

AGREEMENT TO FUND ACQUISITION OF EASEMENT

This Agreement to Fund Acquisition of Easement (this “**Agreement**”) is entered into by and between Community Partners for Affordable Housing, an Oregon nonprofit corporation, or its permitted assigns (“**CPAH**”) and the City of Tualatin (the “**City**”). The effective date of this Agreement (the “**Effective Date**”) shall be the last date that this Agreement is signed by CPAH and City below.

RECITALS:

- A. WHEREAS, CPAH owns property in the City of Tualatin, County of Washington, State of Oregon, located at 23500 SW Boones Ferry Road, Tualatin, Oregon (the “**CPAH Property**”), and intends to develop the CPAH Property as a multifamily residential affordable housing development (the “**Development**”), which development has been approved by the City of Tualatin in File No. AR 21-0001; a copy of that approval is attached to this Agreement as Exhibit A (the “**Development Approval**”).
- B. WHEREAS, Horizon Community Church, an Oregon nonprofit corporation (the “**Church**”) owns real property located at 23370 Boones Ferry Road adjacent to the CPAH Property (the “**Church Property**”), which Church Property constitutes a portion of a larger parcel owned by the Church;
- C. WHEREAS, as a condition of approval for the Development, CPAH is required to obtain the use of a portion of the Church Property legally described on Exhibit B and depicted on Exhibit C attached hereto and incorporated herein by this reference (the “**Public Easement Area**”), for purposes of pedestrian and vehicular access to and ingress from the Development as well as for the use of utilities; the Church intends to enter into an easement with the City for the Public Easement Area (the “**Public Easement**”).
- D. WHEREAS, CPAH has negotiated an agreement for the Church to grant the Public Easement to the City and has agreed to fund the purchase of the use of the Public Easement Area for \$250,000, plus applicable closing costs. The agreement for the Church to grant the use of the Public Easement Area to the City is the subject of a different agreement between the Church and the City, a copy of which is attached to this Agreement as Exhibit D.
- E. WHEREAS, as part of the negotiations between CPAH, the Church, and the City, CPAH has also agreed to design frontage improvements on Boones Ferry for the flagpole portion of the Church Property as depicted in Exhibit E. In addition, CPAH has agreed to construct those frontage improvements provided the City provides sufficient funds to pay for those frontage improvements.
- F. WHEREAS, through additional negotiations between CPAH, the Church and the City, CPAH has agreed to design and construct improvements in the flagpole portion of the Church Property, as depicted in Exhibit E, provided the City provides monetary funding for such work.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereby agree as follows:

- 1. **Deposit of Money.** Within three days of receipt of an invoice from the City, CPAH will (i) open escrow with First American Title Insurance Company (the “**Title Company**”) located at 5335 Meadows Road, Suite 100, Lake Oswego, Oregon 97035, Attn: Joyce Jameson at jameson@firstam.com, and (ii) deposit in escrow \$250,000.00, the “Easement Purchase Funds.”
- 2. **Use of Funds.** The City acknowledges and agrees that the sole and only use of the Easement Purchase Funds by the City and CPAH is to purchase the Public Easement as described in this Agreement. The City also acknowledges and agrees that, by entering into this Agreement and payment of the Easement Purchase Funds and applicable closing costs, the City shall consider CPAH to have satisfied Conditions of Approval A2.b and A9.b of the Development Approval.

3. **Closing Deliverables and Conditions.** The terms and conditions of this Section 3 shall apply to the recording of the Public Easement, and payment of the Easement Purchase Funds (collectively, the “**Closing**”; the date on which the Closing occurs is referred to herein as the “**Closing Date**”). At least one (1) business day prior to the Closing Date, (A) the Church shall deliver in escrow to the Title Company the following: (i) an original of the Public Easement, executed and acknowledged by the Church and City, (ii) any additional documents that CPAH, the City, or the Title Company may reasonably require for recording of the Public Easement and delivery of the Easement Purchase Price; and (B) CPAH shall deliver in escrow to the Title Company any additional documents that the Church, the City, or the Title Company may reasonably require for recording of the Public Easement and delivery of the Easement Purchase Funds.

