

URA RESOLUTION NO. 177

A RESOLUTION OF THE URBAN RENEWAL AGENCY APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE CITY OF WILSONVILLE, THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE, AND NORTHWEST HOUSING ALTERNATIVES INC. (NON PROFIT DEVELOPER) TO DESIGN AND CONSTRUCT A SENIOR HOUSING DEVELOPMENT.

WHEREAS, the Urban Renewal Agency entered into a memorandum of understanding on December 3, 2007 with Northwest Housing Alternatives Inc. to design and construct affordable senior housing; and

WHEREAS, the Urban Renewal Agency acquired the Wesleyan Church property on October 26, 2007, adjacent to the existing City Community Center; and

WHEREAS the land will be leased, as designated in the separate Master Ground Lease agreement, to the Non Profit Developer for purposes of constructing affordable senior housing; and

WHEREAS, the Non Profit Developer expects to receive HUD 202 Award toward the construction of 84 units of affordable senior housing on the site; and

WHEREAS, the City, the Urban Renewal Agency, and Non Profit Developer have worked cooperatively on the development and desire to enter into the Disposition and Development Agreement (DDA), marked Exhibit 1, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, the Non Profit Developer has submitted development plans to the City's Design Review Board (DRB) for review; and

WHEREAS, Exhibit A (Legal Description) to the DDA is currently a place holder and will need to be amended upon a lot line adjustment approval; therefore, staff recommends

approval of the DDA subject to an addendum executed by the Executive Director amending Exhibit A's upon the lot line adjustment approval, the form and description of which shall be approved by the City's legal and engineering staff; and

WHEREAS, Exhibit B (Development Plan) to the DDA was submitted to the City's DRB with the hearing to occur after execution of the DDA; therefore, staff recommends approval of the DDA subject to an addendum to the DDA executed by the Executive Director amending Exhibit B to conform to any modification to the Plan by the DRB; and

WHEREAS, the City and the Non Profit Developer negotiated the items in Exhibit C (Essential and Enhancement Items) to the DDA to be included in the project; and

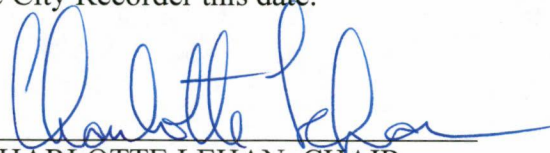
WHEREAS, Exhibit C items will be designed and constructed by the Non Profit Developer and funded by the City's Urban Renewal Agency to enhance the project.

WHEREAS, Exhibit C includes the addition of a pedestrian sky bridge connecting the senior housing project to the City's Community Center and such terms are outlined in the Disposition and Development Agreement and Master Ground Lease.

NOW, THEREFORE, THE URBAN RENEWAL AGENCY RESOLVES AS FOLLOWS:

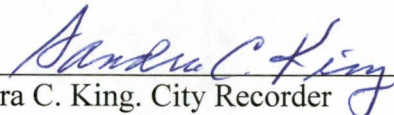
1. The above recitals are incorporated as findings and conclusions of the Urban Renewal Agency.
2. The Urban Renewal Agency authorizes the Executive Director, or her designee, to execute the Disposition of Development Agreement with Northwest Housing Alternatives Inc. to design and construct affordable senior housing on such specified property. The Executive Director, or her designee, is further authorized to execute the future addendum(s) amending Exhibit A and B to the DDA as recited above.
3. The resolution is effective upon the date adopted.

