptance of the Acquisition Parcels shall be subject to the terms and conditions of Articles 3 and Article 5 and all other applicable provisions of this Agreement.

Section 307 **Condition of Title.**

The City or Agency shall cause Key Title Company at 222 High Street SE, P.O. Box 71, Salem, Oregon 97308-0071, or another title company mutually agreeable to the parties (the "**Title Company**") to prepare a preliminary title report with respect to each Acquisition Parcel in connection with the policies of title insurance to be issued pursuant to Section 309. The Developer shall be provided with a copy of each preliminary title report and shall approve the condition of title stated therein with respect to each Acquisition Parcel. Developer shall cause the Title Company to prepare a preliminary title report with respect to each Developer Parcel, or portion thereof, in connection with the policies of title insurance to be issued pursuant to Section 309. The Agency and the City shall be provided with a copy of each preliminary title report and shall approve the condition of title stated therein with respect to each Developer Parcel or portion thereof intended for public use.

The Agency shall convey to the Developer fee title to the Acquisition Parcels subject to all recorded and unrecorded liens, encumbrances, covenants, assessments, easements, leases and taxes, other than those exceptions to title that the property owner is required to or that Developer elects, at Developer's expense, to remove at closing (the "**Permitted Exceptions**"). All Acquisition Parcels and Developer Parcels, or portions thereof, which will be used for public purposes will be deeded or dedicated to the City or Agency free of all exceptions to title other than those specifically approved in writing by City or Agency, as applicable.

Section 308 **Form of Deed.**

The Agency shall convey title to the Acquisition Parcels to the Developer in the condition required by Section 307 by bargain and sale deed or deeds. Likewise, the Developer shall convey title to the Acquisition Parcels and the Developer Parcels, or portions thereof to be used for public purposes, in the condition provided in Section 307, to the Agency or the City by bargain and sale deed or dedication.

Section 309 **Title Insurance.**

Concurrently with recordation of each deed, the Title Company shall provide and deliver to the Developer, at the Developer's expense, an ALTA title insurance policy issued by the Title Company insuring that the title to the Acquisition Parcels are vested in the Developer in the condition required by Section 307 of this Agreement together with such endorsements as are

required by the Developer, including, but not limited to, an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the applicable Acquisition Parcel, including the costs of demolition, site clearing, grading, and installation of infrastructure improvements.

The Title Company shall provide the Agency with a copy of each title insurance policy. The Title Company shall also provide the Agency and the City with an ALTA title insurance policy or policies issued by the Title Company insuring that the title to those portions of the Acquisition Parcels and the Developer Parcels intended for public use is vested in the City or the Agency in the condition required by Section 307, together with such endorsements as are required by the Agency or the City.

Section 310 **<u>Physical Condition of the Acquisition Parcels; Developer Parcels</u>.**

A. <u>As-Is Condition</u>. The Acquisition Parcels shall be conveyed to the Developer in an "as-is" condition. The Agency shall not be responsible for the cost of any items of site work nor for any condition whatever that may be discovered on the parcels. The Agency makes no representation whatsoever regarding the condition of the Acquisition Parcels or their suitability for the construction and operation of the Project thereon. It shall be the sole responsibility of the Developer, at the Developer's sole expense, to investigate and determine the soil and geologic conditions of the Acquisition Parcels and the Developer Parcels and the suitability and economic feasibility of the parcels for the construction of the Project.

B. <u>Environmental Liabilities</u>. It is the express intent of the parties that any liability that may arise after execution of this Agreement under any federal, state, or local environmental laws, for known or unknown environmental conditions on, under or relating to the parcels in the Project Site, shall be the sole responsibility of the Developer. The Developer hereby agrees to defend, indemnify and hold the Agency and City, their appointed and elected officials, employees and agents harmless from any such liability. The Agency represents and warrants that it has not received any notices or violations or advisory actions by regulatory agencies regarding any environmental condition or permit compliance with respect to the Acquisition Parcels or any portion thereof.

Section 311 **<u>Conditions for the Agency Acquisition of Property and Formation of LID</u>.**

Notwithstanding all other provisions of this Article 3 and in addition to other conditions set forth in this Agreement, and within ~~three hundred~~ one hundred eighty (180) days of the Effective Date, the Developer shall meet the following conditions and shall demonstrate the following to the Agency in a manner that the Agency, in its sole discretion, finds acceptable in both form and substance:

A. The Developer has ~~obtained~~submitted for the City's and the Agency's approval~~ of the~~, a complete Public Improvement Plan and ~~the~~a complete Development Agreement, both of which shall include descriptions~~, elements and necessary~~ and elements of the Public Improvements as well as descriptions and elements of the Private Improvements which are necessary for Tribal Approval and all governmental approvals, including but not limited to ODOT, ~~approvals~~ relating to ~~the~~ transportation infrastructure~~; pedestrian circulation, the Public Park, the Pathway and all Private Improvements. Agency's approval of the Public Improvement Plan and the Development may be based, in part, on the inclusion of pedestrian-friendly design elements, extensive landscaping and streetscaping elements and other architectural design features to provide a first-class, attractive development~~ and pedestrian circulation.

B. The Parties have agreed to the form of covenant referred to in Section 305I., and the form of the repurchase agreement referred to in Section 305J.

C. The Developer and the Agency have agreed upon the Schedule of Performance and the Scope of Development.

~~**D.** The Developer has provided Agency a performance and payment bond in an amount equal to $4,700,000. The bond, which shall be in a form agreed upon by the parties, shall secure Developer's performance and payment obligations as a property owner of properties benefited by the LID project at the time the project is undertaken as well as its reimbursement obligations under Sections 602 and 1101 of this Agreement. The Developer shall indemnify the Agency, the City and their elected and appointed officials, officers, agents, employees and volunteers against any claim and damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the Developer's performance under this Agreement. The bond shall provide protection for such indemnification.~~

~~Notwithstanding the foregoing indemnification obligations of the Developer, the amount of the bond shall be reduced at such times as permitted by the issuing company: (1) in the amount of any reduction of the Developer's obligations under Section 1101, as such obligations decrease, and (2) in the amount of full assessment payments made by the Developer, and the Developer's successors and assigns, on all properties owned by the Developer, and the Developer's successors and assigns, at the time the LID is formed. The Developer shall notify the Agency of any such reductions.~~

D. The parties have agreed upon a form of a performance and payment bond in an amount equal to $4,700,000 and including the other coverage and terms specified in Section 311O.

In addition to other conditions set forth in this Agreement, prior to the Agency either initiating the acquisition of one (1) or more of the Acquisition Parcels or requesting that the City form an LID in accordance with the terms and conditions of this Agreement, the Developer shall meet the following conditions and shall demonstrate the following to the Agency in a manner that the Agency, in its sole discretion, finds acceptable in both form and substance:

E. The Developer has met the conditions listed above under Sections 311A, 311B, 311C and 311D.

F. The Developer is a limited liability company duly organized, existing and in good standing in the state of Oregon and has full authority to do business in Oregon and in the City of Keizer and to enter into and perform this Agreement.

G. The Developer is not in default under any material term or condition of this Agreement.

H. The Developer has provided the following, on a confidential basis, to the attorney for the Agency, who, subject to the Public Records Law, shall not disclose such information to any third party, including the City and the Agency, without the prior written consent of the Developer, which shall not be unreasonably withheld:

(1) A true copy of a letter of intent to buy or lease, which shall contain all material terms, with economic terms blacked out, executed by the Developer and one of the Anchor Tenants;

(2) Current financial statements for the Developer and every member thereof;

(3) Evidence of financing, including a lender's commitment letter and/or evidence of equity contributions to the Developer, or funding to be provided by the Anchor Tenants if such entities are purchasers of the Project property described in Elements 1 and 2, in the aggregate sufficient for the Developer to complete the purchase of all land within the Village Center Area, including the Acquisition Parcels, and to develop and construct all of the Private Improvements in at least one of the two elements described in the Scope of Development as Element 1 and Element 2;

(4) The Developer's then current business plan for completing the private development of the Project which shall include, at a minimum, an updated schedule of performance; and

(5) The Developer's marketing plan for the Project.

I. The Developer has provided Agency with copies of deeds or land sale contracts for at least 20 of 27 parcels comprising the entire Village Center Area, as listed on Attachment 5, and has acquired in fee all Project parcels other than the Acquisition Parcels, needed for the Public Improvements.

J. The Developer has obtained the approvals of the City and the Agency of the Public Improvement Plan and the Development Agreement. Agency's approval of the Public Improvement Plan and the Development Agreement may be based, in part, on the inclusion of pedestrian-friendly design elements, extensive landscaping and streetscaping elements and other architectural design features to provide a first class, attractive development. In the event the parties are unable or unwilling to enter into the Development Agreement for any reason, then Developer has ~~obtained the City's and the Agency's approval of the Master Plan~~submitted a complete Master Plan application for the City's and the Agency's approval. The Agency's approval of the Master Plan may be predicated upon the inclusion of pedestrian friendly design elements, extensive landscaping and streetscaping elements and other architectural design features to provide a first class, attractive development. In the event the parties enter into a Development Agreement pursuant to the terms and conditions of this Agreement, then Developer shall nevertheless submit a Master Plan application no more than one hundred eighty (180) days after Agency's approval of the Development Agreement and Developer shall not withdraw such application and shall thereafter cooperate with City in completing the application and approval process.

K. All necessary Tribal Approval and governmental approvals have been obtained, and no appeal of any such approval or of the Development Agreement or Master Plan, as applicable, has been filed and the time for appealing the same has expired.

L. The Parties have approved the manner in which all urban services shall be provided to the Project Site.

M. No litigation or ballot measure is pending that, if enacted or successfully prosecuted, would prevent or would substantially increase the costs of either or both parties in carrying out their respective obligations under this Agreement.

N. The Developer has executed agreements of nonremonstrance as provided in Sections 501I., 606 and 608 and Article 12.

O. The Developer has provided Agency a performance and payment bond in an amount equal to $4,700,000. The bond, which shall be in a form agreed upon by the parties, shall secure Developer's performance and payment obligations as a property owner of properties benefited by the LID project at the time the project is undertaken as well as its reimbursement obligations under Sections 602 and 1101 of this Agreement. The Developer shall indemnify the Agency, the City and their elected and appointed officials, officers, agents, employees and volunteers against any claim and damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the Developer's performance under this Agreement. The bond shall provide protection for such indemnification.

Notwithstanding the foregoing indemnification obligations of the Developer, the amount of the bond shall be reduced at such times as permitted by the issuing company, (1) in the amount of any reduction of the Developer's obligations under Section 1101, as such obligations decrease, and (2) in the amount of full assessment payments made by the Developer, and the Developer's successors and assigns, on all properties owned by the Developer, and the Developer's successors and assigns, at the time the LID is formed. The Developer shall notify the Agency of any such reductions

P. The Developer shall continue to meet or exceed the conditions set forth in Sections 311D, 311F, 311G, 311I, 311J, 311K and 311M through completion of the Project.

~~P~~Q. The Developer has provided all other information reasonably requested by Agency to demonstrate Developer's ability to perform its obligations under this Agreement.

Within sixty (60) days after receipt of all materials provided by Developer pursuant to this Section 311, the Agency will provide Developer written notice that the Agency approves or disapproves of the same. Any disapproval shall state in writing the reasons for such disapproval. The Developer, upon receipt of such disapproval, shall revise such disapproved documents or portions of documents; or provide additional materials in a manner responsive to the stated reasons for disapproval and resubmit the same to the Agency or the City, as applicable, within thirty (30) days after receipt of the notice of disapproval. In the event Developer fails to revise or provide additional materials to the Agency or the City, as applicable, as prescribed in this section, then Developer may be in default, in accordance with the provisions of Article 10.

Within fifteen (15) days after Agency has indicated that Developer has satisfied all of the other conditions set forth in this Section 311, Developer shall notify the Agency, in writing, of Developer's request that Agency proceed with acquisition of the Acquisition Parcels and of Developer's request that either the City thereafter proceed with the LID or refrain from forming the LID. If Developer requests that an LID not be formed, the provisions of Article 12 shall apply.

Article 4 ESCROW

To accomplish the purchase and transfer of the Acquisition Parcels, the City or the Agency shall open one or more escrows ("**Escrow**") with the Title Company (also referred to hereinafter as the "**Escrow Agent**") in Marion County, Oregon. The City, the Agency and the Developer shall provide escrow instructions as shall be necessary for and consistent with this Agreement.

Upon delivery of the deeds to the Escrow Agent by the City or the Agency, and the fulfillment by the Developer of its obligations under the Escrow and this Agreement, the Escrow Agent shall record such deeds when title to the Acquisition Parcels can be vested in the Developer in accordance with the terms and provisions of this Agreement, and when the Title Company is committed to issuing its title policies.

The City, the Agency and the Developer shall each deposit in Escrow such instruments as are required by the Escrow Agent or otherwise required to close the Escrow and consummate the purchase of the parcels in accordance with this Agreement.

Article 5 THE LOCAL IMPROVEMENT DISTRICT

Section 501 Formation.

At such time as the conditions set forth in Section 311 have been met, Developer has demonstrated its continued compliance with Section 311 and all of the Acquisition Parcels have been acquired, and if the Developer has requested that the City proceed with the LID, the Agency shall request that City form the LID pursuant to this Article 5 pursuant to an intergovernmental agreement between the City and the Agency.

A. The LID shall be initiated by the City Council by resolution, with direction given to the City Engineer to prepare an engineering report. The engineer reporting shall provide the following:

(1) A map or plat showing the general nature, location and extent of the Public Improvements and the land, including the property listed on Attachments 3 and 4 (the "Benefited Properties"), to be assessed for payment of all or any part of the costs thereof.

(2) Plans, specifications and estimates of work to be done.

(3) An estimate of probable cost of the Public Improvements, including legal, administrative and engineering costs.

(4) An estimate of unit cost of the Public Improvements to the Benefited Properties, per square foot, per front foot or another unit of cost.

(5) A recommendation concerning the method of assessment to be used to arrive at a fair apportionment of the whole or a portion of the costs of the improvement to Benefited Properties.

(6) A description of each lot, parcel of land, or portion of land to be benefited, with names of the record owners and, when readily available, names of contract purchasers as shown on books and records of the Marion County Tax Assessor. To describe each lot or parcel of land under provisions of this section, it shall be sufficient to use the tax account number assigned to the property by the Tax Assessor or by book and page designations shown on books and records of the Marion County Clerk.

B. Within thirty (30) days after the report is completed, the Agency shall request that the City shall either approve the report as submitted or direct that it be amended and approve the report as amended. if the City intends to make the Public Improvements, such intention

shall be declared by resolution; provided, however, that the City may abandon the process if the estimated cost of such improvements for the Project exceeds the LID Cap and Developer has not funded such excess or demonstrated to the Agency's and City's satisfaction that it will have funds available for payment of such excess. Unless, within fifteen (15) days after approving the report and before adopting the resolution to declare its intention to make the Public Improvements, the City and the Agency receive a written request of Developer to abandon the process, the City shall declare its intention to make the improvements and proceed with the LID in accordance with applicable local laws and the terms and conditions of this Agreement. In the event the LID process is abandoned, the construction of the Public Improvements shall be subject to the provisions of Article 12, and all other conditions hereunder consistent therewith.

C. If the City thereafter proceeds, it shall publish notice, once each week for two (2) successive weeks in a newspaper of general circulation, that it intends to make the Public Improvements. The notice shall specify the time and place where the City Council will hear and consider objections. The notice shall also provide a description of the type and scope of the improvements, a description of the location of the proposed district, the estimated cost and the formula for assessing each of the Benefited Properties, a statement that the plans are available for public inspection, that written remonstrances may be filed against the proposed improvements, and a statement that the proposal could be modified as a result of testimony at the hearing.

D. At the hearing, the City Council shall hear oral objections to the proposed Public Improvements and shall consider written remonstrances thereto.

E. After the City initiates formation of the LID, written remonstrances of the Owners of two-thirds (2/3) of the land to be specially assessed for the improvements shall suspend the proposed improvements, in which event no further action to effect the Public Improvements shall be taken for at least six (6) months. For purposes of this Section 501,"**Owner**" shall mean the record holder of the legal title to the land in question or, where land is being purchased under a land sale contract recorded or verified to the Marion County Recorder in writing by the record holder of legal title to the land, then such purchaser shall be deemed the Owner.

F. The City shall submit notice of the estimated assessment, via first class mail or personal delivery to the Owner of each lot proposed to be assessed. Any mistake, error, omission or failure with respect to the mailing shall not be jurisdictional or invalidate the assessment proceedings. The notice shall state the amounts of the estimated assessment proposed on that property and shall fix a date by which time written objections shall be filed with the recorder. The written statement must assert the grounds for the objection. The City Council shall hold a hearing, but may choose to combine this hearing with the hearing required for the formation of the LID.

G. Once the final assessment is determined, the City Council shall send notice to the Owner of each of the Benefited Properties if the City Council wishes to proceed with the improvements. Any mistake, error, omission or failure with respect to the mailing shall not be jurisdictional or invalidate the assessment proceedings. The City Council may also abandon the procedure and the Public Improvements in the event Developer has breached this Agreement or if the City Council determines that it is in the public interest to abandon the procedure and the Public Improvements.

H. The City Council shall consider objections at the hearing and may adopt, correct, modify or revise the assessment against each lot in the LID according to special and peculiar benefits accruing to it from the improvement. The City Council shall then adopt an ordinance or resolution spreading the final assessment.

I. The Developer, and Developer's successors and assigns, hereby specifically waive any and all right to remonstrate against formation of the LID. The Developer shall execute a nonremonstrance agreement, and with respect to those Developer Parcels for which Developer is a vendee under a land sale contract, Developer shall cause the vendor to execute a nonremonstrance agreement, to affect all Acquisition Parcels and Developer Parcels and record the same with the Marion County Recorder's Office to serve as notice for all subsequent property owners.

J. Within ten (10) days after the City passes the ordinance levying assessments, the City Recorder shall send a notice of assessment to each Owner of assessed property by regular or certified mail and publish notice of the assessment twice in a newspaper of general circulation in the City. The first publication of notice shall be not later than twenty (20) days after the date of the assessment ordinance. The notice of assessment shall include the name of the Owner, a description of the assessed property, the amount of the assessment, and the date of the assessment ordinance, and shall state the time within which such assessments must be paid or bonded and that assessments which are not paid or bonded within the time stated in the notice shall bear interest and that the property so assessed is subject to foreclosure if such assessments are not paid within the time stated in the notice.

K. The Owner of any property to be so assessed, at any time within ten (10) days after notice of final assessment is first published, may file with the recorder a written application to pay:

(1) The whole of the final assessment in installments; or

(2) If part of the final assessment has been paid, the unpaid balance of the assessment in installments.

L. An installment application shall state that the applicant does thereby waive all irregularities or defects, jurisdictional or otherwise, in the proceedings to cause the local improvement for which the final assessment is levied and in the apportionment of the actual cost of the local improvement.

M. The application shall provide that the applicant agrees to pay the final assessment over a period of not less than ten (10) years nor more than thirty (30) years and according to such terms as the City Council may provide. The City Council may provide that the owner of the assessed property may elect to have the final assessment payable over a period of less than ten (10) years and according to such terms as the City Council may provide.

N. The application shall also provide that the applicant acknowledges and agrees to pay interest at the rate provided by the City or as set by the City Recorder on all unpaid assessments, together with an amount, determined by the City Council, sufficient to pay a proportionate part of the cost of administering the bond assessment program and issuing the bonds authorized under ORS 223.235, including but not limited to legal, printing and consultant's fees.

O. The application shall also contain a statement, by lots or blocks, or other convenient description, of the property of the applicant assessed for the improvement.

P. In connection with the final assessments for any local improvement, the City may establish a procedure by which an Owner of assessed property may irrevocably elect in writing to have the final assessment levied for a number of years less than ten (10), which shall be determined by the City Council. The written election shall:

(1) Be signed by the owner or a duly authorized representative of the Owner;

(2) Contain a description of the assessed property and the local improvement for which the assessment is made; and

(3) Contain a statement by the Owner acknowledging that the improvement is a local improvement as described under ORS 223.001(9), that payment of the final assessment against the properties benefited by the local improvement plus interest may be spread over at least ten (10) years and that, notwithstanding any provision of law, the Owner consents to make payments over a period of less than ten (10) years and to have the assessment levied on the benefited property accordingly.

Such election shall be recorded in the bond lien docket for the local improvement to which the assessment relates. From and after the time at which the written election is so recorded, it shall be valid and binding upon all subsequent owners of the property or any part thereof.

Q. Estimated and final assessments shall become a lien upon the property assessed from and after the passage of the resolution or ordinance spreading the same and entry in appropriate lien record of the City. The estimated assessment lien shall continue until the time the estimated assessment becomes a final assessment. All unpaid final assessments together with accrued and unpaid interest and penalties are a lien on each lot or parcel of land or other

property, respectively, in favor of the City, and the lien shall have priority over all other liens and encumbrances whatsoever.

R. The City Council may enforce collection of such assessments as provided by ORS 223.505 and 223.650, namely by the sale of real property.

Section 502 **LID Requirements.**

Pursuant to applicable state and local laws, the City will award all contracts required to construct the public improvements contained within the LID through a process of competitive bidding.

A. The City may, in its sole discretion, direct the City Recorder, upon the basis of the approved engineer's report, to advertise for bids and designate the time at which such bids shall be open, which time may be the time of the first hearing held upon the decision to initiate LID formation.

B. The City may provide by resolution the time and manner of doing the work of such improvement, and may provide for the City to do the work or it may award the work on contract. In the event that the work is done under contract, bids shall be received after advertisement for such time as the Council may determine on all such work and the Council shall proceed in accordance with procedures of state law for public contracting. The contract shall be let to the lowest responsible bidder, provided that the City shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory. The City shall provide for taking security by bond for the faithful performance of any contract let under its authority, and the provisions thereof, in case of default, shall be enforced by action in the name of the City.

C. If the City finds upon opening bids for the work of such improvement that the lowest responsible bid substantially exceeds the engineer's estimate, it may, in its discretion, hold a special hearing of objections to proceeding with the improvement on the basis of such bid and may direct the City Recorder to publish reasonable notice thereof in a newspaper of general circulation in the City. The City Council may abandon the improvement or allow Developer to pay the difference between the estimated amount and the engineer's estimate. In the event the City Council allows Developer to pay such difference, full payment must be received by the City within five (5) days prior to the City Council awarding a contract for the work.

D. If the initial LID assessment has been made on the basis of estimated cost, and upon the completion of the work the cost is found to be greater than the estimated cost, the Developer shall pay the additional cost. The additional cost shall be paid through a reduction in the amount allocated toward land acquisition costs, with the amount paid to Developer for the land reduced by an amount equal to the additional cost of the work, unless Developer elects to pay such additional costs. In the event a reduction to the land cost is not sufficient to pay the additional cost, Developer shall immediately pay to City additional funds to make up the difference. If Developer is unwilling or unable to perform its obligations under this Section 502, then, in addition to pursuing all other remedies available under the terms and conditions of this agreement and by law, City may make a deficit assessment for the additional cost. Proposed assessments upon the respective lots within the assessment district for the proportionate share of the deficit shall be made; and notices shall be sent; opportunity for objections shall be given; such objections shall be considered; and determination of the assessment against each particular lot, block or parcel of land shall be made as in the case of the initial assessment; and the deficit assessment spread by resolution. If assessments have been made on the basis of estimated cost, and upon completion the cost is found to be less than the estimated cost, provision shall be made for refund of the excess or overage.