So long as a party is not in default hereunder, if any condition to such party’s obligation to proceed with the Closing has not been satisfied as of the Closing Date, such party may, in its sole discretion, elect to: (i) postpone the Closing up to 5 days or until the condition has been satisfied by delivering written notice to the other party on or before the Closing Date; (ii) terminate this Agreement; or (iii) proceed to close, notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition; provided that any such waiver of a condition shall NOT relieve a party from any liability it would otherwise have if the failure of a party to satisfy a condition also constitutes a default hereunder or breach of any other provision hereof by such party.

4. **Closing.** Subject to the conditions in Section 3 being met or waived, the Property Closing shall occur not later February 28, 2023.

- 4.1 **Manner and Place of Closing.** This transaction shall be closed by the Title Company, or at such other place as the parties may mutually select. Closing shall take place in the manner and in accordance with the provisions set forth in this Agreement and any other applicable terms and conditions set forth in Exhibit D.

- 4.2 **Events of Property Closing.** Provided the contingencies contained within this Agreement are satisfied or waived, this transaction shall be closed on the Closing Date as follows:

- 4.2.1 Any liens required to be paid by the Church at Closing shall be paid and satisfied of record at the Church’s expense.
 - 4.2.2 CPAH shall pay closing costs per the terms of Exhibit D.
 - 4.2.3 The Title Company shall record the Public Easement.
 - 4.2.4 The Title Company shall release the Easement Purchase Funds to the Church, .

5. **Default; Remedies; Failure to Close.**

- 5.1 **CPAH's Remedies.** In the event that the transaction fails to Close due to the default of the City, CPAH may either: (i) terminate this Agreement; (ii) sue for specific performance, (iii) act in the City’s stead to close the purchase of the Public Easement.

6. **The City's Representations and Warranties.** The City represents and warrants to CPAH as follows:

- 6.1 The City has the full right and authority and has obtained any and all consents required to enter into this Agreement.

- 6.2 By entering into this Agreement and payment of the Easement Purchase Funds and applicable closing costs, the City shall consider CPAH to have satisfied Conditions of Approval A2.b and A9.b of the Development Approval.

7. **CPAH's Representations and Warranties.** CPAH represents and warrants to the City as follows:

- 7.1 CPAH has been duly organized and is validly existing as an Oregon nonprofit corporation. CPAH has the full right and authority and has obtained any and all consents required to enter into this Agreement This Agreement and all of the documents to be delivered by CPAH at

the Closing have been and will be authorized and properly executed and will constitute the valid and binding obligations of CPAH, enforceable in accordance with their terms.

8. Additional Consideration. In addition to depositing the Easement Purchase Funds upon invoice from the City, CPAH agrees to provide the following additional consideration:

8.1 Public Road Improvements. CPAH shall construct and install an access and utilities in the Public Easement Area as required by the City. The access improvements will include a curb cut on the east side of the access to allow the Church to continue uninterrupted access to the Real Property and to SW Boones Ferry Road. In addition, CPAH shall design and construct frontage improvements for the portion of the Real Property that fronts on SW Boones Ferry Road and to construct those frontage improvements with City funds, and CPAH shall do so concurrent with the remainder of the Development.

8.2 Sanitary Sewer. Following recording of the City Easement, CPAH shall, at such time as CPAH installs its own sanitary sewer lines within the City Easement Area, stub a sanitary sewer line to a point on the Church's adjacent property in the location depicted on Exhibit E attached hereto and incorporated herein by this reference for future use by the Church.

8.3 Park Improvements. CPAH shall design, construct and install improvements for the portion of the Real Property that lies between SW Boones Ferry Road and the Public Easement Area, as depicted in Exhibit E, to create a park with a trail and bench seating if the City provides sufficient funds to CPAH to allow CPAH to conduct such work. If these conditions are met, CPAH will conduct such work concurrent with the remainder of the Development.

9. General Provisions.

9.1 Time of Essence; Force Majeure. Except as otherwise specifically provided in this Agreement, time is of the essence of each provision of this Agreement. Notwithstanding the foregoing, no party shall be deemed in default or be liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused by circumstances beyond its reasonable control (which for all purposes hereof shall exclude the payment of any amounts due hereunder), including, without limitation, acts of God, earthquakes, fires, floods, wars, civil disturbances, acts of terrorism, sabotage, epidemics, pandemics, changes to laws or regulations, accidents, strikes, labor disputes, acts or closures of civil or military authority, closures of businesses, inability to obtain labor, material, equipment or transportation, or any other cause which could not have been prevented by such party with reasonable care. The time for performance of a party's obligations, and all related dates and deadlines herein, shall be extended for a period equal to the time lost by reason of the delay.

