TONKON TORP

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February 18, 2022

VIA E-MAIL - rutledgee@sherwoodoregon.gov

Sherwood Planning Commission
c/o Mr. Eric Rutledge, Associate Planner
22560 SW Pine Street
Sherwood, OR 97140

Re: LU 2021-009 MM Cedar Creek Apartments

Dear Mr. Rutledge:

This law firm represents Lake Bowman MHP, LLC ("Lake Bowman"), which is the owner of 16784 SW Edy Road in Sherwood, also known as Lot 3 of Cedar Creek Plaza ("Lot 3"). The above-referenced land use matter is an application by Deacon Development for approval of a major modification of the existing site plan for the Cedar Creek Plaza Shopping Center to allow development of Lot 2 of Cedar Creek Plaza ("Lot 2") with an 84-unit apartment complex in lieu of the previously-proposed hotel. We understand that the matter is scheduled for a continued hearing before the Sherwood Planning Commission on February 22, 2022. On behalf of Lake Bowman, we have the following comments and concerns about the application, including lack of compliance with several provisions of the Sherwood Zoning and Development Code (SZDC or Code).

SZDC 16.12.030

This Code Section requires 8,000 square feet of lot area for the first two multifamily units and 1,500 square feet of lot area for each additional unit. According to the January 14, 2022 revised staff report, Lot 2 is 75,359 square feet, which is sufficient to support 46 multifamily units using this formula. The application, however, is for 84 units. The applicant proposes to entitle Lot 2 with the excess 38 units by transferring the number of apartment units that could have been built on Lot 3 and Lot 7,[1] to Lot 2. Lot 7 is currently owned by the applicant or its affiliate. Lot 3 was also owned by the applicant or its affiliate when the application was filed, but subsequently was sold to Lake Bowman. The statutory warranty deed conveying Lot 3 to Lake Bowman is dated July 27, 2021 and was recorded in the

[1] Note that Lot 3 and Lot 7 are already improved with commercial uses, so these apartment units are only theoretical; they could no longer be built on those lots in reality.

real property records of Washington County on July 30, 2021, and a copy is enclosed.

As staff states in its report, the City "does not have a process for transferring residential lot entitlements." Staff nonetheless argues that residential density is transferable from Lots 3 and 7 to Lot 2 because "the proposed [apartment] building is within the same commercial center / subdivision as the other lots being borrowed from and because the building is located behind the commercial storefronts when viewed from the public streets." (Staff report, p. 15.)

This analysis is flawed for three reasons. First, staff identifies no portion of the Code authorizing residential density transfers, and in fact there is none. Whether to adopt one is the exclusive prerogative of the City Council, and if it wants to do so, it can pass an ordinance adding it to the Code after a public hearing. Nothing in either the Code or Oregon law gives unelected planning staff the right to usurp to itself this power. Rather, land use decisions must be made based on the land use standards in effect at the time the application is deemed complete. ORS 227.175(4)(a); 227.178(3).

Nonetheless, in this case staff has unilaterally decided, without City Council approval, that: (1) Sherwood should allow residential density transfers; and (2) the relevant approval criteria should be that the donor lot is in the same development or subdivision as the recipient lot, and that the proposed development receiving the bonus density will not be visible from a public street. These are completely random criteria that frankly appear to have been selected using an ends-justify-the-means analysis; i.e. determining the desired end result and then selecting criteria that the end result can satisfy. Quite simply, there is no authority for the staff to recommend, or the Planning Commission to approve, a novel density transfer scheme that has not been considered by the only body in the City that has the authority to enact one, and which has not been subject to the necessary public comment applicable to any new legislation.

Second, staff's novel density transfer scheme, if allowed, would likely cause unmitigated adverse impacts. The Cedar Creek Plaza Shopping Center and the Cedar Creek Plaza subdivision are subject to prior land use approvals that impose conditions of approval adopted to mitigate the impacts of the development. In evaluating those impacts, the City did not consider the possibility that <u>both</u> commercial uses and maximum-density residential uses would be developed on Lots 3 and 7, since that would be physically impossible. Thus, the impact analyses for

the prior land use approvals considered only the impacts of commercial development and mitigated for those impacts.[2]

If the proposed residential density transfer is allowed, however, it will be the functional equivalent of having constructed both commercial and maximum-density residential uses on Lots 3 and 7. The fact that those residential units are built instead on Lot 2 makes no difference from the standpoint of the impacts caused by the entire plaza.[3] For example, those units will still generate the same need for parking, the same number of vehicle trips, the same burden on utilities and services, etc. as if they had been built on Lots 3 and 7. But had they been built on Lots 3 and 7, then the existing commercial uses on those lots would not also have been built, thereby offsetting the impacts to some degree. Thus, even if such transferable density once existed, it expired once alternative uses were built on Lots 3 and 7 making residential use of those lots impossible. The proposal by the applicant and staff to revive that theoretical density and transfer it to Lot 2 would, if implemented, cause the plaza to generate impacts from both residential and commercial uses that could not otherwise simultaneously exist, thereby increasing the overall impact burden of the plaza beyond the levels mitigated for in the prior land use approvals.

Third, specifically with respect to the proposed density transfer from Lot 3, neither the applicant nor staff has demonstrated that applicant has the right to transfer density from property owned by an unrelated third party. Even if transferable residential density exists under the Code (which it does not), that transferable density would have value to the owner of the proposed donor lot. As such, it would be within the "bundle of sticks" that comprises ownership of real property. But in this case, the applicant has just assumed that it can take Lot 3's transferable density without the approval of Lot 3's owner, and without paying any consideration for it.

The applicant and staff take the position that the applicant can use this theoretical transferable density because the applicant or its affiliate owned Lot 3 at the time the application was filed. As explained further in the letter dated January 24, 2022 from Chris Koback, legal counsel for other landowners within the shopping center (Exhibit ZZ), this argument is absurd and not supported by any evidence or legal

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[2] See staff report, pp. 26-27: "The transportation improvement and traffic mitigation requirements for the original [site plan] were based on full build-out of the commercial center including the 94-room hotel [on Lot 2]."

[3] The staff report notes, on page 6, that Lot 2 was not part of the original shopping center site plan approval. However, the impacts of a 94-unit hotel on Lot 2 were included in the impacts analysis to show that the site plan met Code requirements through a shared approach to parking, landscaping, vehicle access and circulation, and other impacts. (Staff report, p. 26.) Also, Lot 2 is subject to the subdivision approval which has its own conditions of approval.

authority. The "goal post" rule of ORS 227.178(3) is irrelevant here, and any attempt by the City to transfer Lake Bowman's property rights to the applicant without Lake Bowman's consent would be an unlawful and unconstitutional taking of private property.

If the applicant wanted to retain the theoretical transfer density of Lot 3, it possibly could have reserved that right from the conveyance of Lot 3 to Lake Bowman, but it did not do so. The enclosed warranty deed reserves no rights (i.e., no sticks from the "bundle of sticks") to the transferor. If it did, Lake Bowman would likely have paid a lower price for the property. While the deed is unambiguous on its face, even if it was ambiguous, under Oregon law any doubt should be resolved in favor of the grantee in the deed:

> When there is doubt as to whether the parties intended that a deed transfer a fee simple or a lesser interest in land, that doubt should be resolved in favor of the grantee and the greater estate should pass. Stated differently, all doubts are resolved against restrictions on the use of property by the grantee. *First Nat. Bank of Oregon v. Townsend*, 27 Or. App. 103, 107, 555 P.2d 477, 478 (1976) (internal citations and quotations omitted).[4]

Moreover, the parties' purchase and sale agreement for Lot 3 (copy enclosed) in the second paragraph expressly defines the "Property" being sold to include "the [l]and and all rights, privileges and appurtenances belonging or pertaining thereto." The right to develop the land for residential uses is certainly a "right … belonging or pertaining" to the land, and nowhere does the agreement withhold or carve out that right from the property being sold. Accordingly, upon delivery of the deed in late July 2021, Lake Bowman became the owner of all the sticks for Lot 3 including any theoretically transferable residential density. Lake Bowman has not conveyed that density back to the applicant, and does not consent to the use any such density by the applicant with respect to Lot 2.

In their letter dated February 4, 2022 and attached to the February 16, 2022 letter from Brad Kilby on behalf of the applicant, applicant's counsel makes two ineffective arguments with respect to the proposed transfer of residential density.

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[4] See also *Jarzombek v. Marathon Oil Co.*, No. 04-18-00587-CV, 2019 WL 1547574, at *3 (Tex. App. Apr. 10, 2019) (internal citations and quotations omitted): "Unless a general warranty deed's plain language clearly shows an intention to convey a lesser interest, we will construe the deed to confer upon the grantee the greatest estate that the terms of the instrument will permit. In other words, a warranty deed will pass all of the estate owned by the grantor at the time of the conveyance unless there are reservations or exceptions which reduce the estate conveyed."

First, on page 2 counsel suggests that it was Lake Bowman's obligation under its purchase and sale agreement to sniff out the pending land use application. Confusingly, counsel quotes the agreement itself twice and points out the buyer's actions under the agreement, but fails to introduce the actual agreement into evidence and also drops a footnote claiming that arguments under the agreement are irrelevant to a land use proceeding.

The applicant cannot have its cake and eat it too. Either the agreement is relevant or it is not. Lake Bowman contends that it is relevant and has provided the full agreement with this letter. The language from the agreement quoted by applicant's counsel states that Lake Bowman had the opportunity to evaluate the "value and condition of the Property," had the right to conduct whatever "inspection, test or analysis of the Property" it desired and that at closing it took the Property in its "as-is" condition.[5] None of those quoted provisions are relevant to the actual issue, which is what constituted the "Property" in the first place. As noted above, the Property sold included "all rights ... pertaining" to the land. Lake Bowman does not contend that the Property was defective in any way, or that its value was misunderstood. Instead, Lake Bowman contends that the Property included the right that the applicant now claims was not included in the sale, without any basis in law or the parties' agreement.

Second, counsel argues on page 3 of its letter that the minimum square footage per unit requirements of SZDC 16.12.030 do not apply to this matter because they are not "dimensional requirements." This is directly contrary to the applicant's position in its own application, and also staff's position. The application (Exhibit S, p. 11) clearly states:

> The proposal is for 84 units, therefore 8,000 SF of area is required for the first 2 units and 123,000 SF of area is required for the other 82 units (82 x 1,500 SF) for a total required minimum area of 131,000 SF. Utilizing Lots 2, 3 and 7 of the Cedar Creek Plaza subdivision, the lot area being proposed is 145,490 SF (Lot 2: 75,359 SF/1.73 AC + Lot 3: 39,639 SF/0.91 AC + Lot 7: 30,492 SF/0.70 AC).

And, on pages 12 and 13 of the application, the applicant twice expressly refers to the square footage per unit standard of SZDC 16.12.030 as a "dimensional requirement." Further, staff states on page 13 of the staff report that "all of the development standards under Section 16.12.030 apply to multifamily housing in

[5] Counsel also points out that Lake Bowman made no objections to title during its due diligence, but a pending land use application by the seller is not a title matter and would not appear on a title report.

the RC zone," and clearly concludes that the 84-lot proposal requires the "transferring [of] residential lot entitlements." (Staff report, p. 15.)

After first taking Lake Bowman to task for supposedly being too late in discovering this application, the applicant has now introduced a last-minute argument that its own application and staff are wrong, and in fact the square footage per unit standard does not apply. The end result, counsel argues, is that "residential density for the proposed multi-family development is unlimited." On its face, this is not a plausible conclusion and the Planning Commission should not reverse course and adopt it now.

SZDC 16.94.010 and 16.94.020

These Code Sections establish minimum parking requirements for the various uses within the Cedar Creek Plaza Shopping Center and criteria under which that parking may be shared between uses. Table 1 of the applicant's most recent parking study by Kittelson & Associates (Exhibit UU) concludes that under these criteria, the shopping center as a whole requires at least 556 parking spaces after applying the allowed adjustments for shared parking.[6]

Table 2 of the parking study then allocates these 556 spaces between the three separate "Tracts" as defined in the 2017 CC&Rs that apply to the entire shopping center (Exhibit P): the Providence Tract, the Rembold Tract and the 7-lot subdivision (also called the Deacon Tract). This allocation is necessary because Section 2.1 of those CC&Rs only allows "guests, patrons and invitees" of shopping center owners and occupants to park on a Tract other than the Tract of the business or facility they are visiting. Under Section 2.1, all other parkers (owners, residents, tenants, employees of tenants, and contractors) must park "on the Tract owned by the applicable [o]wner or upon which the premises of the applicable tenant are situated."

In Table 2, Kittelson goes on to estimate the number of these "same Tract" parkers for each Tract. For the Deacon Tract specifically, Kittelson estimates that 92 residents (all of whom would be living on Lot 2 since there are no other residential uses on the Deacon Tract), 47 employees (for all lots within the Deacon Tract) and 7 owners, tenants (meaning commercial tenants) and contractors will need parking on the Deacon Tract.

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[6] Table 1 misstates the Code minimum for fitness uses as 1.3 parking spaces per 1,000 square feet. The correct minimum is 4.3 spaces per 1,000 square feet; however, it appears that this is only a typographical error, as Kittelson's math in Table 1 applies the correct ratio.

We question why Kittelson estimated 92 spaces for the apartment residents when the Code requires 111 spaces (see staff report, p. 65) or possibly even 122 or 123 spaces (see testimony from Mr. Koback to be submitted in advance of the February 22 hearing). But even if only 92 spaces are needed, that means 146 of the spaces on the Deacon Tract must be available for drivers who are obligated to park on the Deacon Tract and not other Tracts. After a further allocation of 35 parking spaces exclusively reserved for the use of commercial tenants on the Deacon Tract, Kittelson concludes that the Deacon Tract must have at least 181 spaces for drivers obligated to park on the Deacon Tract, leaving 186 spaces available for shared use.

The flaw in Kittelson's analysis appears in Table 4. That table shows that while the Deacon Tract must have at least 186 shared parking spaces, under the proposed development it only has 147, for a deficit of 39 spaces. Kittelson argues that drivers needing those 39 spaces can find them on the Providence Tract, but it overlooks the limitation in the 2017 CC&Rs that the only users of the Deacon Tract who can park on the Providence Tract are "guests, patrons and invitees." Moreover, the situation worsens if instead of Kittelson's assumption that the apartments generate 92 resident parkers, we assume that it will generate either 111 parkers (as the staff report states) or 122 or 123 parkers (as argued by Mr. Koback). In those scenarios, the Deacon Tract has a parking deficit of 58, 69 or 70 spaces, respectively. And while Kittelson concludes that there are 79 extra spaces on the Providence Tract that can offset that deficit, it has also concluded that the Deacon Tract as a whole will only generate 54 such parkers (47 employees and 7 owners/tenants/contractors – see Table 2). So even if all 54 of those cars park on the Providence Tract (a dubious assumption at best), that only frees up 54 spaces on the Deacon Tract, not enough to offset the deficit.

Since Kittelson's analysis concedes that the Deacon Tract alone cannot support the parking needed for the apartments, the applicant's analysis stands or falls on the ability to get "guests, patrons and invitees" of the Deacon Tract to park on the Providence Tract. But where is the evidence that this will happen? The applicant has not shown any existing feature of the shopping center that ensures or even encourages this, nor has it proposed any mitigation to do so. Without evidence that enough off-Tract parking will be used by those entitled to use it, thereby freeing up sufficient spaces on the Deacon Tract for those obligated to park there, the reliance on shared parking to meet Code requirements is unreasonable. Accordingly, the City cannot conclude that the shopping center has adequate parking to meet all Code requirements.

Prior Land Use Approvals

As noted in the staff report, the Cedar Creek Plaza Shopping Center is subject to an existing, approved site plan (Exhibit GG), which the applicant seeks to modify in

this application. The Deacon Tract is also subject to the City's decision approving its subdivision (Exhibit HH). As noted above in footnote 3, while the original site plan did not approve any development on Lot 2, it did assume development of Lot 2 with a 94-unit hotel for purposes of evaluating impacts. The subdivision approval also described Lot 2 as a future hotel (Exhibit HH, page 5).

In Mr. Koback's prior written testimony (Exhibits NN and ZZ), he explains why the representations made by the applicant in the two prior land use processes, and the applicant's representations to third parties including Mr. Koback's clients and Lake Bowman, constitute the equivalent of a condition of approval to both the original site plan and the subdivision that the future development of Lot 2 is limited to a hotel. LUBA has held that when a land use application states that the subject property will be used for a specific type of development, an express condition of approval requiring that the property be used for that use is not necessary, but such a condition nonetheless applies. *NE Medford Neighborhood Coalition v. City of Medford*, 52 Or LUBA 277 (2007).

In response to Mr. Koback, staff merely states that Mr. Koback has not identified any condition of approval to the site plan approval that he believed was being changed. But the basis of Mr. Koback's argument is that because of the repeated specific representations in the prior applications that Lot 2 would be developed with a hotel, and the express reliance by the City on those representations in evaluating impacts and imposing conditions, an express condition requiring Lot 2 to be developed as a hotel was not required.