ADOPTED by the Urban Renewal Agency at a special meeting thereof this 29th day of December, 2008 and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, CHAIR

ATTEST:



Sandra C. King, City Recorder

SUMMARY OF VOTES:

Board Chair Lehan	Yes
Board Member Kirk	Yes
Board Member Knapp	Yes
Board Member Ripple	Yes
Board Member Núñez	Yes

Attachment:

Exhibit 1 – Disposition and Development Agreement

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is made as of December 15, 2008, by and between the CITY OF WILSONVILLE, an Oregon Public Body Corporate and Politic (in such capacity, the "City"); CITY OF WILSONVILLE URBAN RENEWAL AGENCY, an Oregon Public Body Corporate and Politic ("Agency") and NORTHWEST HOUSING ALTERNATIVES, INC., an Oregon nonprofit corporation ("Nonprofit Developer"). City, Agency and Nonprofit Developer are referred to jointly in this Agreement as "Parties" and individually as a "Party."

RECITALS

- A. Agency holds title to certain land (the "Property") described in Exhibit A, attached hereto and incorporated by reference as if fully set forth herein, located in the City of Wilsonville, Clackamas County, Oregon. The Property is a portion of a larger parcel of land owned by the Agency.
- B. Nonprofit Developer expects to receive a HUD Section 202 award from the U.S. Department of Housing & Urban Development ("HUD") for the construction of 84 units of senior housing. This money is being leveraged by Nonprofit Developer with other federal, state, local, and private dollars, including nine (9) percent Low Income Housing Tax Credits (LIHTC) and HOME funds to develop the Property into a livable, affordable senior housing community known as Creekside Woods and referred to as the "Development." Nonprofit Developer's proposed senior affordable living community will be the sole tenant of the Development.
- C. City, Agency, and Nonprofit Developer desire a building with design features (the "Enhancements Package") that affordable housing financing resources cannot purchase.
- D. Nonprofit Developer is a leader in the development of a full spectrum of housing needs including low-cost housing for seniors similar to that contemplated for the Development.
- E. Pursuant to the City's and Agency's approvals, and at the request of Nonprofit Developer, the parties intend to enter into this Agreement.
- F. Agency and Nonprofit Developer are to enter into a Master Ground Lease for the Property separate from this Agreement.

AGREEMENT

In consideration of the agreements between the Parties set forth herein and for other valuable consideration, including, but not limited to a long-term ground lease which Agency proposes to grant to Nonprofit Developer for the Development to occur on the Property, the receipt and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

DEFINITIONS

The following terms have the designated meanings in this Agreement:

- 1) **“Agreement”** means this Disposition and Development Agreement and all attached Exhibits.
- 2) **“Building”** means 84 units of one and two-bedroom units, to be built upon the Property by Nonprofit Developer pursuant to this Agreement to be used solely for affordable Senior Housing.
- 3) **“City”** is defined above.
- 4) **“Closing”** means the date on which the right to build on the Property is conveyed to Nonprofit Developer by the Lease.
- 5) **“Commencement of Construction”** means the commencement of the foundation for the Building which requires the setting of forms therefore and the first pour of concrete into the forms.
- 6) **“Construction Completion”** means the day on which City issues a certificate of final occupancy for the Building.
- 7) **“Design Development Drawings”** means:
 - Detailed engineering and architectural site plans for the Project showing the relationship of the buildings to projected final topography of the land, with all proposed connections to existing or proposed utilities and services together with a landscape plan.
 - Plans, elevations, typical cross-sections and typical wall sections of all building areas.
 - Elevations of the buildings to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials, of the building exteriors.

