

June 5, 2025

BCC Agenda Date/Item: _____

Board of County Commissioners
Sitting/Acting as Development Agency Board
Clackamas County

Approval of a Disposition Agreement with HV Otty for the sale of Development Agency property located at 8855 SE Otty Road. Agreement Value is \$3,000,000. Funding is through HV Otty. No County General Funds are involved.

Previous Board Action/Review	The Board directed staff to proceed with disposition of the property at an Executive Session on February 18, 2025.		
Performance Clackamas	1. Which indicator of success does this item affect? This transaction will help grow a vibrant economy and build public trust through good government.		
Counsel Review	Yes (CH 4-8-25)	Procurement Review	No
Contact Person	David Queener	Contact Phone	503-742-4322

EXECUTIVE SUMMARY: The Clackamas County Development Agency owns a 3.3 acre parcel located at 8855 SE Otty Road, which is the former Miles Fiberglass property. HV Otty, LLC presented an offer to purchase the property and redevelop it with 170 market rate apartments and associated retail space. Staff presented the offer to the Board at an Executive Session on February 18, 2025. The Board directed staff to proceed with the sale to HV Otty, LLC with the terms proposed.

The Disposition Agreement outlines the terms and conditions that must be met by both parties prior to closing on the property, including entering into a Post-Closing Agreement requiring the Developer to meet certain site and building improvement goals.

RECOMMENDATION: Staff respectfully recommends that the Board approve and execute the Disposition Agreement between the Clackamas County Development Agency and HV Otty, LLC.

Sincerely,

Dan Johnson

Dan Johnson, Director - Department of Transportation and Development

For Filing Use Only

DISPOSITION AGREEMENT

This DISPOSITION AGREEMENT (this “**Agreement**”) is by and between the CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County (the “**Agency**”), and HV OTTY LLC, a Delaware limited liability company (the “**Developer**”). The latest date on which this Agreement is signed by the Agency and the Developer is referred to in this Agreement as the “**Effective Date**.”

RECITALS

A. This Agreement furthers the Agency’s objectives under the Clackamas Town Center Area Development Plan (the “**Plan**”) by providing for the disposition and development of certain real property owned by the Agency. The Agency has found that the development of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, is in the best interests of Clackamas County, Oregon (the “**County**”), and its residents, and is in accord with the purposes and requirements of applicable federal, state, and local law.

B. The Plan was originally approved and adopted on December 30, 1980, by Order No. 80-2685 of the Clackamas County Board of Commissioners, and it has been amended from time to time. The Plan is incorporated herein by this reference. The Agency represents and warrants that the Plan, as it presently exists, is in full force and effect. A copy of the Plan is on file with the Clackamas County Department of Transportation and Development.

C. The Agency desires to sell the Property to the Developer, and the Developer desires to purchase the Property from the Agency, subject to the terms and conditions set forth in this Agreement.

AGREEMENT

ARTICLE 1: SUBJECT OF AGREEMENT

Section 1.1: Property.

The “**Property**” consists of approximately 3.3 acres of land located at 8855 SE Otty Road in the County, as more particularly shown on the Property Map attached hereto as **Exhibit “A”** and as more particularly described in the Legal Description attached hereto as **Exhibit “B.”**

Section 1.2: Post-Closing Agreement and Memorandum.

At Closing, the Agency and the Developer shall enter into a Post-Closing Escrow and Development Agreement in the form attached hereto as **Exhibit “C”** (the “**Post-Closing Agreement**”). Among other things, the Post-Closing Agreement requires the Developer to meet certain site and building improvement goals. At Closing, the Agency and the Developer shall also enter into a Memorandum of Post-Closing Agreement in the form attached hereto as **Exhibit “D”** (the “**Memorandum**”).

Section 1.3: Agency.

The term “**Agency**,” as used in this Agreement, means the Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County, and any assignee of or successor to its rights, powers, duties, and responsibilities. The Agency exercises governmental functions and powers and is organized and exists under ORS chapter 457. The principal office and mailing address of the Agency, for purposes of this Agreement, is:

Clackamas County Development Agency
c/o Development Agency Program Supervisor
150 Beavercreek Road
Oregon City, OR 97045
Attn: Dave Queener
Email: DavidQue@clackamas.us

Section 1.4: Developer.

The term “**Developer**,” as used in this Agreement, means HV Otty LLC, a Delaware limited liability company, or any permitted assignee of the Developer, as provided in Section 1.6. The principal office and mailing address of the Developer, for purposes of this Agreement, is:

HV Otty LLC
8245 SW Tualatin Sherwood Road
Tualatin, OR 97062
Attn: Bart Dickson
Email: bart@cobaltbuilt.com
With a copy to: hattie@cobaltbuilt.com

Section 1.5: Escrow Officer and Title Company.

The principal office and mailing address of the Escrow Officer and Title Company, for purposes of this Agreement, is:

Chicago Title Company of Oregon
1211 SW Fifth Avenue, Suite 2130
Portland, OR 97204
Attn: Wendy Guerin
Email: wendy.geurin@ctt.com

Section 1.6: Prohibition Against Change in Ownership, Management, and Control of Developer.

The qualifications and identity of the Developer are of particular concern to the Agency and were essential to the selection of the Developer by the Agency for development of the Property. No assignee of the Developer shall acquire any rights or powers under this Agreement, except as expressly permitted herein. All assignments of this Agreement shall require written consent of the Agency, which consent shall not be unreasonably withheld, conditioned, or delayed;

provided, notwithstanding the foregoing, that the Developer shall be entitled to assign this Agreement without the Agency's prior written consent to (i) any entity controlling, controlled by, or under common control with the Developer or (ii) any entity in which the Developer or its parent or affiliated entities own an interest; and further provided that the Developer shall provide written notice to the Agency within three (3) business days following any such permitted assignment.

ARTICLE 2: DUE DILIGENCE

Section 2.1: Title Commitment.

Within twenty (20) days after the Effective Date, the Agency shall cause the Title Company to furnish to the Developer its preliminary title report on the Property (the "**Preliminary Commitment**"), along with copies of all documents that give rise to exceptions listed in the Preliminary Commitment. No later than sixty (60) days prior to the expiration of the Due Diligence Period described in Section 2.4, the Developer shall give the Agency written notice setting forth the title exceptions that are not acceptable to the Developer (the "**Unacceptable Exceptions**"). All exceptions other than those timely objected to shall be deemed acceptable to the Developer (the "**Permitted Exceptions**"). The Agency shall have twenty (20) days after receiving the Developer's notice within which to notify the Developer in writing whether the Agency is willing or able to eliminate the Unacceptable Exceptions. If the Agency agrees to eliminate the Unacceptable Exceptions, the Agency shall be obligated to do so prior to Closing at its cost. If the Agency is unwilling or unable to eliminate the Unacceptable Exceptions, the Developer may elect to terminate this Agreement or to accept the Unacceptable Exceptions and proceed to Closing by giving written notice to the Agency within ten (10) days of receiving notice from the Agency. If the Developer does not provide timely written notice of its election to terminate this Agreement, it shall be deemed to have waived its objections to the Unacceptable Exceptions and all of the Unacceptable Exceptions shall become Permitted Exceptions; provided, notwithstanding the foregoing or anything herein to the contrary, that the Agency shall be obligated to remove and obtain the release of all mortgages, deeds of trust, and other liens or encumbrances arising by or through the Agency on or prior to Closing, without the necessity of the Developer objecting to the same. The Developer shall have the same rights as set forth above to approve (or disapprove and terminate this Agreement with respect to) any title matters or exceptions that are newly disclosed in any title reports issued after the Developer receives the Preliminary Commitment. Upon termination of this Agreement by the Developer as provided in this section, the Earnest Money described in Section 3.2 shall be refunded to the Developer and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

Section 2.2: Survey.