Instead, such a condition is implied and, to be removed via a Major Modification, the applicant must demonstrate under the Code why it should be allowed to remove that condition. That demonstration would have to include evidence as to why the condition should be removed notwithstanding: (1) the use of a future hotel in the impact analyses by the City; and (2) the multiple, specific representations by the applicant to buyers of the other lots in the subdivision that Lot 2 would eventually be developed as a hotel. This includes the applicant's marketing of Lot 3 to Lake Bowman, in which the applicant specifically misrepresented to Lake Bowman in April 2021 that Lot 2 would be developed with a hotel, despite having already held a pre-application conference with the City in February 2021 seeking to develop Lot 2 with apartments instead.[7] As the applicant has made no effort to justify removing the implied condition of approval already applicable to the site plan and the subdivision limiting Lot 2's use to a hotel, the application cannot be approved.

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[7] See the enclosed copy of the applicant's Lot 3 marketing brochure, provided to the members of Lake Bowman in April 2021, which on pages 2 and 8 identifies Lot 2 as an "incoming hotel."

Lastly, Lake Bowman concurs with and joins the testimony and evidence submitted by Mr. Koback on behalf of his clients in this matter.

Please enter this evidence and testimony into the record of this matter. Thank you for your cooperation.

Best regards,

David J. Petersen

DJP/rkb
Enclosures

cc: (via e-mail): Todd Fisher
Siobhan Fisher
Chris Koback, Hathaway Larson LLP
Erin Forbes, Schwabe, Williamson & Wyatt PC
Michael Robinson, Schwabe, Williamson & Wyatt PC

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Washington County, Oregon **2021-083978**
D-DW
Stn=7 C LOUCKS **07/30/2021 01:57:16 PM**
$35.00 $11.00 $5.00 $60.00 $4,870.00 **$4,981.00**

I, Joe Nelson, Interim Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Joe Nelson, Interim Director of Assessment and Taxation, Ex-Officio

THIS SPACE RESE

After recording return to:
Lake Bowman MHP, LLC
PO Box 264
Fox Island, WA 98333

Until a change is requested all tax statements shall be sent to the following address:
Lake Bowman MHP, LLC
PO Box 264
Fox Island, WA 98333

File No.: NCS-1066485-OR1 (RM)
Date: July 14, 2021

STATUTORY WARRANTY DEED

DD Sherwood One LLC, an Oregon limited liability company, Grantor, conveys and warrants to **Lake Bowman MHP, LLC, a Washington limited liability company** , Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

Subject to: see attached exhibit B

The true consideration for this conveyance is **$4,870,000.00**. (Here comply with requirements of ORS 93.030)

After recording return to:
Lake Bowman MHP, LLC
PO Box 264
Fox Island, WA 98333

Until a change is requested all tax statements shall be sent to the following address:
Lake Bowman MHP, LLC
PO Box 264
Fox Island, WA 98333

File No.: NCS-1066485-OR1 (RM)
Date: July 14, 2021

THIS SPACE RESERVED FOR RECORDER'S USE

E-RECORDED simplifile

ID: 2021-083978
County: Washington
Date: 7/30/21 Time: 1:57 PM

STATUTORY WARRANTY DEED

DD Sherwood One LLC, an Oregon limited liability company, Grantor, conveys and warrants to **Lake Bowman MHP, LLC, a Washington limited liability company** , Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

Subject to: see attached exhibit B

The true consideration for this conveyance is **$4,870,000.00**. (Here comply with requirements of ORS 93.030)

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

Dated this 27 day of July, 2021.

DD Sherwood One LLC, an Oregon limited liability company

By: Deacon Development, LLC

As: Manager

By: _____

Name: Steve Deacon

Title: Manager

APN: | Statutory Warranty Deed - continued | File No.: NCS-1066485-OR1 (RM)

STATE OF Oregon)
)ss.
County of Multnomah)

This instrument was acknowledged before me on this 27th day of July, 2021 by Steve Deacon as Manager of DD Sherwood One LLC, on behalf of the limited liability company.

OFFICIAL STAMP
LESLIE KAY MUNSON
NOTARY PUBLIC - OREGON
COMMISSION NO. 1008394
MY COMMISSION EXPIRES FEBRUARY 21, 2025

Leslie K. Munson

Notary Public for Oregon
My commission expires: 02/21/2025

EXHIBIT A

LEGAL DESCRIPTION: Real property in the County of Washington, State of Oregon, described as follows:

PARCEL I:

LOT 3, CEDAR CREEK PLAZA (PLAT FEE NO. 2018 059232), IN THE CITY OF SHERWOOD, COUNTY OF WASHINGTON AND STATE OF OREGON.

PARCEL II:

AN ACCESS EASEMENT AS SET FORTH IN THE RECORDED PLAT OF CEDAR CREEK PLAZA (PLAT FEE NO. 2018 059232), IN THE CITY OF SHERWOOD, COUNTY OF WASHINGTON AND STATE OF OREGON.

Exhibit "B"

1. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission recorded November 13, 1954 in Book 362, page 480, which provides that no right of easement or right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property.

   Document(s) declaring modifications thereof recorded April 15, 1965 as Book 548, page 595.

   The terms and provisions contained in the document entitled "Indenture of Access" recorded October 5, 2017 as Recording No. 2017-078742.

2. Limited access provisions contained in Deed to the State of Oregon, by and through its State Highway Commission recorded May 31, 1991 as Recording No. 91028331, which provides that no right of easement or right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property.

   The terms and provisions contained in the document entitled "Indenture of Access" recorded October 5, 2017 as Fee No. 2017-078742.

3. The terms, provisions and easement(s) contained in the document entitled "Declaration of Easements and Restrictive Covenants" recorded July 26, 2017 as Recording No. 2017-059133.

4. Restrictions shown on the recorded plat of CEDAR CREEK PLAZA.

5. Easements for sanitary sewer purposes as shown on the recorded plat of CEDAR CREEK PLAZA.

6. Easements for public utility purposes along their Frontage with SW Pacific Highway as shown on the recorded plat of CEDAR CREEK PLAZA.

7. Easements for storm sewer purposes as shown on the recorded plat of CEDAR CREEK PLAZA.

8. Easements for private storm sewer purposes as shown on the recorded plat of CEDAR CREEK PLAZA.

9. Easements for variable width storm sewer purposes as shown on the recorded plat of CEDAR CREEK PLAZA.

10. Covenants, conditions, restrictions and easements in the document recorded May 01, 2019 as Recording No. 2019-026258, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

    Document(s) declaring modifications thereof recorded September 18, 2019 as Recording No. 2019-064050.

11. The terms and provisions contained in the document entitled "Private Stormwater Facility Access & Maintenance Covenant" recorded May 14, 2019 as Recording No. 2019-029070 .

12. Covenants, Conditions and Restrictions contained in an unrecorded lease dated May 28, 2019, by and between DD Sherwood One, LLC, an Oregon limited liability company as lessor and Starbucks Corporation, a Washington corporation as lessee, as disclosed by a Memorandum of Lease recorded July 08, 2019 as Recording No. 2019-043497 .

(Covers More Property)

13. Covenants, Conditions and Restrictions contained in an unrecorded lease dated July 31, 2017, executed by DD Sherwood One, LLC, an Oregon limited liability company as lessor and Creek Plaza Fit, LLC, an Oregon limited liability company, dba Planet Fitness as lessee, as disclosed by a Memorandum of Lease recorded September 24, 2019 as Recording No. 2019-065830.

(Covers More Property)

14. An unrecorded lease dated August 17, 2017, executed by DD Sherwood One, LLC, an Oregon limited liability company as lessor and Rock Solid Restaurants, L.L.C., a Washington limited liability company, dba Hop Jack's Restaurant as lessee, as disclosed by a Memorandum of Lease recorded September 24, 2019 as Recording No. 2019-065831.

(Covers More Property)

15. Covenants, Conditions and Restrictions contained in an unrecorded lease dated April 10, 2018, executed by DD Sherwood One, LLC, an Oregon limited liability company as lessor and MESK Investments 3653 LLC, an Oregon limited liability company as lessee, as disclosed by a Memorandum of Lease recorded September 24, 2019 as Recording No. 2019-065832.

(Covers More Property)

16. Covenants, Conditions and Restrictions contained in an unrecorded lease dated June 25, 2018, executed by DD Sherwood One, LLC, an Oregon limited liability company as lessor and SABYDEE, LLC, an Oregon limited liability company dba Sabye Thai Street Food as lessee, as disclosed by a Memorandum of Lease recorded September 24, 2019 as Recording No. 2019-065833.

(Covers More Property)

17. Covenants, Conditions and Restrictions contained in an unrecorded lease dated July 03, 2018, executed by DD Sherwood One, LLC, an Oregon limited liability company as lessor and Thao Ho, an individual dba Luna Nails and Spa as lessee, as disclosed by a Memorandum of Lease recorded September 24, 2019 as Recording No. 2019-065834.

(Covers More Property)

18. Covenants, Conditions and Restrictions contained in an unrecorded lease dated July 09, 2018, executed by DD Sherwood One, LLC, an Oregon limited liability company as lessor and Sherwood Family Eye health, LLC an Oregon limited liability company as lessee, as disclosed by a Memorandum of Lease recorded September 24, 2019 as Recording No. 2019-065835.

(Covers More Property)

19. Covenants, Conditions and Restrictions contained in an unrecorded lease dated August 26, 2019, executed by DD Sherwood One, LLC, an Oregon limited liability company as lessor and OnPoint Community Credit Union, an Oregon community credit union as lessee, as disclosed by a Memorandum of Lease recorded September 24, 2019 as Recording No. 2019-065836.

(Covers More Property)

20. General and special taxes and assessments for the fiscal year 2021/2022, a lien not yet due or payable.

PURCHASE AND SALE AGREEMENT
(16852 SW Edy Road, Sherwood, Oregon)

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is dated May 6, 2021 and is made and entered into on the later of the two dates shown beneath the parties' signatures. The "Effective Date" shall occur on that date that the fully executed Agreement is delivered to the Escrow Holder. This Agreement is by and between Todd & Siobhan Fisher and/or assigns ("Buyer"), and DD Sherwood One, LLC, an Oregon limited liability company ("Seller").

Seller is the owner of certain improved real property located at 16784 SW Edy Rd., in City of Sherwood, Washington County, Oregon, commonly known as Cedar Creek Plaza – Pad B and more particularly described on the attached Exhibit A (the "Land"). As used in this Agreement, "Property" means collectively the following: (A) the Land and all rights, privileges and appurtenances belonging or pertaining thereto (the "Real Property"); (B) all improvements and fixtures located on the Land (the "Improvements"); (C) all personal property owned by Seller with respect to the Real Property and Improvements (the "Personal Property"); (D) all assignable continuing business licenses, utility contracts, plans and specifications, warranties, governmental approvals and development rights related to the Real Property or the Improvements or any part thereof (the "Contracts"); and (E) the leases with the following tenants (each a "Lease"): (i) Mud Bay, Inc. a Washington corporation, (ii) R&G Veterinary Services, LLC, an Oregon limited liability company, and (iii) Sophia's Café Inc., an Oregon corporation DBA Sophia Café Mediterranean Cuisine. Seller wishes to sell the Property to Buyer and Buyer wishes to purchase the Property from Seller, all on the terms, covenants and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other valuable consideration, Seller and Buyer agree as follows:

1. Purchase and Sale. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the Property for the price and in accordance with the terms and conditions set forth in this Agreement.

2. Purchase Price and Payment. The purchase price of the Property (the "Purchase Price") shall be Four Million Eight Hundred Seventy Thousand Dollars ($4,870,000.00). The Purchase Price shall be paid for at closing by cash. Within three (3) business days of the Effective Date, Buyer shall deposit cash (the "Earnest Money") in the amount of One Hundred Thousand Dollars ($100,000.00) with First American Title Insurance Company Attn: Rene' Moody, RMoody@firstam.com, (503) 795-7611, 200 SW Market Street, Suite 250, Portland, Oregon 97201 (the "Escrow Holder" and "Title Company"). The Earnest Money shall be nonrefundable (except as otherwise expressly provided herein) on the date Buyer waives both of Buyer's Due Diligence Contingencies (as defined below) and Buyer's Financing Contingencies (as defined below). The Earnest Money shall be deposited into a federally-insured interest-bearing account by the Title Company. At Closing, the Earnest Money, together with all interest accrued thereon, shall be credited against the Purchase Price.

3. Due Diligence Deliveries.

3.1 Title Report. Seller shall cause the Title Company to provide to all parties, within five (5) business days of the Effective Date, a preliminary title report for the Property (the "Title Report"), together with complete and legible copies of all documents

shown therein as exceptions to title ("Exceptions"). Within five (5) business days after Buyer's receipt of the Title Report and Exceptions, Buyer may disapprove of any exception listed in the Title Report by delivering written notice to Seller ("Buyer's Title Notice") specifying each title defect or matter for which Buyer is requesting a cure by Seller ("Title Defect"). Buyer's failure to deliver Buyer's Title Notice to Seller within the time period specified above shall be a conclusive presumption that Buyer has approved the Title Report. Within five (5) business days after receiving Buyer's Title Notice, Seller shall deliver to Buyer written notice ("Seller's Title Notice") of those Title Defects which Seller covenants and agrees to either eliminate or cure by the Closing Date. Seller's failure to deliver Seller's Title Notice to Buyer within the time period specified above shall be deemed to constitute Seller's election not to eliminate or cure any such Title Defect. If Seller elects (or is deemed to have elected) not to eliminate or cure any Title Defects, Buyer shall have the right, by written notice delivered to Seller within five (5) days of Seller's Title Notice or within five (5) days after the expiration of the time period during which Seller is entitled to deliver Seller's Title Notice, whichever occurs first, to either: (i) waive its prior notice as to the Title Defects which Seller has elected not to cure or (ii) terminate this Agreement as provided later in this section ("Buyer's Final Title Notice"). Buyer's failure to deliver any written notice within such five (5) day period shall be a conclusive presumption that Buyer has approved the Title Documents and this Agreement shall remain in full force and effect. All title and survey matters approved or deemed approved by Buyer are hereinafter referred to as "Permitted Exceptions."

3.2 Delivery of Documents. Within one (1) business day after the Effective Date, Seller shall make available to Buyer all documents listed on the attached Exhibit B with respect to the Property in Seller's possession or control. Buyer may request additional documents and information from Seller after the Effective Date, and Seller shall provide such additional documents and information to Buyer as soon as reasonably possible, to the extent such additional documents and information are in Seller's possession or control, however such supplemental requests for additional documents and information shall not provide for the extension of the Due Diligence Deadline Date. Notwithstanding the foregoing, Seller shall not be required to deliver any of the following documents: (i) any proposals, letters of intent, draft contracts and the like prepared by or for other prospective purchasers of the Property, or (ii) Seller's internal memoranda, attorney-client privileged documents or privileged communications or appraisals. Although Seller has agreed to make available to Buyer information regarding the Property, Seller and its agents shall have no responsibility or liability for the completeness or accuracy of such information, Seller is making no representation with respect to such documents and information, Buyer assumes and accepts the entire responsibility for interpreting and assessing the information provided, and Buyer will rely solely on Buyer's own judgment in making Buyer's decision to purchase the Property.

3.3 Buyer's Due Diligence Documents. If this Agreement terminates, Buyer shall promptly deliver to Seller all studies, reports, surveys, and other information and materials Buyer has received, prepared or obtained pertaining to the Property.

4. Inspection and Cooperation.

4.1 Inspection, Site Work. Seller shall allow Buyer and its consultants access to the Property, provided that Buyer provide no less than forty eight (48) hours prior notice to Seller and such access to the Property is coordinated through Seller's representative (Capital Pacific), following the mutual execution of this Agreement until the Due Diligence Deadline Date, for purposes of inspecting the Property, but subject to the rights of lessee under their respective Lease. In no event may Buyer or any broker or representative of Buyer communicate in any way with any tenants of the Building except in the presence of Seller. With respect to any inspection or testing that is invasive or involves removing or demolishing

any portion of the Property, Buyer must first submit to Seller a written plan for any such invasive testing which shall include a plan to deal with any hazardous materials that may be encountered during such testing, and Buyer may not proceed with any such invasive testing unless Seller has approved of Buyer's plan in writing (which approval may be withheld by Seller in its sole discretion). In the event Seller does not provide approval of Buyer's plan, Seller shall reimburse Buyer for the cost of the initial environmental report ordered by Buyer, but in no event shall Seller be required to reimburse Buyer more than Five Thousand Dollars ($5,000.00). Buyer shall conduct any such invasive testing in strict accordance with the plan approved by Seller.

4.2 Indemnity. Buyer shall protect, defend, indemnify, and hold Seller and Seller's agents and employees harmless for, from and against any claims, liabilities, damages, liens, attorneys' fees, penalties, demands, causes of actions and suits of any nature whatsoever arising out of the inspection of and/or entry onto the Property by Buyer, its agents, employees or contractors; provided, however, in no event shall Buyer be required to indemnify Seller for any pre-existing conditions or to the extent of the negligence or willful misconduct of Seller or Seller's agents, employees, contractors or tenants. This indemnity includes an obligation of Buyer to reimburse Seller for any and all damage Buyer may cause to the Property in connection with Buyer's inspection and this indemnity shall survive the closing or termination of this Agreement.