- A calculation of gross building areas, floor areas, height ratios and open spaces.
- 8) **“Development”** means the Building, fixtures, grounds and landscaping, and other improvements to be constructed by Nonprofit Developer on the Property. The Development will be constructed substantially as described and defined in this Agreement and Exhibit B, attached hereto and incorporated by reference as if fully set forth herein (the “Development Plan”).
 - 9) **“Developer Entity”** is the limited partnership or limited liability company that will own the Development.
 - 10) **Development Review Board** is the decision-making body as defined by Wilsonville Code Section 2.330.
 - 11) **“Encumbrances”** means all of those encumbrances of record with respect to the Property, including, but not limited to or at Closing, as the same may be amended from time to time.
 12. **“Enhancement Package”** means Development specifications requested by Agency and to be paid for by Agency as described in Exhibit C, attached hereto and incorporated by reference as if fully set forth herein.
 13. **“Escrow Agent”** means Chicago Title Insurance Company, Clackamas, Oregon.
 14. **“Final Construction Plans and Specifications”** means all plans and specifications required to complete the Project pursuant to this Agreement, approved by lenders, Agency and the appropriate City, state and other agencies.
 15. **“Force Majeure”** means to causes that are unforeseeable, beyond its control, and without a Party’s fault or negligence, including but not limited to acts of God, acts of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, delay in the issuance of necessary permits for the Project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar events and/or occurrences beyond the control of such Party.
 16. **“Government Delay”** any act or omission by a government entity, including but not limited to HUD, OHCS, City, Agency, and Clackamas County, that delays the Development’s Schedule of Performance.
 17. **“HUD 202 Program”** means the Department of Housing and Urban Development program which provides supportive housing for very-low income persons 62 years of age or older.

18. **"Lease"** means a ground lease of all or a portion of the Property for the land on which the Development will be constructed, which lease will conform to HUD Section 202 guidelines.
19. **"Investors"** is defined in Section 4.1.
20. **"MFI"** means median family income as defined for the City of Portland as estimated by the U.S. Department of Housing and Urban Development.
21. **"Property"** means the real property legally described in Exhibit A hereto.
22. **"Put Closing"** is defined in Section 6.7.
23. **"Put Option"** is defined in Section 6.3 for the Project.
24. **"Right of First Refusal"** is defined in Section 4.2.
25. **"Schedule of Performance"** means the document prepared by Nonprofit Developer describing the schedule by which development and construction of the Project will be performed, a copy of which is attached hereto and incorporated by reference as if fully set forth herein as Exhibit D.
26. **"Senior Housing"** means the development by Nonprofit Developer of independent-living apartments for seniors in accordance with age and income restrictions imposed by HUD and LIHTC rules.
27. **"Skybridge"** means the physical structure between Property and the adjacent City Community Center.
28. **"Title Company"** is the Escrow Agent.
29. **"Utilities"** means sanitary and storm sewer, water mains and lines, electricity and gas lines, and telecommunications, including , but not limited to, telephone, cable television and high-speed internet lines.

1) COMPLIANCE REQUIREMENTS

Nonprofit Developer shall enter into a lease of the Property and construct the Development on the Property in accordance with the following compliance requirements:

a) **Zoning and Land Use Compliance for the Property.** In accordance with City goals for the Property, City, Agency, and Nonprofit Developer have jointly designed Development and submitted materials that will lead to a decision by City's Development Review Board ("DRB Submission"). City and Agency acknowledge that Property's current zoning and tax lot boundaries compel Nonprofit Developer to seek waivers on issues including, but not limited to, building height, site density, automobile parking, and bicycle parking. Nonprofit Developer shall insure that Development shall comply with all applicable zoning and land use requirements for the Property that arise prior to Development Review Board approval and shall

obtain all such approvals at its sole expense. Any land-use or zoning appeal that arises post-DRB approval shall be resolved at the sole expense of City.

1.2 Zoning and Land Use Compliance for the Skybridge from the Development to City's Community Center. Included in Development's Design and DRB Submission is the Skybridge from the Development to the adjacent City's Community Center. The City has authorized the Nonprofit Developer to include the City's respective portion of the Skybridge in Nonprofit Developer's development application. The Nonprofit Developer shall obtain all zoning and land use approvals necessary for the portion of the Skybridge.

1.3 Tree Preservation. Nonprofit Developer shall comply with all regulations of City and all guidelines of City with respect to preservation and protection of trees on or about the Project.