Within twenty (20) days after the Effective Date, the Agency shall deliver the most recent survey, if any, in its possession to the Developer (the "**Initial Survey**"). No later than sixty (60) days prior to the expiration of the Due Diligence Period, the Developer may give to the Agency written notice setting forth any objections to any matters shown on the Initial Survey (the "**Objections**"). The Developer's failure to timely object to any such matters shall be deemed to constitute the Developer's approval thereof. The Agency shall have twenty (20) days after receiving the Objections within which to notify the Developer in writing whether the Agency is

willing or able to cure the Objections. If the Agency agrees to cure the Objections, the Agency shall be obligated to do so prior to Closing at its cost. If the Agency is unwilling or unable to cure the Objections, the Developer may elect to terminate this Agreement or to accept the Objections and proceed to Closing by giving written notice to the Agency within ten (10) days of receiving notice from the Agency. If the Developer does not provide timely written notice of its election to terminate this Agreement, it shall be deemed to have waived the Objections. At its option and expense, the Developer may order an update to the Initial Survey or a new survey. If applicable, the Developer shall deliver a copy of any updated or new survey to the Agency promptly upon written request for the same. The Developer shall have the same rights as set forth above to approve (or disapprove and terminate this Agreement with respect to) any survey matters that are newly disclosed in any updated or new survey ordered after the Developer receives the Initial Survey. Upon termination of this Agreement by the Developer as provided in this section, the Earnest Money described in Section 3.2 shall be refunded to the Developer and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

Section 2.3: Property Documents.

Within twenty (20) days after the Effective Date, the Agency shall deliver all documents and materials that it has in its possession (or that it has access to) that concern the Property or the Property's development, including but not limited to tax and assessment documents; existing surveys; environmental assessments; soils and geotechnical reports; wetland reports, analyses, and permits; traffic studies; development feasibility studies; use and development permits; easements; covenants, conditions, and restrictions; maintenance agreements; and development standards applicable to the Property that are not otherwise set forth herein (except those that appear in zoning codes, comprehensive plans, or other readily available government planning documents).

Section 2.4: Due Diligence Period.

The Developer shall have a period of one hundred fifty (150) days after the Effective Date (the "**Due Diligence Period**") to conduct a due diligence investigation of the Property and to satisfy itself concerning all aspects of the Property and the suitability of the Property for the Developer's intended uses, including, without limitation, the physical condition of the Property, zoning, access, utilities, and all legal rights, titles, and interests. During the period from the Effective Date until the earlier of Closing or termination of this Agreement, the Developer, its affiliates, and their employees, agents, consultants, contractors, equity partners, prospective tenants or purchasers, and lenders may enter the Property to perform such tests, inspections, and studies as the Developer may deem necessary, including, without limitation, environmental assessments. The Developer hereby indemnifies and holds the Agency, the County, and their elected officials, officers, agents, and employees harmless from any injury or damages arising out of any activity of the Developer and its agents, employees, and contractors performed and conducted on the Property for purposes of completing the Developer's due diligence. Such due diligence may include, without limitation, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. After conducting such due diligence, the Developer shall restore the Property to its pre-examination state at the Developer's own expense. Upon written request by the Agency, the Developer agrees to

provide the Agency with copies of all third party reports concerning the existing physical condition of the Property obtained or produced as a result of the due diligence investigation; provided that (i) the Agency shall not be entitled to rely on such third party reports and (ii) the Developer shall have no liability to the Agency with respect to the contents of such third party reports. Prior to expiration of the Due Diligence Period, the Developer may provide the Agency with notice of its approval of the due diligence investigation and its election to proceed with this Agreement (the “**Approval Notice**”). Alternatively, prior to expiration of the Due Diligence Period, the Developer may provide the Agency with notice of its election to terminate this Agreement (the “**Termination Notice**”). If the Developer fails to provide either the Approval Notice or the Termination Notice prior to expiration of the Due Diligence Period, the Developer shall be deemed to have elected to proceed with this Agreement as if an Approval Notice was provided to the Agency prior to expiration of the Due Diligence Period. If the Agency has not approved the revised Design Drawings as provided herein within fifteen (15) days prior to the end of the Due Diligence Period, the Developer shall have the option to extend the Due Diligence Period or otherwise terminate this Agreement as provided herein. In the event of termination, except as otherwise expressly provided herein, neither party shall have any further rights, duties, or obligations hereunder, and the Earnest Money described in Section 3.2 shall be fully and immediately refunded to the Developer.

Section 2.5: Design Drawings.

No later than sixty (60) calendar days prior to the expiration of the Due Diligence Period, the Developer shall prepare and submit to the Agency architectural design development concept drawings of the Developer’s proposed improvements (the “**Design Drawings**”) for the Agency’s review and written approval. The Design Drawings shall be generally consistent with the Scope of Development attached hereto as **Exhibit “E.”** The Agency shall diligently, and in good faith, review the Design Drawings to determine whether they are in substantial conformance with the Scope of Development and shall issue a decision within twenty (20) calendar days after receipt of same. Failure of the Agency to notify the Developer within such period of time shall be deemed to be approval by the Agency. If the Agency does not approve the Design Drawings, the Agency shall specify, in writing, its specific objections to the same, and the Developer shall have fifteen (15) calendar days to revise the same. If the Developer revises and resubmits the Design Drawings, the Agency shall issue a decision within ten (10) business days after receipt of same. The Developer and Agency agree that there shall be no more than two (2) resubmits of the Design Drawings requested by Agency. In the event that Agency requests more than two (2) revisions to the Design Drawings, Developer shall have the option to terminate this Agreement and the Earnest Money shall be refunded in full to Developer. Approval of the Design Drawings by the Agency shall not be deemed approval by any other County agency or department.

Section 2.6: Governmental Approvals.

Prior to Closing, the Agency agrees to join in executing any applications reasonably required by the Developer in connection with its attempts to obtain governmental permits and approvals for its intended development or use of the Property. The Developer shall reimburse the Agency for its actual, reasonable out-of-pocket expenses (if any) incurred in cooperating with the Developer’s attempts to obtain governmental permits or approvals, except any expenses (i) associated with the Agency’s review of the Design Drawings or (ii) otherwise within the scope of

the Agency's typical non-reimbursable obligations or responsibilities for other similar developments; provided that the Agency shall give the Developer notice of the amount and purpose of all such expenses prior to their being incurred by the Agency. Neither the Agency's agreement to cooperate with the Developer in connection with the Developer's governmental approvals nor any other provision of this Agreement shall be construed as making either party an agent or partner of the other party.

Section 2.7: No Liens.

Prior to Closing, the Developer shall not place or allow to be placed on the Property, or any portion thereof, any mortgage, trust deed, encumbrance, or lien unless specifically pre-approved in writing by the Agency. The Developer shall remove or have removed any levy, lien, or attachment made on the Property, or any portion thereof, or provide assurance of the satisfaction thereof within a reasonable time, no later than thirty (30) days after the Developer learns or receives notice of such levy, lien, or attachment coming into existence without the Agency's permission prior to Closing. The Developer may contest or challenge the validity or amount of any such lien or encumbrance; provided that such contest or challenge is made in accordance with applicable law and within a reasonable time; and further provided that the Developer provides security satisfactory to the Agency protecting the Agency's interests or (in the case of construction liens) bonds against the liens as permitted by statute.

Section 2.8: Schedule of Performance.

Subject to the terms and conditions of this Agreement, the Developer shall use commercially reasonable efforts to meet the benchmarks set forth in the Schedule of Performance attached hereto as **Exhibit "F;"** provided that the Developer's failure to meet those benchmarks shall not constitute a default hereunder, except as otherwise provided herein.

ARTICLE 3: DISPOSITION OF PROPERTY

Section 3.1: Purchase and Sale of the Property; Purchase Price.

In accordance with, and subject to, all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to the Developer, and the Developer agrees to purchase from the Agency, the Property for the amount of Three Million and no/100 Dollars (\$3,000,000.00) (the "**Purchase Price**").

Section 3.2: Earnest Money.