Upon the request of Agency or City, Developer shall convey to Agency or City those portions of the Developer Parcels on which the Public Improvements will be located, as set forth on the legal descriptions prepared pursuant to Section 306 and, to the extent Developer holds title to any Acquisition Parcel, or portion thereof, on which the Public Improvements will be located, then Developer shall also convey to Agency or City those portions of the Acquisition Parcels. In consideration therefor, and after the total actual costs of the LID have been determined, Agency or City shall pay to Developer an amount equal to the lesser of (i) $8.50 per square foot or (ii) the appraised value of such Parcels or portions thereof on which the Public Improvements will be constructed. The value of such property shall be determined by appraisals obtained by the Developer, at Developer's sole cost, no more than six (6) months prior to the formation of the LID.

Notwithstanding the foregoing, the parties agree that the amount paid to the Developer pursuant to this Section 502 shall be adjusted downward if the total actual LID cost, including such land cost, exceeds the LID Cap and the Developer has not previously agreed and demonstrated to Agency's satisfaction Developer's ability to pay the amount of such excess. If the Developer has not so agreed and demonstrated, the downward adjustment in the price hereunder shall be equal to the amount of such excess.

Article 6 DEVELOPMENT OF THE PROJECT

Section 601 **Development and Construction of Public Improvements.**

Subsequent to Developer meeting all of the conditions set forth in Articles 3, 4 and 5, and if an LID is formed pursuant to this Agreement, then subject to all of the applicable terms and conditions of this Agreement, and in consideration of the Developer constructing and developing the Private Improvements, the Agency shall cause the City to construct the Public Improvements described and depicted in the Scope of Development.

Section 602 **Development and Construction of Private Improvements.**

In consideration of the development activities of the Agency and the City's formation of an LID, if one is formed pursuant to this Agreement, and the agreements and covenants herein contained, the Developer shall construct and develop the Private Improvements, as set forth in the

Scope of Development. The Developer shall commence and complete construction of the Private Improvements in accordance with the Schedule of Performance. Developer may perform the Scope of Development in as many as (but no more than) seven (7) separate elements in whatever order Developer prefers (for instance, Element 3 as presented in the Scope of Development may be substituted for Element 5 in terms of the order in which the elements may be constructed). The Scope of Development shall describe the work to be performed by Developer in each element of redevelopment and shall further specifically identify the improvements that shall be constructed during the development of Element 1, as identified on the Scope of Development.

A. Developer Design Drawings and Construction Drawings for the Project; Related Documents. Developer shall prepare Concept Design Plans for the Project. Subsequent to receiving Agency approval of the Concept Design Plans, Developer shall prepare Design Development Drawings and Construction Drawings for redevelopment of the Project (including the Public Improvements) and shall submit such Drawings to Agency and the City for approval of development permits. The Design Development Drawings shall comply with all Agency and City design guidelines and requirements. All concept design plans, design development drawings and construction drawings, including plans and specifications, referred to in this Section 602A are referred to herein as the "Drawings".

Agency, in its sole discretion, may withhold its approval of any Drawings that fail to meet the following standards:

1. The Public Improvement Plan, the Development Agreement and Master Plan;

2. The Urban Renewal Plan objectives;

3. All applicable State and City codes and standards, including but not limited to the development standards of the Development Code; and

4. Agency's expectations as to inclusion of pedestrian-friendly design elements, extensive landscaping and streetscaping elements and other architectural design features to provide a first class, attractive development.

B. General Design Standards. As a benchmark for comparison but not as a substitution for compliance with the Keizer Station Plan or the Development Code, the drawings submitted by Developer for the Anchor Tenants in the Village Center Area will be expected to be substantially similar to or better than the design employed by the major tenants within Argyle Square in Wilsonville, Oregon.

C. Changes to the Drawings. If the Developer desires to make any substantial change to any Drawings after approval by the Agency, the proposed changes shall be submitted to the Agency for approval. The Developer acknowledges and agrees that it may be required to secure separate Agency approval of such changes. As used in this subparagraph, "substantial change" means a change which alters the layout or scope of the Private Improvements or changes to a lesser quality previously approved materials.

D. **<u>First Element - Timeline for Submittal of Design Development Drawings</u>**. The Developer shall submit complete Design Development Drawings for City and Agency review for Element 1 of the Private Improvements within one hundred eighty (180) days from the date the Master Plan is approved by the City; provided, however, the Developer shall be entitled to a one-time extension of not greater than an additional one hundred eighty (180) days from the expiration of the original period. If the Developer does not furnish such complete drawings within such second 180-day period, Developer shall immediately submit to Agency a Reimbursement payment described in Section ~~1101A.~~1101.

E. **<u>First Element - Timeline for Completion of Construction</u>**. The Developer shall complete construction drawings (which shall be substantially consistent with the approved Design Development Drawings for Element 1), obtain all applicable approvals and permits, commence and complete construction of Element 1 of the Private Improvements within three hundred sixty-five (365) days of the Developer's obtaining design review approval from the City and the Agency for such element. If the Developer does not commence construction (and do all things necessary to complete construction, as set forth in this Section 602E) within such 365-day period, Developer shall immediately submit to Agency a Reimbursement payment described in Section ~~1101A.~~1101.

F. **<u>Second Element - Timeline for Submittal of Design Development Drawings</u>**. The Developer shall submit complete Design Development Drawings for City and Agency review for the second element of the Private Improvements on or before one hundred eighty (180) days after expiration of the combined time allowed in subsections D and E for the design and completion of the first Element. If the Developer does not furnish such complete drawings within such 180-day period, Developer shall immediately submit to Agency a Reimbursement payment described in Section ~~1101A.~~1101.

G. **<u>Second Element - Timeline for Completion of Construction</u>**. The Developer shall complete construction drawings (which shall be substantially consistent with the approved Design Development Drawings for the second element), obtain all applicable approvals and permits, commence and complete construction of the second element of the Private Improvements on or before three hundred sixty-five (365) days of the Developer's obtaining design review approval from the City and the Agency for such element. If the Developer does not complete construction (and do all things necessary to complete construction, as set forth in this Section 602G) within such 365-day period, Developer shall immediately submit to Agency a Reimbursement payment described in Section ~~1101A.~~1101.

H. **<u>Third and Fourth Elements ~~B~~- Applicable Timelines</u>. The timelines for** the third and fourth elements for completion of the Design Development Drawings and construction shall be the same as those for the second element, such timelines being measured from the scheduled completion dates of the prior stages of each element.

I. Remaining Elements - Applicable Timelines. The Developer shall complete Design Development Drawings for City and Agency review for each of the fifth through and including the seventh elements of the Private Improvements on or before one hundred twenty (120) days after the date of scheduled completion of construction of the immediately preceding element (as set forth in the Schedule of Performance). Developer shall complete construction drawings (which shall be substantially consistent with the approved Design Development Drawings for each respective element), obtain all applicable approvals and permits, commence and complete construction of each of the third through and including the seventh elements of the Private Improvements on or before two hundred forty (240) days of the Developer's obtaining design review approval from the City and the Agency for each element.

J. Definition of Completion. For purposes of meeting the construction deadlines set forth in this Section 602, the Developer shall be deemed to have completed construction of a particular element of the Private Improvements as follows:

Anchor Tenant 1 Element	Upon issuance of certificate of occupancy
Anchor Tenant 2 Element	Upon issuance of certificate of occupancy
Power Center Element	65% of allowed building area and 100% of the Plazas intended for the element completed
Radiant Pads Element	65% of allowed building area and 100% of the Plazas intended for the element completed
Chemawa Pads Element	65% of allowed building area and 100% of the Plazas intended for the element completed
I-5 Commercial Element	Upon issuance of certificate of occupancy for either hotel or offices and 100% of the Plazas intended for the element completed
Neighborhood Element	Grocery store or 65% of allowed building area and 100% of the Plazas intended for the element completed

provided, however, that with respect to the completion of any of the seven (7) elements, an element shall be deemed to have been completed if 75% or more of the allowed building area and 100% of the Plazas for all elements in the aggregate have been completed. For purposes of Sections 602 and 1101, "allowed building area" shall mean gross square footage of buildings pursuant to the Master Plan.

K. Developer's Reimbursement Obligation. Developer's failure to meet any of the Design Development Drawings submittal or construction completion deadlines for any individual element shall result in Developer's further obligation to make a Reimbursement payment described in Section ~~1101A.~~1101. Developer's failure to meet any one of the deadlines shall not serve to modify the Developer's obligations to meet the deadlines for any of the other elements. In the event Developer fails to meet its obligations relating to the deadlines for any of the stages of any of the elements, such failure shall constitute default by Developer pursuant to Section 1001A, entitling Agency to pursue Reimbursement as well as all other available remedies~~;~~. ~~provided, however, that Agency shall not be entitled to exercise its right to terminate this Agreement for an act of default under this Section 602K unless Developer fails to meet its obligations relating to the deadlines for any three (3) construction stages of any of the Elements.~~

L. **Completion of All Private Improvements - 10 Year Period**. Notwithstanding any other provision of this Agreement, Developer shall complete construction of all elements of the Private Improvements within ten (10) years from ~~the earlier of (i) condemnation of any Acquisition Parcel by the Agency for which the Agency was unable to obtain a waiver from the condemnee; and (ii)~~ the date the Master Plan is approved by the Agency.

M. **Acknowledgment of Public Purpose**. At such time as any Acquisition Parcel acquired through condemnation is used for the public purpose for which it was acquired, the Agency shall execute, in recordable form, all documents necessary to terminate and remove from title the applicable Repurchase Agreement described in Section 305J..

Section 603 Construction of Public Park, the Plazas, and the Pathway.

A. Construction. The parties agree that the following areas shall be included within the Project:

(1) The Public Park;

(2) The Plazas; and

(3) The Pathway.

The exact size and location of the Public Park, the Plazas and the Pathway shall be in accordance with the Development Agreement and the Master Plan. The construction and all construction costs (including land costs), of the Public Park and the Pathway shall be included within the LID project, if the LID is formed, or, if not, shall be borne by the Developer which construction and construction costs shall be further subject to the provisions of Article 12.

B. Additional Development Costs. The Developer shall bear all development and construction costs of the Plazas and all costs of developing and constructing the an public area attributable to wetlands mitigation and/or storm water retention facilities, if any.

C. Dedication, Easement. In the event Developer and Agency decide to locate the Public Park or the Pathway on one or more of the Developer Parcels, or portions thereof, such areas shall be dedicated to the Agency prior to and as a condition of formation of the LID if an LID is formed. The Developer shall grant a perpetual easement to the public for purposes of providing pedestrian and vehicular access and parking to and for the Public Park and the Pathway all as provided in the Public Improvement Plan, the Development Agreement and the Master Plan.

Section 604 Cooperation.

The Agency and the Developer shall cooperate in accordance with the Schedules of Performance in effecting the redevelopment of the Project Site.

Section 605 Rights of Access.

For the purpose of ensuring compliance with this Agreement and all applicable laws, representatives of the City and Agency shall have the right of access to and over the Project Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed
in constructing the improvements, so long as such representatives comply with all safety rules. The Developer will not be responsible in any manner whatsoever for any liabilities arising from the negligence, or willful misconduct, of the City, the Agency or any of their agents, servants, employees and contractors in connection with the exercise of the right of access granted hereunder.

Section 606 Taxes, Assessments, Encumbrances and Liens.

The Developer covenants that it shall pay when due all real estate taxes and assessments, including LID assessments, if any, assessed and levied on Parcels owned by the Developer, its assigns and successors within the Project Site. The Developer further covenants that it shall execute and file with the City all agreements of nonremonstrance as provided in this Agreement.

Section 607 Water Rights.

In consideration of the Agency's covenants herein, the Developer shall assign the City any and all water rights associated with any existing functioning wells in the Village Center Area, subject to the conditions that (1) use of such rights shall not interfere with, or increase the costs of, the Developer's development of such Area, (2) the Developer shall have unlimited use of such wells, free of charge, for its landscaping needs in Area A in Keizer Station. Notwithstanding the foregoing, the Developer's use of such wells shall be subject to applicable City ordinances, the Keizer Station Plan, and all rules of the Oregon Water Resources Department.

Section 608 Nonremonstrance Covenant as to Entertainment & Sports Area.

The parties acknowledge and agree that the area in Keizer Station known as Area A - Entertainment & Sports Center (the "**Entertainment & Sports Center Area**") may be developed to include a public indoor aquatic facility, a public outdoor aquatic and family recreation park, public meeting and classrooms, a private fitness and tennis club, and common areas incidental to the foregoing.

The Developer covenants on behalf of itself, its successors and assigns, that it shall not remonstrate against the formation of any local improvement district with respect to the Entertainment & Sports Area that is developed substantially in conformance with the foregoing description provided that such covenant shall only be enforceable against Developer when all of the following conditions are met: (1) the assessed value of the property assessed equals or exceeds $300,000,000; and (2) the maximum allowable assessment in the aggregate does not exceed $4,500,000, which may include the capitalized cost of ongoing operating subsidies. The Developer shall execute a nonremonstrance agreement that provides for the foregoing and that shall affect all the Acquisition Parcels and the Developer Parcels, and record it with the Marion County Recorder's Office.

Article 7 SPECULATION AND ASSIGNMENT PROVISION

Section 701 No Speculation.

The Developer represents its acquisition of the Acquisition Parcels and the Developer Parcels is for redevelopment and not for speculation in land holding.

Section 702 Assignment.

A. General Prohibition on Developer Assignment. Primarily because of the location of the Project within the District and the existing relationship between Agency and Developer, the qualifications and identity of the Developer are of particular concern and importance to the Agency. The Developer recognizes that it is because of its qualifications and identity that the Agency is entering into this Agreement and, in so doing, is further accepting and relying on the obligations of the Developer for the faithful performance of all undertakings and covenants to be performed by it under this Agreement. For the foregoing reasons, except as provided in Section 702 B., the Developer shall not partially or wholly dispose of or agree to dispose of more than 49% of the Developer's interest in the Project Site nor shall the Developer partially or wholly transfer or assign its interests in this Agreement without the prior written approval of the Agency; provided, however, that at the time the Agency and the City have been released from all liability for repayment of the bonds issued following the formation of the LID, or, if no LID is formed, upon completion and approval of the Public Improvements, then the Developer shall be free to transfer any or all of its interests in the Project Site or in this Agreement.

Any proposed transferee shall be subject to all the conditions and restrictions contained in this Agreement, as they apply to the property or interests so transferred.

B. Approved Developer Transfers. Notwithstanding Section 702 A., the Agency hereby consents to:

(1) Any mortgage which the Developer may cause to attach to the Project Site, provided that:

a. None of the Project Site owned by the City or the Agency (including improvements thereon) or identified for siting Public Improvements shall be used as security for such mortgage;

b. The terms of this Agreement and the Agency's and the City's interest in the Project Property shall not be subordinated to such mortgage;

c. The mortgagee's loan documents shall indicate that any person acquiring an interest in the Project as a result of the sale, assignment or other transfer of the mortgagee's interest, including a transfer of title as a result of foreclosure, shall be subject to the terms of this Agreement and the Master Plan;

d. The Developer provides the Agency with copies of all agreements related to the mortgage at least ten (10) days prior to the effective date of closing or funding of the mortgage loan, and any other information necessary for the Agency to determine whether such transfer complies with the requirements of this Agreement.

(2) A transfer to a partnership or limited liability company of which the Developer or one of its members is the general partner of the partnership, or managing member of the limited liability company and controls 51% or more of the partnership or limited liability company.

Article 8 COVENANTS; NONDISCRIMINATION

Section 801 Covenants as to Uses.

The Developer covenants and agrees that during construction and thereafter, the Developer shall devote the Project Site to the uses specified in the Master Plan, as generally identified in the Scope of Development. The Public Improvement Plan, the Development Agreement, the Master Plan and the Scope of Development shall be in compliance with the Urban Renewal Plan, the Keizer Station Plan and the Keizer Development Code. The foregoing covenant shall run with all of the Project property now owned or later acquired by Developer. The parties shall agree on a form of covenant to be recorded against the Project Site, as provided in Section 305.I.

Section 802 **<u>Nondiscrimination</u>.**

The Agency and the Developer covenant that they shall not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, handicap, gender, sexual preference, marital status, national origin, or ancestry in the development, construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Site, nor shall they establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project Site. The covenants set forth in this section shall run with the land.

Article 9 FINANCING OF THE PROJECT

Section 901 **<u>Financial Commitments by the City and the Agency</u>.**

A. Subject to the terms and conditions of this Agreement and an intergovernmental agreement between the City and the Agency, Agency shall pay $4,500,000 toward the costs of the Public Improvements~~, which shall include the costs incurred by Agency to acquire the Area B Acquisition Parcels.~~

B. Subject to the terms and conditions of this Agreement, including the conditions set forth in Section 311, initiate the formation of the LID to generate bond proceeds, from the sale of bonds, with a payment period consistent with applicable laws, and use such proceeds for construction of the Public Improvements; provided, however, that in no event shall the appraised value of the Benefited Properties after the construction of the Public Improvements contemplated by this Agreement be less than three times the amount to be assessed under the LID ~~Cap~~. The value of such property shall be determined by appraisals obtained by the Developer, at Developer's sole cost, no more than six (6) months prior to the formation of the LID. If no LID is formed, the provisions of Article 12 shall apply.

C. The Agency shall request that the City disclose to, and set up all arrangements for collection by, the Developer of all rebates and refunds, if any, available to the Developer by reason of Private Improvement infrastructure costs incurred by Developer in the development of the Project, including, but not limited to, for the oversizing of utilities.

D. Developer understands that the Agency or the City may impose taxes, fees or other charges on the privately-owned property in the Village Center Area that reimburses the City of Keizer and the Keizer Fire District for additional public safety resources needed to serve the area due to its development. The taxes, fees or other charges will be fair and only pay or reimburse the City and the Keizer Fire District for their true costs of providing service to this area. One example includes a tax per square foot of leasable building with a differential rate depending on the type of activity that is intended to occur at each location (the intent being to recognize that different uses create different demands for service from different service providers.) Taxes, fees or other charges shall sunset at such a time as the Village Center Area is removed from the Keizer Urban Renewal District or a power generation facility creating at least $200,000,000 in assessed taxable value comes on line at Keizer Station. The Developer, its successor and assigns, waives any right it has to remonstrate against the creation of a financing district, to the extent a financing district is formed for purposes of this Section 901D.

Section 902 **Financial Commitments by the Developer.**

A. Developer shall pay for, and bear the entire cost of purchasing, the Developer Parcels and the Acquisition Parcels in accordance with the terms and conditions of this Agreement.

B. Developer shall pay for such signage and identification as the Developer and its tenants within the Project deem necessary and appropriate for its successful development, subject to the Agency's approval, which shall not be unreasonably withheld, and in accordance with all applicable state and local laws.

C. Developer shall pay all other costs relating to the construction and development of all of the Private Improvements.

Article 10 DEFAULT AND REMEDIES; TERMINATION

Section 1001 **Default/Cure.**

A. **Default by the Developer.** The following shall constitute defaults on the part of the Developer:

(1) Any breach of provisions of this Agreement, whether by action or inaction, which continues and is not remedied within thirty (30) days after the Agency has given notice to the Developer specifying the breach; provided that if such breach cannot with due diligence be cured within a period of thirty (30) days, the Agency shall allow the Developer a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the Developer diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the Agency;

(2) Any assignment by the Developer for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over the Developer;

(3) The failure of the Developer to pay when due any tax, assessment, lien or other charge having priority over the Agency's interests in the Project. However, the Developer shall not be deemed in default under this Agreement for failure to pay a tax, assessment, lien or other charge if the Developer is contesting the same in good faith and, if necessary to avoid foreclosure, has furnished an appropriate bond of other undertaking to assure payment in the event the Developer's contest is unsuccessful; or

(4) The failure of the Developer to pay when due any amount owing to the Agency or City under this Agreement.

B. **<u>Default by the Agency</u>.** The Agency shall be in default under this Agreement if it breaches any of the provisions of this Agreement, and such breach continues and is not remedied within thirty (30) days after the Developer has given notice to the Agency specifying the breach; provided that if such breach cannot with due diligence be cured within a period of

thirty (30) days, the Developer shall allow the Agency a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the Agency diligently proceeds to affect the cure and the cure is accomplished within the longer period of time granted by the Developer.

Section 1002 **<u>Remedies Before City Formation of LID, Commencement of Construction of Public Improvements, or Agency Acquisition of Acquisition Parcels</u>.**

In the event either Party defaults prior to the earlier of (i) the Agency's acquisition of one or more of the Acquisition Parcels, (ii) if an LID is formed, the formation of the LID; and (iii) if no LID is formed, commencement of construction of the Public Improvements, the non-defaulting Party or parties may, as an exclusive remedy, terminate this Agreement, and all rights and obligations of the parties under or arising from this Agreement shall immediately terminate.

Section 1003 **<u>Remedies Subsequent to City Formation of LID, Commencement of Construction of Public Improvements, or Agency Acquisition of Acquisition Parcels</u>.**

In the event either Party defaults after the earlier of (i) if an LID is formed, formation of the LID; (ii) if no LID is formed, commencement of construction of the Public Improvements; and (iii) after the Agency's acquisition of one or more of the Acquisition Parcels, the non-defaulting Party shall be entitled to such remedies for breach of contract as may be available under applicable law including (without limitation) the remedy of specific performance. In addition, the Agency shall have the right to make a claim on the bond provided by Developer pursuant to and for the purposes set forth in Section 311, and, subject to the right of any Mortgagee to cure the default, to take any and all actions as may be allowed, at law or in equity, for the enforcement of this Agreement.

Section 1004 Termination.

A. Elections upon Non-Occurrence of Conditions. Except as provided in Section 1004B, if any condition in Section 311 is not fulfilled in the sole discretion of Agency on or before the dates set forth in this Agreement, including but not limited to those established within the Schedule of Performance, Agency may elect to:

(1) Terminate this Agreement, which termination shall become effective thirty (30) days after the notice of termination is sent (the "**Termination Date**") unless, before the thirty (30) day period ends, the Developer fulfills such condition or conditions to the satisfaction of the Agency in its sole discretion; or

(2) Waive in writing the benefit of that condition and proceed in accordance with the terms hereof; or

(3) Extend the Termination Date by which the Developer must satisfy the applicable condition, if the condition can be satisfied by the Developer and if the Developer agrees in writing to the extension.

B. Final Termination Date. If all of the conditions under Section 311 have not been satisfied, waived or otherwise resolved pursuant to this Agreement three hundred sixty-five (365) days after the Agency's and City's approval of the Development Agreement or the Master Plan, as applicable ("**Final Termination Date**"), then the parties' rights and obligations to develop the Project under this Agreement shall automatically terminate on such date unless the date is extended by agreement of the parties prior to the Final Termination Date.