9.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns.

9.3 Notices. All notices shall (i) be in writing; (ii) be personally delivered, sent by mail, courier, email or facsimile transmission; and (iii) be effective on the date it is officially recorded as delivered. The address of each party to this Agreement for purposes of notice shall be as follows:

CPAH:
Community Partners for Affordable Housing
Attn: Jilian Saurage Felton

6380 SW Capitol Highway, Suite 151
Portland, Oregon 97239
Email: jsaurage@cpahoregon.org

the City:

Kim McMillan
Community Development Director
Tualatin City Services Building
10699 SW Herman Road
Tualatin, OR 97062-7092
Email: kcmillan@tualatin.gov

Each party may change its address for notice by giving not less than fifteen (15) days prior notice of such change to the other party in the manner set forth above.

- 9.4 Waiver.** 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.
- 9.5 Further Assurances.** The parties and the Church shall reasonably cooperate with one another in order to fulfill and perform the transactions contemplated by this Agreement (including, without limitation, completing and submitting any applications or similar materials required by the City in connection with the Easement), and shall provide such further assurances to one another, including after Closing (which obligations shall survive Closing), as shall be reasonable and appropriate under the circumstances, including without limitation the execution of such documents as may be desirable to implement the provisions of this Agreement fully and effectively.
- 9.6 Equitable Remedies.** Except where this Agreement expressly limits a party's remedies, any party may apply to any court having jurisdiction for the issuance of any provisional process or other equitable remedy, including but not limited to specific performance, injunction, restraining order, attachment or appointment of receiver.
- 9.7 Attorneys' Fees.** In the event suit, arbitration, action or appeal is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, each party will be responsible for their own attorneys' fees and costs.
- 9.8 Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.
- 9.9 Integration; Amendment.** This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties and states the entire agreement of the parties. This Agreement and any of its terms may only be changed, waived, discharged or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.
- 9.10 Counterparts; Electronic Signatures.** CPAH and the City may execute this Agreement by electronic means or deliver executed signature pages to this Agreement by electronic means to the other party, and the electronic signature and/or copy will be deemed to be effective as an original. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which counterparts together will constitute one agreement with the same effect as if the parties had signed the same signature page. CPAH and the City intend to be bound by the signatures on the PDF or facsimile document, are aware that the other party and third parties, including the Title Company, may rely upon the PDF or facsimile signatures and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

- 9.11 Invalidity of Provisions.** In the event any provision of this Agreement, or any instrument to be delivered by either party at either Closing pursuant to this Agreement, is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.
- 9.12 Saturday, Sunday and Legal Holidays.** If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.
- 9.13 Right to Assign.** CPAH may assign this Agreement without the consent of the City to any Affiliate of CPAH, and for purposes of this Agreement, “**Affiliate**” means an entity controlled by, controlling or under common control with CPAH (control being defined for such purposes as ownership of at least 50% of the equity interests in, or the power to direct the management of, the relevant entity).
- 9.14 Waiver of Jury Trial.** Each party waives the right to trial by jury in connection with any dispute, claim or action arising from or in connection with this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed this Agreement below.

CPAH:

Community Partners for Affordable Housing

By: _____

Name: _____

Title: _____

Date: _____

CITY OF TUALATIN:

By: _____

Name: _____

Its: _____

Date: _____

JOINDER OF THE CHURCH

The undersigned, Horizon Community Church, joins in the execution of this Agreement for the sole and limited purpose of acknowledging its consent to and obligation to comply with the terms of Sections __, __, and __ of this Agreement.