The Developer shall, within three (3) business days after the Effective Date, deliver to the Title Company the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00) as earnest money by wire transfer of immediately available funds (the "**Earnest Money**") to be held and applied in accordance with the terms of this Agreement. If the Developer fails to timely deposit the Earnest Money, this Agreement shall terminate and neither the Developer nor the Agency shall have any further obligations to one another. The Earnest Money shall be held in a non-interest-bearing or interest-bearing account approved by the Developer, and any accrued interest shall be

added to and become part of the Earnest Money. The Earnest Money shall be applied to the Purchase Price due by the Developer at Closing. If this Agreement terminates prior to expiration of the Due Diligence Period for any reason, except the default of the Developer under the terms of this Agreement, the Earnest Money, and any accrued interest, shall be fully and immediately refunded to the Developer. Upon approval of the Design Drawings by Agency as provided herein and expiration of the Due Diligence Period, the Earnest Money, and any accrued interest, shall become nonrefundable (except in the event of a default by the Agency or as otherwise expressly set forth herein) but shall be credited toward payment of the Purchase Price at Closing.

Section 3.3: Closing.

This transaction shall close (“**Closing**”) on a date selected by the Developer, and reasonably acceptable to the Agency, that is no later than ninety (90) days after the expiration of the Due Diligence Period (the “**Closing Date**”). Closing shall occur in escrow by and through a mutually acceptable escrow officer (the “**Escrow Officer**”) of Chicago Title Insurance Company of Oregon, 1211 SW Fifth Avenue, Suite 2130, Portland, OR 97204 (the “**Title Company**”), in accordance with the terms and conditions of this Agreement. The Developer agrees, at Closing, and subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Property and to pay the Purchase Price to the Agency by wire transfer of immediately available funds, subject to the credits, debits, prorations, and adjustments provided for in this Agreement, including a credit for the Earnest Money. The Agency and the Developer agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement.

Section 3.4: Deed.

At Closing, the Agency shall convey to the Developer fee simple title to the Property by Bargain and Sale Deed, duly executed, acknowledged, and delivered in the form attached hereto as **Exhibit “G”** (the “**Deed**”), free and clear of all liens, claims, and encumbrances other than the Permitted Exceptions. Conveyance of title to the Property to the Developer, together with full satisfaction of the Developer’s escrow instructions, shall conclusively establish satisfaction or waiver of all the closing conditions set forth in Article 4.

Section 3.5: Title Insurance; Prorations; Adjustments; Commissions.

3.5.1 The Agency shall be responsible for payment of the base premium of the Developer’s title insurance policy (consistent with local custom in the County); provided that the Developer shall be responsible for the payment of any premium associated with extended coverage and any other title endorsements requested by the Developer. At the Developer’s request, the Agency shall execute and deliver at Closing an affidavit certifying that there are no unrecorded leases or agreements affecting the Property, that there are no parties in possession of the Property, that there are no mechanic’s or statutory liens against the Property, and as to such other matters as may be reasonably requested by the Title Company or the Developer for issuance of extended coverage title insurance in favor of the Developer.

3.5.2 Real property taxes and assessments and other expenses related to the Property for the current year (if any) shall be prorated and adjusted between the parties as of the Closing Date. The Agency shall be responsible for any expenses for the period of time prior to the Closing Date, and the Developer shall be responsible for such expenses for the period of time on and subsequent thereto. Escrow fees shall be paid by the Developer. Recording fees shall be paid by the Agency. The Developer shall be responsible for all professional fees incurred by the Developer in connection with the due diligence investigation, and for its legal fees and expenses. The Agency shall pay the costs of its own attorneys, consultants, and advisors with respect to this transaction. All other transaction costs that are not expressly allocated herein shall be allocated between the parties in accordance with the local customs for the purchase and sale of commercial real estate in the County.

3.5.3 The Developer and the Agency hereby acknowledge and agree that Capacity Commercial Group is exclusively representing the Developer, that Apex Real Estate is exclusively representing the Agency, and that no other broker shall be entitled to a commission with this transaction. At Closing, the Agency shall pay Apex Real Estate a brokerage fee, which may be divided with Developer's broker subject to a separate agreement by and between the parties. Additionally, Developer may pay a fee to Developer's broker as outlined in a separate agreement by and between Developer and Capacity Commercial Group. Each party represents and warrants to the other that it has not engaged or dealt with any other real estate broker, finder, or agent in connection with this transaction, or any other person or entity who may be entitled to a commission, finder's fee, or similar compensation in connection with this transaction.

Section 3.6: Events of Closing.

This transaction shall close on the Closing Date as follows:

3.6.1 The Escrow Officer shall perform the prorations and adjustments described in Section 3.5, and the parties shall be charged and credited accordingly.

3.6.2 The Developer shall pay the entire Purchase Price to the Agency by wire transfer of immediately available funds, subject to the charges, prorations, adjustments, and credits set forth in this Agreement, including a credit for the Earnest Money.

3.6.3 Any liens required to be paid by the Agency at Closing shall be paid and satisfied of record at the Agency's expense.

3.6.4 The Agency shall convey the Property to the Developer by execution and delivery of the Deed, subject only to the Permitted Exceptions.

3.6.5 The Title Company shall be irrevocably committed to issuing the title insurance policy described in Section 4.2.5.

3.6.6 The Agency shall deliver a non-foreign person affidavit as provided in Section 7.19.

3.6.7 The parties shall execute and deliver the Post-Closing Agreement.

3.6.8 The parties shall execute and deliver, with notary acknowledgment, the Memorandum.

3.6.9 The Escrow Officer shall record the following documents in the following order: (i) the Deed and (ii) the Memorandum.

3.6.10 The Developer shall deposit the additional sum of One Hundred Thousand and no/100 Dollars (\$100,000.00) by wire transfer of immediately available funds (the “**Security Deposit**”) to be held by the Title Company pursuant to the terms of the Post-Closing Agreement.

3.6.11 The parties shall take such further actions and execute and deliver such other instruments as may be reasonably necessary or desirable to consummate this transaction.

Section 3.7: Possession.

Possession of the Property shall be delivered to the Developer concurrently with the conveyance of title on the Closing Date, free and clear of all tenancies and occupancies. The Developer shall accept title and possession on the Closing Date, unless such date is extended as provided herein.

Section 3.8: Condition of the Property.

The Developer acknowledges that it is purchasing the Property “As Is,” except as otherwise provided herein.

ARTICLE 4: CLOSING CONDITIONS

Section 4.1: Agency’s Closing Conditions.

The Agency’s obligations to convey the Property under this Agreement are expressly conditioned upon the satisfaction of the following conditions:

4.1.1 The Developer has fulfilled all the obligations and covenants that this Agreement requires the Developer to perform prior to Closing, including but not limited to deposit of the Purchase Price and the Security Deposit with the Title Company at or before Closing and execution and delivery of the Post-Closing Agreement.

4.1.2 The Design Drawings have been prepared and submitted by the Developer in accordance with Section 2.5 and have been reviewed and approved by the Agency, such approval not to be unreasonably withheld, conditioned, or delayed.

4.1.3 All of the Developer’s representations and covenants set forth in this Agreement are true and correct in all material respects on the Closing Date.

The foregoing conditions may be waived only by the Agency. If any such conditions are not satisfied as of the Closing Date, the Agency may, at its option, terminate this Agreement, in

which event the Earnest Money shall be refunded to the Developer and neither party shall have any further obligation or liability hereunder (except for such obligations that expressly survive such termination); provided that, to the extent such conditions are not satisfied solely as a result of a breach of this Agreement by the Developer, the provisions of Section 6.2 shall apply.

Section 4.2: Developer's Closing Conditions.

The Developer's obligations to close the purchase of the Property under this Agreement are expressly conditioned upon the satisfaction of the following conditions:

4.2.1 The Developer provides the Approval Notice or is deemed to have given its approval pursuant to Section 2.4.

4.2.2 The Agency has fulfilled all the obligations and covenants that this Agreement requires the Agency to perform prior to Closing.

4.2.3 All of the Agency's representations and covenants set forth in this Agreement are true and correct in all material respects on the Closing Date.

4.2.4 There has been no change in the condition of the Property, including any dumping of refuse or environmental contamination, since the Effective Date, and no legal action or proceeding (including condemnation) affecting the Property or the Developer's intended use thereof has been threatened or commenced.