C. Effect of Termination for Failure of Conditions Precedent. If this Agreement is terminated for failure of satisfaction of the conditions set forth in Section 311, and such failure is not the result of a breach of this Agreement by either Party, then termination shall be the parties' sole remedy. Notwithstanding the foregoing or any other provision, Developer's indemnification obligations shall survive termination of this Agreement.

Section 1005 Mortgagee Provisions.

A. Mortgagee Not Obligated To Construct. Notwithstanding any of the provisions of this Agreement, excepting those which are covenants running with the land, a Mortgagee authorized under this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion.

(1) Nothing in this paragraph or any other paragraph or provision of this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the Project Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the Public Improvement Plan, the Development Agreement, the Master Plan, the Urban Renewal Plan, the Keizer Station Plan and in this Agreement. All improvements constructed by such Mortgagee shall be consistent with and conform to the terms and conditions of this Agreement. The Parties agree that the covenants of this paragraph (1) shall survive conveyance of property, if any, from the Agency. The Developer agrees to execute and record any restrictive covenants to put third parties on notice of the foregoing conditions for development or use of the Project Site.

(2) For purposes of this paragraph A, the term "**Mortgagee**" shall include any mortgagee or any other party as owner of the Project Site or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a mortgage.

B. Copy of Notice of Default of Mortgagee. Whenever the Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement, the Agency shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this
Agreement at the last address of such holder shown in the records of the Agency. Failure of Agency to deliver such notice shall not in any way limit Agency's rights under this Agreement.

C. Mortgagee's Option to Cure Defaults. After any default in or breach of this Agreement by the Developer, or its successor in interest, each Mortgagee shall (insofar as the rights of the Agency are concerned) have the right after the failure of the Developer to cure or remedy said default or breach, at its option, to cure or remedy such breach or default within sixty (60) days, and if permitted by its loan documents, to add the cost thereof to the mortgage debt and the lien of its mortgage. If the breach or default is with respect to construction of the Private Improvements, nothing contained in this paragraph or any other paragraph of 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 Private Improvements, provided that the Mortgagee notifies the Agency in writing of its intention to complete such improvements according to the provisions of this Agreement.

Section 1006 **<u>Nonexclusive Remedies</u>.**

The rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by either of the Parties of any 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 breach or of any of its remedies for any other default or breach by the other Party including, without limitation, the right to compel specific performance.

Section 1007 **<u>Force Majeure</u>.**

For the purposes of any of the provisions of this Agreement neither the Agency nor the Developer, as the case may be, nor any successor in interest to either of them shall be considered in breach of or default in its obligations with respect to the preparation of any element of the Project Site for development, preparation and submission of plans and drawings, the beginning and completion of construction of the Project, or any other obligations created hereunder or progress in respect thereto, in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault, acts of God or of the public enemy, acts of the government (provided that the Agency's or the Developer's acts will not relieve it from responsibility hereunder), acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of suppliers or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay the time or times for performance of the obligations of the Agency or the Developer, as the case may be, shall be extended for the period of the delay; provided, however, that neither Party shall be excused under this Section from performance of any of its obligations for a period longer than one (1) year in the aggregate; and provided, further, that in no event shall the financial incapability of a party relieve it from its obligations hereunder.

Article 11 REIMBURSEMENTS BY THE DEVELOPER

Section 1101 **<u>Reimbursement Amounts</u>.**

If the Developer fails to meet the design development drawings or construction deadlines as provided in Section 602, it shall reimburse the Agency a portion of the Agency's contribution ~~of~~ (the "**Reimbursement**"). The total Reimbursement amount shall be equal to $2,500,000 and shall be divided into fourteen (14) equal amounts of $178,571. Developer's reimbursement obligations shall arise and Developer shall pay Agency $178,571 for each stage of each element of the Private Improvements (i.e., the submittal of the Design Development Drawings and the construction of each such element) that is not completed by Developer in accordance with the Schedule of Performance and Section 602. The Reimbursement payments shall be the property of the Agency, held in a separate interest-bearing account until the earlier of completion of all Private Improvements or the tenth anniversary of the earlier of (i) the Agency's approval of the

Development Agreement or the Master Plan, as applicable under Section 311, and (ii) the first acquisition of any of the Acquisition Parcels by condemnation, at which time all funds remaining in the account may be moved from the account, mingled with other Agency funds and used by Agency.

Section 1102 Reconciliation of Reimbursement Payments.

To the extent Developer has ~~has~~ made Reimbursement payments, Agency shall return all such payments (less Agency's administrative costs associated with establishing and maintaining the account) to Developer if Developer completes construction of at least 90% of the Private Improvements within seven (7) years from the approval date of the Master Plan. Agency shall return 50% of such Reimbursement payments (less Agency's administrative costs associated with establishing and maintaining the account) if Developer completes construction of at least 65% of the Private Improvements within seven (7) years from the approval of the Master Plan.

Section 1103 No Building Permit During Outstanding Reimbursement; Nonexclusive Remedy.

Until the portion of the Reimbursement due hereunder is paid by the Developer, Developer shall be prohibited from submitting to the City an application for a building permit for any subsequent element of the Project. Neither Developer's payment nor Agency's rights pursuant to or under Article 11 shall limit or preclude the exercise by Agency of any of its other rights and remedies under this Agreement.

Article 12 PUBLIC IMPROVEMENTS WITH NO LID

In the event no LID is formed because Developer has made the request prescribed by Sections 109, 311 and 501, ~~,~~ then, once Agency has indicated that the conditions of Section 311 have been met to its satisfaction (or waived by Agency), the Developer shall design, obtain approvals and permits for, and complete construction of, the Public Improvements as described and depicted in the Scope of Development, the Public Improvement Plan, the Master Plan and the Development Agreement. Developer shall commence and diligently pursue through completion construction of the Public Improvements. The construction of the Public Improvements shall be consistent with the timelines established and set forth in the Schedule of Performance and, in any event, shall be completed on or before the date set for completion of Element 1 of the Private Improvements. The selection and awarding of a contract of and to a contractor shall be made pursuant to applicable state laws. In addition, the following shall apply to the Developer's construction of the Public Improvements.

A. The design of the Public Improvements shall be subject to the Agency's approval and in compliance with the Keizer Street Standards and the design standards of the Development Code. The Design Development Drawings and 100% construction drawings for the Public Improvements shall be submitted together and in accordance with the submittal of the documents relating to Element 1 of the Private Improvements under Section 602.

B. The construction contract shall be competitively bid and the contract awarded and the work performed in connection therewith, shall be in compliance with all applicable federal, state and local laws, including those set forth in Attachment 6..

C. Upon completion and acceptance by the City or Agency of, the Public Improvements, the Developer shall convey the Public Improvements to the City or the Agency. Upon conveyance, the Agency shall pay the Developer the sum of $4,500,000, which payment shall satisfy the requirements of Section 901A; provided, however, that the Agency shall not be obligated to pay such sum unless and until the Developer completes construction and the Agency or the City is prepared to accept the Public Improvements ~~on or before~~; and, provided further that the ~~expiration of the 365-day period for completion of Element 1 of the Private Improvements, as provided in Section 602E.~~cost of acquiring the Area B Acquisition Parcels shall be deducted from Agency's total financial contribution amount of $4,500,000.. If, after requesting that an LID not be formed, the Developer fails to commence or complete the Public Improvements within such timeframe or if the Developer fails to complete them to the standards required under this Agreement and the Code, the parties agree that (i) the Developer shall, upon Agency request, execute all documentation necessary to confirm Agency or City ownership of the Project Site parcels on which the Public Improvements will be located; (ii) the City or the Agency may build or rebuild the Public Improvements or portions thereof, as applicable; and (iii) the costs of building or rebuilding the Public Improvements may be assessed against the privately-owned Village Center Area properties. ~~The remonstrance~~In the event an LID is formed for the purpose of building or rebuilding the Public Improvements, the total amount assessed against the privately-owned Village Center Area properties shall not include the cost of the Acquisition Parcels located in Area A, or portions thereof, acquired for the Public Improvements or $4,500,000 associated with Agency funding. The nonremonstrance agreements provided by the Developer under Section 311 shall be applicable to an LID established for purposes of building or rebuilding the Public Improvements.

D. The amount of the performance and payment required by Section 311 shall be reduced to $2,500,000, and the reduction of the amount of such bond, as provided in such section, shall occur only upon the reduction of the Developer's obligations under Section 1101.

E. The nonremonstrance agreement referred to in Section 501I. shall stay in effect until construction of the Public Improvements is complete, and the same has been accepted by the City or the Agency.

Article 13 GENERAL PROVISIONS

Section 1301 Project Managers.

A. Agency Project Manager. For the purposes of making determinations on or revising, where permitted, provisions of this Agreement on behalf of the Agency, or otherwise to represent the Agency with respect to the Project, the Agency shall designate a Project Manager, to be approved by the Developer. Upon the initial execution of this Agreement, the Agency Project Manager shall be the City Manager.

B. Developer Project Manager. For the purpose of making determinations on or revising, where permitted, provisions of this Agreement on behalf of the Developer, or otherwise to represent the Developer with respect to all elements of the Project, the Developer shall designate a Project Manager, to be approved by the Agency. Upon initial execution of this Agreement, the Developer Project Manager shall be RPS Development Company, Inc.

C. Selection of Contractor; CEM. If the LID is formed, the Agency Project Manager and the Developer Project Manager shall work together in a cooperative and efficient fashion to the greatest extent practicable. The Agency shall seek input from the Developer as Agency and City are considering engineering plans and other information pertinent to the general contractor construction bid package for the LID project.

Prior to completion of the engineering report contemplated by Section 501A., the Agency may elect to contract with an independent Construction Engineering Management firm ("**CEM**") to oversee the day-to-day operations of the construction of the Project. Due to the relationship of the Developer to the Project, and in recognition of the significant investment each party has made to promote the success of the Project, and understanding the necessity to seamlessly coordinate the public and private portions of the infrastructure improvements necessary to develop the Project, Developer shall be considered for such position in accordance with the selection process utilized by the Agency. The criteria likely to be considered by the Agency in making its selection shall include, but not be limited to the experience, capability and reputation of individuals or firms which could provide CEM services and the cost of such services (including the cost savings that may be available through contracting with Developer).

Section 1302 Conflict of Interests.

No member, official, or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No elected or appointed official, employee or agent of the Agency shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the Agency or for any

amount which may become due to the Developer or its successor or on any obligations under the terms of this Agreement.

Section 1303 Notice.

A notice or communication under this Agreement by either Party to the other shall be deemed given or delivered forty-eight (48) hours after being dispatched and delivered by private messenger service, or registered or certified U.S. mail; postage prepaid, return receipt requested, and:

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

Northwest National, LLC
245 13th Street
Salem, Oregon 97301
Attn: Charles A. Sides

With copies to:
Richard W. Miller
Cosgrave Vergeer Kester LLP
805 S.W. Broadway, 8th Floor
Portland, Oregon 97205

And to:
Alan M. Roodhouse
RPS Development Company, Inc.
2653 High Heaven Road
McMinnville, Oregon 97128

B. In the case of a notice or communication to the Agency, addressed as follows:

Chris Eppley
Executive Director
930 Chemawa Road
Keizer, Oregon 97303

With a copy to:
E. Shannon Johnson
Lien & Johnson
4855 River Road North
Keizer, Oregon 97303

or addressed in such other way in respect to either party as that party may, from time to time, designate in writing dispatched as provided in this section. Notice given in any other manner shall be effective upon receipt by the party for whom the same is intended.

Section 1304 **Merger and Integration.**

None of the provisions of this Agreement are intended to or shall be merged by reason of a

Deed transferring title to any parcel within the Project Site from the City to the Developer or from the Agency to the Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

Section 1305 **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.

Section 1306 **Waivers.**

No waiver made by a party with respect to the performance, or manner or time hereof, of any obligation of another party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the party making the waiver. No waiver by the City, the Agency or the Developer or 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.

Section 1307 **Attorneys' Fees.**

In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law.

Section 1308 **Time of the Essence.**

Time is of the essence of this Agreement.

Section 1309 **Choice of Law.**

This Agreement shall be interpreted under the laws of the State of Oregon.

Section 1310 **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.

Section 1311 **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.

Section 1312 **Entire Agreement.**

This Agreement and the attachments hereto, which are incorporated herein by reference, are the entire agreement between the parties relating to the subject matter in this Agreement. There is no other oral or written agreement between the parties with regard to this subject matter. There are no oral or written representations made by either party, implied or express, other than those contained in this Agreement.

Section 1313 **Modifications.**

Any modifications to this Agreement shall be made in writing and executed by all parties to this Agreement.

Section 1314 **Successors and Assigns.**

The benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the heirs, successors and assigns of the Parties, including any Mortgagee permitted by this Agreement and anyone acquiring an interest in the Project, or any portion thereof, at foreclosure. The covenants, rights, benefits and obligations of the Agency and the Developer and their remedies for breach thereof shall be covenants and conditions running with the land.

Section 1315 **Place of Enforcement.**

Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Marion County, or the United States District Court for the District of Oregon.

Section 1316 **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.

Section 1317 No Third Party Beneficiaries.

Neither anything in this Agreement contained nor 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.

Section 1318 Representation by Counsel.

Each of the parties has been represented by counsel in the negotiation and preparation of this Agreement. No presumption shall exist (i) in favor of a party by reason of the authorship of any provision of this Agreement or other transaction document by any other party or that party's counsel or (ii) against a party by reason of the authorship of any provision of this Agreement or other transaction document by that party or that party's counsel.

Section 1319 Nonwaiver of Government Rights.

Subject to and except as expressly set forth by the terms and conditions of this Agreement, by making this Agreement and delivery of the Deeds, the City and the Agency are specifically not obligating themselves, or any governmental agency with respect to any discretionary action relating to construction, development or operation of the improvements to be constructed on the Project Site, including, but not limited to, rezoning, variances, vacations, environmental clearances or any other governmental agency approvals which are or may be required.

Section 1320 Approvals.

Where approvals of the Agency or the City are required, the Agency will approve or disapprove or cause the City to approve or disapprove, within thirty (30) days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided herein to the contrary. Any disapproval shall state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are reserved to the Agency's or the City's sole discretion. The Developer, 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 the Agency or the City, as applicable, within thirty (30) days after receipt of the notice of disapproval, or, unless such disapproval is within the sole discretion of the Agency or the City.

Section 1321 Estoppel Certificates.

The Agency and the Developer shall at any time and from time to time, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the party which as requested the same or to any prospective mortgagee, tenant or subtenant designated by the Developer, a certificate stating that (i) the Agreement is in full force and effect and has not been modified, supplemented or amended in any way, and if there have been modifications, the Agreement is in full force and effect as modified, identifying such modification agreement; and if the Agreement is not in force and effect, the certificate shall so state; and (ii) all conditions under the Agreement to be performed by the Agency or the Developer, as the case may be, have been satisfied and, as of the date of such certificate, there are no existing defenses or offsets which the Agency or the Developer, as the case may be, has against the enforcement of the Agreement by the other party, or, if such offsets, the certificate shall so state.

Section 1322 Good Faith and Fair Dealing Obligations.

The parties intend that the obligations of good faith and fair dealing apply to all actions on the part of either party under ~~to~~ this Agreement, notwithstanding the ability of either party to act, or to refrain from acting, in its "discretion" or its "sole discretion.."

Section 1323 Calculation of Time.

All periods of time referred to herein shall be calendar days and 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 in the State of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or a legal holiday in the State of Oregon.

Section 1324 Compliance with Laws.

Developer shall comply with all applicable federal, state and local laws in the construction of the Project, including the Public Park, the Pathway and the Plazas which constitute public improvements and, as such, trigger specific state laws, and in fulfilling its obligations under this Agreement, including but not limited to, the Americans with Disabilities Act (42 USC Section 12101, *et seq.*). Developer represents and covenants that it is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under this Agreement. Developer further represents and covenants that it has filed federal and state income tax returns in the name of the business, for the previous year, for labor or services performed as an independent contractor in the previous year.

Section 1325 Waiver of Surety Defenses.

Developer and its successors and assigns, and all persons (except the Agency), who are or shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waive, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, whether real, personal, or otherwise, or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, all claims and defenses based upon extension of time, indulgence, or modification of terms of Agreement.

Section 1326 **Pledging of Tax Increment Funds; Creation of Debt.**

The parties acknowledge and agree that the Agency has not pledged any of its tax increment revenues to any amounts due under this Agreement. The parties further acknowledge and agree that the Agency's outstanding and future bonds, notes and other debt obligations have a superior lien on the

tax increment revenues to any amounts due under this Agreement and that the obligations of the Agency do not constitute a debt of the Agency or the City or any other political subdivision of the state.

Section 1327 **Statutory Disclosure.**

THIS INSTRUMENT WILL 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 APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

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Section 1328 **Recording.**

An abstract of this Agreement shall be recorded in the deed records of Marion County.

URBAN RENEWAL AGENCY
OF THE CITY OF KEIZER

By:______________________________
Lore D. Christopher, Chair

NORTHWEST NATIONAL, LLC

By:______________________________
Charles A. Sides, Managing Manager

STATE OF OREGON)
) ss.
County of Marion)

This instrument was acknowledged before me on ______________, 2003, by Lore D. Christopher, as the Chair of the Urban Renewal Agency of the City of Keizer.

____
Notary Public in and for the State of Oregon
My Commission expires:

____

STATE OF OREGON)
) ss.
County of Marion)

This instrument was acknowledged before me on ______________, 2003, by Charles D. Sides, the Managing Manager of Northwest National, LLC.

____
Notary Public in and for the State of Oregon
My Commission expires: ________

____

LIST OF ATTACHMENTS

AGREEMENT FOR DISPOSITION AND DEVELOPMENT
OF KEIZER STATION

Attachment 1
Boundaries and Depiction of Project

AGREEMENT FOR DISPOSITION AND DEVELOPMENT
OF KEIZER STATION

Attachment 2
City Parcel

Letter Designation	Map Index	Tax Map	Tax Lot	Acres	Plan Area Designation
E	202-B	63 W 36BC	06000	3.10	B - Retail Service Area

AGREEMENT FOR DISPOSITION AND DEVELOPMENT

OF KEIZER STATION

Attachment 3

Developer Parcels

Letter Designation	Map Index	Tax Map	Tax Lot	Acres	Plan Area Designation
A	204-A	6 3 W 36BD	00100	2.18	A - Village Center Area
B	204-B	6 3 W 36AC	00500	2.69	A - Village Center Area
C	204-C	6 3 W 36AC	00600	0.47	A - Village Center Area
D	204-D	6 3 W 36AC	00700	0.47	A - Village Center Area
E	204-E	6 3W 36AB	00900	0.72	A - Village Center Area
F	204-F	6 3W 36AC	00100	1.48	A - Village Center Area
G	204-G	6 3W 36AC	00300	0.46	A - Village Center Area
H	204-H	6 3W 36AC	00400	1.38	A - Village Center Area
I	204-I	6 3W 36AB	01200	0.79	A - Village Center Area
J	204-J	6 3W 36AC	01400	2.92	A - Village Center Area
K	204-K	6 3W 36BD	00500	2.85	A - Village Center Area
L	204-L	6 3W 36AB	00400	1.80	A - Village Center Area
N	204-N	6 3W 36BC	06100	0.20	B - Retail Service Area
O	205-A	06 3W 36A	00500	15.17	A - Village Center Area
P	205-B	06 3W 36A	00600	12.61	A - Village Center Area
Q	205-C	06 3W 36A	00700	7.85	A - Village Center Area
R	205-D	06 3W 36AB	00100	5.38	A - Village Center Area
S	205-E	06 3W 36AB	00500	1.18	A - Village Center Area
T	205-F	06 3W 36AB	01300	2.98	A - Village Center Area
U	205-G	06 3W 36BD	00200	2.43	A - Village Center Area
V	205-H	06 3W 36BD	00400	1.04	A - Village Center Area
W	205-I	06 3W 36AC	00900	5.13	A - Village Center Area
X	205-J	06 3W 36AC	01100	2.71	A - Village Center Area
AP-K	206-L-6	06 3W 36AB	00700	1.00	A - Village Center Area
AP-L	206-M-6	06 3W 36AB	00600	0.92	A - Village Center Area
AP-M	206-N-6	06 3W 36AB	00800	3.02	A - Village Center Area
AP-N	206-O-7	06 3W 36AB	01000	0.48	A - Village Center Area
AP-O	206-P-8	06 3W 36BD	00900	0.82	A - Village Center Area
AP-R	206-S-9	06 3W 36AB	01100	0.80	A - Village Center Area

AGREEMENT FOR DISPOSITION AND DEVELOPMENT
OF KEIZER STATION

Attachment 4

Acquisition Parcels

Letter Designation	Map Index	Tax Map	Tax Lot	Acres	Plan Area Designation
A	206-A-1	06 3W 36AB	00200	0.60	A - Village Center Area
B	206-B-1	06 3W 36AB	00300	0.91	A - Village Center Area
C	206-C-2	06 3W 36AC	00800	0.59	A - Village Center Area
D	206-D-3	06 3W 36AC	01200	0.81	A - Village Center Area
E	206-E-3	06 3W 36AC	01300	1.86	A - Village Center Area
F	206-F-4	06 3W 36AC	01500	2.47	A - Village Center Area
G	206-G-4	06 3W 36BD	00600	0.43	A - Village Center Area
H	206-H-4	06 3W 36BD	00700	0.28	A - Village Center Area
I	206-I-4	06 3W 36BD	00800	1.11	A - Village Center Area
J	206-J-5	06 3W 36BD	00300	0.95	A - Village Center Area
P	206-Q-9	06 3W 25	04200	6.27	A - Village Center Area
Q	206-R-9	06 3W 25	04500	10.01	A - Village Center Area

AGREEMENT FOR DISPOSITION AND DEVELOPMENT
OF KEIZER STATION

Attachment 5

List of 27 Village Center Area Parcels

AGREEMENT FOR DISPOSITION AND DEVELOPMENT
OF KEIZER STATION

Attachment 6

Required Contract Provisions
Disposition and Development Agreement;
Public Improvements

A. Applicable Federal Laws.

1. Non-discrimination in employment on the basis of race, color, creed, religion, political ideology, age (except legitimate minimum age and retirement provisions), sex, marital status, sexual orientation, national origin, veteran status or the presence of any sensory, mental or physical handicap (unless based on a bona fide occupational qualification) in regard to any position for which the employee is qualified in compliance with all applicable federal, state and local laws, rules and regulations. This requirement shall apply to, but not be limited to the following: employment, recruitment or recruitment advertising, lay-off, demotion or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships. Any violation of this provision shall be considered an event of default;

2. Civil rights legislation including the Civil Rights Acts of 1964 and 1968, and Executive Order 11063 as amended by Executive Order 12259 and by Executive Order 12892, and prohibitions against discrimination on the basis of age under the Age Discrimination Act or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29;

3. The accessibility requirements of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973;

4. The equal employment opportunity provisions of Executive Order 11246 as amended by Executive Orders 11375, 12086, and 13279; and

5. The National Environmental Policy Act of 1969.

B. Applicable State Laws.

All requirements of Oregon Revised Statutes 279.310 through 279.430, 279.545 through 279.650 and 279.835 through 279.855, including but not limited to the following, as applicable, are incorporated herein by reference, and apply to Developer and to any contractors and subcontractors employed or hired by Developer for the construction of the Public Improvements, as follows:

1. If Contractor or Developer fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with the Contract for Public Improvements (the

"contract") as such claim becomes due, Agency may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Developer or Developer's ~~contactor~~contractor by reason of the contract. The payment of a claim in the manner authorized above shall not relieve the Developer or Developer's ~~contactor~~contractor or its surety from its obligation with respect to any unpaid claims;

2. If the Developer, Developer's contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from the Agency or Developer, the Developer, its contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279.445 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279.445. The rate of interest charged to the Developer, its contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from the Agency or from the Developer or Developer's contractor, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived;

3. If the Developer, its contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279.445;

4. Developer and its contractor and subcontractors, if any, are subject to Oregon Workers' Compensation Law, which requires all employers that employ subject workers who work under the Agreement, the contract to comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Developer shall ensure that each of its contractor and subcontractors, if any, complies with these requirements;

5. Developer and Developer's ~~contactor~~contractor shall, upon demand, furnish to the Agency, written proof of workers' compensation insurance coverage. Developer and Developer's ~~contactor~~contractor is required to submit written notice to the Agency thirty (30) days prior to cancellation of said coverage;

6. Neither Developer (with respect to the Agreement) nor any contractor or subcontractor (with respect to any construction contract) shall be eligible for any Federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid by Agency. Developer is not a contributing member of the Public Employee's Retirement System;

7. Developer is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under the and all contractors and subcontractors shall be engaged as independent contractors and be responsible for any federal or state taxes applicable to any payments made under all construction contracts;

8. Developer has filed federal and state income tax returns in the name of the business as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year and Developer shall obtain such certification from its contractor and subcontractors;

9. Developer agrees and certifies that it is a corporation in good standing and licensed to do business in the State of Oregon and Developer further agrees that it will obtain such certification from its contractor. Developer agrees and certifies that it has complied and will continue to comply with all Oregon laws relating to the performance of Developer's obligations under the Agreement;

10. Developer is not an employee of Metro, any special district, or local government, including Agency, the federal government or the State of Oregon;

11. Developer shall:

11.1 Make payment promptly, as due, to all persons supplying to the Developer labor and material for the prosecution of the work provided for in the Agreement and any construction contract documents;

11.2 Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of the Agreement;

11.3 Not permit any lien or claim to be filed or prosecuted against the Agency on account of any labor or material furnished; and

11.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167;

12. Developer shall promptly as due, make payment to any person, co-partnership or association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employee of such Developer, of all sums which the Developer agrees to pay for such services and all moneys and sums which the Developer collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. Developer shall require of its contractor the same assurances;

13. Developer will comply with 279.835 et seq. in the procurement of products and services from a nonprofit agency for disabled individuals;

14. For those employees of Developer covered or subject to Oregon employment laws, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime, and except when otherwise provided in a collective bargaining agreement between Developer and any labor organization:

14.1 Persons employed under the construction contract shall receive at least time and a half pay for work performed on the legal holidays specified in ORS 279.334(1)(a)(C)(ii) to (vii) and for all overtime worked in excess of 40 hours in any one week;

14.2 No person shall be employed for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where Agency absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279.051, the laborer shall be paid at least time and a half pay;

14.2.1 for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

14.2.2 for all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; or

14.2.3 for work performed on Saturday and on any legal holidays specified in ORS 279.334.