HORIZON COMMUNITY CHURCH:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

City Approval of Plambeck Gardens

[attached]

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EXHIBIT B

Legal Description of Public Easement Area

[To be provided by the Church and attached hereto]

EXHIBIT C

Depiction of Public Easement Area

Public Easement Area (Shown in pink within bold faced black box, and as cross-hatched area of +/- 1900 SF)

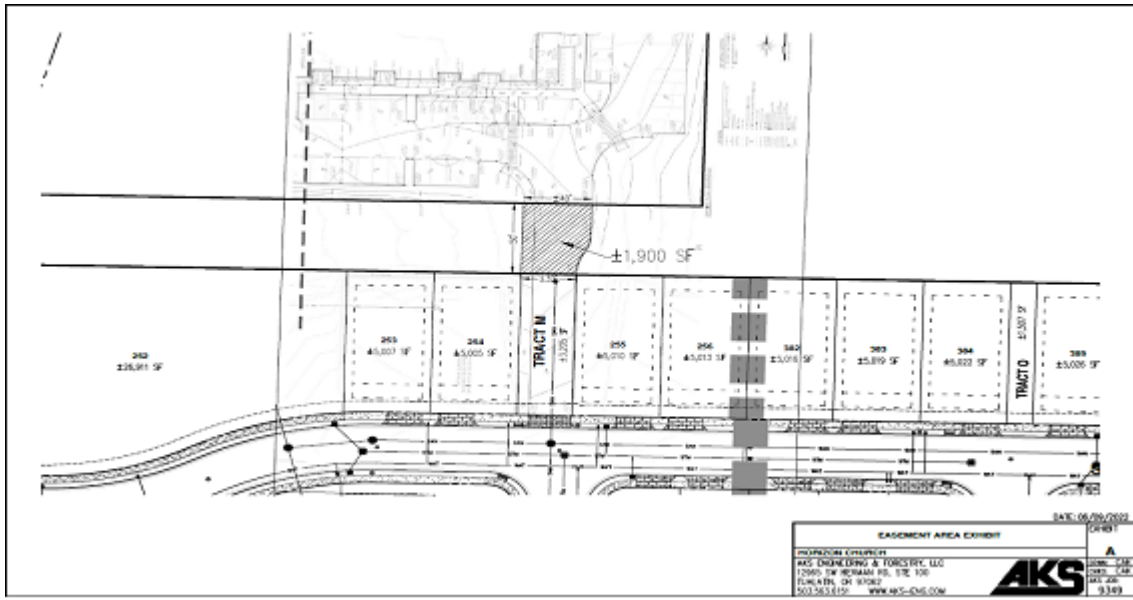
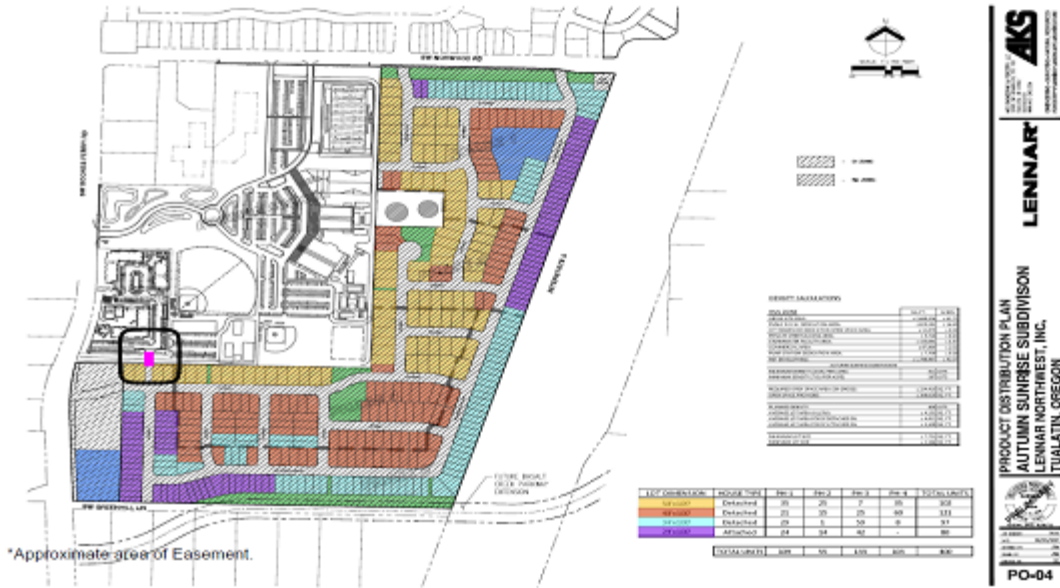


EXHIBIT D

Agreement Between City and Church

[To be attached]

EXHIBIT E

Depiction of Flagpole Area for Frontage Improvements

[To be provided by the Church and attached hereto]

EXHIBIT F

Depiction of Sewer Location

[To be provided by the Church and attached hereto]