4.2.5 The Title Company is irrevocably committed to issuing a title insurance policy upon recordation of the Deed, insuring that fee simple title is vested in the Developer as of the Closing Date, in the amount of the Purchase Price, subject only to the Permitted Exceptions.

The foregoing conditions may be waived only by the Developer. If any such conditions are not satisfied as of the Closing Date, the Developer may, at its option, (i) terminate this Agreement, in which event the Earnest Money shall be refunded to the Developer and neither party shall have any further obligation or liability hereunder (except for such obligations that expressly survive such termination); provided that, to the extent such condition is not satisfied solely as a result of a breach of this Agreement by the Agency, the provisions of Section 6.3 shall apply; (ii) extend the Closing Date for a period of fifteen (15) days (retaining the option to terminate this Agreement at the end of such period), by providing written notice to the Agency prior to the then-current Closing Date, for the sole purpose of permitting the Agency to satisfy any unsatisfied conditions to the Developer's obligation to close; or (iii) waive any such unsatisfied conditions and proceed to Closing.

ARTICLE 5: REPRESENTATIONS AND WARRANTIES

Section 5.1: Developer's Representations and Covenants.

The Developer represents, warrants, and covenants as follows:

5.1.1 The Developer is a Delaware limited liability company, duly organized and validly existing, and is or at Closing will be qualified to do business in the state in which the Property is located. The Developer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate this transaction.

5.1.2 There is no agreement to which the Developer is a party or which, to the Developer's knowledge, is binding on the Developer which is in conflict with this Agreement. There is no action or proceeding pending or, to the Developer's knowledge, threatened against the Developer which challenges or impairs the Developer's ability to execute or perform its obligations under this Agreement.

5.1.3 The Developer has or will have the financial capacity to cause those improvements set forth in the Post-Closing Agreement to be constructed.

5.1.4 Bart Dickson, in his capacity as Manager of the Developer, is individually authorized to act on behalf of, and bind, the Developer.

5.1.5 The Developer is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

5.1.6 To the best of the Developer's knowledge, the Developer, for a period of no fewer than six (6) calendar years preceding the Effective Date, has faithfully complied with (i) all applicable tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to the Developer; to the Developer's property, operations, receipts, or income; to the Developer's performance of or compensation for any work performed by the Developer; or to goods, services, or property, whether tangible or intangible, provided by the Developer; and (iii) any applicable rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

For purposes of this Agreement, the "**Developer's knowledge**" is the actual or constructive knowledge of Bart Dickson; provided that such individual shall have no personal liability whatsoever with respect to this Agreement.

Section 5.2: Agency's Representations and Covenants.

The Agency represents, warrants, and covenants as follows:

5.2.1 The Agency is a duly organized and validly existing public body in good standing in the State of Oregon. The Agency has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate this transaction.

5.2.2 To the best of the Agency's knowledge (without any requirement for further investigation), there are no actions, suits, claims, legal proceedings, condemnation or eminent domain proceedings, or any other proceedings affecting the Property, or any portion thereof, at

law or in equity, before any court or governmental agency, domestic or foreign, nor is there any basis for any such proceeding which, if adversely determined, might affect the use or operation of the Property for the Developer's intended purpose, the value of the Property, or the ability of the Agency to perform its obligations under this Agreement; provided that the Agency makes no representation or warranty regarding the use of the Property under current or future land use codes, building codes, or other generally applicable laws and regulations. The Developer acknowledges its obligation to investigate the same as part of the due diligence investigation.

5.2.3 To the best of the Agency's knowledge (without any requirement for further investigation), there are no liens, bonds, encumbrances, easements, reservations, covenants, conditions, restrictions, or other matters affecting the Property except as disclosed in the Preliminary Commitment, and the Agency has not received notice and has no knowledge of any pending liens or special assessments to be made against the Property.

5.2.4 From the Effective Date until the Closing Date, the Agency shall use commercially reasonable efforts to maintain the Property in its condition as of the Effective Date, less the reasonable impacts of any natural conditions and of the Developer's due diligence investigation.

5.2.5 To the best of the Agency's knowledge (without any requirement for further investigation), all information, documents, and instruments concerning the Property that are delivered to the Developer by the Agency are complete and true copies of such documents or original counterparts thereof.

5.2.6 To the best of the Agency's knowledge (without any requirement for further investigation), other than this Agreement, the Permitted Exceptions, and the documents to be executed and delivered hereunder at Closing, there are no contracts or agreements of any kind relating to the Property to which the Agency or its agents are a party and which would be binding on the Developer after Closing.

5.2.7 The Agency has not obligated itself in any manner to sell the Property to any party other than the Developer and promises not to enter into an agreement with any other party for the sale or lease of any portion of the Property while this Agreement is in effect.

5.2.8 The Agency is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

5.2.9 To the best of the Agency's knowledge (without any requirement for further investigation), the Agency is not (and is not engaged in this transaction on behalf of) a person or entity with which the Developer is prohibited from doing business pursuant to any law, regulation, or executive order pertaining to national security, including but not limited to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Executive Order 13224, the Bank Secrecy Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act and any sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control, and laws related to the prevention and detection of money laundering in 18 U.S.C sections 1956 and 1957.

5.2.10 To the best of the Agency's knowledge (without any requirement for further investigation), the Agency's sale of the Property is not subject to any federal, state, or local withholding obligation of the Developer under the tax laws applicable to the Agency or the Property.

5.2.11 The Agency has received no written notice of and has no knowledge of any material violations or investigations of violations of any applicable laws or ordinances affecting the Property that have not been corrected or resolved.

5.2.12 To the best of the Agency's knowledge (without any requirement for further investigation), the Property is in compliance with all applicable Environmental Laws; there are no material concentrations of Hazardous Substances on, in, or under the Property; and there are no underground storage tanks within the Property. As used in this Agreement, the term "**Environmental Laws**" means any and all state, federal, and local statutes, regulations, and ordinances to which the Property is subject relating to the protection of human health and the environment, as well as any judgments, orders, injunctions, awards, decrees, covenants, conditions, restrictions, or other standards relating to same, and the term "**Hazardous Substances**" means all hazardous and toxic substances, wastes, or materials, including without limitation all substances, wastes, and materials containing petroleum, including crude oil, or any of the substances referenced in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601(14), and similar or comparable state or local laws.

For purposes of this Agreement, the "**Agency's knowledge**" is the knowledge of Mr. David Queener.

Section 5.3: Survival.

All representations and warranties contained in this Agreement shall be true on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date and shall survive Closing and not be merged into any documents delivered at Closing. The parties agree to disclose any material change in the representations and warranties contained in this Agreement.

ARTICLE 6: DEFAULT AND REMEDIES

Section 6.1: Default.

Except for the parties' wrongful failure to close or satisfy a closing condition by the Closing Date, neither party shall be deemed in default under this Agreement unless such party is given written notice of its failure to comply with this Agreement and such failure continues for a period of five (5) days following the date such notice is given.

Section 6.2: Agency's Remedies.

In the event that this transaction fails to close solely on account of a default by the Developer under this Agreement, this Agreement shall terminate and the Earnest Money, and any

accrued interest, shall be forfeited by the Developer and retained by the Agency as liquidated damages and as the Agency's sole remedy for such default. Such amount has been agreed by the parties to be reasonable compensation and the exclusive remedy for the Developer's default, since the precise amount of such compensation would be difficult to determine.

In the event that any of the following occurs prior to the conveyance of title to the Property, this Agreement, and any rights of the Developer in this Agreement, in the Property, or in any portion thereof, shall, at the option of the Agency and upon written notice by the Agency to the Developer, be terminated, in which event the Earnest Money, and any accrued interest, shall be retained by the Agency as liquidated damages and as its property without any deduction, offset, or recoupment whatsoever, and neither the Developer nor the Agency shall have further rights against or liability to the other under this Agreement:

6.2.1 The Developer (or any successor thereto) assigns or attempts to assign this Agreement, or any rights of the Developer in this Agreement, in the Property, or in any portion thereof, in violation of this Agreement.