1.4 Encumbrances. Nonprofit Developer acknowledges and agrees that the Development is subject to the Encumbrances. Nonprofit Developer further agrees that it shall comply with the Encumbrances and cause all of its agents, employees, tenants, and invitees to comply with the Encumbrances. City and Agency acknowledge that the affordable housing programs that will finance Development's construction and operations will require additional Encumbrances to be recorded against Property. City and Agency will agree to these necessary additional Encumbrances required by funding programs including, but not limited to, HUD 202, LIHTC, and HOME.

1.5 Silver LEED Status. The Development shall be built to Leadership in Energy and Environmental Design Silver Status NC Version 2.2.

1.6 Affordability. The residential rental units within the Development shall comply with all affordability requirements of the HUD 202 and LIHTC programs as applicable.

2) CITY AND AGENCY INFRASTRUCTURE AND OTHER OBLIGATIONS

Agency will cause the development or installation of the following infrastructure improvements that will benefit the Development by the time periods set forth below but subject to Force Majeure:

a) Utilities. Nonprofit Developer is responsible, at its sole cost and expense, for all connections and connection fees relating to Utilities, except as set forth herein.

b) Skybridge. Nonprofit Developer shall design and construct the Skybridge. The Skybridge's design and construction costs will be paid solely by City. City shall also grant the Developer Entity all licenses and easements necessary for the Skybridge's construction, maintenance, and terms of use as mutually agreed upon in the Master Lease to be executed subsequently by the parties.

2.3 Public Streets. The City has constructed public streets to serve the Development.

2.4 Sanitary Sewer Relocation. The Development Site is currently bisected by a sanitary sewer line which must be relocated in conjunction with Development's construction.

City and Agency agree to relocate this sanitary sewer line in a manner consistent with the Development Plan's requirements and to pay all associated costs. City and Agency further agree to substantially complete this work in timely manner consistent with the Schedule of Performance. If the City or Agency fails to substantially complete the sanitary sewer relocation according to the Schedule of Performance and the delay impacts Development's budget, City and/or Agency agree to pay all additional Development costs reasonably attributable to this delay.

c) Open Space. The Development site comprises approximately six (6) acres which Nonprofit Developer will be leasing. City and Agency may agree that a portion of the adjacent land owned by the Agency (which is intended to subsequently be transferred to the City) will serve as open space or other natural or undeveloped area for the Development.

2.4 Deferred SDCs. City shall provide for deferrals of the City's Systems Development Charges above \$550,000.00, which deferred fees may be required to be recovered if the Project does not operate for the expected duration of the tax credits. After 10 years following pulling of each building permit, the Nonprofit Developer shall apply to the Agency for funding to reimburse City for such deferred fees. If the application is not successful, City shall waive such deferred fees.

2.5 Waiver of Permit Fees. City shall provide for the waiver of all building permit fees subject to the ability to recapture them if the Development is not substantially completed as required herein.

2.6 Federal Prevailing Wage. The Development is intending to receive federal funds and shall be subject to federal prevailing wage laws and regulations. Nonprofit Developer shall be responsible for compliance with all applicable laws and regulations in this regard including any coordination with and reporting to any applicable federal and state agencies.

3) DEVELOPMENT OF THE PROJECT.

a) Architect and Contractor. Nonprofit Developer, at its sole cost and expense, shall enter into a contract with an architect and a general contractor for the design and the construction of the Development. Nonprofit Developer has indicated that it intends to engage Walsh Construction as its general contractor and Michael K. Willis Architects as its architect and Agency hereby approves such parties. Use of any other contractor or architect shall require Agency's prior written consent which consent will not be unreasonably withheld.

Nonprofit Developer's contracts with architect and general contractor shall be based on the building and site design assumptions developed in collaboration with Agency staff and submitted for approval by the Design Review Board (the "Development Plan" included as Exhibit B). The Development's design shall also include all Essential and Enhancement described in Exhibit C, which is incorporated therein. The City will pay all associated professional and construction costs as set forth in Exhibit C.

b) Plans, Drawings and Related Documents.

i) Nonprofit Developer shall work in coordination with Agency to design improvements to be built on the Property in compliance with the Design Review Board's development approval and such conditions of approval as the Board may impose.

ii) Nonprofit Developer shall prepare the Design Development Drawings and the Final Construction Plans and Specifications required for the Development under the Schedule of Performance. Nonprofit Developer shall submit draft drawings to Agency for approval in conjunction with the conclusion of the following phases of development:

- (a) Schematic Phase;
- (b) Design Development Phase; and
- (c) Construction Document Phase.