5. Buyer's Contingencies.

5.1 Due Diligence Contingency. Buyer's obligation to close this transaction shall be subject to Buyer's approval of the Property in Buyer's sole discretion (the "Due Diligence Contingencies") and the satisfaction or waiver by Buyer of Due Diligence Contingencies on or before the date that is thirty (30) days after the Effective Date (the "Due Diligence Deadline Date"). If Buyer does not deliver to Seller a written notice waiving the Due Diligence Contingencies on or before the Due Diligence Deadline Date, then Buyer shall be deemed to have terminated this Agreement and the Earnest Money shall be returned to Buyer.

5.2 Financing Contingency. Within five business (5) days after the Effective Date, Buyer shall deliver to Seller written evidence reasonably satisfactory to Seller that Buyer has made a loan application to obtain financing for the purchase of the Property and paid the applicable loan application fees to the lender to whom such loan application has been submitted. Buyer's obligation to close this transaction shall be subject to Buyer's approval of the terms of financing for the acquisition of the Property in Buyer's reasonable judgment (the "Financing Contingencies") and the satisfaction or waiver by Buyer of such Financing Contingencies on or before the date that is seventy five (75) days after the Effective Date (the "Financing Deadline Date"). If Buyer does not deliver to Seller a written notice waiving the Financing Contingencies on or before the Financing Deadline Date, then Buyer shall be deemed to have terminated this Agreement and the Earnest Money shall be returned to Buyer.

5.3 Estoppel/SNDA Contingency. Buyer's obligation to close this transaction shall be subject to receipt of an executed estoppel certificate ("Tenant Estoppel Certificate") and subordination, non-disturbance and attornment agreement ("SNDA") from each tenant under each Lease (the "Estoppel/SNDA Condition"). The Tenant Estoppel Certificate and SNDA shall be on a reasonable form provided by Buyer to Seller within ten (10) days of the Effective Date, provided however, that in the event the Lease specifies a form of Tenant Estoppel Certificate or SNDA, Seller shall only be obligated to obtain such document as described in the Lease. Seller's sole obligation hereunder shall be to utilize commercially reasonable efforts to obtain Tenant Estoppel Certificate and SNDA from such tenant of the

Lease. If on or before the date that is five (5) days before the Closing Date such Estoppel/SNDA Condition is not satisfied (or waived by Buyer within two (2) days from notice from Seller to Buyer that such Estoppel/SNDA Condition has not been satisfied), then this Agreement may be terminated, the Earnest Money shall be returned to Buyer and no party hereto shall have any further obligation hereunder. Seller's failure to satisfy the Estoppel/SNDA Condition shall not constitute a default under this Agreement, however Seller is required to utilize commercial reasonable efforts to obtain the Tenant Estoppel Certificate and SNDA in accordance with this Section 5.3. Buyer shall have three (3) days from receipt of the executed Tenant Estoppel Certificate to approve or reject the same, provided that Buyer may only reject the Tenant Estoppel Certificate if the Tenant Estoppel Certificate reflects a discrepancy materially affecting the economics of the transaction in Buyer's reasonable discretion, or discloses previously undisclosed material breach of the Lease.

6. Closing.

6.1 Time of Closing. The purchase of the Property shall be closed in escrow at the Title Company. The time for closing (the "Closing Date") shall be on or before the date that is ten (10) days following the waiver of both the Due Diligence Contingencies and the Financing Contingencies.

6.2 Events of Closing.

6.2.1 Seller's Deposits. At least one (1) business day prior to the Closing Date, Seller shall deliver to the Title Company, the following: (a) an executed and acknowledged statutory special warranty deed (the "Deed") conveying fee simple title to the Real Property to Buyer subject only to the Permitted Exceptions; (b) an executed Assignment of Service Contracts and Assignment Rights in the form of the attached Exhibit C (the "Contract Assignment"), assigning to Buyer Seller's interest in the Contracts; (c) an executed Assignment of Lease to Buyer in the form of the attached Exhibit D (the "Lease Assignment"), including assignment of Seller's interest in the Lease; (d) an executed Bill of Sale in the form of the attached Exhibit E (the "Bill of Sale"), and (e) a certification that Seller is not a "foreign person" as such term is defined in the Internal Revenue Code and the Treasury Regulations promulgated thereunder. Seller shall also execute such customary Title Company owner's affidavit as maybe reasonably required by the Title Company for the issuance to Buyer of an extended coverage policy of title insurance.

6.2.2 Buyer's Deposits. On or before the Closing Date, Buyer shall pay into escrow the Purchase Price less any credit to Buyer pursuant to this Agreement and shall deliver to escrow an executed Contract Assignment, Lease Assignment and Bill of Sale.

6.3 Income and Expenses.

6.3.1 General. The following items in this Section 6.3 shall be adjusted and prorated between Seller and Buyer as of 12:01 a.m. on the Closing Date (the "Adjustment Time"). Such adjustments and prorations shall be calculated on the actual days of the applicable month and all annual prorations based upon a 365-day year.

6.3.2 Taxes. Real and personal property taxes and assessments for the current tax year levied or assessed against the Property. If the amount of taxes and assessments for the current tax year has not been fixed by the Closing, the proration shall be based upon the taxes paid for the previous year and re-prorated at the time the amount of taxes and assessments for the current tax year has been fixed.

6.3.3 Rents. Rents collected by Seller prior to Closing shall be prorated as of the Closing date. During the period after Closing, Buyer shall deliver to Seller any and all rents accrued but uncollected as of the Closing date to the extent subsequently collected by Buyer; provided, however, Buyer shall apply rents received after Closing (net of any collection fees or expenses) first, to payment of current rent then due; second, to rents attributable to any period after the Closing which are past due on the date of receipt; and thereafter, to Seller for delinquent rents as of the Closing. Seller shall be entitled to institute legal proceedings and use other commercially reasonable means to collect all delinquent rentals which became due prior to the day of the Closing from any of the tenants, guarantors or other third parties responsible for the payment of such delinquent rentals. All refundable security deposits and prepaid rents (if any) of any tenant occupying the Property at the Closing shall be paid over by Seller to Buyer at Closing.

6.3.4 Operating Expenses. All sums due for operating expenses payable that were owing or incurred by the Property or the Seller prior to the Adjustment Time will be paid by the Seller; provided that Buyer shall pay Seller any amounts that the tenants of the Property may owe under their Lease with respect to operating expense reconciliations for calendar year 2021 promptly after such amount has been determined by Buyer. Buyer will furnish to the Seller any bills for such period received after the Closing Date for payment, and Buyer will have no further obligation with respect thereto. All operating expenses payable incurred after the Adjustment Time will be paid by Buyer. If invoices or bills for any of such costs and expenses are unavailable on or before the Closing, such costs and expenses shall be estimated and prorated at Closing based upon the latest information available (including prior bills and operating history) and a final and conclusive readjustment of any cost and expense item shall be made upon receipt of the actual invoice or bill, but in all events no later than sixty (60) days following the Closing. Buyer shall take all steps necessary to effectuate the transfer of all utilities to Buyer's name as of the date of Closing, and where necessary, open a new account in Buyer's name and post deposits with the utility companies. If Buyer and Seller are unable to obtain final meter readings as of the Closing from all applicable meters, such expenses shall be estimated at Closing based upon the operating history of the Property subject to the final adjustment in all events no later than sixty (60) days following the Closing. Seller shall be entitled to recover any and all deposits held by any utility companies as of the date of Closing, and if any such deposits are not returned to Seller on or before the Closing and are assigned to Buyer, such amounts shall be credited to Seller's account and increase the amount of funds payable by Buyer at Closing.

6.3.5 Tenant Installation Expenses. As used herein, "Tenant Installation Expenses" means, collectively, any and all fees, costs, expenses and charges of the landlord arising out of or in connection with any existing Lease, any new lease for space at the Property and any extensions, renewals or expansions under any existing Lease, including (i) brokerage commissions and fees to effect any such leasing transaction, (ii) expenses incurred for repairs, improvements, equipment, painting, decorating, partitioning and other items to satisfy the tenant's requirements with regard to such leasing transaction, (iii) reasonable legal fees for services in connection with the preparation of documents and other services rendered in connection with the effectuation of the leasing transaction, and (iv) expenses incurred for the purpose of satisfying or terminating the obligations of a tenant under a new lease to the landlord under another lease (whether or not such other lease covers space in the Property). Buyer shall receive a credit against the Purchase Price with respect to any Tenant Installation Expenses that are payable with respect to the Lease as of the Effective Date that have not been paid as of the Closing Date.

6.3.6 Closing Costs. Seller shall pay the premium for a standard form owner's policy of title insurance, the real estate transfer tax and one-half the escrow fee.

Buyer shall pay for any upgrades to the title insurance policy to extended coverage and any required title endorsements. Buyer shall pay one-half the escrow fee and all recording fees.

7. Risk of Loss.

7.1 Damage. In the event that, prior to the Closing Date, the Property, or any part thereof, is destroyed or suffers damage in excess of five percent of the Purchase Price or entitles a tenant under a Lease to terminate its Lease, Buyer shall have the right, exercisable by giving notice of such decision to Seller within five (5) business days after receiving written notice of such damage or destruction, to terminate this Agreement. If Buyer does not timely elect to terminate this Agreement, Buyer shall accept the Property in its then condition, and all proceeds of insurance awards payable to Seller by reason of such damage or destruction shall be paid or assigned to Buyer. In the event of damage to the Property and the immediately preceding two sentences are not applicable, Buyer shall accept the Property in its then condition and proceed with the purchase and Seller shall assign to Buyer all applicable insurance proceeds.

7.2 Condemnation. If after the Effective Date, and prior to the Closing Date, all or any substantial portion of the Property (where the value of the condemned Property is in excess of five percent of the Purchase Price), being subjected to a bona fide threat of condemnation by a body having the power of eminent domain, or being taken by eminent domain or condemnation (or sale in lieu thereof) or entitles a tenant under a Lease to terminate its Lease, Buyer may by written notice to Seller within five (5) business days after receiving notice of such event, elect to cancel this Agreement prior to the closing hereunder, in which event both parties shall be relieved and released of and from any further liability hereunder, and any consideration paid hereunder shall forthwith be returned to Buyer and thereupon this Agreement shall become null and void and be considered canceled. If no such election is made, this Agreement shall remain in full force and effect and, upon closing, the purchase contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected and the Purchase Price for the Property shall not be reduced by the amount of any awards that have been or that may thereafter be made for the taking of the Property (but the condemnation award shall be paid to Buyer).

8. Default; Remedies.

8.1 Time of Essence. Time is of the essence of the parties' obligations under this Agreement.

8.2 Buyer's Failure to Close. In the event that Buyer is obligated to pay the Purchase Price and fails to do so, then Seller, as Seller's sole remedy, shall be entitled to retain the Earnest Money deposited by Buyer (and all interest earned thereon) as liquidated damages. **BUYER AND SELLER HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL DAMAGES THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AN AMOUNT EQUAL TO ALL OF THE EARNEST MONEY. SUCH AMOUNT WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER, AND AFTER PAYMENT THEREOF TO SELLER, NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATION TO OR RIGHTS AGAINST THE OTHER.**

8.3 Seller's Failure to Close. In the event that Seller is obligated to convey the Property to Buyer but fails to do so, then Buyer, as Buyer's sole remedy, shall be entitled to either: (i) a return of the Earnest Money deposited by Buyer (and all interest earned thereon) and reimbursement of Buyer’s expenses incurred in connection with this Agreement

and the transactions contemplated by this Agreement, or (ii) seek specific performance of this Agreement; provided, however, if specific performance of Seller's obligations within thirty (30) days after the scheduled Closing Date is not an available remedy due to the nature of Seller's default, Buyer shall have a claim for damages.

9. Representations and Covenants.

9.1 Seller's Representations. Seller's representations contained in this Section 9.1 are true and accurate in all material respects. Seller's representations contained in this Section 9.1 shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by Seller in a separate certificate at that time; provided, however, if Seller becomes aware after the date of this Agreement that any representation by Seller is untrue in any material respect, Seller may give Buyer written notice of such change in Seller's representation and Buyer shall have seven (7) days to terminate this Agreement by written notice to Seller and receive a refund of the Earnest Money, but the failure of Buyer to timely terminate this Agreement shall be deemed a modification of such representation and Seller shall only be obligated to remake such representation at Closing as so modified. Seller's representations are based on Seller's actual knowledge (as used herein, "Seller's actual knowledge" means the actual and present knowledge of Steve Deacon without investigation or inquiry). In no event shall Steve Deacon have any personal liability under this Agreement.

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

9.1.2 To Seller's actual knowledge, no asbestos, radioactive material, hazardous waste, material, or substance, toxic substance, pollutant, oil, or contaminant, as defined by any federal, state, or local law, rule, order, ordinance, requirement, or regulation ("Hazardous Substances") has been stored or disposed on the Property in violation of any applicable law.

9.1.3 There is no condemnation proceeding, litigation, action, suit, or proceeding pending, or threatened in writing within twelve (12) months prior to the date of this Agreement, which affects the Property.

9.1.4 Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

9.1.5 Seller has not received any written notice of violation of any law or ordinance affecting the Property.

9.1.6 There are no existing Leases other than those listed on the rent roll provided by Seller to Buyer. All of the Leases are in full force and effect in accordance with their respective terms and no tenant or Seller is in the default of any such Lease. Seller has performed all of its obligations under the Leases, the performance of which are required prior to the date of this Agreement. All tenants under the Leases are in possession of their respective premises and no portion of the improvements are being occupied by any person who does not have the legal right to do so. The rent roll accurate shows all free rent, improvement allowance obligation and other rent concessions/landlord inducements with respect to the Leases.

9.1.7 There are no service contracts with respect to the Property that are not terminable on the Closing Date.

9.1.8 Seller has not committed nor obligated itself in any manner whatsoever to sell the Property to any person other than Buyer. Without limiting the generality of the foregoing, no right of first refusal regarding the Property exists. Seller will not, prior to Closing, offer to or enter into any backup or contingent option or other agreement to sell the Property to any other person.

9.2 Liability Cap. Notwithstanding anything to the contrary contained herein, after the Closing: (a) the maximum aggregate liability of Seller, and the maximum aggregate amount which may be awarded to and collected by Buyer (including, without limitation, for any breach of any representation, warranty and/or covenant by Seller) in connection with the Property and/or the sale thereof to Buyer including, without limitation, under this Agreement or any documents executed pursuant hereto or in connection herewith (collectively, the "Other Documents", shall under no circumstances whatsoever exceed Two Hundred Fifty Thousand Dollars ($250,000.00) (the "Liability Cap"); and (b) no claim by Buyer alleging a breach by Seller of any representation, warranty and/or covenant of Seller contained herein or in any of the Other Documents may be made, and Seller shall not be liable for any judgment in any action based upon any such claim, unless and until such claim, either alone or together with any other claims by Buyer alleging a breach by Seller of any such representation, warranty and/or covenant is for an aggregate amount in excess of Ten Thousand Dollars ($10,000.00) (the "Floor Amount"), in which event Seller's liability respecting any final judgment concerning such claim or claims shall be for the entire amount thereof, subject to the limitation set forth in clause (a) above; provided, however, that if any such final judgment is for an amount that is less than or equal to the Floor Amount, then Seller shall have no liability with respect thereto.

9.3 Seller's Covenants. Seller covenants that, until this transaction is closed or escrow is terminated, whichever comes earlier, Seller shall operate and maintain the Property in a manner consistent with Seller's past practices. Seller shall not execute any new lease for the Property or amend any existing Lease without the prior written consent of Buyer, which consent shall not be unreasonably withheld or conditioned and shall be deemed granted if Buyer fails to respond within two (2) business days of a request for such consent.

9.4 Buyer's Representations. Buyer hereby represents that Buyer has full power and authority to enter into this Agreement. All requisite action has been taken by Buyer in connection with the execution of this Agreement and the transactions contemplated hereby. Except as expressly set forth in Section 9.1, Buyer acknowledges that no warranties, guarantees or representations have been or are being made by Seller or any agent or representative of Seller concerning the Property. Buyer accepts the Property, "AS IS, WITH ALL FAULTS" without any representations or warranties by Seller or any agent or representative of Seller, expressed or implied, except as set forth in Section 9.1. Buyer acknowledges that Buyer has ascertained for itself the value and condition of the Property and Buyer is not relying on, nor has Buyer been influenced by, any representation of Seller or any agent or representative of Seller regarding the value, condition, or any aspect of the Property. Buyer agrees that Buyer's payment of the Purchase Price is Buyer's acknowledgment that it has had every opportunity to conduct whatever inspection, test, or analysis of the Property that Buyer deemed to be relevant to Buyer's decision to purchase the Property. As part of Buyer's agreement to purchase the Property "AS-IS, WITH ALL FAULTS", and not as a limitation on such agreement, Buyer hereby unconditionally and irrevocably waives and releases any and all actual or potential rights Buyer might have regarding any form of warranty, express or implied, of any kind or type, relating to the Property, except for

Seller's warranties set forth in this Agreement. Such waiver is absolute, complete, total and unlimited in every way. Seller shall not be responsible for any failure to investigate the Property on the part of Buyer or, except as expressly set forth in Section 9.1, for any representation or statement regarding the Property (including any representation or statement by any real estate broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of Seller, or any third party).