6.2.2 The Developer does not submit the Design Drawings by the dates provided in Section 2.5; provided that this paragraph shall only apply in the event that the Developer does not terminate this Agreement prior to the expiration of the Due Diligence Period.

6.2.3 The Developer does not tender the Purchase Price or take title to the Property on conveyance by the Agency after satisfaction or waiver of all the closing conditions set forth in Section 4.2.

Section 6.3: Developer's Remedies.

In the event that this transaction fails to close solely on account of a default by the Agency under this Agreement, this Agreement shall terminate and the Earnest Money, and any accrued interest, shall be returned to the Developer. The Developer shall be entitled to such remedies for breach of contract as may be available under applicable law, including without limitation the remedies of specific performance, injunctive relief, and damages.

ARTICLE 7: GENERAL PROVISIONS

Section 7.1: Applicable Law.

The laws of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.

Section 7.2: Attorney Fees.

The parties shall bear their own costs and attorney fees in the event that an action is brought to enforce, modify, or interpret the provisions of this Agreement.

Section 7.3: Notice.

All notices given pursuant to this Agreement shall be in writing; shall be sent to the addresses shown in Section 1.3 and Section 1.4, to the attention of the person indicated; and shall be either (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested; (ii) delivered in person or by local or national courier; or (iii) sent by email to the email addresses shown in Section 1.3 and Section 1.4.

Any notice (i) sent by mail in the manner specified in this section shall be deemed given three (3) business days after deposit with the United States Postal Service, (ii) delivered in person or by local or national courier shall be deemed given upon receipt or refusal of delivery, and (iii) sent by email shall be deemed given upon email transmission. Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender. Each party may change its address for notice by giving not less than ten (10) days' prior notice of such change to the other party in the manner set forth above.

Section 7.4: Nonliability of Officials and Employees.

No member, manager, shareholder, director, officer, elected official, employee, affiliate, agent, or representative of any of the parties shall be personally liable to any other party or its successor in the event of any default or breach by any party, or for any amount that may become due to any party, or for any obligations under the terms of this Agreement.

Section 7.5: Headings.

The titles of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any provisions of this Agreement.

Section 7.6: Time of Essence.

Time is of the essence under this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified in this Agreement, as may be extended by mutual agreement of the parties in writing.

Section 7.7: Severability.

If any clause, sentence, or other portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion shall remain in full force and effect.

Section 7.8: No Partnership.

Nothing in this Agreement or the documents delivered in connection herewith nor any acts of the parties 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 of any association

between the parties.

Section 7.9: Nonwaiver of Government Rights.

Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary governmental action relating to the acquisition of the Property or to the development, operation, and use of the improvements to be constructed on the Property, including but not limited to condemnation, comprehensive planning, rezoning, variances, environmental clearances, or any other governmental agency approvals that are or may be required.

Section 7.10: Integration.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all prior negotiations or previous agreements between the parties or their predecessors with respect to all or any part of the subject matter hereof.

Section 7.11: Counterparts; Facsimile and Electronic Transmission.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement. Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of any party, the parties shall confirm facsimile or electronically transmitted signatures by signing an original document.

Section 7.12: Waiver.

All waivers of the provisions of this Agreement, and any amendments hereto, must be in a writing signed by the appropriate authorities of the Agency and the Developer. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Section 7.13: Weekends and Holidays.

If the time for performance of any of the terms, conditions, and provisions of this Agreement falls on a Friday, Saturday, Sunday, or legal holiday, then the time for such performance shall be extended to the next business day.

Section 7.14: Neutral Construction.

This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party by virtue of which party drafted all or any part of this Agreement.

Section 7.15: Dispute Resolution.

Each party waives its right to trial by jury in any claim, action, suit, or proceeding arising out of this Agreement or this transaction.

Section 7.16: Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns. This Agreement is made for the sole benefit of the parties and their permitted successors and assigns, and no other person or party shall have any right of action under this Agreement.

Section 7.17: Acceptance of Service of Process.

In the event that any legal or equitable action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service on the Program Supervisor of the Agency, as set forth in Section 1.3, or in such other manner as may be provided by law. In the event that any legal or equitable action is commenced by the Agency against the Developer, service of process on the Developer shall be made on the individual identified in Section 1.4, or in such other manner as may be provided by law.

Section 7.18: Merger.

None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein, 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 7.19: Non-Foreign Persons.

The parties agree to comply with the terms of Section 1445 of the Internal Revenue Code. At Closing, the Agency shall execute and deliver to the Developer and the Title Company a non-foreign person affidavit in a form mutually acceptable to the parties.

Section 7.20: Exhibits.

All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

ARTICLE 8: STATUTORY DISCLAIMER

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON

TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

"AGENCY"

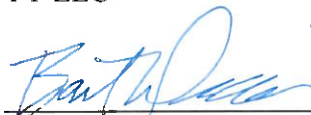
CLACKAMAS COUNTY DEVELOPMENT
AGENCY

By: _____
Craig Roberts, Chair

Date: _____, 2025

"DEVELOPER"

HV OTTY LLC

By: _____
Bart Dickson, Manager

Date: MAY 21, 2025

LIST OF EXHIBITS

EXHIBIT A Property Map
EXHIBIT B Legal Description
EXHIBIT C Post-Closing Agreement
EXHIBIT D Memorandum of Post-Closing Agreement
EXHIBIT E Scope of Development
EXHIBIT F Schedule of Performance
EXHIBIT G Bargain and Sale Deed

EXHIBIT A

Property Map

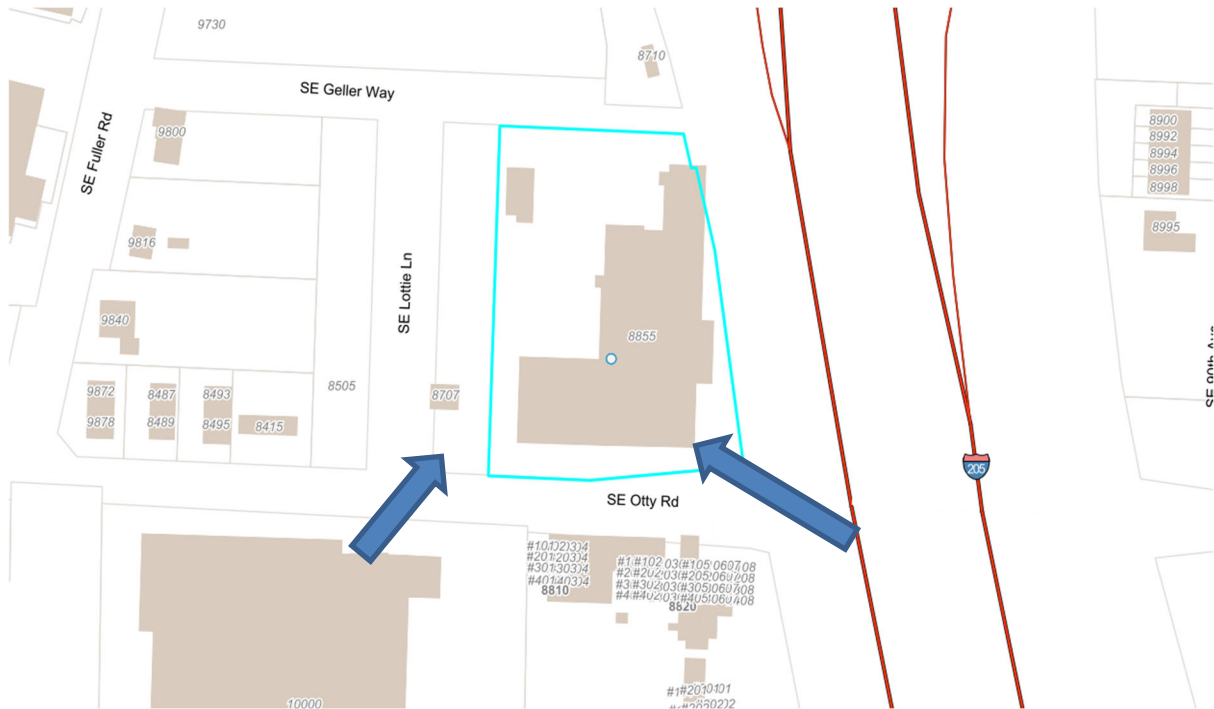


EXHIBIT B

Legal Description

Clackamas County parcel 1S2E28CB-700 also known as Assessor's parcel number 00048371
and parcel 1S2E28CB-800 also known as Assessor's parcel number 00048380

EXHIBIT C

Post-Closing Agreement

POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT

This **POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT** (this “**Agreement**”) is entered into by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County (the “**Agency**”); **HV OTTY LLC**, a Delaware limited liability company (the “**Developer**”); and **CHICAGO TITLE COMPANY OF OREGON**, an Oregon corporation (the “**Escrow Holder**”). The latest date on which this Agreement is signed by the Agency, the Developer, and the Escrow Holder is referred to in this Agreement as the “**Effective Date**.”