City and Agency, in their roles as a design partners, shall have five (5) business days to comment in writing on the drawings submitted at the conclusion of each phase, unless otherwise agreed to by the parties. For all phases, failure to provide written comments during this timeframe shall constitute an automatic approval of the drawings by the City and Agency. Nonprofit Developer agrees to make best efforts to incorporate all comments received by City or Agency through this process. Nothing in this section shall be construed to apply to City or Agency approval of drawings in their roles as regulatory bodies rather than design partners.

iii) City, Agency, and Nonprofit Developer agree that the Enhancement Package costs delineated in Exhibit C are estimates based on early design work, not final bids based on full construction drawings. Costs may go up or down for individual items, and all parties agree to revisit the Enhancement Package periodically in conjunction with costing exercises completed by general contractor. Any changes to the Enhancement Package or cost increases above the cost estimates described in the Enhancement Package are subject to Agency's and City's approval. City or Agency's unwillingness to pay the full cost associated with any item in the Enhancement Package may result in the deletion of that item from the project's scope and trigger the provisions of Section 3.3.

c) **Schedule of Compliance.** Nonprofit Developer shall make best efforts to comply with the Schedule of Performance, but shall not be held responsible for delays caused by the City, Agency, HUD, or any other government entity ("Government Delay"). Any Government Delays shall automatically lengthen the Schedule of Performance by a period equal to the length of the delay. The parties acknowledge that time is of the essence with respect to Nonprofit Developer's compliance with the Schedule of Performance subject to the provisions of Section 6.2. To assist Nonprofit Developer in meeting the Schedule of Compliance, Agency may advance funds to Nonprofit Developer to be credited to the Enhancement Package.

4) ASSIGNMENT AND RIGHT OF FIRST REFUSAL

a) **Prior to Completion.** Prior to completion of the Development, Nonprofit Developer may not assign any of its rights or obligations under this Agreement except to a Developer Entity controlled by Nonprofit Developer. Notwithstanding the form of the Developer Entity's structure, Nonprofit Developer will remain in charge of Developments daily

operations. Any other party or parties to such Developer Entity other than Nonprofit Developer shall be limited partners or members ("Investors").

4.2 Agency's Intent to Transfer Property to City. Agency currently owns the Property that is the subject of this Agreement and it is the intent of the Agency that it may assign and or transfer the property ownership interest in the Property of the Agency to the City and assign its interests in this Agreement to the City. Any such assignment and or transfer to the City of the ownership of the Property and or to this Agreement shall not affect the obligations or rights under this Agreement and the City shall simply be a successor in interest to this Agreement.

5) USE AND MANAGEMENT OF THE DEVELOPMENT

a) Use. The Development shall be used for affordable Senior Housing and for no other purpose without the prior written approval of Agency. ~~which will not be unreasonably withheld so long as the proposed change in use is compatible with all zoning and land use approvals, Encumbrances and any other recorded restrictions against the Property.~~

b) Management. Nonprofit Developer will select a property management company with affordable housing experience through a competitive process, and Agency shall agree to Nonprofit Developer's selection. Any subsequent change in property management Company shall require notification to Agency. The Agency has the ability to request changes in the management company for just cause, denial of this request may result in non-compliance with the DDA.