9.4.1 Buyer hereby represents that it is aware of (i) the exclusive uses granted to other tenants of the retail center, as outlined in Exhibit F ("Exclusive Uses") and (ii) that Seller has recorded or will record memorandums of such leases on all parcels of the retail center, including the Property.

10. Miscellaneous Provisions.

10.1 Notices. Notice may, unless otherwise provided herein, be given or served (a) by delivering the same to such party, or an agent of such party, in person or by commercial courier, (b) by email, if the time of email delivery is confirmed by sender's receipt of an email report which confirms that the email was successfully transmitted in its entirety and provided the email was forwarded prior to 5:00 P.M., or (c) by depositing the same into custody of a nationally recognized overnight delivery service. Notice given in any manner shall be effective only if and when received by the party to be notified between the hours of 8:00 A.M. and 5:00 P.M. of any business day with delivery made after such hours to be deemed received the following business day. For the purposes of notice, the addresses of Seller and Buyer shall, until changed as hereinafter provided, be as set forth below. The parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other party.

If to Seller:
c/o Deacon Development
901 NE Glisan Street, Suite 100
Portland, OR 97232
Attn: Ian Lewallen
Telephone No.: (503) 297-8791
Email: ian.lewallen@deacon.com

If to Buyer:
Todd/Siobhan Fisher
PO Box 264
Fox Island, WA 98333
Todd Mobile Phone: 818-207-5041
Siobhan Mobile Phone:253-219-8425
Todd E-Mail: todd.mgr@gmail.com
Siobhan E-Mail: sfisher1355@yahoo.com

10.2 Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

10.3 Amendment. This Agreement may not be modified or amended except by the written agreement of the parties. No modification or amendment or attempted waiver of any provision of this Agreement shall be binding unless in writing and signed by the party to be bound. This Agreement may not be modified or amended orally.

10.4 Attorneys' Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

10.5 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10.6 Brokers. Seller warrants and represents to Buyer that no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement other than Michael Horwitz, Michael Lowes and Kevin Adatto of Capital Pacific, LLC ("Capital Pacific") whose commission shall be paid for by Seller pursuant to a separate written agreement. The total commission shall be three and one half percent (3.5%) of the Purchase Price ("Total Commission"). Buyer warrants and represents to Seller that no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement other than Ryan O'Leary and Rebecca Liddell of Kidder Mathews ("Kidder"), whose commission shall be paid for by Seller form the Total Commission. The Total Commission shall be divided equally between Capital Pacific and Kidder so that Capital Pacific receives one and three quarters percent (1.75%) of the Purchase Price and Kidder receives one and three quarters percent (1.75%) of the Purchase Price. The commissions shall be payable at closing. In the event any other claims for brokers' or finders' fees or commissions are made in connection with the negotiation, execution, or consummation of this Agreement, then Buyer shall indemnify, hold harmless, and defend Seller from and against such claims if they are based upon any statement, representation or agreement made by Buyer, and Seller shall indemnify, hold harmless, and defend Buyer if such claims shall be based on any statement, representation or agreement made by Seller.

10.7 Integration. This Agreement contains the entire agreement and understanding of the parties with respect to the purchase and sale of the Property and supersedes all prior and contemporaneous agreements between them with respect to such purchase and sale.

10.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

10.9 Assignment. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns; provided, however, Buyer may not assign its interest in this Agreement without the prior written consent of Seller, which consent may be withheld by Seller in Seller's sole discretion; provided, further, that without being relieved of any liability under this Agreement, Buyer reserves the right to take title to the Property in the name of an entity that is controlled by Buyer.

10.10 1031 Exchange. Seller and Buyer shall have the right to convey all or a portion of the Property in exchange for real property or properties of like kind pursuant to Section 1031 of the Internal Revenue Code, either in a simultaneous exchange or in a deferred exchange. Buyer agrees to cooperate with Seller in effecting such an exchange and, if requested by Seller, Buyer shall execute any exchange agreement reasonably requested by Seller and consistent with the above. Seller agrees to cooperate with Buyer in effecting such an exchange, and if requested by Buyer, Seller shall execute any exchange agreement reasonably requested by Buyer and consistent with this Section. Neither party shall be required to take title to any property, incur any costs or be subject to any liability whatsoever in connection with such cooperation.

10.11 Statutory Disclosure. 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.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement effective as of the date set forth above.

Seller: DD Sherwood One, LLC, an Oregon limited liability company

DocuSigned by:
By: Steve Deacon 5/6/2021
0CCB7411417E942B...
Steven Deacon, Manager

Buyer: Todd & Siobhan Fisher and/or assigns

DocuSigned by:
By: 5/6/2021
583B658B057A48E...

DocuSigned by:
By: Siobhan Fisher 5/6/2021
84DC06255C82486...

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

SELLER DOCUMENTS

1. Complete copy of all leases, including amendments and addenda.
2. Year-end operating statements for the last two years, year to date operating statement, and the operating budget for the current year.
3. Tenant CAM reconciliation statements for the past two years by tenant and current year estimates by tenant.
4. Current rent roll.
5. Aged delinquency status by tenant.
6. Schedule of security deposits.
7. Tenant financial information including tenant sales for the last 3 years.
8. The most current certified property survey.
9. Real estate tax statement for current tax year.
10. Copies of all service contracts.
11. A copy of all reports and studies relating to the environmental, soils, geological, and ground water conditions or the presence or use of any toxic or hazardous substance.
12. Inspection reports, such as roof, mechanical, electrical, plumbing, fire/life/safety systems, and structural.
13. Copy of casualty, liability and other insurance certificates carried by landlord and tenants relating to the Property.
14. Copy of any documentation relating to easements, declarations, or conditions, covenants and restrictions.
15. Site Plan
16. Building drawings.

EXHIBIT C

ASSIGNMENT OF SERVICE CONTRACTS

This Assignment of Service Contracts (this "Assignment") is made and entered into _____, 2021,, by and between _____ ("Assignor"), and _____ ("Assignee").

For good and valuable consideration paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged by Assignor, Assignor does hereby assign, transfer, set over and deliver unto Assignee all of Assignor's right, title, and interest in: (i) those certain service contracts, tenant improvement agreements and leasing commission agreements (the "Contracts") listed on Exhibit A, if any, attached hereto and made a part hereof for all purposes, and (ii) those certain warranties held by Assignor (the "Warranties") listed on Exhibit B, if any, attached hereto and made a part hereof for all purposes.

ASSIGNEE ACKNOWLEDGES AND AGREES, BY ITS ACCEPTANCE HEREOF, THAT THE CONTRACTS, AND THE WARRANTIES ARE CONVEYED "AS IS, WHERE IS" AND IN THEIR PRESENT CONDITION WITH ALL FAULTS, AND THAT ASSIGNOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE NATURE, QUALITY OR CONDITION OF THE CONTRACTS AND THE WARRANTIES, THE INCOME TO BE DERIVED THEREFROM, OR THE ENFORCEABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE CONTRACTS OR THE WARRANTIES.

Except as otherwise expressly provided in that certain purchase and sale agreement between Assignor and Assignee dated as of _____ ____, 2021,, by accepting this Assignment and by its execution hereof, Assignee assumes the payment and performance of, and agrees to pay, perform and discharge, all the debts, duties and obligations to be paid, performed or discharged from and after the date hereof, by the owner under the Contracts and the Warranties.

The obligations of Assignor are intended to be binding only on the property of Assignor and Assignor shall not be personally binding upon, nor shall any resort be had to, the private properties of any of its officers, directors, members, or shareholders, or any employees or agents of Assignor.

All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be executed on the date and year first above written.

Assignor: _____

By: _____

Title: _____

Assignee: _____

By:_____

Title:_____

EXHIBIT D

ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE (this "Assignment") is made and entered into as of this _____ day of_____,_____, by and between_____ _____, a _____ ("Assignor"), and_____ _____, a _____ ("Assignee").

RECITALS

This Assignment is entered into on the basis of and with respect to the following facts, agreements and understandings:

A. On_____,_____, Assignor, as "Lessor," and_____ _____, as "Lessee," entered into a certain Lease, pursuant to which said Lessor leased to said Lessee certain real property in the City of_____, County of_____ _____, State of_____ (the "Premises"), which Premises are a portion of the property more particularly described on Exhibit A, attached hereto and made part hereof by this reference (the "Property"). Said Lease is hereinafter referred to as the "Lease."

B. By an instrument dated of even date herewith and recorded prior to this instrument, Assignor sold and conveyed its fee interest in and to the Property to Assignee and, in conjunction therewith, Assignor agreed to assign its interest as Lessor under the Lease to Assignee and Assignee agreed to assume the obligations of the Lessor under the Lease, all as more particularly set forth in this Assignment.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants and agreements set forth herein, Assignor and Assignee agree as follows:

1. Assignment. Assignor hereby sells, assigns, grants, transfers and sets over to Assignee, its heirs, personal representatives, successors and assigns, all of Assignor's right, title, and interest as Lessor under the Lease.

2. Acceptance of Assignment and Assumption of Obligations. Assignee hereby accepts the assignment of the Lessor's interest under the Lease and, for the benefit of Assignor, assumes and agrees faithfully to perform all of the obligations which are required to be performed by the Lessor under the Lease on or after the Effective Date (defined below).

3. Effective Date. The effective date of this Assignment and each and every provision hereof is and shall be_____ (the "Effective Date"). **(If no date is identified, the Effective Date shall be the date the deed from Assignor to Assignee is recorded.)**

4. Assignor's Indemnity of Assignee. Assignor hereby agrees to defend (with counsel reasonably satisfactory to Assignee) and indemnify Assignee, its heirs, personal representatives, successors and assigns, and each of them, from and against any and all claims, suits, demands, causes of action, actions, liabilities, losses, damages, costs and expenses (including attorneys' fees) arising out of or resulting from any act or omission committed or alleged to have been committed by Assignor as Lessor under the Lease,

including without limitation any breach or default committed or alleged to have been committed by the Lessor under the Lease, prior to the Effective Date.

5. Assignee's Indemnity of Assignor. Assignee, for itself and on behalf of its heirs, personal representatives, successors and assigns, hereby agrees to defend (with counsel reasonably satisfactory to Assignor) and indemnify Assignor, its partners, and their respective directors, officers, employees, agents, representatives, successors and assigns, and each of them, from and against any and all claims, suits, demands, causes of action, actions, liabilities, losses, damages, costs and expenses (including attorneys' fees) arising out of or resulting from any act or omission committed or alleged to have been committed by Assignee, its heirs, personal representatives, successors and assigns, as lessor under the Lease, including without limitation any breach or default committed or alleged to have been committed by the Assignee under the Lease, on or after the Effective Date.

6. Successors and Assigns. This Assignment, and each and every provision hereof, shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

7. Governing Law. This Assignment shall be construed and interpreted and the rights and obligations of the parties hereto determined in accordance with the laws of the state where the Property is located.

8. Headings and Captions. The headings and captions of the paragraphs of this Assignment are for convenience and reference only and in no way define, describe or limit the scope or intent of this Assignment or any of the provisions hereof.

9. Gender and Number. As used in this Assignment, the neuter shall include the feminine and masculine, the singular shall include the plural and the plural shall include the singular, as the context may require.

10. Multiple Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Attorneys' Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Assignment or with respect to any dispute relating to this Assignment, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred in connection therewith (the "Fees"). In the event of suit, action, arbitration, or other proceeding, the amount of Fees shall be determined by the judge or arbitrator, shall include all costs and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment on the day and year first above written.

Assignor: _____

By:_____

Title:_____

Assignee: _____

By:_____

Title:_____

EXHIBIT E

BILL OF SALE

This Bill of Sale ("Bill of Sale ") is made this _____ day of _____, 2021, by and between _____ ("Assignor"), and _____ ("Assignee"). Capitalized terms used herein without definition shall have the respective meanings set forth in that certain Purchase Agreement between Assignor and Assignee dated _____ ____, 2021.

RECITALS

Assignee, in connection with Assignee's purchase of the Property from Assignor, wishes to acquire Assignor's interest in the Personalty (as defined below), and Assignor wishes to transfer all of Assignor's interest under the Personalty to Assignee.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Bill of Sale. Assignor hereby sells, transfers, assigns and conveys to Assignee all tangible personal property ("Personalty") set forth in the inventory on Exhibit A attached hereto and made a part hereof, and located on, and used in connection with the management, maintenance or operation of that certain land and improvements located at 16814 SW Edy Road, Sherwood, Oregon, as more particularly described in Exhibit B attached hereto and made a part hereof ("Real Property"), but excluding tangible personal property owned or leased by Assignor's property manager or the tenants of the Real Property under any tenant leases.

ASSIGNEE ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SET FORTH IN THIS BILL OF SALE, ASSIGNOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (A) THE NATURE, QUALITY OR CONDITIONS OF THE PERSONAL PROPERTY, (B) THE INCOME TO BE DERIVED FROM THE PERSONAL PROPERTY, (C) THE SUITABILITY OF THE PERSONAL PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH ASSIGNEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PERSONAL PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PERSONAL PROPERTY, OR (F) ANY OTHER MATTER WITH RESPECT TO THE PERSONAL PROPERTY. ASSIGNEE FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PERSONAL PROPERTY, ASSIGNEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PERSONAL PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY ASSIGNOR, EXCEPT AS SPECIFICALLY PROVIDED IN THE AGREEMENT. ASSIGNEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PERSONAL PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT ASSIGNOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION. ASSIGNEE FURTHER ACKNOWLEDGES AND AGREES THAT THE SALE OF THE PERSONAL PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS, WHERE IS" CONDITION AND BASIS "WITH ALL FAULTS," EXCEPT AS SPECIFICALLY PROVIDED IN THE AGREEMENT.

2. Miscellaneous

2.1 The covenants and conditions contained herein shall apply to, be binding upon, and shall inure to the benefit of each of the parties hereto and their respective successors in interest and assigns.

2.2 In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Assignment or with respect to any dispute relating to this Assignment, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

2.3 This Assignment may be signed in counterparts.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment on the day and year first above written.

Assignor: _____

By: _____

Title: _____

Assignee: _____

By: _____

Title: _____

EXHIBIT F

EXCLUSIVE USES

Exclusive Uses

Creek Plaza Fit, LLC dba Planet Fitness shall have the exclusive right to use its premises within the Retail Center to conduct a business for the primary purpose of a health club (defined as a place that houses exercise equipment for the purpose of physical exercise and charges for its use) or tanning salon.