RECITALS

A. Pursuant to that Disposition Agreement effective May 22, 2025 (the “**Disposition Agreement**”), the Developer acquired from the Agency that certain real property consisting of approximately 3.3 acres of land located at 8855 SE Otty Road in Clackamas County, Oregon, as more particularly described in Exhibit “B” to the Disposition Agreement (the “**Property**”). All capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth in the Disposition Agreement.

B. In connection with the Disposition Agreement, and in furtherance of the Plan, the Agency desires that the Developer construct certain improvements on the Property, and the Developer desires to do so subject to the terms and conditions of this Agreement.

AGREEMENT

1. **DEVELOPMENT GOALS**. The Developer shall achieve Substantial Completion of the Building Improvements within forty-eight (48) months following the Effective Date, subject to delays due to force majeure, as described in Section 9.18, and delays caused by the action or inaction of the Agency or its elected officials, officers, directors, shareholders, members, managers, employees, affiliates, agents, successors, assigns, and/or any other person or entity acting on its behalf or under its direction or control. For purposes of this Agreement, delays caused by the action or inaction of the Agency shall not include the passage of time attributable to any permit or development review procedure, or other standard decision-making process associated with the Agency’s function as a public entity. As used in this Agreement, the term “**Substantial Completion**” means the receipt of a temporary certificate of occupancy, and the term “**Building Improvements**” means a mixed-use development that includes approximately 170 market rate apartments and associated residential-supporting active use space, as described in Exhibit “E” to the Disposition Agreement. The Developer agrees, at its own cost and expense, to install, construct, or cause to be installed or constructed the Building Improvements in accordance with the terms of this Agreement and with all applicable specifications, standards, codes, and requirements, including those of the County and the State of Oregon.

2. **SCHEDULE OF PERFORMANCE.** In addition to achieving Substantial Completion of the Building Improvements within the time period set forth in Section 1 (subject to force majeure and other delays as set forth in Section 1), the Developer shall use commercially reasonable efforts to meet the benchmarks set forth in the Schedule of Performance in Exhibit “F” to the Disposition Agreement; provided that the Developer’s failure to meet those benchmarks shall not constitute a default hereunder, except as otherwise provided herein.

3. **GOVERNMENTAL PERMITS.** Before commencement of construction or development of any buildings, structures, or other works or improvements in connection with the Building Improvements, the Developer shall, at its own expense, secure or cause to be secured any and all land use, construction, and other permits which may be required by any governmental agency. The Agency shall cooperate with the Developer and permitting agencies in obtaining the necessary permits.

4. **TERM.** The term of this Agreement shall commence on the Effective Date and, except as otherwise provided herein, end on the date that all funds in the Account have been disbursed in accordance with the terms of this Agreement.

5. **ACCOUNT.**

5.1 **Appointment.** The Agency and the Developer appoint the Escrow Holder to receive and hold funds in an escrow account (“the **Account**”) for the benefit of the Agency and the Developer and to disburse the funds in the Account in accordance with the terms of this Agreement. The Escrow Holder accepts that appointment.

5.2 **Security Deposit.** At Closing, the Developer shall deposit One Hundred Thousand and no/100 Dollars (\$100,000.00) in the Account, to be held by the Escrow Holder as security for satisfaction of the obligation of the Developer to achieve Substantial Completion of the Building Improvements. Until disbursed as provided herein, the funds in the Account shall be held by the Escrow Holder in accordance with the terms of this Agreement.

5.3 **Investment of Account Funds.** The Escrow Holder shall invest the funds in the Account (the “**Account Funds**”) in an interest-bearing account fully insured by the Federal Deposit Insurance Corporation, and any accrued interest shall be added to and become part of the Account Funds.

5.4 **Disbursement of Account Funds.** Upon Substantial Completion of the Building Improvements under the conditions set forth in this Agreement, and within three (3) business days of receipt by the Escrow Holder of a written request by the Developer that is approved in writing by the Agency, which approval shall not be unreasonably withheld, conditioned, or delayed, the Account Funds shall be disbursed to the Developer. If the Agency fails to give notice of disapproval to the Developer within twenty (20) business days of receipt by the Agency of the request, the Agency shall be deemed to have given its approval as if it had approved the request in writing. Notwithstanding the foregoing, if the Developer does not achieve Substantial Completion of the Building Improvements within the time period set forth in Section 1 (subject to force majeure and other delays as set forth in Section 1), and within three (3) business days of receipt by the

Escrow Holder of a written request by the Agency, the Account Funds shall be disbursed to the Agency, and the Developer waives any right to object to disbursement of the Account Funds to the Agency under those circumstances. The Account Funds shall be disbursed in a single payment and shall not be disbursed in installments.

5.5 **Termination of Account.** The Account shall be terminated upon disbursement of the Account Funds as provided in this Agreement.

6. **LIMITATION OF LIABILITY.** Notwithstanding any other provision herein, the liability of any party under this Agreement shall be strictly limited to a sum equal to the Account Funds as provided by this Agreement. In no event shall any party have any obligations or liability whatsoever with respect to this Agreement in excess of the Account Funds or with respect to any assets of any party (other than the Account Funds). Except for any party's right to disbursement of the Account Funds as provided in this Agreement, the parties hereby waive, release, covenant not to sue, and forever discharge all other parties and their elected officials, officers, directors, shareholders, members, managers, employees, affiliates, agents, successors, and assigns of, for, from, and against any and all Claims arising from or related to this Agreement, whether such Claims relate to the period before or after the Closing Date. As used in this Agreement, the term "Claims" means any and all actual or threatened claims, detriments, rights, remediation, counterclaims, liens, controversies, obligations, agreements, executions, debts, covenants, promises, suits, causes of action, actions, demands, liabilities, losses, damages, assessments, judgments, fines, penalties, threats, sums of money, accounts, costs, and expenses, known or unknown, direct or indirect, at law or in equity (including, without limitation, reasonable attorney fees and other fees of professionals selected by the Developer), whether incurred in connection with any investigative, non-judicial, quasi-judicial, judicial (including pretrial, trial, and appellate), mediative, arbitative, administrative, bankruptcy, insolvency, or other actions or proceedings or in settlement, and whether or not suit was filed thereon. The provisions of this section shall survive the expiration or termination of this Agreement.

7. **ESCROW HOLDER.**

7.1 **Duties of Escrow Holder.** The Escrow Holder shall act with reasonable diligence in performing its duties hereunder. The Agency or the Developer may, at any time and from time to time, require an accounting of all monies deposited into and disbursed from the Account. Within ten (10) days after the end of each calendar quarter, the Escrow Holder shall send to the Agency and the Developer a statement showing all deposits, disbursements, and interest credits of the Account for the previous calendar quarter, as well as the current balance of the Account.

7.2 **Claims of Escrow Holder.** The Escrow Holder shall have no claim against the Account or the Account Funds and relinquishes any right or claim it may have against the Account or the Account Funds.