14.3 For those employees that are covered or subject to Oregon employment laws, Developer must, pursuant to ORS 279.316(1)(b), give notice to employees whom perform work, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work;

15. To the extent any of Developer's employees are covered by the Oregon employment laws, such covered worker employed by Developer shall be foreclosed from the right to collect for any overtime under the Agreement unless a claim for payment is filed with Developer within ninety (90) days from the completion of the Agreement, providing Developer has:

15.1 Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and

15.2 Maintained such circular continuously posted from the inception to the completion of the Agreement on which workers are or have been employed;

16. Developer shall require its contractor demonstrate that an employee drug testing program is in place during the term of any construction contract;

17. Developer and its contractor are required to include in each subcontract for property or services entered into by Developer and its contractor and first-tier subcontractors, including material suppliers, for the purpose of performing any construction contract:

17.1 A payment clause that obligates Developer or its contractor to pay first-tier subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to Developer or its contractor by Agency under such contract; and

17.2 An interest penalty clause that obligates Developer or its contractor, if payment is not made within 30 days after receipt of payment from Agency, to pay to first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. Developer, its contractor or first-tier subcontractor shall not be obligated to pay an interest penalty if the only reason that Developer, its contractor or first-tier subcontractor did not make payment when payment was due is that Developer, its contractor or first-tier subcontractor did not receive payment from Agency or Developer or its contractor when payment was due. The interest penalty shall be:

17.2.1 For the period beginning on that day after the required payment date and ending on that date on which payment of the amount due is made; and

17.2.2 Computed at the rate specified in 279.314(2);

18. Developer and its contractor are further required to include in each of its subcontracts, for the purpose of performance of such construction contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards

of these sections and require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier;

19. A dispute between Developer or its contractor and a first-tier subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to subsection (4) or (5) of ORS 279.445 does not constitute a dispute to which Agency is a party. Agency shall not be included as a party in any administrative or judicial proceeding involving such dispute;

20. The Developer shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of construction work (including, but not limited to, any subcontractors of any tier) to the extent that the Agency has paid the Developer for such work. The Developer shall furnish to the Agency such releases of claims and other documents as the Agency may request from time to time to evidence such payment (and discharge). The Agency may, at its option, withhold payment, in whole or in part, to the Developer until such documents are furnished. The Developer may provide other security acceptable to the Agency, such as a bond, in lieu of paying disputed lien claims. The Developer may record a release bond executed by a surety authorized to issue surety bonds in the state of Oregon within 15 days after the Developer becomes aware of or is notified of the filing and making of the lien, in which event the Agency shall not withhold payment in whole or in part to the Developer for such lien;

21. Developer shall execute and deliver to the Agency a good and sufficient bond, to be approved by the Agency, in a sum equal to the contract price for the faithful performance of the contract;

22. The existing prevailing rate of wage which may be paid to workers in each trade or occupation required for such public work employed in the performance of the contract either by the Developer, its contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a provision that such workers shall be paid not less than such specified minimum hourly rate of wage; and

23. A fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279.375 (1), and the fee shall be paid to the commissioner pursuant to the administrative rule of the commissioner.

Document comparison done by DeltaView on Monday, November 03, 2003 17:14:35

Input:	
Document 1	file://K:/31541/00004/JRB/Agrt for D D 09-18-03 Eleventh Draft (clean).doc
Document 2	file://K:/31541/00004/JRB/Agrt for D D 09-18-03 Twelfth Draft (clean).doc
Rendering set	Standard

Legend:	
Insertion	
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Padding cell	

Statistics:	
	Count
Insertions	49
Deletions	48
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	103

Eppley, Christopher

From: Alan Roodhouse [amr@direcway.com]
Sent: Monday, November 03, 2003 9:05 AM
To: Eppley, Christopher
Cc: Bob Thompson; Chuck Sides
Subject: Most Recent DDA draft by Jill Bruce

Chris:

As we discussed, we need the following significant changes made to the current draft, or a commitment to the changes from the Agency, before we can sign the current draft. Also, there are a number of technical changes we believe are appropriate which could be handled in the amendment which incorporates the following changes.

Major Points:

Done 1) In several places (three definitions, Article 2, Section 311J, etc.) the DDA has been changed to provide that we now have the responsibility for BUYING all the right of way necessary in Area B as a condition to going forward. Not only will this add at least $500,000 to the budget, she didn't even include parcels we are not successful in buying in the condemnation responsibilities of the Agency. This has not been the deal to this point and I believe should be reversed.

Also: In carefully defining the Project and the Public Improvements to include right of way and improvements in Areas A and B, I believe Jill has EXCLUDED the bridge under Chemawa and the southern jug handle from the definition. Though those improvements are not in the redevelopment area, they have always been part of the public improvements we have been discussing for inclusion in the LID, subject to help from the Agency ($4.5M) and some reimbursement from the tribes.

2) Several changes have been made to procedure which greatly increase our challenges of performing and sometimes jeopardizes us financially.

Done

a) Under Section 12C as currently drafted, we must complete the public improvements before the expiration of the Element 1 time period IN ORDER FOR US TO GET THE $4.5 MILLION FROM THE AGENCY. This is not a financeable provision! If the Agency/City approves the plans and we start the improvements, the agreement has to provide unconditionally that they will pay the $4.5 million when we have successfully completed the improvements and they have accepted them. Otherwise, we will unable to commence construction.

b) She also added language in Article 12C about what happens if we fail to complete the improvements or complete them incorrectly, and she added an open ended obligation for us to allow the City to put an LID on our property with no limits whatsoever. We at least have to limit the obligation to the lesser of (i) $10 million ($18.3M, less the City's $4.5M, less the $3.8M for our land value, which would then be irrelevant), or (i) $10M reduced by the amount of money we have spent on the public improvements to the date the city takes over the project. This is really important.

? 3) She has completely changed the deal on the repayment obligation of the $2,500,000 for slow development. We have said from day one, a year and half ago, that we would not be in default if we couldn't develop against any time period due to market conditions beyond our control. We agreed to the repayment of up to $2.5M on the basis that the city should get that back if they don't get the tax base in a reasonable period, but we have consistently insisted, and the council agreed, that that was the only remedy for slow development. She has made the missing of any one of the 14 time benchmarks a <u>DEFAULT</u> under the agreement, with all the remedies available, including terminating the agreement, voiding all their responsibilities, etc. Section 602N must go back in.

Done 4) She has tightened the time periods for performance under Section 311 (in conflict with Section 1004B, which gives us up to a year).

5) She has again equated the non-waiver buy back issue for condemnation of private development land with the completion schedule in spite of the Repurchase Agreement mechanism. The two are not related and this connection should be dropped. The Repurchase Agreement mechanism solves the problem. The period for performance of private development should be measured from the approval of the Master Plan, not the date of any condemnation.

Joel 6) In Section 901B, she has changed the LID appraisal underwriting criteria from three times $13.8M to three times $18.3M. I guess she doesn't understand that the city's $4.5M should not be in that computation.

Joel 7) She has provided that the $4.7M bond is required as a Section 311 condition instead of posting it in stages when the $4.5M is paid by the city and for $2.2M to cover LID debt service when the LID is formed, months later. The agreement to the form of bond was to be a Section 311 condition, but the bond should not be posted until the obligations arise for the developer.

8) She has made changes to the Master Plan approval language which can again be interpreted as requiring two separate approval processes before the City and the Agency. I think it must be clear that the Master Plan process is the one mandated by the KSP, and that the Agency must approve it after the City completes the process.

Joel 9) She has added several state code provisions as Attachment 6 to the DDA. This is completely unnecessary, and would cause us to do a lot of legal research to determine whether the sections are in fact required. We have agreed to abide by laws applicable to public improvement projects. That should suffice. Please have Attachment 6 removed.

As I said, the other changes are ministerial and I believe you, Shannon and we can agree to them easily in the context of producing an amendment that incorporates the above changes. We hope we can sign the agreement tonight as we discussed. Thanks for your help in this.

Alan M. Roodhouse

CITY OF KEIZER MISSION STATEMENT

KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES TO THE COMMUNITY IN A COORDINATED, EFFICIENT AND LEAST COST FASHION

AGENDA

KEIZER CITY COUNCIL
REGULAR SESSION
Monday, November 3, 2003
7:00 p.m.
Robert L. Simon Council Chambers
Keizer, Oregon 97303

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **FLAG SALUTE**

4. **PUBLIC TESTIMONY**

   This time is provided for citizens to address the Council on any matters other than those on the agenda scheduled for public hearing.

5. **PUBLIC HEARINGS**

6. **COMMITTEE REPORTS**

   a. Appointments to Keizer Planning Commission

7. **OTHER BUSINESS**

   This time is provided to allow the Mayor, Council members or staff an opportunity to bring new or old matters before the Council that are not on tonight's agenda.

   - **New Business**
   - **Old Business**

8. **ADMINISTRATIVE ACTION**

   a. ORDINANCE – Authorizing Payment of System Development Charge in Installments and Imposing Lien (Merrill)

b. RESOLUTION – Establishing Keizer 23 Cable Television Committee

c. RESOLUTION – Establishing River Road Renaissance Task Force

9. CONSENT CALENDAR

a. Liquor License – Change of Ownership – Cherry Avenue Market and Deli

b. Approval of September 2, 2003 Regular Session Minutes

c. Approval of September 15, 2003 Regular Session Minutes

d. Approval of September 22, 2003 Special Session Minutes

e. Approval of September 25, 2003 Work Session Minutes

f. Approval of October 6, 2003 Regular Session Minutes

g. Approval of October 13, 2003 Work Session Minutes

h. Approval of October 20, 2003 Regular Session Minutes

10. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications.

11. AGENDA INPUT

November 10, 2003
12:00 p.m. (Noon) Work Session

November 17, 2003
7:00 p.m. City Council Meeting

12. ADJOURN

Upon request, auxiliary aids and/or special services will be provided. To request services; please contact us at 503-390-3700 or through Oregon Relay 1-800-735-2900 at least two working days (48 hours) in advance.

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 6a

APPOINTMENTS TO KEIZER PLANNING COMMISSION

CITY COUNCIL MEETING: __November 3, 2003__

AGENDA ITEM NUMBER: ____________

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

THROUGH: CHRIS EPPLEY
CITY MANAGER

FROM: TRACY L. DAVIS, CMC Tracy
CITY RECORDER

SUBJECT: KEIZER PLANNING COMMISSION APPOINTMENTS

ISSUE:

On September 30, 2003 the three-year terms of Planning Commission members Michael Smith and Frank Moore expired. Both Mr. Smith and Mr. Moore have expressed their desire to be reappointed to their respective positions. Each is eligible to serve another term on the Commission.

The Volunteer Coordinating Committee has unanimously recommended reappointing Mr. Moore and Mr. Smith each to another three-year term on the Commission.

RECOMMENDATION:

It is recommended the Council accept the recommendation of the Volunteer Coordinating Committee and reappoint Frank Moore and Michael Smith each to another three-year term on the Keizer Planning Commission.

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 8a

ORDINANCE – AUTHORIZING PAYMENT OF SYSTEM DEVELOPMENT CHARGE IN INSTALLMENTS AND IMPOSING LIEN (MERRILL)

CITY COUNCIL MEETING: November 3, 2003

AGENDA ITEM NUMBER:_____________

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

SUBJECT: ***WILLIAM AND JENNIFER MERRILL SYSTEM DEVELOPMENT CHARGE LIEN***

William and Jennifer Merrill own a small acreage located at 7790 Timothy Lane Northeast. The septic tank for their property failed and they attempted to have a new septic tank installed. State regulations require properties to connect to public sewer systems if they are within 300 feet of a sewer line, which was the case here.

The Merrills are selling the property and have relocated due to employment reasons to Washington. They wish to arrange to pay the system development charges for the acreage fee and hookup fee in installments. State law requires the City to agree to installment payments subject to having a lien against the property.

The Merrills have signed the system development charges lien and a copy is enclosed. However, to formally impose a municipal lien, the Council also needs to pass an ordinance to that effect. Such ordinance is attached for your review. The ordinance has an emergency clause so that the work may be completed right away before the rainy season arrives in full.

RECOMMENDATION:

Adopt the attached Ordinance.

Please let me know if you have any questions in this regard. Thank you.

ESJ/tmh
attachment

BILL NO. ____ | A BILL | ORDINANCE NO. 2003-________

FOR

AN ORDINANCE

AUTHORIZING PAYMENT OF SYSTEM DEVELOPMENT CHARGES IN INSTALLMENTS AND IMPOSING LIEN; AND DECLARING AN EMERGENCY

WHEREAS, under ORS 223.208, property owners may apply to the City for authorization to pay system development charges in installments;

WHEREAS, the real property commonly known as 7790 Timothy Lane Northeast, Keizer, Oregon is subject to system development charges for the sanitary sewer system;

WHEREAS, William Merrill, Jr. and Jennifer Merrill, the owners of record of said real property, have applied to the City for authorization to pay the system development charge in installments;

NOW, THEREFORE, the City Council of the City of Keizer ordains as follows:

Section 1. SYSTEM DEVELOPMENT CHARGE LIEN. The following described property is obligated to the City of Keizer to pay system development charges in the sum of $14,271.80 for the sanitary sewer system:

7790 Timothy Lane Northeast, Keizer, Oregon
Tax Lot #600
Tax Account # R19785
Map # 6-3W-23DB

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

William Merrill, Jr. and Jennifer Merrill are the owners of record of the subject property and have signed an application to pay system development charges in installments, a copy of which is attached hereto, marked Exhibit "A" and by this reference incorporated herein. The City of Keizer accepts the application of William Merrill, Jr. and Jennifer Merrill to pay system development charges in installments and authorizes the payment of system development charges in the amount of $14,271.80 pursuant to the terms and conditions set forth in Exhibit "A". The system development charge shall be entered as a lien against the subject property in the city lien docket and other lien dockets as appropriate.

Section 2. EFFECTIVE DATE. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist and this Ordinance shall take effect immediately upon its passage.

PASSED this _______ day of _________________, 2003.

SIGNED this _______ day of _________________, 2003.

____
Mayor

____
City Recorder

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

AFTER RECORDING,
RETURN TO:
E. Shannon Johnson
Lien & Johnson
4855 River Road N.
Keizer, OR 97303

SYSTEM DEVELOPMENT CHARGES LIEN
(Application to pay in Installments)

THIS INDENTURE WITNESSETH that the hereinafter described property is obligated to pay system development charges in the sum of $14,271.80 for the sanitary sewer system. The subject real property is owned by William Merrill, Jr. and Jennifer Merrill and is located at 7790 Timothy Lane Northeast, Keizer, Oregon. The applicants want to take advantage of the laws of the State of Oregon which secure the right to pay system development charges in installments.

William Merrill, Jr. and Jennifer Merrill hereby make application to the City of Keizer to pay said system development charge in installments. The applicants understand and agree that the amount of the system development charges due shall become a lien against the described property. The applicants (and the owner of the property if different) do hereby waive all irregularities or defects, jurisdictional or otherwise, to the imposition of the system development charges and the stated amount of the system development charges and do hereby acknowledge that the $14,271.80 system development charge is legally imposed on the subject property and the applicants do hereby promise and agree to pay said system development charge in twenty (20) semi-annual installments, each in the amount of $713.59 with interest thereon at the rate of two percent (2%) per annum on the unpaid balance of the system development charges.

The subject property, commonly known as 7790 Timothy Lane Northeast, Keizer, Oregon, referred to herein which is liable for the payment of the system development charge is legally described as follows:

That certain property described in the Warranty Deed recorded on April 23, 2001 at Reel 1773, Page 445 in the Marion County Records.

In the event the installments are not paid when due, at the option of the City of Keizer, the entire balance of principal and interest shall become immediately due and payable. In the event the City refers the lien or this agreement to an attorney for collection, the applicants agree to pay reasonable attorney fees and costs, both at trial and on appeal.

In further consideration of the granting of this request, the applicants agree to accept complete responsibility for informing any subsequent purchaser of the subject property that a lien for the system development charge, payable to the City of Keizer, is in place against the subject property.

The applicants acknowledge that this system development charge is not subject to Section 11B, Article XI of the Oregon Constitution and consequently, the system development charge is outside the $10.00 limitation for each $1,000 of real market value for ad valorem property tax purposes.

In witness whereof, we have hereunto placed our signatures this 17th day of October, 2003.

William A. Merrill Jr.
William Merrill, Jr.

Jennifer Merrill

STATE OF WASHINGTON, County of Benton) ss. October 17, 2003.

The foregoing instrument was acknowledged before me this 17th day of October, 2003, by William Merrill, Jr.

VICKIE LYNN HAMILTON NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES MAR. 27, 2007

Vickie Lynn Hamilton
NOTARY PUBLIC FOR WASHINGTON
My Commission Expires: 3/27/2007

STATE OF WASHINGTON, County of Benton) ss. October 17, 2003.

The foregoing instrument was acknowledged before me this 17th day of October, 2003, by Jennifer Merrill.

VICKIE LYNN HAMILTON NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES MAR. 27, 2007

Vickie Lynn Hamilton
NOTARY PUBLIC FOR WASHINGTON
My Commission Expires: 3/27/2007

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 8b

RESOLUTION – ESTABLISHING KEIZER 23 CABLE TELEVISION COMMITTEE

CITY COUNCIL MEETING: November 3, 2003

AGENDA ITEM NUMBER:______________

TO: **MAYOR CHRISTOPHER AND COUNCIL MEMBERS**

THROUGH: **CHRISTOPHER C. EPPLEY, CITY MANAGER**

FROM: **E. SHANNON JOHNSON, CITY ATTORNEY**

SUBJECT: ***KEIZER 23 CABLE TELEVISION COMMITTEE***

The K23 task force has been meeting to review policies and procedures for operating Keizer's Channel 23. The task force agreed on a general statement of mission, purpose and goals.

The first step is creation of a permanent standing committee to advise the Council on matters involving Keizer Channel 23 and City television broadcasting. I have therefore prepared the enclosed resolution creating the K23 Advisory Committee.

RECOMMENDATION:

Adopt the attached Resolution creating the K23 Advisory Committee.

Please contact me if you have any questions. Thank you.

ESJ/tmh
attachment

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2003-_____

ESTABLISHING A K23 ADVISORY COMMITTEE

WHEREAS, establishing a K23 Advisory Committee is appropriate and necessary;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the K23 Advisory Committee, a City Council Committee, is hereby established as outlined in Appendix "A", which is attached hereto and by this reference made a part hereof.

PASSED this __________ day of _________________, 2003.

SIGNED this __________ day of _________________, 2003.

____
Mayor

____
City Recorder

Lien & Johnson
Attorneys at Law
4855 River Road N
Keizer, Oregon 97303
(503) 390-1635

Appendix "A"
City Council Committee

Name: K23 Advisory Committee

Purpose: To act in an advisory capacity to the Keizer City Council and City Manager in the creation, development and implementation of Keizer Public, Educational, and Government (PEG) television broadcasting. The powers and duties of the K23 Advisory Committee shall include, but are not limited to:

1. Develop a mission statement for the committee.
2. Develop an annual capital improvement plan and budget.
3. Develop policies for program prioritization and calendaring.
4. Develop short and long term goals for the television station.
5. Set a fee schedule and facility use policies for non-city program production.

This is a Council Committee subject to the City Charter and Council Procedures.

Membership: The K23 Advisory Committee shall consist of five voting members. Two members shall be Keizer City Councilors and three members shall be Keizer residents serving at-large. A liaison from the City staff shall serve as a non-voting ex officio member. The three at-large members shall be appointed as outlined by the City Council Rules of Procedure. The City Councilor members shall be appointed by the Mayor.