6) DEFAULT AND REMEDIES

a) Failure to Comply. If Nonprofit Developer fails to comply with each of its obligations under the Schedule of Performance under its sole control or any of the terms, conditions, covenants of this Agreement on Nonprofit Developer's part to perform (each a "Noncompliance"), Nonprofit Developer shall be in default if it fails to cure the Noncompliance within ten (10) days after written notice from Agency to do so. If the Noncompliance cannot be reasonably cured within such ten (10)-day period, Nonprofit Developer will not be in default if it commences to cure within such ten (10)-day period so long as the cure is completed within a mutually agreed-upon timeline after written notice from Agency of the Noncompliance..

b) Commencement of Construction. If Nonprofit Developer or the Developer Entity prior to the Commencement of Construction, fails to comply with the Schedule of Performance, Agency and Nonprofit Developer or the Development Entity shall re-evaluate and make reasonable and appropriate adjustments to the Schedule of Performance that shall be documented in writing and signed by both Parties. A review period by any government agency named in the Schedule of Performance (including but not limited to Wilsonville Design Review, Wilsonville Building Permit Review, HUD Firm Commitment Review, and HUD Final Closing Review) that extends beyond the its respective date shown in Exhibit B shall lead to an automatic extension of the Schedule of Performance. Each automatic extension shall equal the number of days by which the government agency's review extends past its respective completion date as shown in Exhibit D. In accordance with the Schedule of Performance, the Parties expect that the

Commencement of Construction shall occur no later than September 1, 2009, unless otherwise automatically extended or agreed to by the Parties.

c) **Put Option.** Nonprofit Developer shall notify City promptly of its award of HUD 202 funding. If Nonprofit Developer has not achieved Commencement of Construction by the later of September 1, 2010 or 24 months after the award of HUD 202 funding, unless otherwise agreed to by the Parties, then Agency shall have the right, but not the obligation, to acquire the Development from Nonprofit Developer or the Developer Entity and Nonprofit Developer or the Developer Entity shall have the obligation to sell the Development to Agency on the terms and conditions of Sections 6.5, 6.6, 6.7 and 6.8 ("Put Option").

d) **Exercise of Put Option.** Agency shall exercise its Put Option by written notice within thirty (30) days after the later of September 1, 2010 or 24 months after the award of HUD 202 funding, unless otherwise agreed to by the Parties, for a failure to achieve Commencement of Construction ("Put Exercise Notice").

e) **Put Purchase Price.** The purchase price on the exercise of the Put Option for the failure to achieve Commencement of Construction shall be the sum of Nonprofit Developer's or the Developer Entity's documented out-of-pocket costs and expenses paid to third parties for architectural and other professional services directly related to the preparation of architectural plans and specification and the securing of any interim financing and financing under the HUD 202 Grant Program and any other costs and expenses relating to the providing of Utilities (including hook-up fees or deposits) to the Property and for the securing of any necessary governmental permits or approvals for the Development, including building permits (subject to Section 2 above) ("Out-of-Pocket Costs"). Provided that the Agency's exercise of its Put Option is not due to Nonprofit Developer's negligence, Nonprofit Developer shall also receive \$200,000 as partial compensation for its multi-year investment of staff time and the development opportunities it necessarily forfeited while pursuing the Development. The purchase price calculated pursuant to this Section 6.5 is referred to herein as the "Put Option Price."

f) **Calculation of Put Option Price.** Nonprofit Developer or the Developer Entity shall, within twenty (20) days after Agency delivers its Put Exercise Notice, deliver to Agency its calculation of the Put Option Price, together with a line item summary of each item making up the Put Option Price along with substantiating documentation.

g) **Closing of Put Option.** Once the Put Option Price has been calculated and substantiated to Agency's reasonable satisfaction, Closing on the Put Option shall occur within thirty (30) days thereafter ("Put Closing"). At Closing and through the Title Company, Nonprofit Developer or the Developer Entity shall deliver to the Title Company each of the following documents:

(a) An Assignment of Lease, Bill of Sale, Assignment of Contracts, and such additional agreements that benefit the Development but excluding any monetary encumbrances or liens. To the extent Agency pays off any of the encumbrances or the liens, Agency shall be entitled to a dollar for dollar credit against the Put Purchase Price.