7.3 **Resignation of Escrow Holder.**

7.3.1 The Escrow Holder may resign as escrow agent hereunder at any time by giving sixty (60) days prior written notice to the Agency and the Developer. In such event, the

Agency shall select a new escrow agent doing business in the Portland, Oregon, metropolitan area, whose selection shall be subject to the reasonable approval of the Developer. Promptly after selection of the new escrow agent, the Escrow Holder shall transfer over to the new escrow agent all of the Account Funds and shall be relieved of any duties hereunder arising thereafter except for the obligation to give the reports required hereunder with respect to any prior or current periods. Contemporaneously with such transfer, the Escrow Holder shall deliver to the Agency and the Developer a report showing the amount transferred. The new escrow agent shall execute and deliver an instrument accepting its appointment, and the new escrow agent shall be vested with all of the estates, properties, rights, powers, and duties of the Escrow Holder as if originally named as escrow agent hereunder.

7.3.2 If the Escrow Holder resigns upon written notice as provided for above and a new escrow agent is not appointed within thirty (30) days after such notice, the Escrow Holder may petition to an Oregon court of competent jurisdiction to name a successor and agrees to perform its duties hereunder until a successor is named.

7.4 **Instructions to Escrow Holder.** All instructions to the Escrow Holder shall be submitted in writing, signed by an authorized representative of the submitting party, with a simultaneous copy to the other party. Once submitted, instructions may not be withdrawn or altered without the consent of both the Agency and the Developer.

7.5 **Escrow Fees.** Escrow fees shall be shared equally by the Developer and the Agency.

8. **DEVELOPER OBLIGATIONS UNDER THE PLAN.** Pursuant to Sections 630 and 900 of the Plan, the Developer agrees as follows:

8.1 The Property shall be used for the purposes designated in the Plan, and the Developer shall develop and use the Property in accordance with the land use provisions and building requirements specified in the Plan.

8.2 The Developer shall achieve Substantial Completion of the Building Improvements within the time period set forth in Section 1, which the Agency deems to be a reasonable period of time for redevelopment of the Property.

8.3 The Developer shall submit all plans and specifications for the construction of the Building Improvements to the Agency for review and approval to determine compliance of such plans and specifications with the Plan.

8.4 The Developer covenants that it shall not discriminate against any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property.

8.5 The Developer shall maintain the Property in a clean, neat, and safe condition.

8.6 The foregoing covenants shall be binding upon and run for the benefit of the parties and their respective successors and assigns, subject to Section 9.16. In the event that the Developer or any of its lessees, licensees, agents, or occupants uses the Property in a manner inconsistent with the foregoing covenants, the Agency may bring all appropriate legal and equitable actions.

9. GENERAL PROVISIONS.

9.1 Applicable Law. The laws of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.

9.2 Attorney Fees. The parties shall bear their own costs and attorney fees in the event that an action is brought to enforce, modify, or interpret the provisions of this Agreement.

9.3 Notice.

9.3.1 All notices given pursuant to this Agreement shall be in writing and shall be either (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested; (ii) delivered in person or by local or national courier; or (iii) sent by email.

9.3.2 Any notice (i) sent by mail in the manner specified in Section 9.3.1 shall be deemed given three (3) business days after deposit with the United States Postal Service, (ii) delivered in person or by local or national courier shall be deemed given upon receipt or refusal of delivery, and (iii) sent by email shall be deemed given upon email transmission. Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

9.3.3 The address of each party, for purposes of notice, shall be as follows:

AGENCY:

Clackamas County Development Agency
c/o Development Agency Program Supervisor
150 Beaver Creek Road
Oregon City, Oregon 97045
Attn: Dave Queener
Email: davidque@clackamas.us

DEVELOPER:

HV Otty LLC
8245 SW Tualatin Sherwood Road
Tualatin, OR 97062
Attn: Bart Dickson
Email: bart@cobaltbuilt.com
With a copy to: hattie@cobaltbuilt.com

ESCROW HOLDER:

Chicago Title Company of Oregon
1211 SW Fifth Ave, Suite 2130
Portland, Oregon 97204
Attn: Wendy Guerin
Email: wendy.guerin@ctt.com

Each party may change its address for notice by giving not less than ten (10) days' prior notice of such change to the other parties in the manner set forth in Section 9.3.1.

9.4 **Nonliability of Officials and Employees.** No member, manager, shareholder, director, officer, elected official, employee, affiliate, agent, or representative of any of the parties shall be personally liable to any other party or its successor in the event of any default or breach by any party, or for any amount that may become due to any party, or for any obligations under the terms of this Agreement.

9.5 **Headings.** The titles of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any provisions of this Agreement.

9.6 **Time of Essence.** Time is of the essence under this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified in this Agreement, as the same may be extended by mutual agreement of the parties in writing.

9.7 **Severability.** If any clause, sentence, or other portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion shall remain in full force and effect.

9.8 **No Partnership.** Nothing in this Agreement nor any acts of the parties 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 of any association between any of the parties.

9.9 **Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the acquisition of the Property or to the development, operation, and use of the improvements to be constructed on the Property, including but not limited to condemnation, comprehensive planning, rezoning, variances, environmental clearances, or any other governmental agency approvals that are or may be required.

9.10 **Non-Integration.** This Agreement supplements the obligations of the parties under the Disposition Agreement. Each agreement shall be construed to be consistent with the other to the maximum extent possible. The terms and provisions of this Agreement do not modify or otherwise affect the terms and provisions of any other agreement between some or all of the parties.

9.11 **Counterparts; Facsimile and Electronic Transmission.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall together

constitute one and the same Agreement. Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of any party, the parties shall confirm facsimile or electronically transmitted signatures by signing an original document.

9.12 **Waiver**. All waivers of the provisions of this Agreement, and any amendments hereto, must be in a writing signed by the appropriate authorities of the Agency and the Developer. Failure of any party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

9.13 **Weekends and Holidays**. If the time for performance of any of the terms, conditions, and provisions of this Agreement falls on Friday, Saturday, Sunday, or legal holiday, then the time for such performance shall be extended to the next business day.

9.14 **Neutral Construction**. This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against any party by virtue of which party drafted all or any part of this Agreement.

9.15 **Dispute Resolution**. Each party waives its right to trial by jury in any claim, action, suit, or proceeding arising out of this Agreement or this transaction.

9.16 **Binding Effect**. Subject to the terms of this section, this Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns. Except as otherwise provided herein or in the Disposition Agreement, no party shall assign its rights and/or obligations under this Agreement without the consent of the other parties, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing provisions of this section or any other terms or provisions of this Agreement, the Agency may assign this Agreement and all associated agreements, rights, and obligations to an affiliated governmental entity. This Agreement is made for the sole benefit of the parties and their permitted successors and assigns, and no other person or party shall have any right of action under this Agreement or any right to the Account Funds.

9.17 **Further Assurances**. The parties agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

9.18 **Force Majeure**.

9.18.1 **Force Majeure Event**. A party shall not be liable for, or deemed in breach of this Agreement because of, any failure or omission to timely carry out or observe its obligations under this Agreement to the extent that such performance is rendered impossible or is materially and demonstrably delayed by any Force Majeure Event. The time for performing obligations under this Agreement shall be extended, on a day-to-day basis, due to any such event. As used in this Agreement, the term "**Force Majeure Event**" means any event that is beyond the reasonable

control of, and that could not have been reasonably foreseen, avoided, or provided against by, the nonperforming party; provided that such event is not caused by or attributable to the negligence or fault of such party, or a breach of such party's obligations hereunder.

9.18.2 **Notice of Force Majeure Events.** As a condition of claiming a Force Majeure Event, the claiming party shall promptly give the other parties written notice describing the particulars of the Force Majeure Event, including the expected duration and the probable impact of the Force Majeure Event on the performance of such party's obligations hereunder. The parties agree to use reasonable efforts to notify each other of potential Force Majeure Events and to update each other on developments regarding Force Majeure Events.

9.18.3 **Mitigation.** Suspension or extension of a party's obligations or performance under this Agreement due to a Force Majeure Event shall be of no greater scope and of no longer duration than is reasonably required by such event. The party claiming a Force Majeure Event, where reasonably possible, shall have a duty to alleviate and mitigate the cause and effect of such event, and to resume performance of its affected obligations under this Agreement promptly after doing so. The burden of proof with respect to a Force Majeure Event shall be on the party claiming the same.