Rock Solid Restaurants, LLC dba HopsNDrops and Landlord have agreed that Landlord shall not lease space in the Property to the following competitors of Hop Jack's: Fatburger, The Ram, Red Robin, Gordon Biersch, Blazing Onion, Rock Wood Fired Kitchen, Bob's Burgers and Brew, The Counter Burger, Cheers, Steak and Shake and TGI Fridays

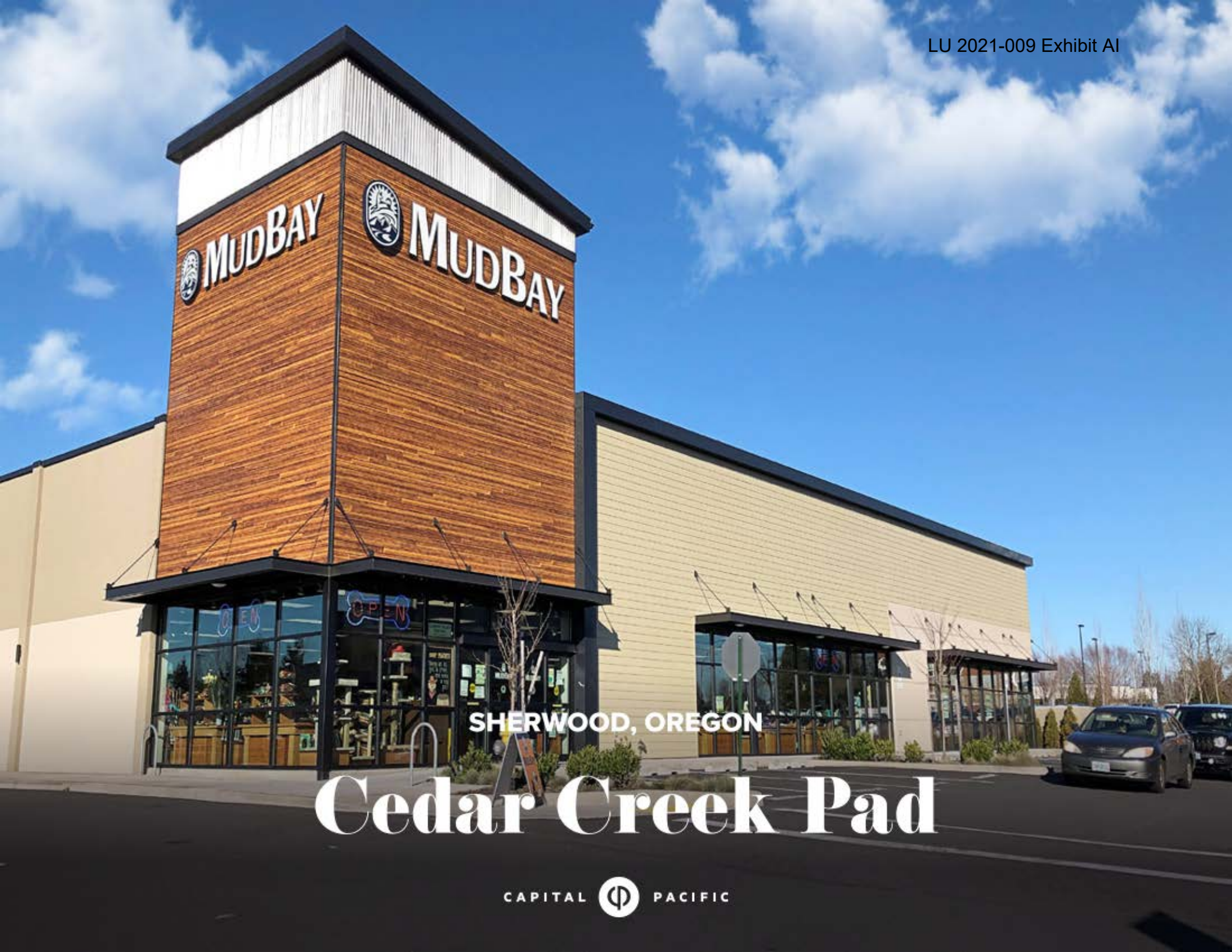
MESK Investment 3693 LLC dba IHOP Restaurant and Landlord have agreed that Landlord shall not lease space in the Property to a business which derives more than ten percent (10%) of its gross sales from the operation of a sit-down, fast-casual breakfast restaurant

Sabydee, LLC dba Sabye Thai restaurant and Landlord have agreed that Landlord shall not lease space in the Property to a business whose primary business is Thai cuisine.

Luna Nails and Landlord have agreed that Landlord shall not lease to a business whose primary business is a nail salon and/or which derives more than fifteen percent (15%) of its gross sales from performing facial waxing services.

Sherwood Family Eye Health and Landlord have agreed Landlord shall not lease to a business which derives more than ten percent (10%) of its gross sales from the operation of an optometry office and store.

R&G Veterinary and Landlord have agreed Landlord shall not lease to a business which is primarily a veterinary clinic for large and small domestic animals.



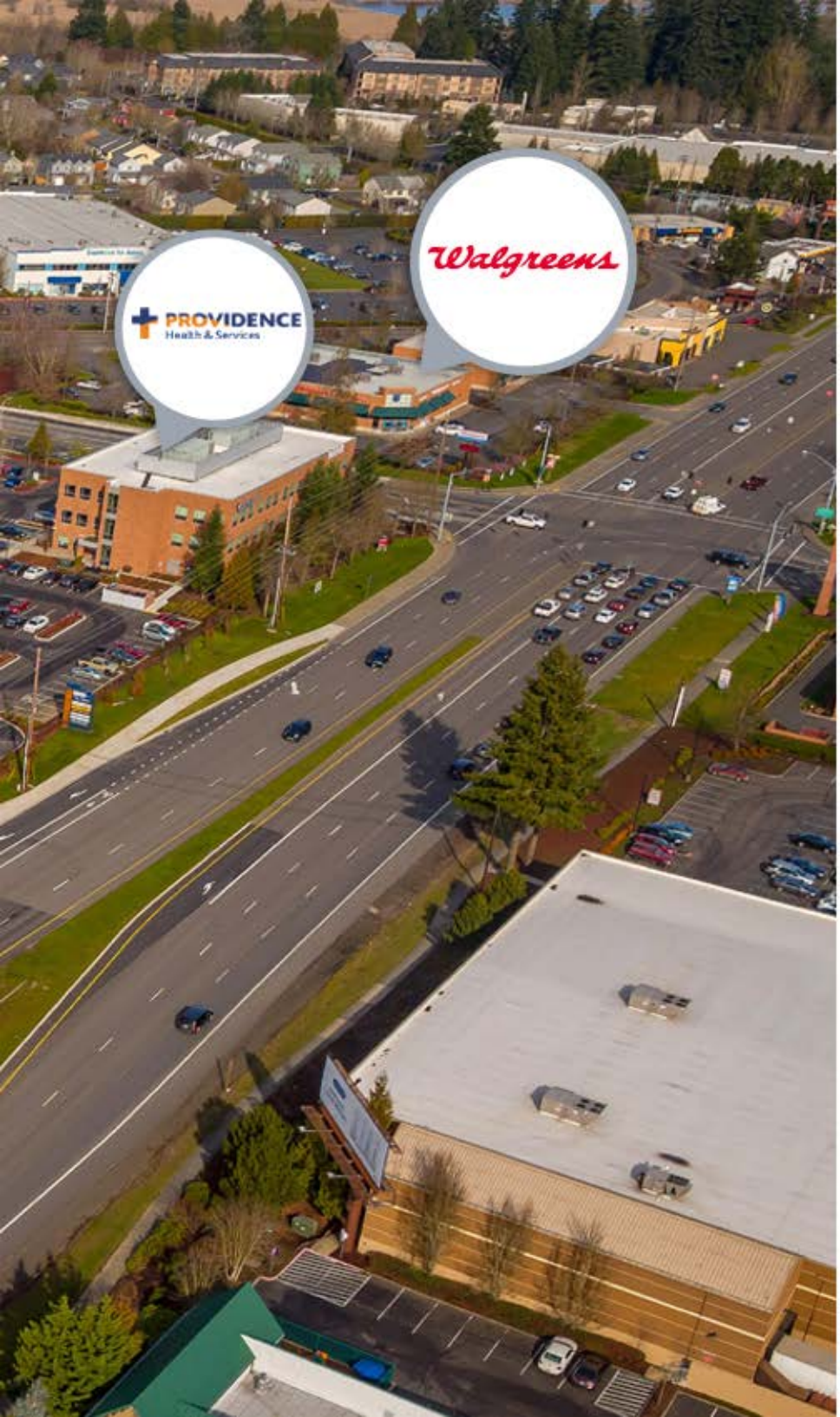
SHERWOOD, OREGON

Cedar Creek Pad

CAPITAL PACIFIC


THE ACKERLY SENIOR LIVING
CEDAR CREEK PAD
INCOMING HOTEL
planet fitness
OnPoint
HOPS N DROPS
LUNA NAILS & SPA
SABYE THAI
CUPCAKE COUTURE
IHOP
SHERWOOD EYE HEALTH

THE OFFERING



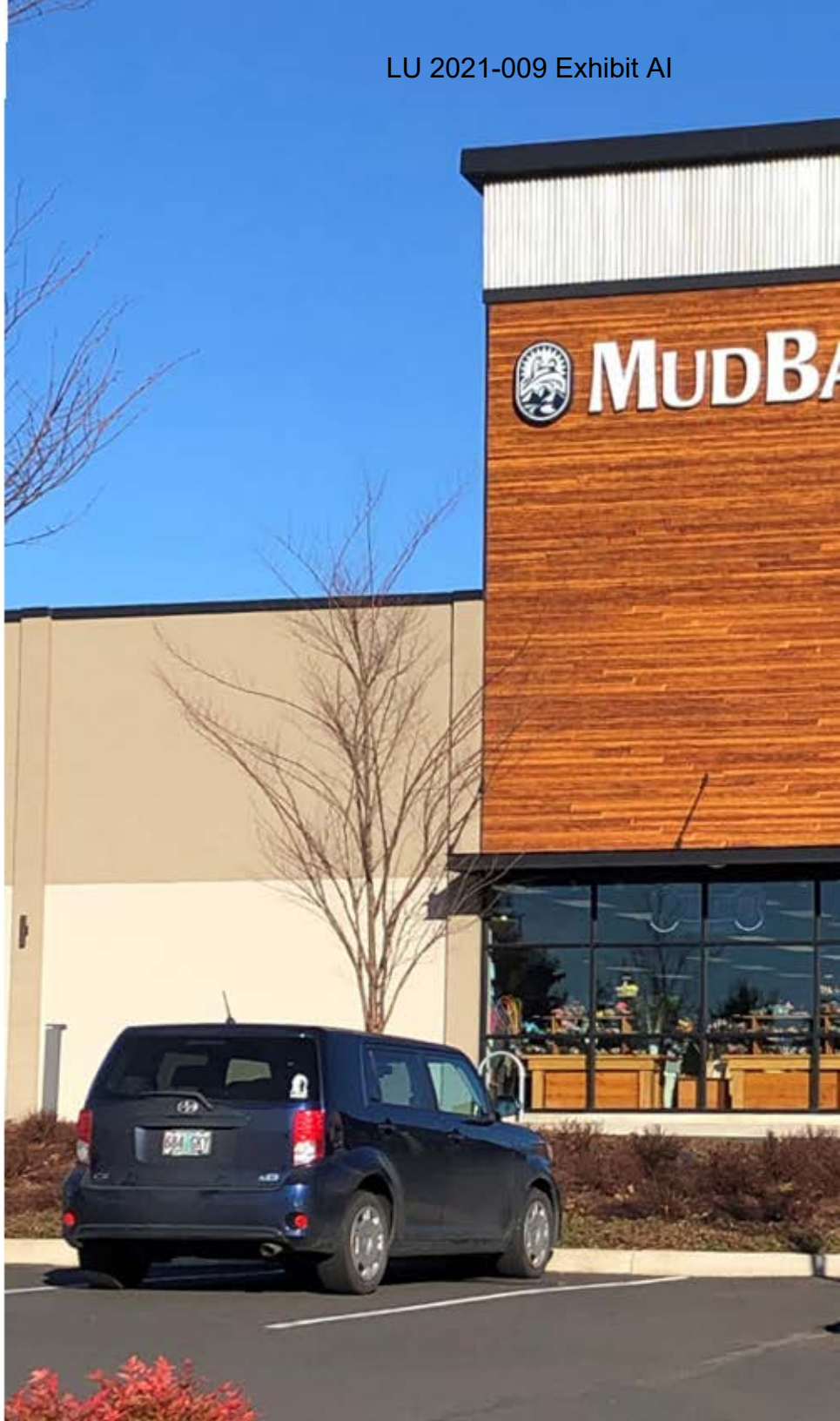
Located Within a High Quality Mixed Use Center

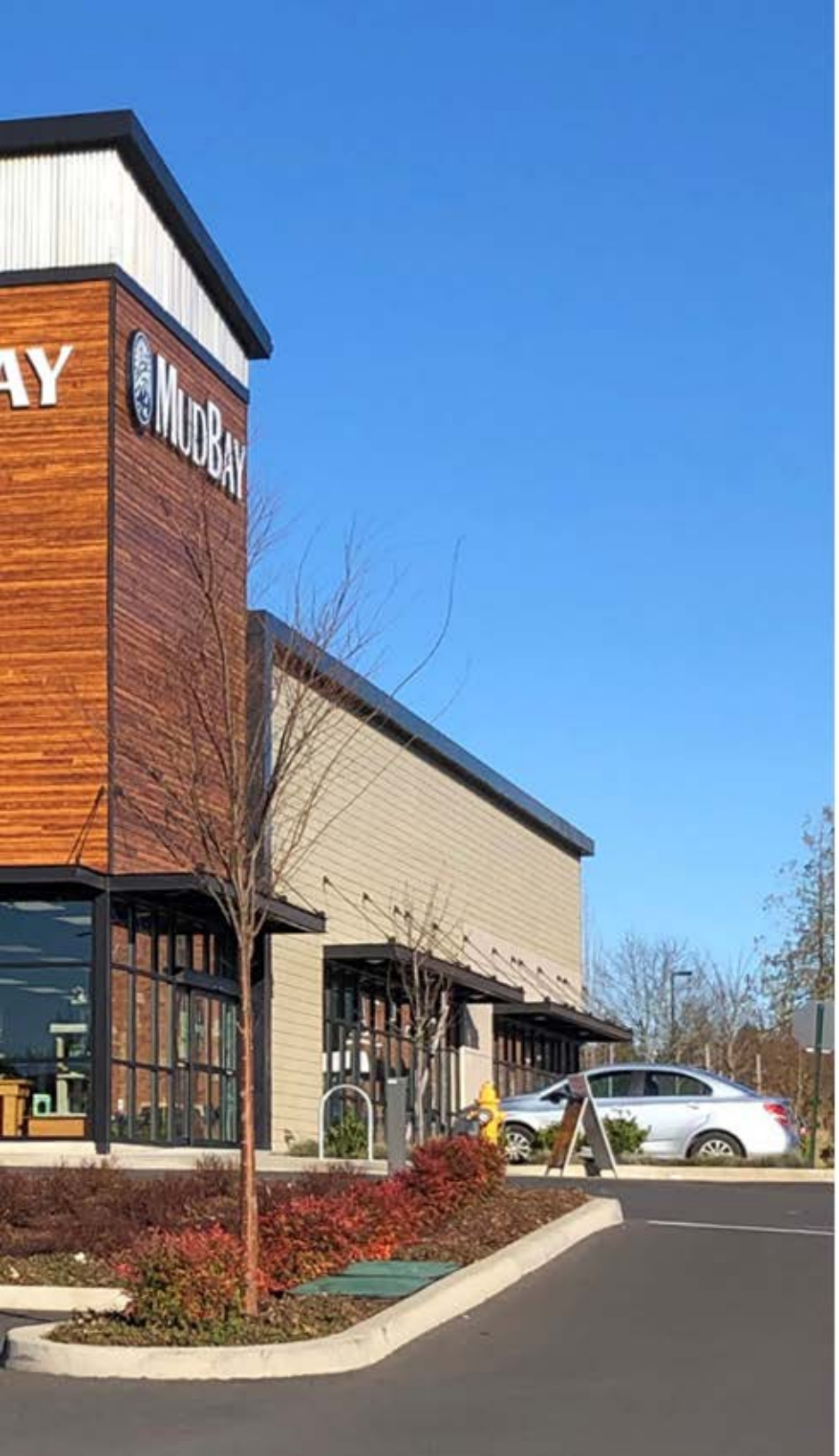
THE OFFERING provides the opportunity to acquire a three-tenant retail asset fully occupied by Mud Bay, R+G Veterinary, and Sophias Cafe located within the Cedar Creek Plaza, a Class A mixed-use center. All tenants operate under NNN leases with varying rental increases. The Property benefits from strong surrounding demographics and co-tenancy provided by an adjacent 137-unit senior housing development and a 3-story Providence Health Service building with a ground level urgent care. The Property is well-positioned with excellent visibility off Highway 99, located in Sherwood, OR, one of the state's fastest-growing cities.

CEDAR CREEK PAD

INVESTMENT HIGHLIGHTS

- PART OF A HIGH QUALITY MIXED USE CENTER THAT INCLUDES SIX ADDITIONAL RETAIL PADS, A MEDICAL CENTER, AS WELL AS A SENIOR HOUSING DEVELOPMENT.
- HIGH PURCHASING POWER IN THE TRADE AREA WITH AVERAGE INCOMES IN EXCESS OF $120,000 VS PORTLAND METRO AVERAGE OF $86,000.
- SHERWOOD IS ONE OF THE FASTEST GROWING CITIES IN WASHINGTON COUNTY AND THE PORTLAND MSA.
- SOPHIAS CAFE CHOSE CEDAR CREEK TO EXPAND THEIR PRESENCE TO A THIRD LOCATION IN THE PORTLAND METRO AREA.
- EXPOSURE AND SIGNAGE VISIBLE FROM HIGHWAY 99, THE PREEMINENT ARTERIAL CONNECTING TO THE WORLD-RENOWNED WILLAMETTE VALLEY WINE REGION.