(b) An assignment of all permits, building permits or other approvals with respect to the Property as may be requested by Agency in writing.

(c) An assignment of all architectural, construction and other agreements with respect to the Development as may be requested by Agency in writing.

(d) Certificate in a form approved by Agency that Nonprofit Developer or the Developer Entity, as applicable, is not a "foreign person" as such term is defined in the Internal Revenue Code and the Treasury Regulations promulgated under the Internal Revenue Code.

(e) Such escrow instructions as may reasonably be required to document the Closing and which are consistent with the provisions of Section 6.

At Closing, Agency shall deliver each of the following to the Title Company:

(f) The Put Purchase Price, in immediately available funds, as calculated subject to any adjustments for Agency's payment of monetary encumbrances or liens.

(g) Such escrow instructions as the title company may reasonably require to document the Closing and which are consistent with the terms and conditions of Section 6.

h) Closing Costs and Prorations. Nonprofit Developer or the Developer Entity shall pay for escrow fees incurred by the Title Company. Agency and Nonprofit Developer or the Developer Entity shall pay for their own attorney fees in connection with or related to the exercise of the Put Option by Agency and the Put Closing. Utilities and ad valorem property taxes shall be prorated as of the Put Closing. Nonprofit Developer or the Developer Entity shall be responsible for all costs and expenses with respect to the Development prior to Closing and shall indemnify, defend and hold Agency harmless from any of such costs and expenses.

7) OTHER MATTERS

a) Marketing and Public Relations. For events relating to Commencement of Construction and Construction Completion, Nonprofit Developer and Agency will jointly plan and implement public relations and marketing events with respect to those two events and may agree to jointly plan and implement public relations or marketing events for the Development generally.

b) Thunderbird Outreach Efforts. Nonprofit Developer shall conduct outreach to former residents of Thunderbird Mobile Home Club Park who may desire to move to the Development and have Senior Housing needs. These outreach efforts will be subject to such laws, rules and regulations promulgated by HUD and other applicable governmental entities. Developer shall submit a written outreach plan to Agency, which shall have five (5) business days to provide its comment. Failure to comment within five business days shall be deemed an approval of the outreach plan.

c) Communications. Prior to Construction Completion, Agency and Nonprofit Developer shall hold regular Development project meetings for the purpose of reviewing the

status of the Schedule of Obligations and other obligations of both Nonprofit Developer and Agency under this Agreement. These Development project meetings may be in person, by phone or video conferencing and shall be held at least once a month up and through Construction Completion unless the Parties otherwise agree. Nonprofit Developer shall make available for such meetings its architect, contractor or other relevant professionals as the Parties may agree are appropriate for the subject(s) to be discussed at each meeting.

d) Project Managers. The initial project managers (the "Project Managers") shall be Martin Brown and Jeanna Troha for Agency and Jonathan Trutt for Nonprofit Developer. All communications between the parties shall be through the Project Managers unless the respective Project Managers otherwise designate other persons within their respective organizations. Each Party may change its Project Manager from time to time during the effectiveness of this Agreement upon at least ten (10) days' prior written notice to the other Party.

8) MISCELLANEOUS PROVISIONS

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

b) Notice.

i) Any 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 by private messenger service, or registered or certified U.S. mail; postage prepaid, return receipt requested, and:

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

Northwest Housing alternatives
2316 SE Willard Street
Milwaukie, OR 97222-7740
Attn: Jonathan Trutt

iii) In the case of a notice or communication to the Agency, addressed as follows:

City of Wilsonville—Urban Renewal Agency
29799 SW Town Center Loop East
Wilsonville, OR 97070
Attn: Jeanna Troha
Martin Brown

with a copy to:

City of Wilsonville
Attn: Michael Kohlhoff, City Attorney
29799 SW Town Center Loop, E
Wilsonville, OR 97070