Term of Office: Except for the initial terms, each member of the K23 Advisory Committee shall be appointed for a three-year term. The initial terms shall be staggered so that not more than two will expire in the same year. Members may be reappointed, however no member shall serve more than two consecutive terms. If a member has been appointed to fill a vacancy, such partial term shall not be counted for purposes of the term limit. A member who has served two terms may be reappointed if a period of at least one year has passed since the previous term of office.

Chair and Vice-Chair: The K23 Advisory Committee shall elect a Chair and Vice-Chair at the first meeting of each calendar year.

Meetings: All meetings of the K23 Advisory Committee shall follow Roberts Rules of Order Newly Revised and the Oregon Public Meeting Laws.

Attendance: It is the duty of each member to attend at least 75% of the meetings each calendar year. When a member is unable to attend a meeting, the member shall notify the Chair. Members of the K23 Advisory Committee may be removed by two-thirds majority vote of the City Council.

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 8c

RESOLUTION – ESTABLISHING RIVER ROAD TASK FORCE

COUNCIL MEETING: November 3, 2003

AGENDA ITEM NUMBER:

TO: MAYOR CHRISTOPHER AND CITY COUNCILOR MEMBERS

THROUGH: CHRISTOPHER EPPLEY
CITY MANGAGER

FROM: NATE BROWN
COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: RIVER ROAD RENAISSANCE TASK FORCE

BACKGROUND:

In July of 2003, the City of Keizer was awarded a grant through the Mid-Willamette Valley Council of Governments in the amount of $75,000 to fund a master planning process for the River Road commercial corridor. The firm of Spencer and Kupper has been hired to guide the City through the process of completing the plan. The process includes creation of an ad hoc task force, made up of community representatives, to complete this plan. A list of representatives is attached to this report.

RECOMMENDATION:

It is recommended the City Council adopt the attached Resolution Establishing an Ad Hoc Task Force to Create the River Road Renaissance Master Plan. It is further recommended that the Mayor confirm the appointment of the members.

River Road Renaissance Task Force

Jack Lowery	Chamber of Commerce, Govt. Affairs
Janet Porter	KAVA
Eric Meurer	Builder's Association
John Preston	River Road Merchant
Jeff Boucher	River Road Merchant
Chuck Baker	River Road Merchant
Dennis Blackman	River Road Merchant
Dennis Koho	At Large
John Lottis	At Large
Father Phil Sopke	At Large
Bruce Nopp	Contractor
Hersh Sangster	Bikeways Committee
Stu Crosby	KURB
Bruce Anderson	Planning Commission
Steve Prothero	Traffic Safety Commission
Greg Frank	Fire Department
Crissel Perez	Youth Councilor
	Salem Area Transit
	City of Salem
	Marion County
Mark Adams	Salem/Keizer School Board

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

ESTABLISHING AN AD HOC TASK FORCE TO CREATE A

RIVER ROAD RENAISSANCE MASTER PLAN

Resolution R2003-____________

WHEREAS, it has become apparent that Keizer must more actively participate in regional planning efforts so as to promote our unique interests, establish an even stronger community identity and to better identify our place within the region, and

WHEREAS, there are many questions that need to be answered within the community as we fully participate and productively add to these regional efforts, and

WHEREAS, the creation of a master plan that includes design, land use and transportation strategies for the River Road commercial corridor is a critical next step for the community.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Keizer hereby authorizes the creation of an ad hoc River Road Renaissance Task Force to develop a River Road commercial corridor master plan for the City of Keizer

BE IT FURTHER RESOLVED that the Task Force shall consist of twenty-one (21) members; a representative of the Keizer Chamber of Commerce Governmental Affairs Committee; four (4) River Road merchant representatives; a representative of KAVA; two (2) representatives of the building industry; three (3) City of Keizer residents at large; a representative from the Planning Commission; a representative each from the City of Salem, Marion County, Fire District, Salem Area Transit, Salem Keizer School Board, Keizer Urban Renewal Board, Traffic Safety Commission, and Bikeways Committee. The Director of Community Development will serve as the staff liaison to the Task Force.

BE IT FURTHER RESOLVED that the Mayor shall confirm the appointment of the members of the Task Force.

PASSED this _____ day of __________________, 2003.

SIGNED this _____ day of __________________, 2003.

____
Mayor

____
City Recorder

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 9a

LIQUOR LICENSE – CHANGE OF OWNERSHIP – CHERRY AVENUE MARKET AND DELI

CITY COUNCIL MEETING: <u>**November 3, 2003**</u>

AGENDA ITEM NUMBER: ________________

TO: **MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS**

THROUGH: **CHRIS EPPLEY**
CITY MANAGER

FROM: **TRACY L. DAVIS, CMC**
CITY RECORDER

SUBJECT: **CHERRY AVENUE MARKET AND DELI**
CHANGE OF OWNERSHIP

BACKGROUND:

On October 14, 2003 an application for a change of ownership was received from Byung and Sung Min requesting approval of a change of ownership for Cherry Avenue Market and Deli located at 3740 Cherry Avenue, Keizer. There will not be any change in name of the establishment. The City of Keizer Ordinance indicates the Council must approve the requested change; however no public hearing is required.

RECOMMENDATION:

It is recommended the City Council approve and forward a recommendation to the Oregon Liquor Control Commission for the change of ownership for the liquor license for Cherry Avenue Market and Deli.

KEIZER POLICE

1982

City Council Meeting of________________________

Agenda Item No.______________________

To: Mayor and City Council

Thru: Chris Eppley, City Manager

From: Marc Adams, Chief of Police
Rita Powers, Police Support Supervisor RP

Subject: Cherry Ave. Market & Deli

Issue: Shall the City Council approve the liquor license application of Cherry Ave. Market & Deli, 3740 Cherry Ave. NE., Keizer, Oregon 97303 (Change of Ownership)

Background

There were 17 calls for service at the address of 3740 Cherry Ave. between October 1, 2002 and September 30, 2003. 8 were in conflict with the ordinance, 4 being directly related to the sale and/or consumption of alcohol.

The applicants Byung K Min and Sung Min have no criminal history on record.

Thus, the background review did not reveal any any significant history or events that would be in conflict with the City of Keizer City Ordinance 95-318.

Recommendation
The Keizer Police Department recommends approval of the liquor license for Cherry Ave Market & Deli, 3740 Cherry Ave. NE., Keizer, Oregon.

P.O. BOX 21000 ★ 930 CHEMAWA RD. N.E. ★ KEIZER, OREGON 97307-1000
PHONE: 503-390-3713 ★ FAX: 503-390-8295

rec 10/14/03 -

OREGON LIQUOR CONTROL COMMISSION
LIQUOR LICENSE APPLICATION

PLEASE PRINT OR TYPE

Application is being made for:

LICENSE TYPES

- ☐ Full On-Premises Sales ($402.60/yr)
  - ☐ Commercial Establishment
  - ☐ Caterer
  - ☐ Passenger Carrier
  - ☐ Other Public Location
  - ☐ Private Club
- ☐ Limited On-Premises Sales ($202.60/yr)
- ☒ Off-Premises Sales ($100/yr)
  - ☐ with Fuel Pumps
- ☐ Brewery Public House ($252.60)
- ☐ Winery ($250/yr)
- ☐ Other: ____

ACTIONS

- ☒ Change Ownership
- ☐ New Outlet
- ☐ Greater Privilege
- ☐ Additional Privilege
- ☒ Other ____ CHANGE TN

Applying as:

☐ Limited Partnership ☐ Corporation ☐ Limited Liability Company ☒ Individuals

FOR CITY AND COUNTY USE ONLY

The city council or county commission:

____
(name of city or county)

recommends that this license be:

Granted ☐ Denied ☐

By: ____
(signature) (date)

Name: ____

Title: ____

OLCC USE ONLY

Application Rec'd by: [signature]

Date: 9/30/03

90-day authority: ☒ Yes ☐ No

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

① BYUNG K MIN ③ ____

② SUNG AE MIN ④ ____

2. Trade Name (dba): Cherry Ave Market & Deli

3. Business Location: 3740 Cherry Ave Keizer Marion OR 97303
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: SAME
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: (503) 390-3621
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? ☒ Yes ☐ No

7. If yes to whom: Injung Kim Type of License: ~~Beer~~ & Wine (Off-Premises)

8. Former Business Name: Cherry Ave Market & Deli

9. Will you have a manager? ☐ Yes ☒ No Name: ____
(manager must fill out an individual history form)

10. What is the local governing body where your business is located? Keizer, Marion
(name of city or county)

11. Contact person for this application: Byung K Min (503) 930-4425 ~~551-9902~~
(name) (phone number(s))

4373 Kacey Cir NE Salem OR 97305
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① [signature] Date 9-25-03 ③ ____ Date ____

② Sung Ae Min Date 9-25-03 ④ ____ Date ____

OREGON LIQUOR CONTROL COMMISSION

BUSINESS INFORMATION

Please Print or Type

Applicant Name: BYUNG K MIN Phone: (503) 390-3621

Trade Name (dba): Cherry Ave Market & Deli

Business Location Address: 3740 Cherry Ave

City: Keizer ZIP Code: 97303

DAYS AND HOURS OF OPERATION

Business Hours:

		To
Sunday	7:30 AM	11:00 P.M.
Monday	6:30 AM	11:00 P.M.
Tuesday	6:30 A.M	11:00 P.M.
Wednesday	6:30 AM	11:00 P.M.
Thursday	6:30 AM	11:00 P.M
Friday	6:30 AM	12:00 P.M.
Saturday	7:30 AM	12:00 P.M

Outdoor Area Hours:

		To
Sunday		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		

The outdoor area is used for:

- ☐ Food service Hours: ______ to ______
- ☐ Alcohol service Hours: ______ to ______
- ☐ Enclosed, how ______

The exterior area is adequately viewed and/or supervised by Service Permittees.

______ (Investigator's Initials)

Seasonal Variations: ☐ Yes ☒ No If yes, explain: ______

ENTERTAINMENT

Check all that apply:

- ☐ Live Music
- ☐ Recorded Music
- ☐ DJ Music
- ☐ Dancing
- ☐ Nude Entertainers
- ☐ Karaoke
- ☐ Coin-operated Games
- ☐ Video Lottery Machines
- ☐ Social Gaming
- ☐ Pool Tables
- ☐ Other: ______

N/A

DAYS & HOURS OF LIVE OR DJ MUSIC

		To
Sunday		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		

N/A

SEATING COUNT

Restaurant: ______ Outdoor: ______

Lounge: ______ Other (explain): ______

Banquet: ______ Total Seating: ______

OLCC USE ONLY

Investigator Verified Seating: ____(Y) ____(N)

Investigator Initials: ______

Date: ______

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: [signature] **Date:** 9-25-03

1-800-452-OLCC (6522)

www.olcc.state.or.us

(rev. 04/03)

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 9b

APPROVAL OF SEPTEMBER 2, 2003 REGULAR SESSION MINUTES

MINUTES
KEIZER CITY COUNCIL
Tuesday, September 2, 2003
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Christopher called the regular meeting to order at 7:15 pm. Roll Call was taken as follows:

Present:
Lore Christopher, Mayor
Jacque Moir, Council President
Judy K. Smith, Councilor
James Taylor, Councilor
Richard Walsh, Councilor
Michel Gaynor, Councilor
Chuck Lee, Councilor
Crisel Perez, Youth Councilor

Staff:
Chris Eppley, City Manager
Marc Adams, Chief of Police
Shannon Johnson, City Attorney
Dianne Hunt, Human Resources
Nate Brown, Community Development Director
Cheryl Vafakos, Associate Planner
Tracy Davis, City Recorder

FLAG SALUTE

City Councilor Judy Smith led the flag salute. Councilor Lee noted Councilor Smith represented Keizer for the Habitat for Humanity, recruiting 90 people to work on building the homes at the State Fair "Keizer Build Day" and getting $3,000 donated to the cause, led the Council in the flag salute.

ANNOUNCEMENTS

Keizer Volcanoes tapes for our troops overseas are available for anyone involved in the Letters from Home Program. There will be pictures on the website later this week from the flag ceremony and the Habitat for Humanity project.

PUBLIC TESTIMONY

Byron Hendricks, 1220 20th Street SE, Salem – Spoke to Council as the 2003 Campaign Chair for the United Way of the Mid-Willamette Valley. He pointed out that the Mid-Willamette Valley United Way is a local agency helping the residents of our communities, noting that the need is greater than ever for public service agencies. The agency has $11.00 worth of requests for every $1.00 in funding that is raised. He listed agencies serving Keizer and concluded inviting Council to attend the campaign kick-off on September 12 at 7:30 at the Red Lion.

Mayor Christopher noted that the City of Keizer is honored to support United way and read a proclamation making September 12, 2003, as "United Way Day" in the City of Keizer.

Responding to questions about donations, Mr. Hendricks reported that contributions could be mailed to the United Way office at 455 Bliler Ave NE Salem, OR 97303 or donated directly at their website: www.uwmwv.org.

Monte Graham, 14000 Kirkwood Road NW, Yamhill County, District Manager for Marion County Soil and Water Conservation District, and Treasurer on Claggett Creek Watershed Council, spoke to Council regarding the Clagget Creek Watershed Project. He noted that most of the work on the project has been completed. Upcoming workdays are October 11 and October 18. The first workday is designated as a "Leaders Day" for planning. October 18 from 9 to 12 will be planting day. He noted that individuals or groups wishing to volunteer could contact him (503-399-5741, ext. 118) or Gary Miller. In conclusion Mr. Graham reporting that the easement is being worked on and should be completed in the near future.

Councilor Taylor commended the group for the hard work they have done and for their unwavering dedication.

Council President Moir reminded Council members that they need to be at the project at 9 am on October 18 to help with the planting.

Mr. Graham also noted that there would be a ceremonial event first thing in the morning on October 18, adding that everyone should bring a shovel and that lunch will be furnished to volunteers

PUBLIC HEARING
a. Minor Variance Case No. 2003-21 (Keizer Development LLC)

City Manager, Chris Eppley, introduced the new Community Development Director, Nate Brown.

City Attorney Shannon Johnson read the statutory outline as required by state law. He stated the applicable criteria under the minor variance cases set forth in Keizer Development Code at Section 3.105.05 are in the staff report. There was no objection to waiving the reading of the exact criteria, therefore the reading was waived. There was no objection regarding notice or any bias declared from the public. The Council also did not declare any conflicts of interests or exparte contacts.

Cheryl Vafakos, Associate Planner, reviewed the case as follows: The subdivision in question is Barnick Estates which was established with Subdivision Case No. 2000-45 with a maximum density allowed of 6 units per acre. The property is 2.03 acres in area with 12 lots. This calculates to 5.9 dwelling units if 1 dwelling unit per acre is allowed. However, one of the lots in the subdivision was developed with a duplex which resulted in the subdivision reaching maximum density with one lot left undeveloped. Previously a request by the applicant for a variance to allow a maximum of 7 dwelling units per acre was denied by Council. The vacant lot in question is 1483 Barnick Road. The applicant is proposing to increase the maximum density of the subdivision to 6.5 acres, thereby allowing a single-family dwelling to be constructed on the undeveloped lot. Ms. Vafakos noted that comments from the City of Salem Public Works Department and Marion County Fire District No. 1 could be found in the Staff Report. She concluded that staff recommendation is that a Public Hearing be opened and conducted and Council approve the variance request.

Ken Nolan, P.O. Box 2125, Salem, owner of 1445 Edy Avenue NE in the Barnick Estates Subdivision, spoke to Council stating that he was very much in favor of getting the lot cleaned up and the sidewalk completed.

John Gooley, 650 Melandy Lane NE, Salem 97301, addressed the Council stating that all neighbors in the subdivision support the minor variance; the variance was approved by the staff and the hope is for Council approval.

Gloria Dean, 7575 Wotherspoon Drive NE, Keizer, requested a copy of the criteria. She voiced her concern as to the effect the variance would have, if any, on properties for sale on Barnick abutting Wotherspoon and stated that she felt the neighborhood density should not be increased. Ms. Vafakos responded that the proposed variance was for the Barnick Estates Subdivision only and would not affect the area she was referring to. Ms. Dean replied that, in that case, she did not object to the variance. Mr. Albert Dean asked if setbacks would be changed and was assured that they would not. City Attorney Johnson noted for the record that witness was given a list of criteria to review and was asked to address any questions in the matter to the Council before the hearing was closed.

With no further testimony, Mayor Christopher closed the public hearing.

Councilor Walsh briefed Council on the history of the variance. He noted that he had voted against it two years ago because the rules did not allow for this hardship situation. He stated that this case motivated him to come up with new variance criteria which was presented to the Planning Commission. Mr. Walsh noted that the applicant has done a good job working on this and closed stating that he was in favor of acceptance of the variance.

Ms. Vafakos interjected, for the record, that her calculations of the density came to 6.4.

Council President Jacque Moir moved to Approve Minor Variance Case No. 2003-21 (Keizer Development LLC) With Conditions As Identified In Staff's Recommendation. Councilor Gaynor seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor, and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

City Attorney Johnson noted that the final Order would be brought to the next meeting.

b. RESOLUTION – Forming Pierce Subdivision Street Lighting District

City Manager, Chris Eppley, provided a history of the formation of a Street Lighting Local Improvement District and noted that the Public Hearing was to consider remonstrances to project and objections to proposed assessments. He explained the billing process for the Lighting District and recommended the City Council open a Public Hearing to consider oral objections and written remonstrances to the formation of Pierce Subdivision Street Lighting Local Improvement District.

Mayor Christopher opened the Public Hearing.

With no one wishing to testify, Mayor Christopher closed the Public Hearing.

City Recorder, Tracy Davis, corrected the district spelling to PEIRCE.

Councilor Moir moved to adopt Resolution R2003 forming Peirce Subdivision Street Lighting Local Improvement District as amended. Councilor Smith seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor, and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

COMMITTEE REPORTS

None

OTHER BUSINESS

Volunteer Recognition – Councilor Smith reported that the Volunteer Coordinating Committee will be recognizing volunteers by attending their meetings, presenting certificates and providing cookies.

Habitat for Humanity Project – Councilor offered her thanks to all the volunteers who worked on the project. She noted there were approximately 90 volunteers from various groups and reported that another Habitat house is planned for the State Fair next year which she will be coordinating. Additionally, it is hoped that a Habitat House will be built at the 2005-2006 Iris Festival. Ms. Smith continued that the organization is looking for property available through donation or for a reasonable price. She invited everyone to attend a potluck on September 8 at 6 pm at Evergreen Court in Salem, which is where the Habitat houses are located.

Riverr Task Force – Councilor Walsh reported that the Task Force took a tour of the park escorted by a local land owner. He noted that SKIP (Salem-Keizer-Independence Partnership) has asked the Task Force to attend the September 17 meeting at the COG office where a resolution between the jurisdictions will be considered. This resolution is not mandatory, but offers the commitment to cooperate with each other on river projects. He noted that the Task Force has reviewed and approved it and recommends approval by Council. The final document will be available after the September 17 meeting.

Flag Raising Ceremony – Councilor Walsh reported that the flag was donated to the City of Keizer by the 162nd Infantry Division of the National Guard, which has several Keizer residents serving in it. The flag will fly throughout the month of September at which time Mr. Walsh will ask Council to decide how to retire the flag. He commended the Boy Scout Troop 121 on the presentation of the flag.

Councilor Moir added that the web site for those interested in the 162nd Infantry is: www.geocities.com\jagspecx

Councilor Walsh noted that, although the flag was a gift from the 162nd Infantry, it is being flown by the City in support of all our troops who are dedicating their lives for us. He continued that they have not been forgotten and that we are praying for the safe return.

Councilor Smith asked members to send additional names and addresses to her at Lettersfromhome@comcast.net . She noted that there were only two names left so additional names were needed.

Councilor Taylor echoed thoughts from Councilor Walsh noting that the war was far from over, that more troops have been killed in action since the declaration of the end of the war and troops were still in danger.

Traffic Safety Committee - Councilor Taylor thanked Councilor Moir for filling in for him at the Traffic Safety Commission and turned the floor over to her. Councilor Moir reported that Traffic Safety Commission will be applying for a grant from the Alliance for Community Transportation Safety (ACTS) to purchase traffic counters. Additionally, she referred to a letter report received from ODOT regarding a speed study done on North River Road which was based on data from 1999-2001 statistics. The report denied the City's request to reduce the speed limit on North River Road. Ms. Moir expressed the hope that Council would intervene and request that ODOT consider the schools and housing developments and resultant traffic. She requested this issue be made an agenda item for a future work session. The area of concern is River Road from Lockhaven to just past Country Glen and the entire length of Wheatland Road from River to just pass Clear Lake Road.

Councilor Smith requested a staff report addressing alternatives and remedies. Councilor Walsh noted his desire for more information concerning the impact of congestion noting that when traffic is slowed down, congestion is increased. Councilor Taylor pointed out that the issue was brought up by concerned citizens at the north end of Keizer and that with the addition of traffic lights at Wheatland, it would be prudent to lower the speed limit to Wheatland and it should continue from that point on. Councilor Gaynor disagreed. He noted that contradicting ODOT was not practical. Considering the existing slow traffic on River Road, he suggested that impeding traffic further would not be a good idea.

<u>Councilor Moir moved to direct staff to bring back a report with further information on the possibility of reducing the speed limit to 35 mph on Wheatland and River Road either at a Council meeting or in a work session. Seconded by Taylor.</u>

Responding to inquiry by Councilor Lee, Mr. Eppley indicated that staff could provide some information on the topic. In review he noted that there has not been a significant number of accidents or issues, so justification in reducing the speed limit might not be there, but the information could be provided for further discussion. Councilor Walsh agreed with Councilor Gaynor saying that slowing down the traffic and increasing the congestion is not the proper direction without a problem existing.

Councilor Smith noted that the children going to and from school on Wheatland and River need protection. She voiced her opinion that 45 mph was too high, continuing that ODOT decisions sometimes need to be challenged. Councilor Taylor agreed noting that in his lifetime 6 people had been killed between Manzanita and Lockhaven and that this is a dangerous area. He concluded voicing his support of lowering the speed limit to 35 mph.

Responding to inquiry by Councilor Walsh, Chief Adams indicated that the referenced area is not in the top 10 major accident locations which are where speeds are slower. He recommended assessing the problem and going on from there.

The motion passed as follows:

AYES: Christopher, Moir, Smith and Taylor (4)
NAYS: Walsh, Gaynor, and Lee (3)
ABSTENTIONS: None (0)
ABSENT: None (0)

EVAK (Emergency Volunteers Assisting Keizer) Report – Ms. Moir reported calendar changes as follows: September 20, Core Volunteer and New Member Training in place of Assistance Group Training; September 27, Emergency Operations Center Training **Cancelled**; October 4, Core Group Volunteer Training and New Member Training replaces Information Group Training; October 18, All Group Exercise (tentative); November 6, EVAK Meeting, 5:30 pm, Conference Room B.

Soldiers in Iraq – Councilor Lee offered special thanks to IKE Media, especially Lisa and Jeff Walker, for their efforts recording the Volcanoes game for the purpose of sending a "piece of Keizer" to our soldiers in Iraq. He noted he would leave copies with Tracy Davis or interested citizens can call IKE Media at 800-299-6374.

Making After School Count Task Force – Councilor Lee reported that a draft of the final report was available for anyone interested. The next meeting is on September 3. Mr. Lee indicated that the task force is close to making a final recommendation to the Salem City Council on how to fund the after school program.