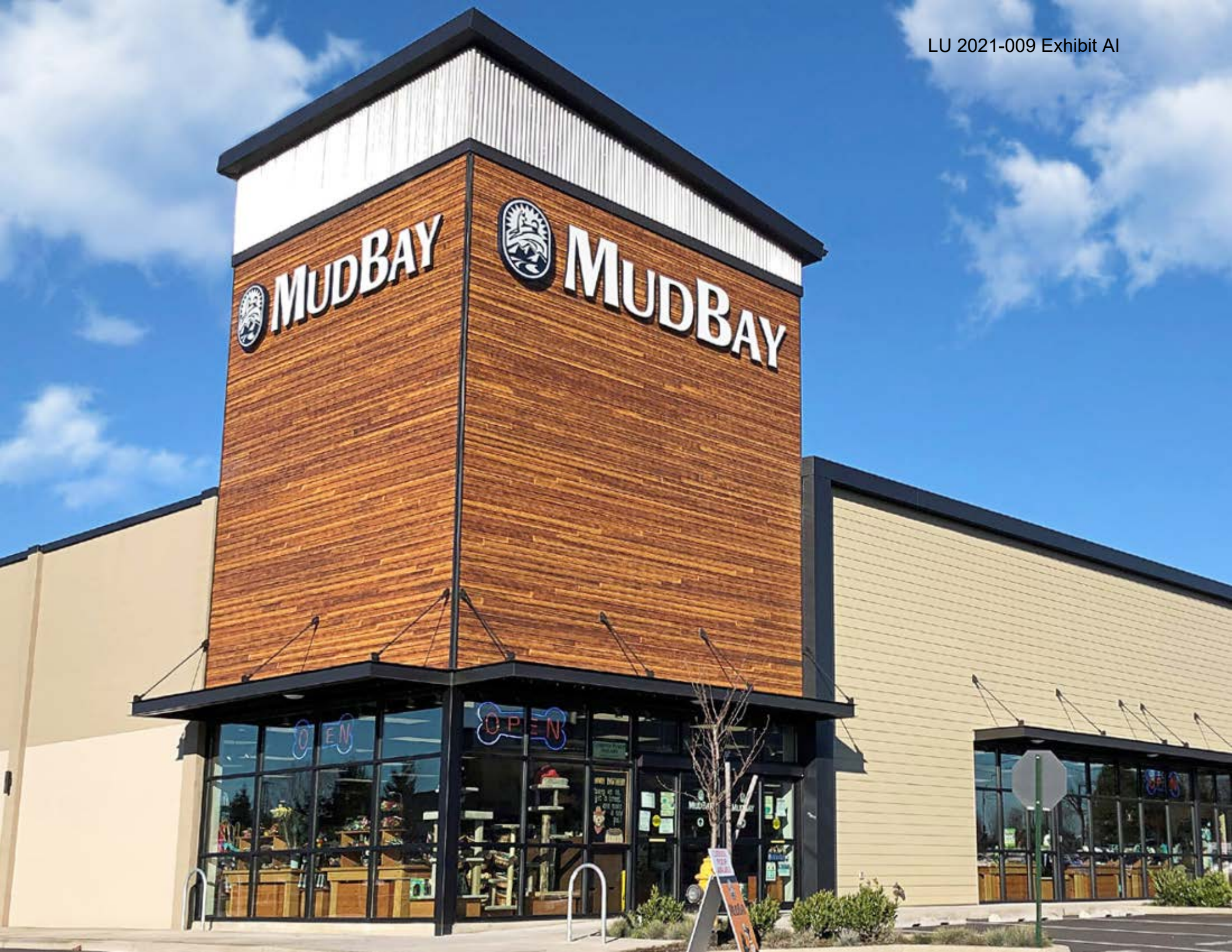




$4,990,000	6.00%
PRICE	CAP

LEASEABLE SF	**8,563 SF**
LAND AREA	**44,011 SF**
OCCUPANCY	**100%**
PRICE PER SF	**$583**
YEAR BUILT	**2018**
PARKING	**±232 Spaces; 27.0/1,000 SF***
ADDRESS	**16784 SW Edy Rd Sherwood, OR 97140**

** Tenant benefits from additional parking provided via a Cross-Easement Parking Agreement with the larger center.*


MUDBAY
MUDBAY
OPEN
OPEN

ABOUT THE TENANT

About Mud Bay

MUD BAY is a northwest pet supply retailer, highly specialized in offering dog and cat related products, with a focus on high quality, all while having one of the largest selections of natural foods for dogs and cats in the U.S. The company is based out of Olympia, WA with continued growth in the northwest, as the retailer has expanded steadily over the last few decades, primarily opening in neighborhoods.

Mud Bay converted ownership to an Employee Stock Ownership Plan (ESOP) in 2015, providing their staff long-term stake ownership in the company, reflective of Mud Bay's culture of empowering and investing in their employees. Through this investment in the company, Mud Bay has grown into the largest pet retailer headquartered in the Pacific Northwest and one of the top 20 pet retailers in the country.

60 | **# OF PACIFIC NORTHWEST STORES**

5 | **NEW STORES OPENED IN 2020**


THE ACKERLY SENIOR LIVING
PROVIDENCE Health & Services
CEDAR CREEK PAD
INCOMING HOTEL
planet fitness
OnPoint
HOPS & DROPS
LUNA NAILS & SPA
SABYE THAI
CUPCAKE COUTURE
IHOP
SHERWOOD EYE HEALTH

CEDAR CREEK PLAZA

The current declarant of Cedar Creek Plaza is Deacon Development, who still owns one remaining pad outside of this current asset. Cedar Creek Plaza consists of a Providence Health Services, Planet Fitness, five retail pads (consisting of both national, regional, and local tenants), and an adjacent 137-unit senior housing development.

TENANTS

- **CUPCAKE COUTURE**
- **HOPS N DROPS**
- **IHOP**
- **LUNA NAILS & SPA**
- **MUD BAY**
- **ON POINT COMMUNITY CREDIT UNION**
- **PROVIDENCE HEALTH SERVICES**
- **SABYE THAI**
- **SHERWOOD EYE HEALTH**
- **STARBUCKS**
- **SOPHIAS CAFE**
- **R+G VETERINARY**
- **PLANET FITNESS**

Q: DO ANY TENANTS HAVE EXCLUSIVE USES OR CO-TENANCY CLAUSES?

A: No Tenants have a co-tenancy clause, yet the following tenants do have an exclusive:

- Planet Fitness
- IHOP
- Sherwood Eye Health
- Hops n' Drops
- Sabye Thai
- Luna Nails
- R+G Veterinary
- Starbucks
- Sophias Cafe

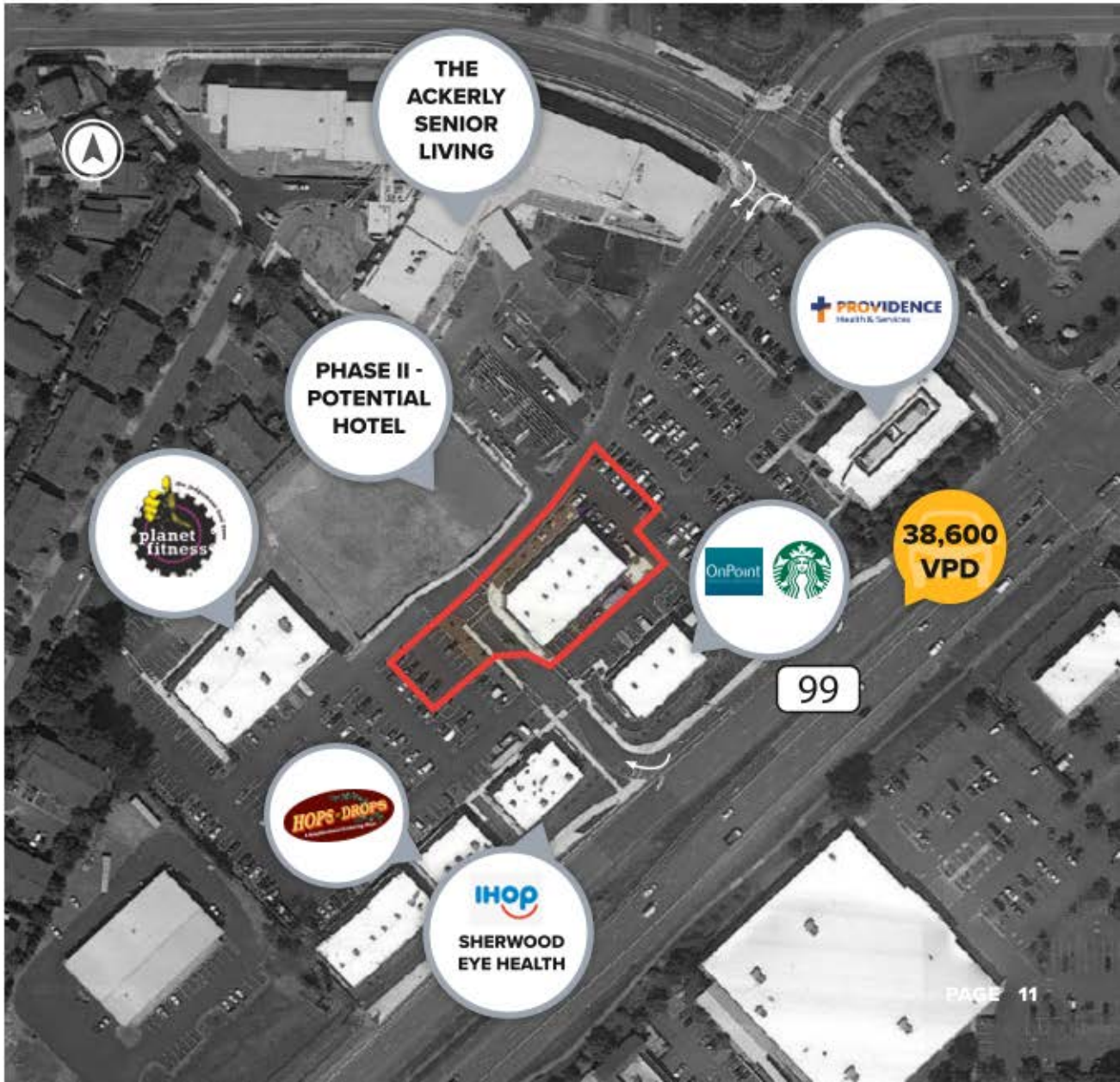

99
SW ROY ROGERS RD
38,600 VPD
THE HOME DEPOT
REGAL CINEMAS
HOBBY LOBBY
BEDMART
petco
Walgreens
CEDAR CREEK PAD
Walmart SUPERCENTER
PROVIDENCE
verizon
GNC
jiffylube
planet fitness
ROSS
DRESS FOR LESS
DOLLAR TREE
TACO BELL
Sharis
Dutch Bros.
TARGET
PANDA EXPRESS
KOHL'S
PARKWAY VILLAGE SOUTH
Incoming 92,000 SF entertainment center

LOCATION OVERVIEW

Within 5 Miles

108,973	2019 POPULATION
117,108	2024 PROJECTED POPULATION
$120,243	AVERAGE HOUSEHOLD INCOME
$99,278	MEDIAN HOUSEHOLD INCOME
3,240	TOTAL BUSINESSES
38,011	TOTAL EMPLOYEES

PARCEL LINE



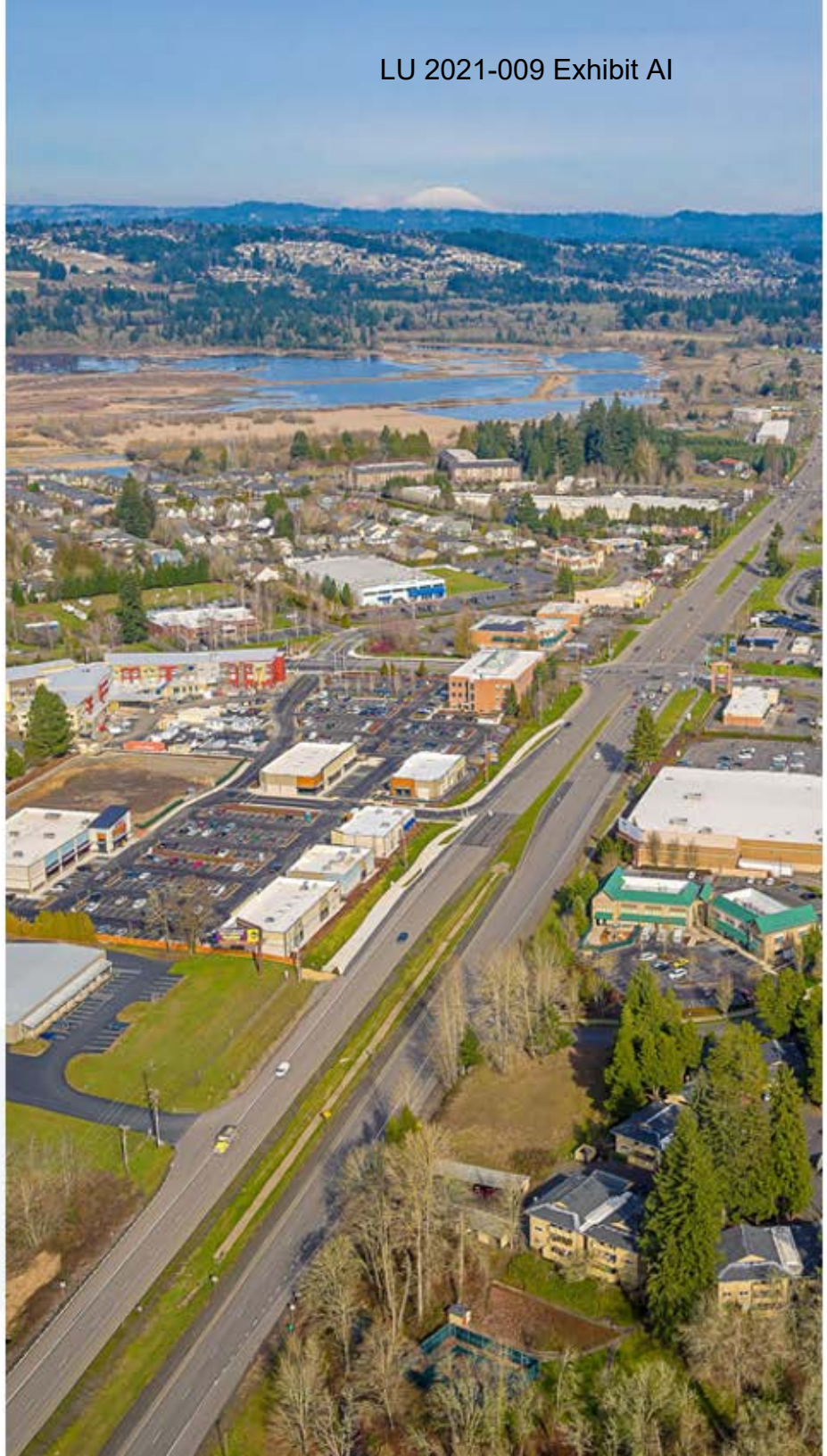
CONNECTIVITY

Portland Connectivity

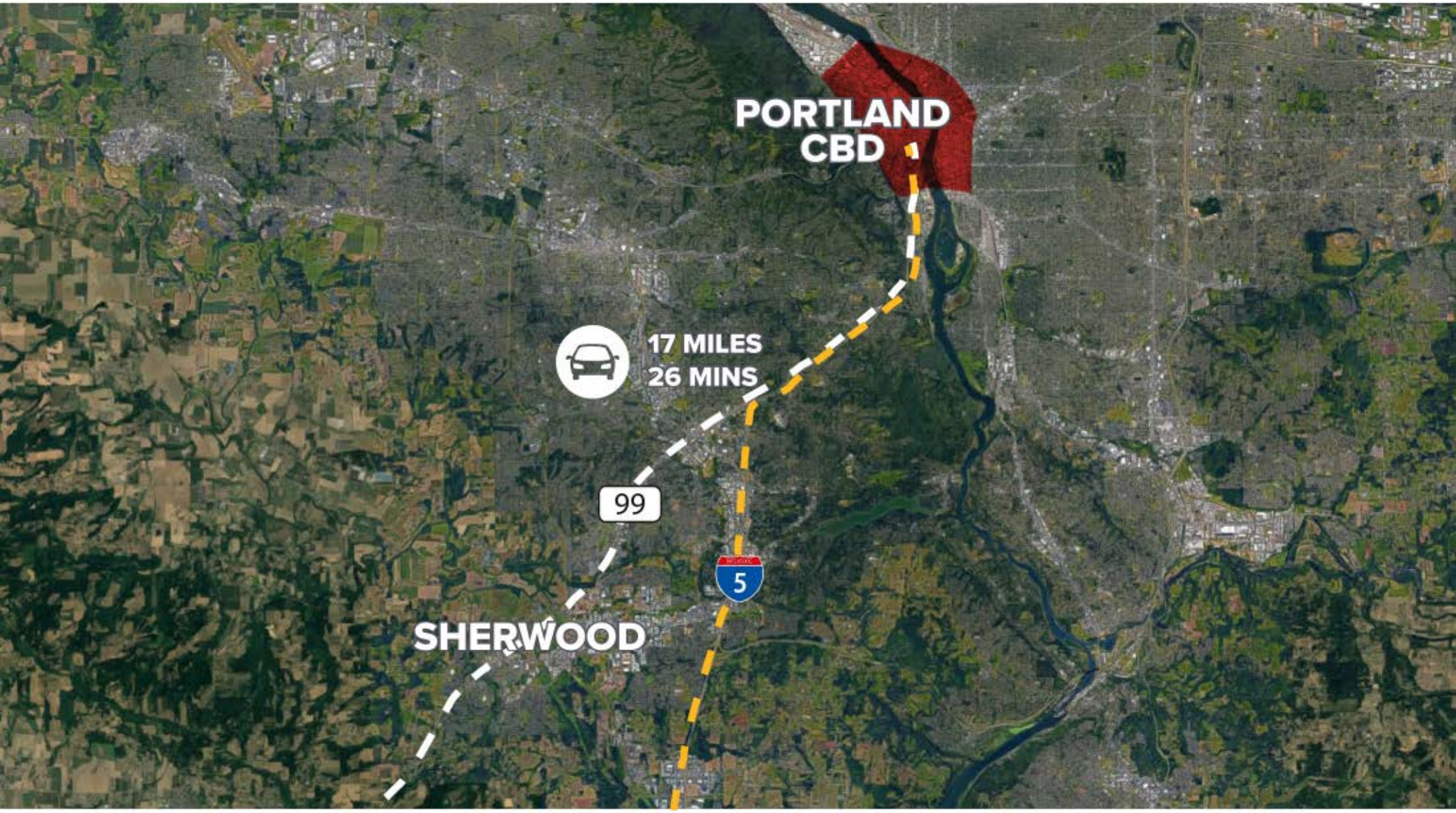
SHERWOOD IS A GROWING SUBURB OF THE PORTLAND MSA, less than 20 miles from Portland's Central Business District - the city hugs the west and east portions of Highway 99, a commuter highway connecting directly to I-5, driving traffic into downtown Portland. Sherwood is a suburb of Portland with an affluent demographic base and has seen growth due to the increasing size of Portland. Oregon sustained the third highest growth rate in history in 2018, according to a Portland State University study, mostly due to the growth of Portland and its surrounding neighborhoods.