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.

c) Merger. None of the provisions of this Agreement are intended to or shall be merged by reason of any Lease granting a leasehold interest in the Property from Agency to Nonprofit Developer or any successor in interest, and any such Lease shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

d) 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.

e) Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by Agency or Nonprofit Developer of any provision of this Agreement or any breach thereof, shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

f) Attorney Fees. If 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 attorney, paralegal, accountant, and other expert 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. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

g) Choice of Law. This Agreement shall be governed by Oregon law.

h) Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.

i) 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.

j) 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.

k) Entire Agreement. This Agreement and the attachments hereto is the entire agreement between the Parties. There are no other oral or written agreements 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.

l) Modifications. Any modifications to this Agreement shall be made in writing and executed by both Parties. The Parties recognize that circumstances may change and that it may be in the interest of both Parties that Agreement be amended from time to time. For this reason, each of the Parties will consider changes that may be proposed by the other during effectiveness of this Agreement.

m) Successors and Assigns. Subject to the provisions of Section 4, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.

n) 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 Clackamas County, or the United States District Court for the District of Oregon in Portland, Oregon.

o) 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.

Executed as of the day and year first above written.

AGENCY:
CITY OF WILSONVILLE URBAN
RENEWAL AGENCY

By: _____

Print name: _____

Title: _____

CITY:
CITY OF WILSONVILLE.

By: _____

Name: _____

Title:

NONPROFIT DEVELOPER:
NORTHWEST HOUSING ALTERNATIVES,
INC.

By: _____

Name: _____

Title:

APPROVED AS TO FORM
this _____ day of _____, 200__.

Michael E. Kohlhoff, City Attorney
City of Wilsonville, Oregon

EXHIBITS

- A. Legal Description of the Property
- B. Development Plan
- C. Enhancement Package
- D. Schedule of Performance

EXHIBIT A

Legal Description

* DDA to be amended once legal description is completed.

EXHIBIT B

Development Plan
See attached

EXHIBIT C
Essential and Enhancement Items
Paid to Northwest Housing

Essential Items

Number	Item	Cost	Primary Project Manager*
1	Design and construction of Skybridge from Senior Housing to Community Center.	\$639,000	Nonprofit Developer
2	Community Center modifications to accommodate Skybridge connection.	\$85,000	City
3	Replace existing retaining walls with engineered retaining walls. Total of new walls approximately 290 lineal feet long by 16 feet tall to native sub grade—Design and construction.	\$182,000	Nonprofit Developer
4	Professional Services: Legal services, architectural services, land survey, tree survey, stormwater topographical survey, recordation fees, design services	\$60,000	Nonprofit Developer
	Total	\$966,000	

Enhancement Items

Number	Item	Cost	Primary Project Manager*
1	Visible storm water system in place of conventional underground piped storm water system	\$86,000	Nonprofit Developer
2.	Blow in cellulose insulation at exterior walls in place of batt insulation to increase R-Value	\$50,300	Nonprofit Developer
3.	Replace existing chain link fence on Wilsonville Road	\$17,000	Nonprofit Developer
4.	Update to carpet tiles in common areas including corridors	\$11,700	Nonprofit Developer
5.	Low flush toilets	\$11,000	Nonprofit Developer
6.	Wall covering below handrail/chair rails	\$43,700	Nonprofit Developer
7	Creation of (7) additional parking spaces	\$16,000	City
8.	Addition of pocket doors in (7) ADA units	\$7,000	Nonprofit Developer
	Total	\$242,700	
	GRAND TOTAL	\$1,208,700	

- The “Primary Project Manager” listed next to each item shall assume responsibility for its coordination and/or design and construction. Coordination in all cases includes close communication between City and Nonprofit Developer to ensure that the Development stays on schedule and work is completed according to both parties’ expectations.
- City responsibility sewer re-location \$140,000

EXHIBIT D

Schedule of Performance

See attached