Today's Choices Tomorrow's Communities – Councilor Lee noted that the committee is anticipating their annual celebration honoring Marion/Polk County organizations who work towards preserving the quality of life. Mr. Lee requested recommendations for nominations of Keizer organizations noting they could be given to him via City Hall or at his home number: 503-304-9135.

Mayor Christopher welcomed the new Community Development Director, Nate Brown.

Mayor Christopher read a proclamation making October Disability Employment Awareness Month.

Mayor Christopher announced that the Annual Mid-Willamette Valley Mayoral Pinewood Derby Race sponsored by the Boy Scouts of America would be on Saturday, September 6, 10-12 on the front steps of the State Capitol. She noted that her representative is Mathew, who built and raced his car and won first place in the Regional Derby held earlier this year. Additionally, she noted that the new City of Keizer logo would be on the car, and encouraged everyone attend.

Mayor Christopher joined members in thanking IKE Media for time and materials donated on behalf of the City of Keizer.

Mayor Christopher informed Council that Bill 666, regarding golf carts and the ½ mile radius, was approved and noted that it was now up to Council to deal with the ordinance regarding golf cart usage in the City of Keizer with the ½ mile radius removed. She continued thanking Representative Backlund for his help on this matter. The effective date will be 90 days after the Governor signs the bill. City Attorney Johnson pointed out that the ordinance should not be put on the agenda until after the governor signs the bill. Councilor Taylor offered his thanks to Representative Backlund as well.

River Road Task Force - City Manager, Chris Eppley, reported that he and Councilors Gaynor and Walsh and Mayor Christopher reviewed proposals and conducted interviews and awarded the project to the firm of Spencer & Kupper. He noted that the firm drew up the original Urban Renewal Plan and consequently are familiar with Keizer. He voiced the hope that the task force can be officially created and represented, and the Mayor can be authorized to sign a contract entering into an agreement with Spencer & Kupper soon. Mayor Christopher reminded Council members of chosen representatives.

Chief Marc Adams reported that the cadets recently competed in the Annual Law Enforcement Explorer Games and did very well. Additionally, he noted that Darcy Olfson from Newport was hired and would begin his assignment in a couple of weeks. Chief Adams advised Council that base fines for traffic offenses have gone up drastically due to legislation passed by the Oregon legislature.

Dianne Hunt reminded members that Policy Committee Meeting was on September 3 at noon. Additionally, she noted the new hires in addition to Nate Brown: Public Works Municipal Utility Worker 1, Juan Alman, and Information System Technician, Bill Hopkins. She also suggested that if, the Council thought it was appropriate, the geocities link could be published on the City of Keizer website.

The Council agreed by consensus to put the link on the website.

Cheryl Vafakos reported that she was happy to have Nate Brown on board. City Manager, Chris Eppley, commended Ms. Vafakos on her dedication, loyalty and hard work.

Nate Brown noted that he was excited to be part of the City of Keizer team and is looking forward to working with the Keizer organization.

City Attorney, Shannon Johnson, noted that he was pleased to announce that LUBA had issued its final opinion in the land use case involving Keizer Station and affirmed entirely Council's February decision. He reported that the appeal period is 21 days. If the appeal was filed by September 19, the case would go to the Court of Appeals. Mr. Johnson commended staff members, consultants and Maria Meier.

Mayor Christopher commended Mr. Johnson, City of Keizer staff and Maria Meier. Councilor Walsh offered thanks to the Planning Commission and to the Citizens of Keizer to participate in the process.

Chief Adams noted that Greg Wingett was the staff member who worked hard to get the new chairs for Council Chambers. Additionally, he noted that Mr. Wingett had gotten new chairs for the Police Department and that he had worked very hard to get a good deal.

Chris Eppley commended everyone at the City of Keizer for taking pride in their work,

Councilor Lee noted that Mayor Christopher has been doing a wonderful job. Regarding the Keizer Station project he noted that Mayor Christopher attended many meetings with other jurisdictions and that she did an excellent job in many forums stating the City's case.

ADMINISTRATIVE ACTION

None

CONSENT CALENDAR

Councilor Moir noted in the Minutes from June 2, page 6 the "Barber" should be "Barker" and on page 7 "reducte" should be "reduce".

Councilor Moir moved for approval of the June 2, 2003, Regular Session Minutes as amended. Councilor Lee seconded.

Councilor Walsh noted on Page 4, Item B, the statement that "Councilor Walsh reported that Salem-Keizer transportation corridor has been approved by the state" is incorrect. He noted that what was approved was that SKATS approved starting work with a consultant to make proposals on a Salem-Keizer Transportation Corridor.

Councilor Moir withdrew the motion. Councilor Lee withdrew the second. Minutes will be brought back with changes.

WRITTEN COMMUNICATIONS

Mayor Christopher read a letter from Mayor Janet Taylor, City of Salem, reporting that a core group was meeting to discuss ideas and goals for increasing regional promotion of Marion County. Mayor Christopher noted that she has been invited to the initial meeting scheduled for September 16 and to be a representative on the task force determining how tax dollars will be allocated.

Mayor Christopher noted that she had received a request from KYKN Radio to research the zoning conflicts which are preventing residents of Simonka Place (Union Gospel Mission for Women and Children) from receiving free dental work. Mayor Christopher asked staff to come back with a report showing the restrictions that are preventing this benefit and addressing the possibility of working with the organization to provide the service.

AGENDA INPUT

September 8, 2003
12:00 Noon City Council Work Session

September 15, 2003
7:000 pm City Council Meeting

- Comp Plan/Zone Change Public Hearing (Chapin-Marion County Fire District)
- Resolution – Authorizing City Manager t Enter into an Agreement for Hearings Officer Services

October 6, 2003
7:00 pm – City Council Meeting

ADJOURNMENT Mayor Christopher adjourned the meeting at 8:45 p.m.

APPROVED:

Debbie Lockhart, Recording Secretary

MAYOR:

Lore Christopher

COUNCIL MEMBERS

Councilor #1 – Judy K. Smith

Councilor #4 – Jacque Moir

Councilor #2 – Michel Gaynor

Councilor #5 – Richard Walsh

Councilor #3 – Charles E. Lee

Councilor #6 – James Taylor

Minutes approved:

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 9c

APPROVAL OF SEPTEMBER 15, 2003 REGULAR SESSION MINUTES

MINUTES
KEIZER CITY COUNCIL
Monday, September 15, 2003
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Christopher called the regular meeting to order at 7:05pm. Roll Call was taken as follows:

Present:
Lore Christopher, Mayor
Jacque Moir, Council President
Judy K. Smith, Councilor
James Taylor, Councilor
Richard Walsh, Councilor
Chuck Lee, Councilor (arrived 7:40)
Crisel Perez, Youth Councilor
Absent:
Michel Gaynor, Councilor
Staff:
Chris Eppley, City Manager
Rob Kissler, Public Works Director
Marc Adams, Chief of Police
Shannon Johnson, City Attorney
Nate Brown, Community Development Director
Cheryl Vafakos, Associate Planner
Tracy Davis, City Recorder

FLAG SALUTE

Mathew Anderson of 6094 Palm Tree Court, Keizer was introduced by Mayor Christopher as the Cub Scout who built and raced the City of Keizer Pinewood Derby car in the Mayor's Pinewood Derby and won second place. Mathew explained how he built the car and then led the Council in the Flag Salute.

PUBLIC TESTIMONY

Carl Myers, Municipal Court Judge, City of Keizer addressed the Council regarding House Bill 2759, a 65-page bill that is part of the 2003-2005 Biennium Budget Compromise. It was designed to raise money to help backfill cuts that were made in the Oregon Judicial

Department, due to budget shortfalls over the last biennium and going into 2003-5. The legislation which went into effect on September 1, created new filing fees for State courts, increased existing filing fees, fees to fund legal aid and mediation programs and fines and unitary assessments on all crimes and violations. Additionally the bill reduced a court's discretion to impose fines lower than the base fine. It is the increased fines and assessments and the reduced discretion that greatly affects local courts. A "Base Fine Comparison Table" was distributed to Council, showing previous Keizer base-fine schedule and the new schedule imposed by 2759. He gave examples of class violations and explained the fines. Judge Myers pointed out that this new legislation will most likely trigger angry complaints about the fines and will be perceived as an unwillingness to reduce fines. There will be more "not guilty" pleas and trials disputing the charges. Accounts receivable will rise with a larger number of uncollectible fines and payment schedules will have to be extended. There may be increased revenue to the City because of the increased fines, but a larger percentage of the fines will be paid to the State because of the increase in the "Unitary Assessment". Additionally it is anticipated that more staff time will be required to handle these matters. Court programs will need to be updated, there will be more files handled, more hearings, collection management, patrol officers will be spending more time explaining fines, etc.

Judge Myers concluded that judges statewide are opposed, not necessarily to the increased fines, but to the lack of discretion that they have to make the fines appropriate to the circumstances of the individual who has been found guilty of a traffic violation or crime.

In response to questioning about the Diversion Program, Judge Myers explained that, if the Council gave him direction that, as a public policy, certain violations might be treated with a diversion program or traffic school type of program, he would strongly consider that public policy in implementing some sort of program to avoid the high fines. That is somewhat contrary to the spirit of 2759, nevertheless, almost all the judges and courts across the state currently have some kind of traffic school program or deferment program where the defendant pays an administrative fee, fulfills certain requirements, and upon successful completion of the program, may have the case dismissed, so no fine is imposed. This is currently done with first-time juvenile offenders and for minor insurance violations.

Shayne Hollandsworth, Parks Board Member, 1191 Mandarin Street NE, Keizer - reported as follows:
Park Meadows Park: An interested citizen has approached the Parks Board regarding additional playground equipment at the Park

Meadows Park. Park Board has concluded that there is a need for additional equipment but wants to involve the neighborhood in the final decision. A letter is being circulated to get the support of the neighborhood.
Volunteer Mowing Program: Terry Witham reported that the volunteer mowing program has been very successful and that volunteers are being considered for spring/fall cleanup. The Parks Board is going to recognize these volunteers at the November Parks Board meeting with cookies, coffee and certificates.
Riverr Task Force: Mr. Walsh spoke to Parks Board regarding the 85-acre park, possible land acquisitions, and the Willamette Concord. Parks Board is in favor of the project.
Rotary Picnic Shelters: The Kiezer Rotary has been building picnic shelters at the ballpark and requested permission to build six more at other parks. The Board came up with a list of recommended locations.
Cummings School 4-acre Parcel: The board is exploring the possibility of developing a park on the property. Gary Whalen is working with the principal of the school.
Youth Recreation: Marsha Clark is pursuing the idea of a skate competition for Carlson Skate Park next summer.
Pepsi Machines & Litter at Carlson Skate Park The Board is considering relocating receptacles and putting an article in the McNary High School newspaper to limit litter. The vending machine that was damaged was repaired and is operational. Mr. Kissler recommended that City Staff review the contract with Pepsi regarding maintenance obligations for the vending machines.
Wallace House: The location is to be disclosed soon.

Volunteer Coordinating Committee
Mayor Christopher introduced *Troy Nichols, 1085 Fir Cone Lane NE, Keizer,* as her direct appointment to the Volunteer Coordinating Committee. She stated that Mr. Nichols works for the House Majority Office, Representative Knopf and has lived in Keizer for three years.

PUBLIC HEARING
Comprehensive Plan Map Amendment/Zone Change – Case No. 2003-24 (Chapin Investments/ Marion County Fire District #1)

City Attorney Shannon Johnson read the statutory outline as required by state law. There was no objection to waiving the reading of the requirements, therefore, the reading was waived.

There was no objection regarding notice or any bias declared from the public. The Council also did not declare any conflicts of interests or exparte contacts.

Associate Planner Cheryl Vafakos reported that the request was for a Comp Plan Map Amendment and Zone Change – Case No. 2003-24. The subject property for the hearing is located in the 7900 and 8000 block of Wheatland Road. Because there is no specific address, the property was also identified on the Marion County Assessors Map.

Ms. Vafakos noted additionally a letter from Marion County Fire District in which they request an emergency waiver of the 30-day waiting clause for enacting this ordinance.

Staff recommendation is that Council deliberate and approve a motion to change the Comp Plan Map from Low-density Residential (LDR) to Commercial (C) and a zone change from Urban Transitional (UT) to Commercial General (CG).
Ms. Vafakos referred to her staff report and noted a change on page 8: B under Zone Change 3.110.03A under the findings: "Residential Single Family" should be replaced with "Commercial General" and the Comp Plan designation of "Low Density Residential (LDR)" should be replaced with "Commercial"

Mayor Christopher opened the Public Hearing

Testimony:
Mark Shipman, Attorney for Applicant, Land Use Attorney with Saalfeld Griggs in Salem. Mr. Shipman informed Council that there had been a public hearing before the Hearings Officer and presented a complete application with substantial information. Staff recommended approval to the Hearings Officer, the Hearings Officer took that under advisement and this evening recommended that Council approve the combined application. He voiced agreement with the conditions that staff laid out for combined application and both applicants are prepared to carry those out.

With no further testimony, Mayor Christopher closed the public hearing.

<u>Councilor Moir moved to change the Comprehensive Plan Map Designation from Low-density Residential (LDR) to Commercial (C) and change the zone from Urban Transitional (UT) to Commercial General (CG) with conditions as identified in the Hearings Officers recommendation adding an emergency clause and waiving the 30-day waiting period. Councilor Taylor seconded the motion.</u>

In response to questioning by Councilor Smith, Ms. Vafakos stated that Phase 1 and Phase 2 were not separate properties, but separate development stages, therefore, the approval has to be for the entire property.

<u>Councilor Smith then recommended a friendly amendment requiring landscape buffering from "UT or residential zones" around the mini storage.</u>

Councilor President and Councilor Taylor accepted Councilor Smith's recommended amendment to the motion.
The motion passed unanimously as amended as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh and Lee. (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Gaynor (1)

Chris Eppley noted that the appropriate ordinance would be prepared with an emergency clause and brought to the first meeting in October.

COMMITTEE REPORTS and OTHER BUSINESS

Councilor Lee stated that donor plaques and the plaque commemorating Newton & McGee Plaza are in place at the Keizer Corner focal point on Chemawa and River Road, and everything looks very nice.

Councilor Moir recommended initiating a project for Planning Commission and Traffic Safety Commission to identify viable alternative routes for moving traffic north-south and east-west, to be completed by April or May of 2004. Because MWACT is looking at grants for traffic for 2006-09, possible projects requiring funding need to be under consideration in order to increase the possibility of receiving a grant. Council agreed by consensus to give this project o the Planning Commission.

Student Councilor Crisel Perez reported that this month she is shadowing Councilor Moir, attending various committee meetings with her. She noted that she is in full support of the recognition night for the park volunteers. Regarding the skate competition, she noted that she was working on getting some youth input and should have that soon.

MWACT Update – Councilor Walsh reported that the criteria have been formalized for evaluation of STIP (Statewide Transportation Improvement Plan) proposals. These criteria were distributed. Mr. Walsh stated that the first and most important condition is inclusion in the TSP. He noted that the TSP should be reviewed so that projects could be inserted for next year. Members discussed the need to review the Regional TSP. Councilor Moir suggested that Planning Commission be asked to review the Regional TSP as well. Mr. Walsh asked Council to consider the importance of Cherriots in respect to the TSP and encouraged members to work towards a consensus on what is desired for the City of Keizer.

Bikeways Committee – Councilor Walsh informed Council that the "Bicycles Skills Fair" at Day Spring Church would be on September 8,

2003, from 3 to 6 pm. Councilor Smith reported that this event is a wonderful event which focuses on safety for children.
SKIP (Salem-Keizer-Independence Partnership) Group will meet on September 17 to discuss the Willamette River Concord which is a pact affirming that the cities are working together, coordinating their efforts toward the development of a park along the Willamette River. Councilor Walsh noted that this Concord does not relinquish any jurisdictional rights. He informed council that the Concord was approved unanimously by the Riverr Task Force and the Parks Advisory Board.

Planning Commission – Councilor Smith reported that the Design Standards are still being reviewed and Commission is reviewing alternatives to the Sherwin Williams paint colors.

Volunteer Coordinating Committee – Councilor Smith noted that the committee is not holding a recognition ceremony as done in the past, instead they are attending various meetings, presenting certificates and providing cookies. Councilor Moir commended Councilor Smith on the recognition of volunteers noting the favorable response from the volunteers receiving recognition.

League of Oregon Cities – Mayor Christopher notified Council that the LOC is sponsoring a 2003 Student Poster and Essay Contest. The contest is for 7th and 10th grade students only. The theme is "The Key to Economic Stimulus". Deadline is October 17. The information was given to Student Councilor Perez and will be posted at City Hall. Councilor Lee noted that the information is already at Salem/Keizer schools.

City Manager Chris Eppley stated that the Planning Commission would be holding a special meeting on September 17th to discuss a text amendment to the AI zone around the Willow Lake Nursery. This issue will come to Council September 22.

Chief Marc Adams reported that the Keizer Police Department had a booth at the Latino Small Business Conference. He noted there was a great turnout and a lot of interest in the booth. Addressing the issue of traffic fines, Chief Adams informed Council that the traffic safety unit issues one warning citation out of every three traffic citations. He also noted that the Department had one resignation last week and a new officer starting on Saturday. Chief Adams informed Council that as part of the Department Strategic Planning Process they had reviewed the organizational structure and decided to go back to a two-Captain system with fewer Sergeants. He felt this could be done within budget, possibly even under budget.
Dianne Hunt, Human Resources, informed Council that the IT person

is working out well. She listed several different projects which had been completed.

Cheryl Vafakos asked those who did not have their code book updated to please bring them in for updating.

Nate Brown stated that work on the Development Standards is continuing. He reported that an application had been submitted to the organization "Today's Choices-Tomorrow's Communities" on the Keizer Village improvements and the partnership entered into with the private sector. The organization has asked Keizer to update their information and Mr. Brown will be working with Chris Eppley on the update. Referring to the River Road Task Force, Mr. Brown reported that he and City Manager Chris Eppley will be meeting with the consultant on September 29, 2003. The first meeting of the Task Force will be scheduled, most likely, for October.
City Attorney Johnson reported that the Qwest litigation is scheduled for oral argument in the 9th Circuit Court of Appeals on November 3, 2003. This has to do with rights of the Oregon cities to collect franchise fees from Qwest. Additionally he reported that the deadline for appeals to be filed on the LUBA matter is Friday, September 19.

ADMINISTRATIVE ACTION

a. ORDER – Minor Variance Case No. 2003-21 (Keizer Development LLC)

City Attorney Johnson reported that Council had directed staff to prepare an Order approving the variance and that it was in the packets for review and approval.

<u>Councilor Moir moved to adopt the Order in the Matter of the Application of Keizer Development LLC for a Variance to the Maximum Density of Units per Acre for Property Located within the Barnick Estates Subdivision, Case No. 2003-31. Councilor Taylor seconded the motion.</u>

<u>The motion passed unanimously as follows:</u>

<u>AYES:</u> Christopher, Moir, Smith, Taylor, Walsh and Lee (6)
<u>NAYS:</u> None (0)
<u>ABSTENTIONS:</u> None (0)
ABSENT: Gaynor (1)

b. Acceptance of 2003 Salary and Benefits Study

Dianne Hunt addressed the Council stating that the Study had been before the Council July 7, 2003, and it was tabled pending review of the Personnel Policy Committee. She reported that the committee reviewed the Study on August 20 and September 3. She reviewed the various recommended changes.

<u>Councilor Moir moved to accept into record the City of Keizer 2003</u>

Salary and Benefit Study. Councilor Walsh seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh and Lee (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: Gaynor (1)
Councilor Moir Moved to Direct Staff to Implement the Following Classifications Changes Effective July 1, 2003, as Listed with the Exception that Title Change be Made for Police Captain to Deputy Chief, Eliminating the Captain's Position as Recommended by the Committee.

Dianne Hunt noted that the title change from Captain to Deputy Chief would have to be addressed in resolution form. She noted that the title change is not being recommended until reorganization, or an analysis thereof, is complete. Mayor Christopher pointed out that the title change was directly related to a salary change and the recommendation of the consultant. Ms. Hunt explained that the duties of the classification are independent of the title: based on the duties, the position is second in command. City Attorney Johnson explained that a formal resolution would be necessary to change the title but the salary range could be changed with a minute motion. Chief Adams noted that the job title selection is at the discretion of the department. He continued that the possible reorganization would result in the elimination of a couple of sergeant positions and, referring to the title of Deputy Chief, stated that no matter what the title is, the duties will be the same.

City Attorney Johnson asked if the motion could be for the salary changes only and a resolution be made at a later date for the Title Change. Hearing no objections it was agreed that that is how the motion would read.

Councilor Smith seconded the motion as noted.

Mayor Christopher offered a friendly amendment that with the title change of Deputy Chief, should there be a personnel change and the Department stay with Deputy Chief, it would be an open competitive recruitment with public input.

City Manager Chris Eppley declared that it was a staff administrative decision to be held strictly at the administrative level.

Mayor Christopher withdrew the amendment.

The motion passed as originally presented as follows:

AYES: Christopher, Moir, Smith, Taylor and Walsh (5)
NAYS: Lee (1)
ABSTENTIONS: None (0)
ABSENT: Gaynor (1)

City Attorney Johnson was directed to have the resolution regarding the change in title prepared for the October meeting.

Councilor Smith requested that verification of Mr. Eppley's statement about the administrative decision be brought to the October meeting.

WRITTEN COMMUNICATIONS None

ADJOURNMENT Mayor Christopher adjourned the meeting at 9:04 p.m.

APPROVED:

Debbie Lockhart, Recording Secretary

MAYOR:

Lore Christopher

COUNCIL MEMBERS

Councilor #1 – Judy K. Smith

Councilor #4 – Jacque Moir

(Absent)
Councilor #2 – Michel Gaynor

Councilor #5 – Richard Walsh

Councilor #3 – Charles E. Lee

Councilor #6 – James Taylor

Minutes approved:

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 9d

APPROVAL OF SEPTEMBER 22, 2003 SPECIAL SESSION MINUTES

MINUTES
KEIZER CITY COUNCIL
SPECIAL SESSION
Monday, September 22, 2003
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Christopher called the special session to order at 5:35 p.m. Roll Call was taken as follows:

Present:
Lore Christopher, Mayor
Jacque Moir, Council President
Michel Gaynor, Councilor
Judy K. Smith, Councilor
James Taylor, Councilor
Richard Walsh, Councilor
Crisel Perez, Youth Councilor

Absent:
Charles Lee, Councilor

Staff:
Marc Adams, Chief of Police
Shannon Johnson, City Attorney
Cheryl Vafakos, Associate Planner
Rob Kissler, Public Works
Susan Gahlsdorf, Finance Director
Tracy Davis, City Recorder

PUBLIC TESTIMONY

None

ADMINISTRATIVE ACTION - Development Disposition Agreement with Northwest National LLC – Keizer Station Project

Mayor Christopher outlined the process for the review of the Development Disposition Agreement stating that Council would go over the document page by page and item by item. She indicated that the hope was to complete review of the document and then the developer would meet with City Attorney and finalize details. The City Council would meet in Executive Session for final tweaking and sign off by the end of the week. A tentative meeting was set for Monday, September 29 at 5:30. She noted that the Agreement could not be voted on until the regularly scheduled Council meeting on October 6.