Distance To

CITY	MILES	MINS
Portland	17 miles	26 min
Salem	36 miles	40 min



CONNECTIVITY



NEW DEVELOPMENTS

SHERWOOD IS ONE OF THE FASTEST-GROWING CITIES IN OREGON with the ninth highest population density, driving the need for additional housing and increased amenities. This has led to a brand-new high school currently under development. Despite the increasing population and need for additional housing, Sherwood has a lack of developable land for retail and housing purposes as most is zoned light industrial. In addition, Sherwood has revised the application for expansion and is intending on reapplication for the Urban Growth Boundary.

1. T-S CORPORATE
APPROVED - 5 INDUSTRIAL BUILDINGS, APPROX. 535,000 SF

2. TROUVAILLE BREWING
APPROVED

3. PARKWAY VILLAGE SOUTH
UNDER CONSTRUCTION
FIVE-LOT SUBDIVISION WITH 92,000 SF INDOOR ENTERTAINMENT AND 32,000 SF FOR RETAIL.

4. DENALI LANE PUD
APPROVED - SEVEN-LOT SINGLE FAMILY SUBDIVISION.

5. THE SPRINGS PUD
APPROVED - TWO NEW BUILDINGS TO PROVIDE COMBINED 93 ASSISTED-LIVING UNITS.

6. OREGON STREET TOWNHOMES
UNDER CONSTRUCTION
25 TOWNHOMES ACROSS 1.2 ACRES.

7. PINE STREET MIXED-USE
THREE-STORY MIXED-USE BUILDING ACROSS 0.1 ACRES WITH RETAIL AND A RESTAURANT ON THE GROUND FLOOR WITH MULTIFAMILY ABOVE.

8. HAMPTON INN
UNDER CONSTRUCTION

9. SHERWOOD HIGH SCHOOL
BRAND NEW $182M, 73-ACRE CAMPUS SCHEDULED TO OPEN 2020-2021.

10. MIDDLETON ESTATES SUBDIVISION
UNDER REVIEW - 12-LOT SINGLE FAMILY SUBDIVISION ACROSS 1.98 ACRES.


CEDAR
CREEK
PLAZA
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CEDAR CREEK PAD

FINANCIAL SUMMARY

PRICE	**$4,990,000**
CAPITALIZATION RATE	**6.00%**

CASH FLOW SUMMARY			
SCHEDULED INCOME		**PER SF**	
Base Rent for the Period of:	5/1/2021 - 4/30/2022	$34.66	$296,760
Operating Expense Reimbursement		$8.96	$76,710
Equals: Scheduled Gross Income		$43.61	$373,470
Total Effective Gross Income (EGI)		**$43.61**	**$373,470**
OPERATING EXPENSES		**PER SF**	
CAMS		$3.67	$31,425
Property Taxes		$3.15	$26,968
Insurance		$0.15	$1,246
Management Fee	4.0% of EGI	$1.66	$14,256
Total Operating Expenses		**$8.63**	**$73,895**
NET OPERATING INCOME		**$34.98**	**$299,575**

RENT ROLL

	TENANT INFO		LEASE TERMS			CURRENT RENT		RENT INCREASES		OPTIONS
TENANT NAME	**SIZE**	**% OF SF**	**RENT START**	**LEASE EXPIRATION**	**LEASE TYPE**	**MONTHLY BASE RENT**	**RENT PSF**	**DATE OF INCREASE**	**MONTHLY BASE RENT**	
Mud Bay, Inc.	**4,918**	**57.43%**	**12/1/19**	**11/30/29**	**NNN**	**$14,098**	**$34.40**	**12/1/24**	**$15,508**	**3, 5-Yr**
Comments: Annually, the tenant shall provide a signed copy of the gross sales from the preceding year.										180 Days Notice 10% Per Period
R+G Veterinary Services, LLC	**2,441**	**28.51%**	**8/21/21**	**8/31/31**	**NNN**	**$7,120**	**$35.00**	**5/1/22**	**$7,262**	**2, 5-Yr**
Comments: Rent Commencement begins 6 months after Delivery, Store opening, or Certificate of Occupancy; expected Delivery is 2/22/2021. Rent abatement period not reflected in the analysis. Annually, the tenant shall provide a signed copy of the gross sales from the preceding year. Personal Guarantee until tenant's financial conditions is shown to be at least equal to the Guarantors' collective financial conditions.								2% Annual Inc.		180 Days Notice 2% Annual Inc.
Sophias Cafe Inc.	**1,204**	**14.06%**	**6/8/21**	**6/30/28**	**NNN**	**$3,512**	**$35.00**	**5/1/22**	**$3,600**	**1, 5-Yr**
Comments: Rent Commencement begins 4 months after Delivery, Store opening, or Certificate of Occupancy; expected Delivery is 2/8/2021. Rent abatement period not reflected in the analysis. Annually, the tenant shall provide a signed copy of the gross sales from the preceding year. Personal Guarantee.								2.5% Annual Inc.		120 Days Notice 2.5% Annual Inc.
TOTALS	**8,563**	**100%**				**$24,730**	**$34.66**			
Occupied	8,563	100%				$24,730	$34.66			

CEDAR CREEK PAD

OPERATING EXPENSES

	PROJECTED OPERATING EXPENSES			REIMBURSEMENTS
	TOTAL	PER SF	NOTES	IN-PLACE
CAMS	$31,425	$3.67	1	$31,425
PROPERTY TAXES	$26,968	$3.15	2	$26,968
INSURANCE	$1,246	$0.15	1	$1,246
MANAGEMENT	$14,256	$1.66	3	$17,071
TOTAL EXPENSES	**$73,895**	**$8.63**		**$76,710**

NOTES:

1) Based on the 2021 Operating Budget.
2) Based on 2020 Washington County Tax Assessment.
3) Based on 4% of EGI. Reimbursements include Admin Fees.

REIMBURSEMENTS

TENANT NAME	SIZE	PRO RATA	CAMS	PROPERTY TAX	INSURANCE	MGMT	ADMIN FEE	ADMIN COLLECTED	NOTES	TENANT TOTALS
EXPENSE TOTAL			$31,425	$26,968	$1,246	$14,256				
Mud Bay, Inc.	4,918	57.43%	$18,048	$15,488	$716	$8,188	15%	$2,815	1, 2	$45,255
R+G Veterinary Services, LLC	2,441	28.51%	$8,958	$7,688	$355	$4,064	0%	$0	1, 3	$21,065
Sophias Cafe Inc.	1,204	14.06%	$4,419	$3,792	$175	$2,004	0%	$0	1, 3	$10,390
TOTAL	8,563	100.00%	$31,425	$26,968	$1,246	$14,256		$2,815		$76,710

NOTES:

1) Controllable CAM capped at 5% annually after the greater Cedar Creek Plaza's first stabilized year (85%+ occupied). Lease also charges a 15% Administration Fee.
2) Lease charges a 15% Administration Fee.
3) Reimbursements do not account for rent abatement periods.

CEDAR CREEK PAD

LEASE ABSTRACT
MUD BAY, INC.

Premise & Term

TENANT	Mud Bay, Inc.
LEASABLE SF	4,918
LEASE TYPE	NNN
RENT COMMENCEMENT	12/1/2019
LEASE EXPIRATION	11/30/2029
TERM	10 Years
OPTIONS	3,5-Year - 180 Days' notice

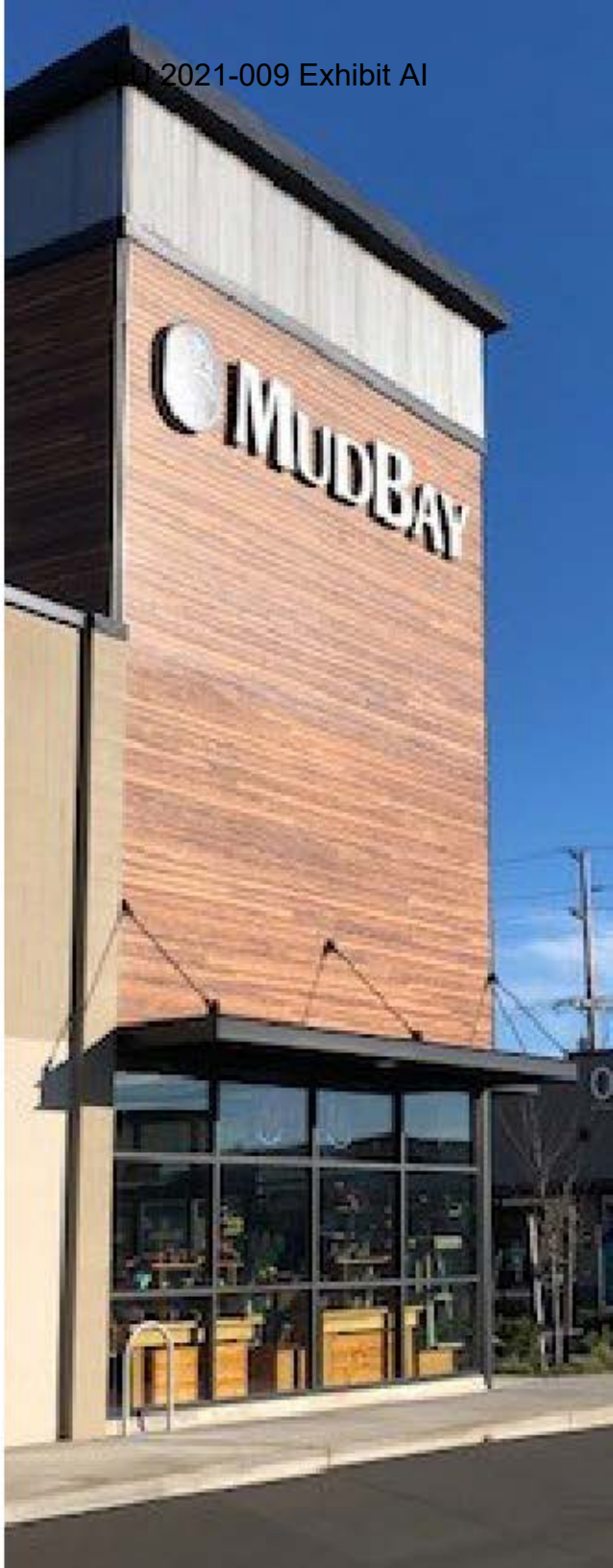
Maintenance & Repair

TENANT'S OBLIGATIONS

Tenant is responsible for all interior maintenance of the premises including HVAC and interior mechanical operating systems.

LANDLORD'S OBLIGATIONS

Landlord is responsible for the capital-related expenses for the roof and structure and the repairs and maintenance to the foundation. HVAC repair and replacement are reimbursed by the tenant (up to $1,000 per year).



Expenses

TAXES

Tenant is responsible for 100% reimbursement of their share of Property Taxes, Landlord's insurance policies, and all common area maintenance and repair, including a management fee and a 15% administration fee.

CAMS

Controllable CAM (all expenses excluding taxes, insurance, utilities, snow removal, and security) is capped at 5% of the first stabilized year (85%+ occupancy of the Retail Center and property taxes have been assessed to reflect this occupancy). Cap amount shall increase annually and cumulatively by 5%.

Lease Provisions

SALES REPORTING

Tenant to provide a financial statement to Landlord no more than once annually, within 10 days upon request of Landlord

CEDAR CREEK PAD

LEASE ABSTRACT
R+G VETERINARY SERVICES, LLC

Premise & Term

TENANT	R+G Veterinary Services, LLC
LEASABLE SF	2,441
LEASE TYPE	NNN
RENT COMMENCEMENT	5/1/2021
LEASE EXPIRATION	4/30/2031
TERM	10 Years
OPTIONS	2,5-Year - 180 Days' notice
GUARANTEE	Personal Guarantee until tenant's finances equal or exceed the combined financial conditions of the Guarantors.

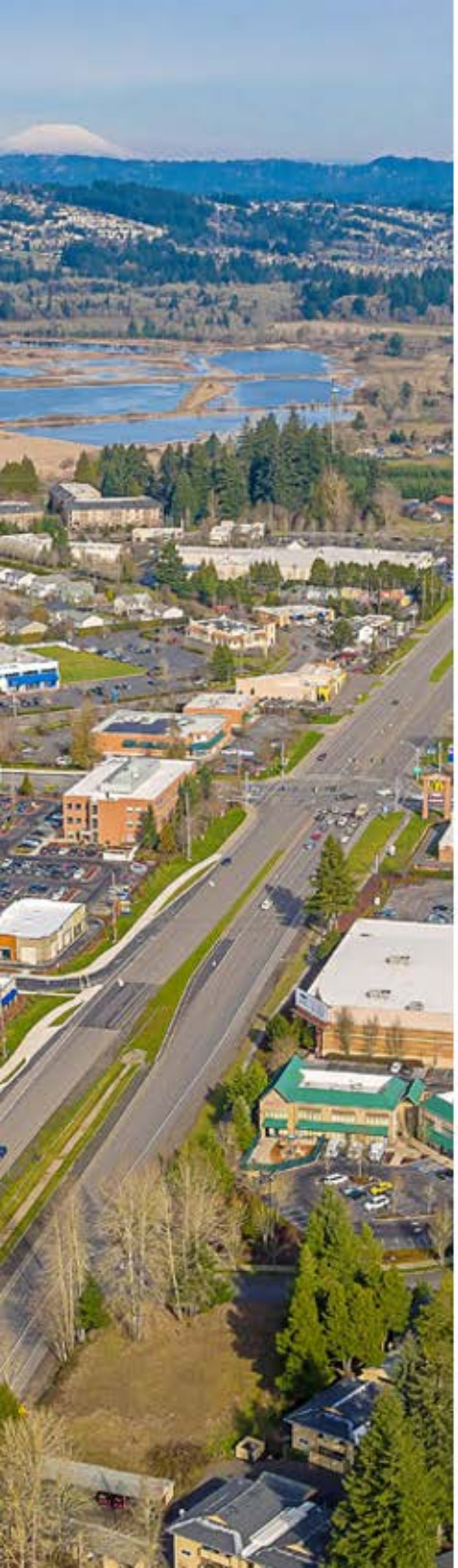
Maintenance & Repair

TENANT'S OBLIGATIONS

Tenant is responsible for all interior maintenance of the premises including HVAC and interior mechanical operating systems.

LANDLORD'S OBLIGATIONS

Landlord is responsible for the capital-related expenses for the roof and structure and the repairs and maintenance to the foundation. HVAC repair and replacement are reimbursed by the tenant.



Expenses

TAXES

Tenant is responsible for 100% reimbursement of their share of Property Taxes, Landlord's insurance policies, and all common area maintenance and repair, including a management fee.

CAMS

Controllable CAM (all expenses excluding taxes, insurance, utilities, snow removal, and security) is capped at 5% of the first stabilized year (85%+ occupancy of the Retail Center and property taxes have been assessed to reflect this occupancy). Cap amount shall increase annually and cumulatively by 5%.

Lease Provisions

SALES REPORTING

Tenant to provide a financial statement to Landlord no more than once annually, within 10 days upon request of Landlord.

LEASE ABSTRACT
SOPHIAS CAFE, INC.