9.19 **Memorandum of Agreement.** On or about the Effective Date, the parties shall execute and deliver a memorandum of this Agreement in the form of Exhibit "D" to the Disposition Agreement, which shall be recorded in the official records of Clackamas County. This Agreement shall not be recorded.

9.20 **Termination of Agreement.** Upon termination of this Agreement, the parties shall execute and record at the Developer's expense an instrument in mutually acceptable form evidencing such termination.

[SIGNATURES START ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year first above written.

AGENCY:

Clackamas County Development Agency

By: _____

Name: _____

Title: _____

Date of Execution: _____

DEVELOPER:

HV Otty LLC

By: _____

Name: _____

Title: _____

Date of Execution: _____

ESCROW HOLDER:

Chicago Title Company of Oregon

By: _____

Name: _____

Title: _____

Date of Execution: _____

EXHIBIT D

Memorandum of Post-Closing Agreement

When Recorded Return To:

MEMORANDUM OF POST-CLOSING AGREEMENT

This **MEMORANDUM OF POST-CLOSING AGREEMENT** (this “**Memorandum**”) is made and dated as of _____, 2025 (the “**Effective Date**”), by and between **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County (the “**Agency**”), and **HV OTTY LLC**, a Delaware limited liability company (the “**Developer**”).

The Developer acquired from the Agency that certain real property described in **Exhibit “A”** attached hereto (the “**Property**”).

In connection with the acquisition of the Property, the Agency and the Developer entered into that certain Post-Closing Escrow and Development Agreement dated as of _____, 2025 (the “**Post-Closing Agreement**”).

The Post-Closing Agreement provides, among other things, for the Developer to make certain improvements to or for the Property, including construction of approximately 170 market rate apartments and associated residential-supporting active use space.

This Memorandum is solely for recording purposes and shall not be construed to in any way alter, modify, amend, or supplement the Post-Closing Agreement or any term or condition thereof.

This Memorandum may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Memorandum.

[SIGNATURES START ON NEXT PAGE]

Page 31 – DISPOSITION AGREEMENT (HV OTTY LLC)

HV OTTY LLC

STATE OF OREGON)
) ss.
County of _____)

WITNESS my hand and official seal.

Page 32 – DISPOSITION AGREEMENT (HV OTTY LLC)

**EXHIBIT A to Memorandum of
Post-Closing Agreement**

Legal Description

Clackamas County parcel 1S2E28CB-700 also known as Assessor's parcel number 00048371
and parcel 1S2E28CB-800 also known as Assessor's parcel number 00048380

EXHIBIT E

Scope of Development

The Building Improvements consist of approximately 170 market rate apartments, with associated residential-supporting active uses, parking, lighting, landscaping, and public improvements as may be required by applicable laws, regulations, and ordinances and generally conforming to the tentative concept diagram attached hereto as Exhibit E-1.

EXHIBIT E-1

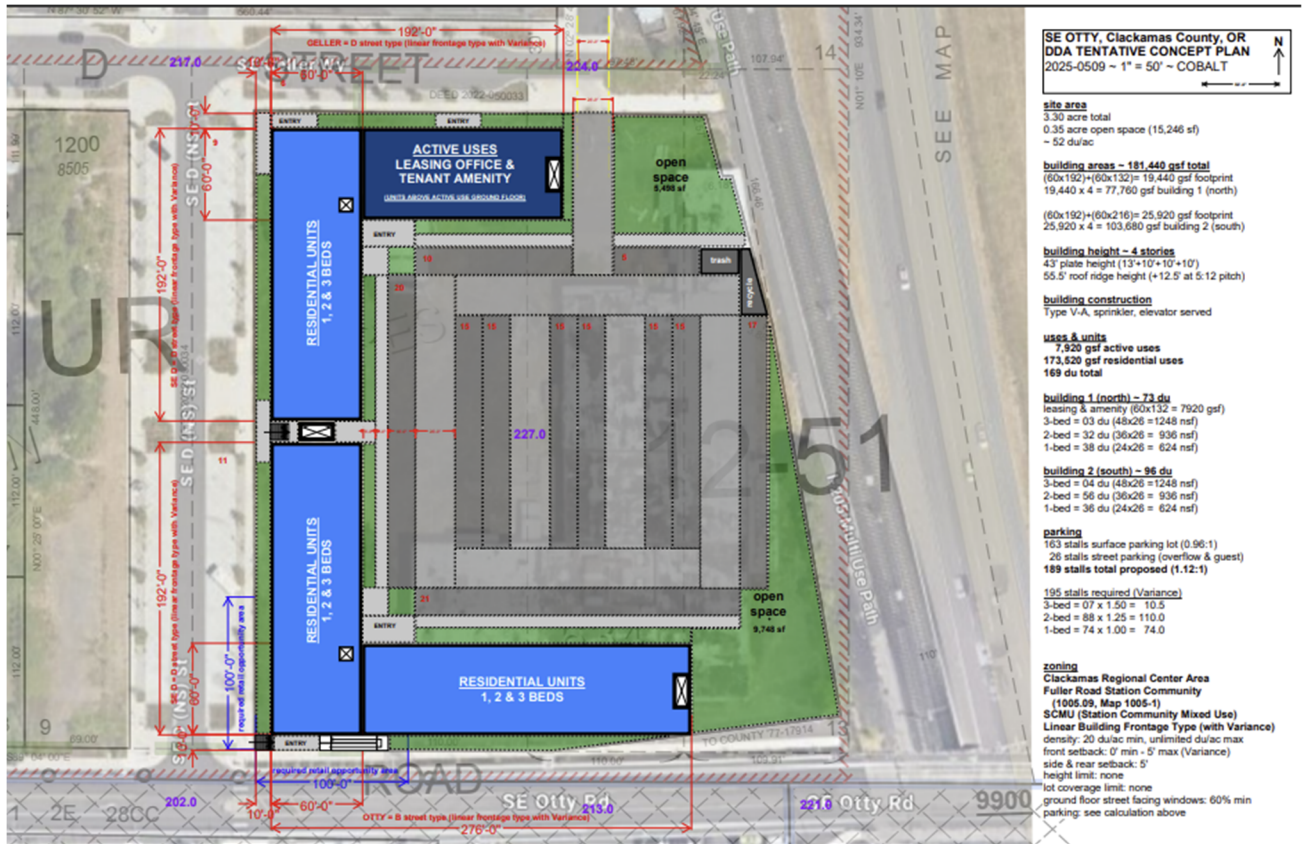


EXHIBIT F

Schedule of Performance

Anticipated dates for the following benchmarks to be provided by the Developer.

Phase	Start Date	End Date	Number of Days
Due Diligence Period	May 22, 2025	October 19, 2025	150
Design Drawing Preparation and Review	May 22, 2025	September 9, 2025	110
Construction Document Preparation and Review	May 22, 2025	December 18, 2025	210
Permitting	December 19, 2025	April 23, 2026	125
Construction	April 24, 2026	May 26, 2028	763

EXHIBIT G

Bargain and Sale Deed

AFTER RECORDING SEND TO:

**UNTIL A CHANGE IS REQUESTED
ALL TAX STATEMENTS SHALL
BE SENT TO:**

STATUTORY BARGAIN AND SALE DEED

CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County (“**Grantor**”), conveys to **HV OTTY LLC**, a Delaware limited liability company (“**Grantee**”), all of Grantor’s interest in that certain real property located in Clackamas County, Oregon, as more particularly described in **Exhibit “A”** attached hereto.

The true consideration for this conveyance is Three Million and no/100 Dollars (\$3,000,000.00).

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the property subject to this conveyance.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING

EXHIBIT A to Bargain and Sale Deed

Legal Description

Clackamas County parcel 1S2E28CB-700 also known as Assessor's parcel number 00048371
and parcel 1S2E28CB-800 also known as Assessor's parcel number 00048380