OTHER BUSINESS

Councilor Judy Smith distributed a copy of the City's draft policy on Open and Competitive hiring process. She noted this pertained to the previous discussion by Council on the hiring process for the Police Captain.

Clarifying why the issue was being addressed, Mayor Christopher explained that the vacancy left by Captain Barker needed to be filled and Council had discussed open and competitive recruitment for the position at an earlier meeting.

Responding, Chief Marc Adams stated the agency has not looked outside for promotions unless there were no qualified employees within the agency. Open and competitive hiring is done for initial hiring, but promotions are made from within the agency. Chief noted this process meets the requirements of the referenced policy and noted that to hire outside the agency for a position of this nature would destroy employee incentive. He detailed the anticipated process in this instance.

City Attorney Johnson asked if the issue could be addressed when the City Manager returns to the office.

ADJOURNMENT

Mayor Christopher adjourned the meeting at 6:50 p.m.

APPROVED:

Debbie Lockhart, Recording Secretary

MAYOR:

Lore Christopher

COUNCIL MEMBERS

Councilor #1 – Judy K. Smith

Councilor #4 – Jacque Moir

Councilor #2 – Michel Gaynor

Councilor #5 – Richard Walsh

(Absent)
Councilor #3 – Charles E. Lee

Councilor #6 – James Taylor

Minutes approved:

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 9e

APPROVAL OF SEPTEMBER 25, 2003 WORK SESSION MINUTES

MINUTES
KEIZER CITY COUNCIL/URBAN RENEWAL AGENCY
WORK SESSION

Thursday, September 25, 2003
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER

Chair Christopher called the regular meeting to order at 8:17 p.m.

Present:
Lore Christopher, Chair
Michel Gaynor
Jim Taylor
Jacque Moir
Judy Smith
Richard Walsh
Crisel Perez

Absent:
Charles Lee

Staff:
Tracy Davis, City Recorder
Rob Kissler, Public Works Director

DISCUSSION
a. Development Disposition Agreement with Northwest National LLC – Keizer Station Project

Mayor Christopher outlined the process that would be used for this meeting. She would act as spokesperson for the Council and would point out the areas of concern. She stated that the goal was to have a final draft agreement by October 6. In attendance for Northwest National LLC were Chuck Sides, Alan Roodhouse, and Bob Thompson.

Members went over the agreement page by page as follows:

Page 3
Recital H - add the word Tribal Law.

Council is in favor of bifurcating the process. The fear is that it could lead to an issue that could be appealed because it does not specifically say "Master Plan".

Page 4
Article 1 SUBJECT OF AGREMENT
§101 Definitions "Predevelopment Agreement" - Council feels that the Predevelopment Agreement has expired, that is why they are working on getting the agreement in place.

Page 5
§101 Definitions: - "Public Park" - Council feels a minimum of 2 acres of park area is necessary in addition to the four gathering places. Developer responded that this was not acceptable stating it would result in a loss of 100,000 feet of build able area. Mayor Christopher suggested that sizes of existing green areas, such as the bike path, be expanded to achieve the desired 2 acres.

Page 6
§107 Schedule of Performance - Regarding the change from 6 elements to 7, there was no problem, however, Mayor Christopher questioned if the two anchors were going in at the same time. Developer responded that that was the hope, but it was more likely that one of the anchors would follow the other. The two anchors represent almost one-third of the economic value that this project will generate.

Page 7
§108 General Description of the Project, Section E - Change the developer's inserted number from 80,000 square feet to 100,000 square feet. Developer agreed to this.

§109 Nonperformance by the Agency: Developer removed indemnification and waived all claims, causes of action, etc. Council wants indemnification in the section. Developer explained that the change was made because the references seemed to be directed at claims that the developer would have against the agency so they were trying to address it in a more legal manner. If the intent is to indemnify against third parties, developer objects to that, feeling that one partner should not have to indemnify another partner for something done by someone else. Councilor Walsh clarified that the reference was to subcontractors and Developer agreed to that pending the opinion of Rich Miller

Page 7 and 8
Article 3 PROVISIONS RELATING TO ACQUISITION PARCELS
§301 Acquisition of Acquisition Parcels
§302 Site Feasibility Assessment
§303 Development of Acquisition Budget and Acquisition Account
City Attorney Johnson noted that the concept was that the developer will front the acquisition costs (whether voluntary or not) and a specific acquisition account established for long-range purchases will not be necessary, but as long as the money is up front, all parties are in agreement. Final language has not yet been perfected.

Page 10
§304 Monitoring of the Acquisition Budget; Acquisition Account - Add language saying that every thirty (30) days Agency will give Developer a statement.

Page 11
§305 *Agency Condemnation Procedure, Paragraph I* - Developer had removed the wording "being recorded against the property" and Council wants that wording left in the agreement. Developer said they didn't have a problem with that as long as they were put in the project documentation. He continued that the idea of covenants was not troubling, but the method that they are put in place could make a difference when dealing with national tenants.

§308 Form of Deed - The last sentence added by developer was acceptable for Development Parcels but not for Acquisition Parcels. It was noted that reference to "Acquisition Parcels" and "Development Parcels" needs to be specifically stated.

Page 13
§Physical Condition of the Acquisition Parcels, Paragraph B Environmental Liabilities - Referring to the "sole responsibility" the developer had replaced "the Developer" with "parties other than the Agency", however Council felt that it was unclear as to who was the responsible party. Developer felt they would be burdened with environmental issues for property they did not own. They felt that, if property was contaminated, the one who contaminated it should be the responsible party. They pointed out that the wording "parties other than the agency" could be themselves. City Attorney Johnson pointed out that the agreement is solely between the Developer and the Agency and that third parties could not be held responsible for anything because they are not part of the agreement.

§311 Conditions of the Agency Acquisition of Property and Formation of LID Paragraph C

(1) Agency felt the words "material terms" should be added, however, Developer stated that with "economic terms" blacked out, the only thing left would be "material terms" so it was not an issue.

(3) Referring to the language "or commitments by major national tenants to provide funds, in the aggregate" Council questioned if that was referring to purchasers and developer affirmed noting that they would be responsible for their portion of the site work and probably also make contributions to the off-sites.

(4) Council is not comfortable with removing any language but find additional language acceptable with the exception of "Village Center Area, which plan shall generally portray all elements of the private improvements". Council wishes to remove the word "generally". Developer responded that the issue of the word "generally" was acceptable as well as the removed language, except for the Project Budget. Developer does not what that to be in the paragraph.

Paragraph D - Council wanted assurance that all 20 pieces of property are owned before acquisition and/or condemnation process begins. Developer noted that the process is usually that purchase of land is postponed until the last possible minute. The Developer is willing to prove to the satisfaction of the Agency that the land is under control. Developer concluded that the longest contract on property under contract is December 2004, meaning everything will be purchased by December 2004.

Paragraph G - Council accepts deletion of the words "construction permits", but wants all other wording to remain with "tribal approvals" being added between "land use approvals" and "governmental approvals".

Page 15

Paragraph J - Council wishes to leave the wording in. Developer was agreeable to this.

Paragraph L - Council wishes to leave the wording in. Developer questioned the definition of an "assurance". Council noted that acceptable wording would be "The parties acknowledge and agree that the area in Keizer Station known as Area A Entertainment and Sports Center may be developed."

Paragraph N - Wording was taken out by Developer but Council wants it to remain. Developer is willing to leave it in.

Paragraph I - Council agrees to reduction of the bond based on existing financial obligations.

Last Paragraph of §311 - Developer asked for 30-day approval, however Council felt it could not be done in 30 days but could do it in 60 days. Developer agreed to that.

Page 16
Article 5 THE LOCAL IMPROVEMENT DISTRICT
§501 Formation – Council wants to leave the selection of a CEM out of the agreement.

Paragraph A (4) & (5) – The language which the Developer removed is language taken directly from the City of Keizer ordinances and cannot be removed. Developer stated that using front foot language does not work with a shopping center.

Page 17
Paragraph B - Council wants to change the language added by Developer "the Developer has not agreed to fund such excess" to "the Developer has not funded such excess". Developer offered compromise language offering a commitment that Developer can fund it. It was agreed that parties would discuss this matter further. Additionally, at the bottom of the page (top of Page 18) language was added which will also be discussed further.

Page 18
Paragraph I – Council finds it acceptable for Developer to not proceed with an LID before the first condemnation because once the first condemnation has been made, it should be committed to the LID.

Page 21
§502 LID Requirements - Paragraph following Paragraph D. Council wants that paragraph left in and the following paragraph taken out. Council felt the next paragraph needed more assurances. Developer was willing to work on this.

§503 No LID – Council accepts the language, however, City Attorney Johnson will work on related issues.

Article 6 DEVELOPMENT OF THE PROJECT
§602 Development and Construction of Private Improvements – In the last sentence beginning with "The Scope of the Development..." the word "generally" should be taken out. Developer agreed.

Page 23
Paragraphs D, E, F, G, H and the last paragraph. - Council feels 10 years, 7 elements, $2.5 million. 14 one-half elements. Council wants the section of the document written to reflect the project has 10 years because of condemnation.

Page 24
§603 Construction of Public Area, Plaza Areas and Multi-Purpose Pathway, Item C Dedication and Easement – Council added "pursuant to the Master Plan A" folowing "in immediately adjacent areas of the Private Development on a reasonable basis"

Page 26
§607 Water Rights – Council indicated that the City agrees that Developer may use existing wells during the construction, but upon completion, City would acquire the water rights. Council agreed that more work needed to be done on this portion of the document.

§608 Non Remonstrance Covenant as to Entertainment & Sports Area. Council replaced the words "It is the preference of the Developer" or "It is contemplated" with "The parties acknowledge and agree" and further into the sentence the word "be" was replaced with the words "may be".

Page 28
Article 9 FINANCING OF THE PROJECT
§901 Financial Commitments by the City and the Agency
Section A – Council removed the words "up to the first".

Section B – In the first sentence following "30 years" Council added "pursuant to local law".

Page 29
§902 Financial Commitments by the Developer, Section C – Council wants this section to read that Agency agrees that Developer would consent to pay the transportation SDCs and Agency agrees to adopt those transportation SDCs within 365 days and pay all lawfully adopted SDCs.

Chris Eppley summarized as follows: Council understands Developer's need to define off-site costs. They understand that transportation SDCs can do that and Council wants to do that for the Developer. They are okay doing it at the time of the building permit but Developer cannot apply for a building permit until Agency has an SCD methodology in place. Council agrees not to take more than 365 days (from the signing of agreement) to make that happen.

Council noted that the final language needs fine tuning..

Page 31
Article 10 DEFAULT AND REMEDIES; TERMINATION
§1004 Termination, Section B, Final Termination Date – Council wants the parenthetical comment "(except those conditions .....) to be deleted. Developer agreed to this.

Page 33
Article 11 REIMBURSEMENTS BY THE DEVELOPER
§1101 Reimbursements by the Developer – Council changed the second sentence to read "The Reimbursement shall be equal to each half of an element........" Developer agreed to this.

§1102 Incentives – Council does not agree to any incentives as listed in the Agreement, however agrees that if Project is 90% complete in a seven year period, Council will pay back any Reimbursements paid by the Developer. If Project is 75% complete in seven years, Council will pay back 50% of any Reimbursements paid by the Developer, less any City costs.

Page 34
§1101 Reimbursement by the Developer – Council and Developer agreed to keep the established time line for the first three elements and telescope the last four elements so that the final project completion is 10 years, dividing the money up respectively.

Page 35
Article 12 GENERAL PROVISIONS
§1201Project Managers, Section C – Council questioned Developer's strikeout of two sentences, and Developer affirmed that he indeed did not need the sentences in the agreement.

Page 41
§1228 Recording – Council prefers that an Intergovernmental Agreement be attached as an Exhibit to the Agreement and City

would sign there. Developer agreed.

City Attorney Shannon Johnson reminded Council that the attachments to the agreement will need to be completed.

ADJOURNMENT The meeting was adjourned at 10:14 p.m.

APPROVED:

Debbie Lockhart, Recording Secretary

Lore Christopher, Chair

AGENCY MEMBERS

Michel Gaynor

(Absent)
Charles E. Lee

Jim Taylor

Jacque Moir

Judy Smith

Richard Walsh

Minutes approved:

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 9f

APPROVAL OF OCTOBER 6, 2003 REGULAR SESSION MINUTES

MINUTES
KEIZER CITY COUNCIL
Monday, October 6, 2003
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER Mayor Christopher called the regular meeting to order at 7:27 pm. Roll Call was taken as follows:

Present:
Lore Christopher, Mayor
Jacque Moir, Council President
Judy K. Smith, Councilor
James Taylor, Councilor
Richard Walsh, Councilor
Michel Gaynor, Councilor
Chuck Lee, Councilor
Crisel Perez, Youth Councilor

Staff:
Rob Kissler, Public Works Director
Marc Adams, Chief of Police
Dianne Hunt, Human Resources
Susan Gahlsdorf, Finance Director
Shannon Johnson, City Attorney
Nate Brown, Community Development Director
Tracy Davis, City Recorder

FLAG SALUTE Councilor Lee led the City Council in the flag salute.

PUBLIC TESTIMONY None

PROCLAMATION Councilor Walsh summarized the background of the committees working to form the park along the Willamette River in conjunction with Salem, Keizer and Independence. The group has created a Proclamation which has been approved by Independence City Council, Salem City Council; Keizer Parks Board, and the Keizer Riverr Task Force. The proclamation states that the communities will work cooperatively together to reach a common goal. Councilor Walsh then read the proclamation.

Councilor Walsh moved to adopt the Willamette Concord (Keizer Proclamation). Councilor Taylor seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

PUBLIC HEARING
Text Amendment to the AI (Agricultural Industrial) Zone of the Keizer Development Code

Community Development Developer, Nate Brown, addressed the Council regarding amending the Agricultural Industrial zone to broaden the allowed uses, introducing uses compatible with the objectives of the development pattern, the comprehensive plan goals and the property owner's desires. Mr. Brown pointed out that the Planning Commission approved the Amendment on September 17 and noted that the language of the amendment was refined to assure that administrative and support facilities would be allowed in the zone, but expansion of the wastewater treatment facilities would not.

Hearing no questions directed at Mr. Brown, Mayor Christopher opened the public hearing.

Testimony
Ken Sherman, Jr., attorney, 475 Cottage Street, Salem, Oregon, representing Willow Lake Nursery, reported that he was appearing in support of the text amendment. He briefed the Council on the history of transaction which brought about this request. He noted that the proposed changes in the text are a movement in a positive direction for the City of Keizer.

John Blake, 5655 Windsor Island Road, Keizer, Oregon, co-owner of Willow Lake Nursery spoke to the Council explaining his previous arrangements with the City of Salem and the property in question. He noted that this amendment would be a positive measure for the City of Salem as well as for his family.

Hearing no questions, Mayor Christopher closed the public hearing.

Councilor moved a Motion to Direct Staff to Prepare an Ordinance Modifying the Text of the Keizer Development Code Section 2.115 Agricultural Industrial Zone (AI) to return for Council Approval on October 20, 2003. Councilor Gaynor seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

COMMITTEE REPORTS and OTHER BUSINESS

Keizer Corner: Councilor Lee reported that having just returned from two weeks in Italy and seeing many beautiful sites, nothing compared to the majesty of Keizer Corner. He noted that Keizer corner was going to be recognized by the "Quality of Life Recognition Celebration" to be held on October 16 at 7 pm at Willamette Valley Viticulture.

Mayor Christopher informed Council that four projects were up for recognition and the Council will have a table at the event. Council members interested in attending were instructed to coordinate that with Tracy Davis.

Emergency Planning Committee – Councilor Moir reported that the committee is back to monthly meetings. It has just had two training and restructuring meetings for EVAK (Emergency Volunteers Assisting Keizer), the core volunteer group is undergoing some changes which will be reported in the newsletter. Ms. Moir took a moment to thank Mayor Christopher who will be writing an article for the newsletter. The committee is currently planning an exercise for March or April 2004.

Student Councilor – Councilor Moir informed Council members that each councilor would have an opportunity to be "shadowed" by Student Councilor Crisel Perez. Ms. Moir distributed evaluation forms to members to complete after they have worked with Ms. Perez. Mayor Christopher added that the Keizer Times will be doing a profile on Ms. Perez. She noted that in November/December Ms. Perez would be working with Richard Walsh, January/February with Judy Smith; March/April with Chuck Lee; May/June with Michel Gaynor; and July/August with Jim Taylor.

Skate Park Helmet Regulation – Councilor Moir thanked members of the Keizer Police Department and City staff members because most of the youth using the park are wearing helmets. She continued that much of the responsibility for this change is due to the Bikeways Committee providing free helmets to the users.

Claggett Creek Watershed Council – Mayor Christopher reported that she had spoken with Gary Miller, the Chair of the Watershed Council, and that he had expressed a need for volunteers (4 to 5) on Saturday, October 11 from 9 am until noon. She noted that she and Councilor Moir had volunteered and asked for additional volunteers. She continued that on Saturday, October 18, 100 volunteers would be needed to work from 9am until noon. Volunteers are asked to bring their own shovel. Councilor Moir added that some minor planting is scheduled for the October 11 workday so those attending should bring their own shovel, gloves, boots, etc. Questions should be addressed to Gary Miller at home: 503-371-1658.

Rob Kissler noted that a press release was sent out to the media requesting volunteers. He added that there were over 6,000 native plants to plant; lunch would be provided by Northwest Natural Gas; and coordination will take place in the Dearborn parking lot in the south end of the park. All volunteers will be welcomed for however long they are available.

Civic Center Task Force – Mayor Christopher read a Press Release from October 1st giving notice of a Public Forum scheduled for Tuesday, October 28, 2003 from 6 until 7:30 pm in Council Chambers.

Councilor Gaynor noted that purpose of the Civic Center Task Force was to determine the best use of the facilities and City obligations and coordinate those to work together efficiently. Two meetings have already taken place with some innovative ideas being put forth. Councilor Gaynor voiced his belief that the input from these meetings would result in a positive outcome for the City.

Athletic Fields at Whitaker – Councilor Gaynor reported that volunteers have been working hard to level the complex and prepare it for hydroseeding. The installation of irrigation, also done by volunteers, is planned for this spring and should take four consecutive weekends.

In response to questioning by Councilor Smith, Councilor Gaynor stated that the access from 14th would most likely be opened up when the project was complete, but that issue should be addressed to the school.

MWACT - Councilor Walsh reported that ODOT gave a presentation stating that the entire stretch from Kuebler to Eugene is under consideration for widening. He noted that there would be an open house regarding the Salem Highway Construction Project from Chemawa Interchange/Salem Parkway/Mission Street exit held on October 7 at the Salem Public Library.

SKATS – Councilor Walsh noted that they now have a draft of what they envision the corridor to look like from downtown to Chemawa. A great deal of consideration has been given to continuity of traffic while implementing rapid bus travel. Mr. Walsh reported that SKATS produced the plan on disc for the City of Keizer and offered to obtain it and present it to Council. Council agreed that they would like to see it.

Planning Commission – Councilor Smith reported that the Commission would be meeting on Wednesday at 7 pm. She noted that there was an opening on the Planning Commission. Parties interested should get an application from City Hall.

Staff Reports
Chief Adams reported:

1. Officer Dave LeDay had been selected to receive the "Looking Beyond the Traffic Ticket" Award given by ODOT. The award is given to an officer making a traffic stop and discovering another crime connected with that stop. Officer LeDay will be presented the award on Thursday, October 16 at the Annual Safety Conference in Eugene.
2. Through Traffic Safety Commission efforts the Keizer Police Department has been selected to receive a speed equipment grant which would give the department a laser speed measuring device costing $3500.
3. On October 16, the Keizer Police Department K-9, Niko, will retire due to hip problems. A $1000 donation has been received towards replacing him.
4. The police department made 17 arrests between Oct. 3 and 5.

Dianne Hunt, Human Resources, reported:

1. The City is recruiting for two Captain positions. Recruitment closes at noon on Friday, October 17. There have been over 400 responses to the website.
2. Utility room is being cleaned up, replacing 12 overloaded, outdated messy hubs with two modern ones.

Nate Brown, Community Development Director reported:

1. Planning Commission meeting on Wednesday evening will be considering the Development Standards, working on clarification of definitions and establishing a standard for colors. In addition the Commission will begin review of the Transportation Services Plan (TSP).
2. Consideration is being given to opening the Permit Counter full time rather than half time. He is hoping to encourage applicants to file in Keizer rather than Marion County so that the revenue remains with the City.

City Attorney, Shannon Johnson reported that the 1000 Friends and Friends of Marion County and Doug Parrow filed their brief in the Court of Appeals LUBA case and oral argument is set for November 10.

Mayor Christopher invited Council to the "Black, White & Gray Gala Reception" on November 1 at the Keizer Heritage Center at 7:00 pm.

ADMINISTRATIVE ACTION

a. ORDINANCE – Comprehensive Plan Map Amendment/Zone Change – Case No. 2003-24 (Chapin Investments/Marion County Fire District #1

City Attorney Shannon Johnson reported that this matter came before Council for Public Hearing and Council directed him to prepare an Ordinance granting the requested comp plan and zone change. He presented the ordinance and zone change for adoption.

Councilor Moir moved to Adopt a Bill for an Ordinance in the matter of the Application of Marion County Fire District #1 for a Comprehensive Plan Map Amendment from Low Density Residential (LDR) to Commercial (C) and a Zone Change from Urban Transitional (UT) to Commercial General (CG) with Limited Use Overlay Zone for Property Located in the 7900 and 8000 Block of Wheatland Road North, Keizer, Oregon (Case No. 2003-24); and Declaring an Emergency. Councilor Taylor seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

b. RESOLUTION – Change of Title from Police Captain to Deputy Chief

Dianne Hunt reported that the City of Keizer Salary Survey 2003 conducted by HR Answers recommended changing the title Police Captain to Deputy Chief. She presented the Resolution stating that the Personnel Policy Committee recommends Council retain the title of Police Captain and vote a "do not pass" on the resolution.

Councilor Moir moved to Adopt Resolution R2003 Changing the Classification Title of Police Captain to Deputy Chief and Repealing Resolution No. R2001-1240. Councilor Lee seconded.

Councilor Moir noted that it was her intention to vote against this motion, following the recommendation of the Personnel Policy Committee. Councilor Walsh voiced his support of the Personnel Policy Committee's recommendation.

Councilor Smith questioned the changes stating that she was in favor of eliminating the classification of Police Captain and initiating the classification of Deputy Chief.
The motion failed as follows:

AYES: Smith (1)
NAYS: Christopher, Moir, Taylor, Walsh, Gaynor and Lee (6)
ABSTENTIONS: None (0)
ABSENT: None (0)

c. RESOLUTION – Change of Fee for Property Lien Searches

Acting City Manager, Susan Gahlsdorf, reported that state statute requires the City to give constructive notice of its interest in real property either by recording that interest with the County or through an electronic medium. Currently the City's Resolution allows the charge of $5 for every Lien Search because it is still being done manually through a title company. However, the city is now capable of providing the information on line and will be working with Net Assets, Inc. This service costs $8 per search. She noted that currently the City generates about $8,000 annually in lien requests at the $5 rate. The proposal is that the lien fee be raised to $20. There have been no increases since 1994. This amount would generate an additional $11,000 to the general fund. She noted that other cities in the area are charging between $20 and $35 for Lien searches. Ms. Gahlsdorf concluded that staff recommendation is that Council:

1. Include the Lien Search Fee in the Resolution for Administrative Services so that the fee can be tracked and updated along with other administrative fees;
2. Repeal Resolution 94-763 which is the current property lien search fee; and
3. Amend Resolution 03-1404 to include a charge of $20 per electronic lien search.

In response to questions by Council, Ms. Gahlsdorf affirmed that she felt the requested fee would be adequate to cover costs incurred by City staff, noting that, if the cost proved to be inadequate, she would approach Council at a later date. She added that the Administrative Resolution is reviewed every three years.

Mayor Christopher asked for comments from the audience regarding the fee increase. There were no comments.

Councilor Moir moved to adopt Resolution R03 Establishing Fees for Certain Administrative Services Amending R03-1404 and Repealing R94-763. Councilor Gaynor seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

d. Supplemental Budget

Acting City Manager, Susan Gahlsdorf, reported that on September 26, 2003, the City of Keizer published a notice that the City Council would consider adoption of a Resolution for a supplemental budget. Since that time staff has discovered that a supplemental budget is not necessary and the request has been withdrawn.

CONSENT CALENDAR

a. Resolution – Initiating Fultz Estates Phase II Street Lighting District
b. Resolution – Creation of Classification of Permit Specialist
c. Resolution – Creation of Information System Technician
d. Salary Survey 2003
e. Resolution – Authorizing the Mayor to Enter Professional Services Contract with Spencer and Kupper for Master Planning Services for River Road Corridor

Councilor Moir moved for approval of the Consent Calendar. Councilor Walsh seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

WRITTEN COMMUNICATIONS

Mayor Christopher reported that she received a letter from Christian Center Academy requesting volunteers to read to children on Tuesday, November 11, National Young Readers Day. Information is available through City Hall.

Oregon Department of Aviation is requesting that someone with first hand tourist information write a letter describing the kind of vacation a family could have if they flew their privately owned airplane into an Oregon airport near the community including details about lodging, restaurants, package deals, etc. Mayor Christopher gave the letter to City Recorder Tracy Davis and talked with the Chamber of Commerce, and asked that anyone interested share their experiences.

AGENDA INPUT

October 13, 2003
12:00 pm (Noon) City Council Work Session
- CCRLS (Chemeketa College Regional Library Service) Library/City of Keizer
- Transportation Projects

October 20, 2003
7:00 pm – City Council Meeting
- RESOLUTION – Creating River Road Task Force
- Appointments to Keizer Points of Interest Committee
- No Parking Signs on Northern Heights Loop

ADJOURNMENT

Mayor Christopher adjourned the meeting at 8:40 p.m.

APPROVED:

Debbie Lockhart, Recording Secretary

MAYOR:

Lore Christopher

COUNCIL MEMBERS

Councilor #1 – Judy K. Smith

Councilor #4 – Jacque Moir

Councilor #2 – Michel Gaynor

Councilor #5 – Richard Walsh

Councilor #3 – Charles E. Lee

Councilor #6 – James Taylor

Minutes approved:

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 9g

APPROVAL OF OCTOBER 13, 2003 WORK SESSION MINUTES

MINUTES
KEIZER CITY COUNCIL
WORK SESSION
Monday, October 13, 2003
Robert L. Simon Council Chambers
Keizer City Hall, Keizer, Oregon

CALL TO ORDER

Mayor Christopher called the work session to order at 12:43 pm. Roll call was taken as follows:

Present:
Lore Christopher, Mayor
Jacque Moir, Council President
Charles Lee, Councilor
Judy Smith, Councilor
Richard Walsh, Councilor
Michel Gaynor, Councilor

Absent:
James Taylor, Councilor

Staff:
Chris Eppley, City Manager
Nate Brown, Community Development Director
Rob Kissler, Director of Public Works
Tracy Davis, City Recorder

DISCUSSION
a. CCRLS Library/City of Kiezer

Richard Walsh distributed a July 2002 memorandum regarding the Chemeketa Cooperative Regional Library System (CCRLS) and a Keizer Library Service Survey completed in November 2001. He also distributed a copy of the ballot measure passed in 1986 creating the Chemeketa Cooperative Regional Library Service, several other ballot measures and the resolution regarding CCRLS. The CCRLS was first created in 1976 with a federal grant, then went to a series of levies for support and finally passage of a permanent tax base. The CCRLS is a free system with specific rights. All library patrons in the CCRLS system have full access to everything in the each of the participating libraries.

Funds are distributed to the Salem library every time they serve a patron in an outlying area through inter-library loans. Additionally, there is a per capita distribution. Because the City of Keizer does not have a library, they do not qualify for service, but citizens could go to Salem for their books. Keizer citizens are entitled to these basic services: Adults can check out library books or other material one at a time, children can check out an unlimited number of books/material; patrons have unlimited use of library facilities while on premises.

A Library Services Task Force studied this issue and recommended Keizer build a threshold library. City Council turned down the recommendation in favor of a more tailor made library. The task force then recommended a "gap library". Before this could be put on the ballot it would be necessary to determine what the gap would be. As part of CCRLS citizens of Keizer would reap full benefits from the Salem Library, if the City is not part of the CCRLS, only the basic services would be available (currently in effect). If the city became a member of the CCRLS it would include a cash benefit of approximately $30,000-$35,000.

The current CCRLS program is that they require threshold libraries in order to become a member. However, in order to accommodate the City of Keizer, CCRLS offered a Provisional Membership. The purpose of becoming a full member of CCRLS is to create The 21st Century Library. Councilor Walsh announced he would be meeting with representatives of the CCRLS to discuss membership options.

The Council agreed by consensus to request full membership in CCRLS.

b. Transportation Projects

Council members discussed possible MWACT projects. It was determined that it was of utmost importance to concentrate on a regional concept as local street improvements would not be approved. Councilor Smith reported that the Planning Commission felt focus should be on getting another interchange in north Keizer and continued noting that in order to be considered, a project must appear in a TSP. Chris Eppley noted that the interchange north of exit 260 project would need to be in the County TSP. Council discussed the fact that interchanges need to be 2 miles apart according to the "rural" standards and asked Councilor Walsh to investigate the possibility of getting the designation of rural changed to urban. Other projects discussed were the Dearborn project and I-5 Exit 260 interchange.

Mr. Walsh noted that for a project to have the best chance for approval, it needs to be in the works with plans and a large degree of preparation completed. Additionally, Mr. Kissler echoed Councilor Smith that it was of utmost importance that the project be in the TSP. He noted that until those issues were resolved, there was no point in designing or requesting anything.

Councilor Walsh reported that Polk County is considering asking for a bridge extending Lockhaven across the river to west Salem. As an alternative to that idea, Mr. Walsh asked Council if they could agree to a concept of a bridge going from Keizer Station, down the Parkway across the river at Pine/Tryon and doing it in such a way that it hooked up with Highway 22.

When Mayor Christopher asked members if they agreed with Mr. Walsh's idea, some councilors noted that they did not disagree, but they also were open to further discussion. Council agreed to put the issue on the table.

After further discussion of the issue, the Council agreed by consensus that the Parkway project should be the one the City should support.

Adjournment

Meeting adjourned at 1:52

Tracy Davis, City Recorder

APPROVED:
MAYOR:

Lore Christopher

COUNCIL MEMBERS

Councilor #1 – Judy K. Smith

Councilor #4 – Jacque Moir

Councilor #2 – Michel Gaynor

Councilor #5 – Richard Walsh

Councilor #3 – Charles E. Lee

(Absent)

Councilor #6 – James Taylor

Minutes approved:

City of Keizer, Oregon

November 3, 2003

AGENDA ITEM 9h

APPROVAL OF OCTOBER 20, 2003 REGULAR SESSION MINUTES

MINUTES
KEIZER CITY COUNCIL
Monday, October 20, 2003
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER Mayor Christopher called the regular meeting to order at 7:18 pm. Roll Call was taken as follows:

Present:
Lore Christopher, Mayor
Jacque Moir, Council President
Judy K. Smith, Councilor
James Taylor, Councilor
Richard Walsh, Councilor
Michel Gaynor, Councilor
Chuck Lee, Councilor
Crisel Perez, Youth Councilor

Staff:
Shannon Johnson, City Attorney
Marc Adams, Police Chief
Chris Eppley, City Manager
Rob Kissler, Public Works
Dianne Hunt, Human Resources
Tracy Davis, City Recorder

FLAG SALUTE Taylor Hermes who served Leadership Youth through the Salem Chamber of Commerce and is now serving on the Board of Directors of Today's Choices, Tomorrow's Communities, a Senior at McNary, and a linebacker for the McNary Celtics, led the Council in the Flag Salute.

PUBLIC TESTIMONY Kim Beesley, Chair of the Volunteer Coordinating Committee presented certificates to the Council and thanked them for their volunteer service to the community.

PUBLIC HEARINGS None

COMMITTEE REPORTS

a. **Recognition of Citizens from September 25, 2003 arrest (Steve Walen, Zach Shuler, Danny Rung, Patrick Daily, Taylor Hermes, and William Dane)** - Chief Adams reviewed the event which resulted in these Citizens being recognized noting that on September 25 a burglar being chased by the victim ran by these young men who took up the chase, apprehended the criminal and held him for arrest. Chief Adams commended the citizens and Mayor Christopher thanked them for becoming involved.

b. **Swearing In of Keizer Police Officer Darsy Olafson** - Chief Mark Adams introduced Officer Olafson, a graduate of Western Oregon University, a two-year veteran of the Newport Police Department. City Attorney performed the swearing in.

c. **Appointments to Keizer Points of Interest Committee** – City Manager referred to Resolution R2003-1426 establishing a Keizer Points of Interest Committee. The committee is comprised of a Chamber of Commerce representative, a Visitor's Association representative, a Heritage Museum representative, a Parks Advisory Board Representative and three citizens-at-large. Councilor Jim Taylor was appointed by Mayor Christopher to serve as Council Liaison to this committee. The Volunteer Committee unanimously recommended the appointments of June Abbott, Terry Hoag, and Jerry McGee to fill the Citizen at large positions. In addition the Volunteer Committee unanimously approved the following appointees: Matt Williams, Chamber of Commerce; Robin Barney, Visitor's Association; Barbara Clement, Heritage Museum; and Vickie Hilgemann, Parks Advisory Board.

<u>Councilor Moir moved to accept the recommendation of the Volunteer Coordinating Committee and appoint the following members to the Keizer Points of Interest Committee: Jerry McGee, June Abbott, Terry Hoag, Matt Williams, Robin Barney, Barbara Clement and Vickie Hilgemann. Councilor Smith seconded.</u>

<u>The motion passed unanimously as follows:</u>

<u>AYES:</u> Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
<u>NAYS:</u> None (0)
<u>ABSTENTIONS:</u> None (0)
<u>ABSENT:</u> None (0)

Mayor Christopher presented Proclamations to members in attendance and read the Proclamation. Councilor Taylor thanked Mayor Christopher for appointing him as Council Liaison to the Committee noting that he was anxious to get to work.

OTHER BUSINESS

- **Riverr Task Force -** Councilor Walsh reported that Commissioner Carlson has been assigned to the Task Force and continued that the inventory of the 85-acre parcel of land near the Willamette River has been completed. The report was very favorable and now the planning will begin.
- **Volunteer Announcement** – Councilor Gaynor addressed the viewers and audience about how to get involved as a volunteer. He suggested interested parties come in to City Hall and fill out an application to be submitted to the Volunteer Coordinating Committee.
- **Quality of Life Awards -** Mayor Christopher reported that Councilors Lee, Moir, Smith and herself were at the celebration by "Today's Choices, Tomorrow's Communities" on October 16. This organization recognized a number of projects that had served to build in the livability of collective communities. She pointed out that Keizer had seven separate projects that were recognized as outstanding projects. They were: The Exchange Club of Keizer and North Salem, Keizer Community Band, Keizer Corner, Keizer Village, Stomp Shoppers, Turnaround Achievement Awards, and Volcanoes. She noted that there were 27 projects recognized and 7 of them were from Keizer. Councilor Lee reported Keizer Corner reflects the pride, spirit and volunteerism of the community. Nate Brown had nominated the Keizer Enterprises for the Keizer Village Shopping Center because of the cooperation that occurred between the project, the City, and the Urban Renewal District. He submitted the details about the history of the project and the project received an award.
- **Keizer Times Article** – Councilor Moir reported that on October 17 the Keizer Times published an article about Student Councilor Crisel Perez who has been shadowing her for the last two months.
- **Claggett Creek Park Wetland Mitigation Project** – Councilor Moir read a letter from Gary Miller, President of the Claggett Creek Watershed Council thanking all participants for their help. Councilor Lee reported that Samantha Walsh, an 8th grader at Blanchet organized a group of students to participate in the effort. He noted that about 20% of the students enrolled at Blanchet are from Keizer and the school also received an award at the Quality of Life function as a new institution providing a college prep Catholic education in the Salem Keizer community.
- **EVAK Quarterly Report** – Councilor Moir offered the report for members to review and noted that the Newsletter was attached to the report. She continued that the Emergency Management Committee had decided to go back to monthly meetings.
- **Letters From Home** – Councilor Smith reported that she had been getting lots of requests for addresses of troops to send boxes to. She noted that she only has individual addresses but

interested parties could contact Congresswoman Darlene Hooley's office for information. Councilor Walsh added that some of the troops are coming home saying that Mr. Kieper came home and he had gone to see the flag and was very appreciative.

- **Youth Compact Committee** – Councilor Lee reported that he and Councilor Moir attended the Youth Compact meeting last week and made a plea for Peer Court. Youth Compact has spent a great deal of time and resources looking at after school programs, particularly middle school youth. Now different issues are being focused on, such as drug and alcohol issues and abuse. There are guest speakers slated to address Youth Compact educating and guiding the organization towards becoming a supporting agency.
- **Police Department** - Chief Adams reported that KOIN TV will be running a program on replica toy guns that was produced in Keizer. These guns are knockoffs of real guns and are extremely difficult to identify and dangerous to own.
- **Human Resources Department** – Dianne Hunt reported that open recruitment for a Public Works Permit Specialist closes October 31 and information is available in the front lobby. Interviews for Police Captain are scheduled for next week. She distributed before and after pictures showing the latest project being worked on by the Information Tech: condensing wires and hubs. Work is continuing on the computer network and the plan is to clean up the telephone wires as well.
- **Community Development Department** – Nate Brown reported that he had met with Marion County Building Department on the subject of opening up the Keizer department open full time. The details have not been finalized, but there is agreement that customer service is the goal and is something both departments need to focus on.
- **Legal Department** City Attorney Shannon Johnson reported that last Thursday the brief on behalf of the City was filed in the Keizer Station Place Court of Appeals Case. In addition to the City's brief, the developer, Northwest National LLC, filed a brief, as did the Confederated Tribes of the Grande Ronde and Siletz.
- **Youth Councilor Perez** thanked Mary, the reporter for Keizer Times, for the favorable article. She also stated that, having attended the Today's Choices, Tomorrow's Communities event, she was pleased to see everyone getting involved.

ADMINISTRATIVE ACTION

a. RESOLUTION – Authorizing the City Manager to Direct Removal of No Parking Signs on Northern Heights Loop

City Manager, Chris Eppley reported that on August 20, 2003, Chuck Shirley, a Country Glen resident, contacted the City requesting the posted No Parking signage on Northern Heights NE be removed. He presented a signed petition form his neighbors. Staff recommends the Council approve the Resolution and Authorize City Manager to Direct the Public Works Department to remove the No Parking signage on Northern Heights Loop NE

Councilor Moir moved to adopt Resolution R2003 Authorizing the City Manager to Direct the Public Works Department to remove the No Parking signage on Northern Heights Loop NE, Keizer, Oregon. Councilor Lee seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

b. ORDINANCE – Amending the Reimbursement District Ordinance No. 2003-485

City Attorney Shannon Johnson reported that the original Reimbursement District Ordinance did not allow for all City costs to be in the Application fee. Although the Public Works Directors Report and the Notification costs were included in the application fee, the legal expenses, engineering fees and finance department time are not. Staff recommends Council adopt a bill for an Ordinance Amending the Reimbursement District Ordinance, declaring an emergency amending Ordinance No. 2003-485.

Councilor Moir moved to adopt a bill for an Ordinance Amending the Reimbursement District Ordinance, declaring an emergency amending Ordinance No. 2003-485. Councilor Smith seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

c. RESOLUTION – Establishing Application Fee for Public Improvement Reimbursement District Agreements

Rob Kissler addressed Council regarding the Application Fee for Public Improvement Reimbursement District Agreements. On preliminary review of an application, staff has developed an average cost for the application fee of $1,265. The fee recovers the cost the city incurs from legal staff, engineering staff and finance department maintenance. Staff recommends Council adopt a Resolution Establishing a Reimbursement District for Public Improvements Application Fee of $1,265.

Councilor Moir moved to adopt a Resolution Establishing a Reimbursement District for Public Improvements Application Fee of $1,265.

In response to questions, City Attorney Johnson explained that the application fee is paid in advance by the developer for city costs to move forward, even if it is not approved. The administrative costs are not collected until the adjoining property is developed and finance department auditing time is incurred.

Councilor Moir moved to adopt Resolution R-2003 Establishing a Application Fee for Public Improvements Reimbursement Districts of $1,265 as Amended to be Reviewed Every Two Years with the Review of Engineering and Legal Contracts. Councilor Smith.

The motion as amended passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

CONSENT CALENDAR

a. Resolution – Authorization of Expenditure of Specific Purpose Funds
b. Resolution – Authorization for disposition of Surplus Property (Niko)
c. Resolution – Authorization for Supplemental Budget
d. Approval of June 2, 2003, Regular Session Minutes
e. Approval of June 16, 2003, Regular Session Minutes
f. Approval of June 23, 2003, Regular Session Minutes
g. Approval of July 21, 2003, Regular Session Minutes
h. Approval of August 4, 2003, Regular Session Minutes
i. Approval of August 11, 2003, Work Session Minutes
j. Approval of August 18, 2003, Regular Session Minutes
k. Approval of August 25, 2003, Special Session Minutes

Items d, f and j pulled.

Councilor Moir moved to approve remaining items on the Consent Calendar (a, b, c, g, e, h, I and k). Councilor Taylor seconded.

Councilor Smith noted corrections to Minutes of June 16, 2003.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

Noted corrections to minutes of June 2, 2003, June 23, 2003 and August 18, 2003.

Councilor Moir moved for approval of the June 2, 2003 Regular Session Minutes as corrected. Councilor Lee seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Taylor, Walsh, Gaynor and Lee (6)
NAYS: None (0)
ABSTENTIONS: Smith (1)
ABSENT: None (0)

Councilor Moir moved for approval of the June 23, 2003 Regular Session Minutes as corrected. Councilor Lee seconded.

The motion passed unanimously as follows:

AYES: Christopher, Smith, Taylor, Walsh, Gaynor and Lee (6)
NAYS: None (0)
ABSTENTIONS: Moir (1)
ABSENT: None (0)

Councilor Moir moved for approval of the August 18, 2003 Regular Session Minutes as corrected. Councilor Smith seconded.

The motion passed unanimously as follows:

AYES: Christopher, Moir, Smith, Taylor, Walsh, Gaynor and Lee (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

WRITTEN COMMUNICATIONS

None

AGENDA INPUT

Special Urban Renewal Agency Meeting - Monday October 27, 2003
12:30 p.m.
- Resolution – Authorizing Mayor to Sign DDA with NW National LLC – Keizer Station Project

November 3, 2003
7:00 p.m. City Council Meeting

November 10, 2003
12:00 p.m. (Noon) Work Session

ADJOURNMENT Mayor Christopher adjourned the meeting at 8:25 p.m.

APPROVED:

Debbie Lockhart, Recording Secretary

MAYOR:

Lore Christopher

COUNCIL MEMBERS

Councilor #1 – Judy K. Smith

Councilor #4 – Jacque Moir

Councilor #2 – Michel Gaynor

Councilor #5 – Richard Walsh

Councilor #3 – Charles E. Lee

Councilor #6 – James Taylor

Minutes approved:

PUBLIC MEETING NOTICE
KEIZER CITY COUNCIL

FAXED

NOTICE OF WORK SESSION

The Keizer City Council will meet for a Work Session on **Monday, November 10, 2003 at 12:00 p.m. (Noon)**. This session will be held at Keizer City Hall, 930 Chemawa Road NE, Keizer, Oregon. The agenda for this meeting includes discussions regarding a possible reinstatement of the Peer Court program in the City of Keizer.

This location is accessible to the disabled. Please contact City Hall if special arrangements are necessary. Questions regarding this meeting may be directed to Chris Eppley, City Manager at (503) 390-3700, ext. 102.

DATED this 6th day of November 2003.

Tracy L. Davis, CMC
City Recorder

NOTICE FOR INFORMATIONAL PURPOSES ONLY

PUBLIC MEETING NOTICE
KEIZER CITY COUNCIL/ URBAN RENEWAL AGENCY

NOTICE OF EXECUTIVE SESSION

NOTICE is hereby given that the City Council/Urban Renewal Agency of the City of Keizer will meet in executive session on **Monday, November 3, 2003 at 12:00 p.m. (Noon)**

The Executive Session is being held pursuant to ORS 192.660(1)(e) – To conduct deliberations with persons designated by the governing body to negotiate real property transactions and ORS 192.660(1)(f) – To consider records that are exempt by law from public inspection.

The Executive Session will be held at Keizer City Hall, 930 Chemawa Road NE, Keizer, Oregon. This location is accessible to the disabled. Please contact City Hall if special arrangements are necessary.

Questions regarding this session may be directed to Chris Eppley, City Manager at 390-3700, extension 102.

Dated this 31st day of October 2003.

Tracy L. Davis, CMC
City Recorder

Notice for Information Purposes Only.

CITY OF KEIZER
NOTICE OF MEETING

URBAN RENEWAL AGENCY MEETING

NOTICE is hereby given that the Urban Renewal Agency of the City of Keizer will meet on **Monday, November 3, 2003 at 6:00 p.m.** The agenda includes approval of a property improvement grant for 120 Chemawa Road NE, Keizer and a Resolution Authorizing the Mayor to Enter the Disposition Development Agreement with Northwest National LLC for the Keizer Station project.

The meeting will be held in the Robert L. Simon Council Chambers, Keizer City Hall, 930 Chemawa Road NE, Keizer, Oregon.

Questions regarding this session may be directed to Chris Eppley, City Manager at 390-3700.

Dated this 31st day of October, 2003.

Tracy L. Davis, CMC
City Recorder

Notice for Information Purposes Only.

Upon request, auxiliary aids and/or special services for those with disabilities will be provided. To request services, please contact us at 390-3700 or through Oregon Relay 1-800-735-2900 at least two working days (48 hours) in advance..