Premise & Term

TENANT	Sophias Cafe, Inc.
LEASABLE SF	1,204
LEASE TYPE	NNN
RENT COMMENCEMENT	5/1/2021
LEASE EXPIRATION	4/30/2028
TERM	7 Years
OPTIONS	1,5-Year - 120 Days' notice
GUARANTEE	Personal

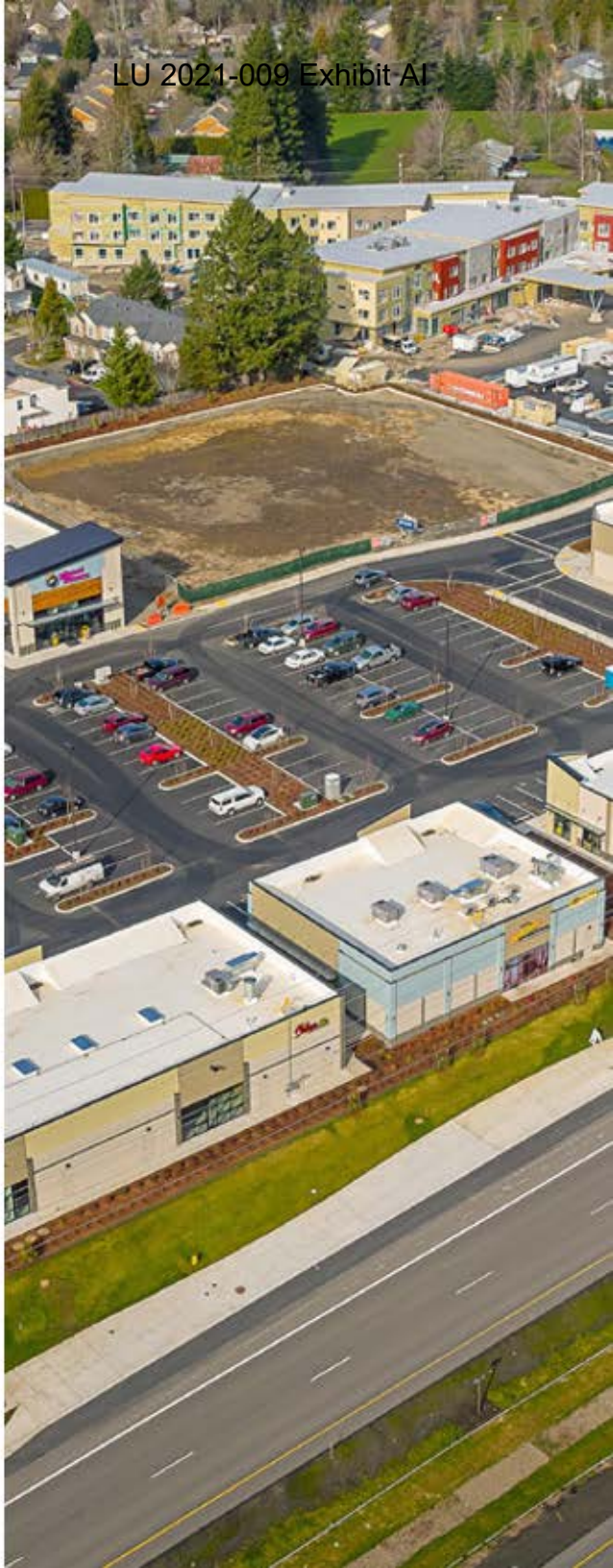
Maintenance & Repair

TENANT'S OBLIGATIONS

Tenant is responsible for all interior maintenance of the premises including HVAC and interior mechanical operating systems. HVAC repair and replacement are reimbursed by the Landlord.

LANDLORD'S OBLIGATIONS

Landlord is responsible for the capital-related expenses for the roof and structure and the repairs and maintenance to the foundation.



Expenses

TAXES

Tenant is responsible for 100% reimbursement of their share of Property Taxes, Landlord's insurance policies, and all common area maintenance and repair, including a management fee.

CAMS

Controllable CAM (all expenses excluding taxes, insurance, utilities, snow removal, and security) is capped at 5% of the first stabilized year (85%+ occupancy of the Retail Center and property taxes have been assessed to reflect this occupancy). Cap amount shall increase annually and cumulatively by 5%.

Lease Provisions

SALES REPORTING

Tenant to provide a financial statement to Landlord no more than once annually, within 10 days upon request of Landlord

CC&RS

CC&Rs are in place for the larger shopping center, Cedar Creek Plaza, that permit cross-easement access across and through all parcels for vehicle and pedestrian access, and shared parking. A Declaration of Easements and Restrictive Covenants with the adjacent Providence and Senior Housing tracts also permit cross-easement access across and through all parcels, yet do not permit shared parking.

ACCESS

Cross-easement access and parking rights are provided for pedestrian and vehicular traffic to guests, patrons, invites of Owners (tenants and their employees).

RESTRICTED USES

The CC&Rs restrict uses that are typical of Class A retail, which include but are not limited to the following: industrial, billiard parlor, game hall, gun range, flea market, marijuana or related products, recycling facility, dry cleaning (dry cleaning pickup site permitted), and auto repair.

TENANT USES

Exclusive Uses

TRACT	EXCLUSIVE	RESTRICTED TRACT	EXEMPTIONS
Deacon Development Parcels	Fitness & Hotel	Sr. Housing	Senior housing, hospital patients
Sr. Housing Parcel	Senior Housing	Deacon Parcels	
Providence Parcel	Hospital or urgent care clinic	Sr. Housing & Deacon	Medical or dental offices that provide health care to customers.

MAINTENANCE & REPAIR

Individual Parcels

Parcel owners are responsible for all maintenance and repair required of their own parcel, and to keep their parcel and portion of the private roadway abutting their parcel lighted. There are three monument/pylon signs, of which the underlying parcel owner is solely responsible for its maintenance, repair, replacement, and lighting.

Private Roadway

Parcel owners are responsible for maintaining their portion of the private roadway crossing their parcel, including sweeping, snow removal, and restriping; general maintenance excludes capital expenses. If a capital expense is required, Providence (or a successor) will appoint a Maintenance Director to obtain bids, manage work, and bill necessary parcel owners.

CAMS - GREATER SHOPPING CENTER

The Declarant (Deacon Development), is responsible for the maintenance and repair of the common elements of the greater shopping center, including the parking areas shared by more than one parcel, roadways, driveways, sidewalks, walkways, landscaping, and storm water systems. Responsibilities include the maintenance and repair of lighting, decorating, security, snow removal, landscaping, irrigation systems, signage, storm drainage, utilities, and parking lot maintenance and repair, including parking lot resurfacing, repaving, striping, and cleaning, alongside Declarant's premium for general liability insurance and a management fee. Declarant to provide an annual statement to each parcel owner by April 15th annually

CAM SHARE

Each Parcel owner is responsible for the direct payment of property taxes for their underlying parcel, and the maintenance and repair for all buildings and utility lines located on their parcel, and for maintaining a liability insurance parcel. Each parcel is billed their share based on the GLA on their parcel in relation to the total GLA of the center.

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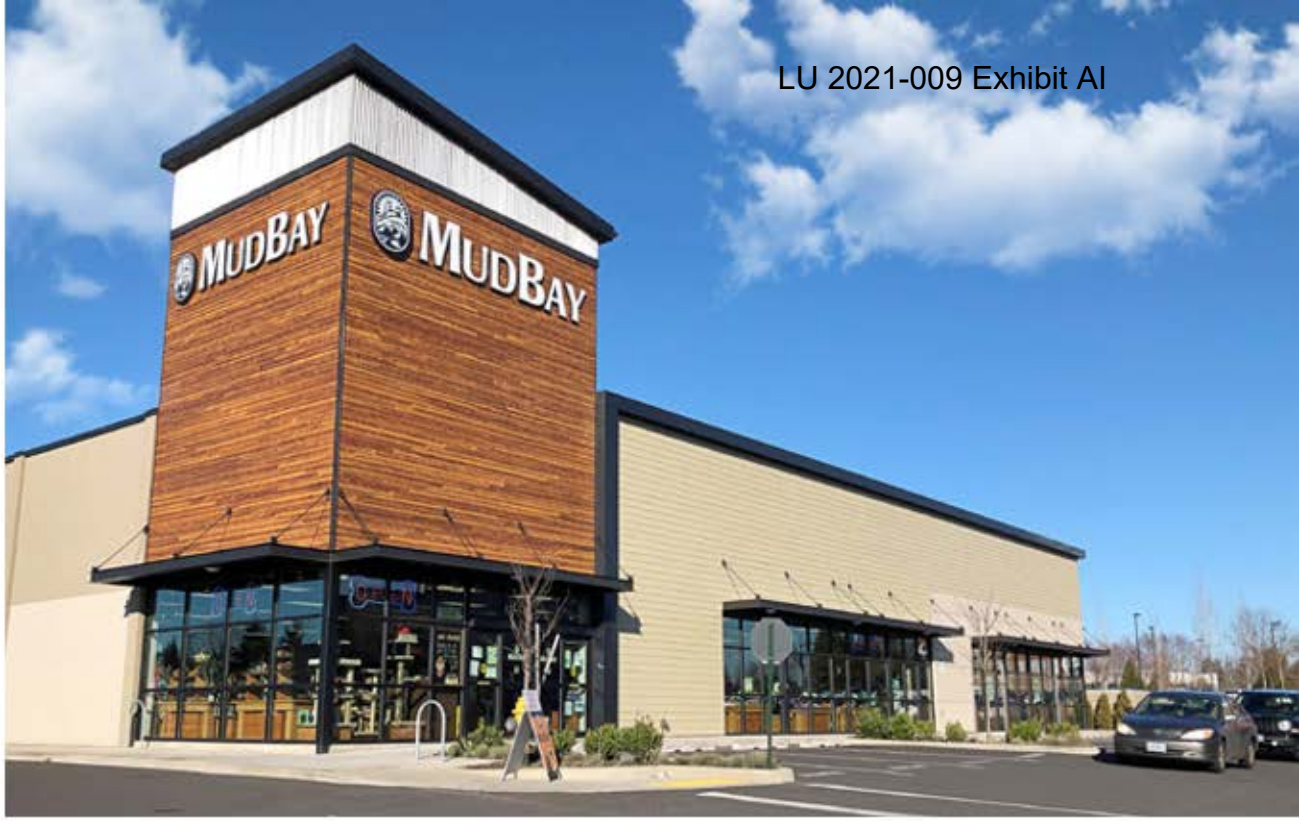

Our brokers collaborate.

KEVIN ADATTO
SEAN TUFTS
MICHAEL HORWITZ
SCOTT FRANK
SEAN MACK
DAVID GELLNER
LANCE SASSER
PETER DUNN
MICHAEL LOWES
MAGGIE WOLK
AUSTIN COHN

MEET THE ENTIRE TEAM HERE.

HATHAWAY LARSON

Koback · Connors · Heth

February 21, 2022

VIA EMAIL

Jean Simpson, Chair
City of Sherwood Planning Commission
22560 SW Pine Street
Sherwood, OR 97140
planningcommission@sherwoodoregon.gov

Re: Case File LU 2021-009 MM-Cedar Creek Multifamily Development

Dear Ms. Simpson and Commission Members:

This firm represents the owners of three properties in the Cedar Creek Plaza: Bob Barman, H & C Holdings, LLC, and Jaffe Sherwood, LLC. We previously submitted a letter to staff on December 3, 2021, and a letter to the Planning Commission on January 24, 2022. We are writing to provide supplemental written testimony on behalf of the above-referenced owners.

1. *The maximum allowed density on Lot 2 is 46 dwelling units and the express text in the development code does not permit any form of density transfer.*

The residential density applicable to the application is in Sherwood Development Code ("SDC") 16.12.050. The number of units of multi-family housing one can place on a lot is determined by the lot area. In this matter, the base standard is 8,000 square feet which is required for the first two units and 1,500 square feet is required for every additional unit. Applying that objective standard, to get 84 apartment units on Lot 2, the applicant needs 131,000 square feet of lot area. The problem for the application is Lot 2 only has 75,359 square feet of lot area. In an attempt to circumvent the plain text in the SDC, the applicant contrived a scheme to include two already developed lots (Lots 3 and 7) in the application and asserted that 38 units that could be placed on those lots can somehow now be placed on the separate Lot 2.

We understand that the record before you will include a letter from David Petersen, who represents the owners of Lot 3, Lake Bowman MHP, LLC. Mr. Petersen aptly explains the fundamental flaws with staff's attempt to unilaterally create outside the normal process, a density transfer provision. Our

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clients adopt Mr. Petersen's points. We add that there is no plausible way to read the current development code to permit any form of density transfer. Any interpretation of the development code has to follow the methodology set forth in *PGE v. BOLI*.[1] See, *Siporin v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). We can dispense with any discussion on the deferential standard because the assertion that the development code allows a density transfer is from staff not the governing body. Staff does not get any deference. At the hearing, staff did not clearly explain how it determined that the current code provisions include a density transfer provision. Any reading of the code under the correct legal standard compels the conclusion that there is no provision that allows any form of density transfer. The plain, unambiguous text in SDC 16.12.030 provides that for residential density in the applicable zone, the applicant can have 46 units. There is no text that allows the applicant to enhance that density using other parcels.

Chair Simpson made it clear in the initial January 25, 2022 hearing, the SDC does not have any provision that allows an applicant to transfer density or other development rights. There is absolutely no text that permits an applicant to borrow square feet from another lot and effectively, albeit factionally, add it to the development lot. The city is not permitted to simply make up a transfer provision in deciding a quasi-judicial application. ORS 227.175 mandates that applications be approved or denied based only on standards set forth in the city's comprehensive plan or land use regulations. Because the SDC does not have any provision allowing the transfer of density or lot area, the applicant is limited to 46 dwelling units on Lot 2.

Deacon presented a convoluted and confusing argument for why it can use density from other lots on Lot 2. Deacon admits that the chart for allowed uses in the RC zone expressly sets forth the standard that multi-family housing is allowed in the RC zone, subject to dimensional requirements in SDC 16.12.030. However, at that point, Deacon leaves the rails apparently asserting that the lots size standard for HDR development is not a dimensional standard. Nothing could be further from reality. The dimensional standard for multi-family development requires 8,000-foot lots for two multi-family units and 1,500 square feet of lot size for each additional unit. That standard is a dimensional standard, and it squarely applies to the application.

It is clear that not even Deacon believes its own argument. Indeed, if Deacon believed it was correct, there was no reason for it to add Lots 3 and 7 to the application. If the lot size standard we recited above does not apply and only setbacks apply, Deacon could have proposed all 84 units on Lot 2 without using Lots 3 and 7. Deacon plainly knows that the lot size standard in SDC 16.12.030 is a dimensional standard, and it applies.

Deacon's reference to deference under *Kaplowitz v. Lane County*, 285 Or App 764 (2017) is clearly misplaced. The deferential standard applies to LUBA's review of interpretations of land use ordinance provision made by the governing body. In this matter, the only person who seems to have accepted Deacon's unsupported interpretation is staff which is not entitled to any deference.

[1] *PGE v. BOLI*, 317 Or 606, 859 P2d 1143 (1993).

Finally, Deacon attempts to interject ORS 197.307 into this matter. As we note above, there is no subjective element to the dimensional lot size standard. The minimum lot size is 8,000 square feet for two units and an owner needs 1,500 square feet over that for every additional unit. The fact that one has to conduct a mathematical calculation does not make a standard less than clear and objective. Deacon's argument that the standards are not clear and objective because one has to select between two charts is simply wrong. There is only one chart that applies. SDC 16.16.22.020 plainly directs that for multi-family development in the RC zone, the application is subject to the dimensional standards in SDC 16.12.030. There is no merit to the argument that a lot size standard is not a dimensional standard. There is no choice between charts.

2. *The current owner of Lot 3, which was included in the application, does not consent to any decision on the application that impacts Lot 3.*

We previously addressed the additional problem with the applicant's attempt to use other lots to avoid the lot area standards. Even if one overlooked the fact that there is no code authority for such action, the applicant does not own Lot 3 and that owner does not want its property to be the subject of any land use decision on the current application. The owners of Lot 3 have engaged its own attorney and we anticipate detailed testimony from that counsel.

For this letter, we want to reemphasize a couple of points. First, this situation does not fall under the goal post rule in ORS 227.178. That rule applies to changes in regulations after an application is deemed complete. In this matter, no party is asserting that any applicable regulation change requires denial. Rather, there was a significant change in facts. Deacon sold Lot 3 after filing the current application. Because the goal post rule does not apply, there is no legal basis for the city to render a decision that impacts Lot 3 without that owner consenting to the processing of the application.

A second significant problem with Deacon's position is that the development rights it seeks to use from Lot 3, belong to the new owner. The owner of Lot 3 will likely provide a copy of the purchase and sale agreement Deacon used to sell Lot 3 to the current owner. That PSA confirms that Deacon sold the property, including all easements, rights, and appurtenances. That means Deacon sold all development rights and entitlements. Consequently, the current owner of Lot 3 owns all development rights that may attach to Lot 3. Deacon is asking the Planning Commission to allow it to use those rights even though it sold them. The effect of a decision approving the current application is to place a restriction on Lot 3. If the Planning Commission allows Deacon to use the lot area of Lot 3 for units on Lot 2, assuming that transfer is permitted, which it is not, Lot 3 will forever be restricted from using development rights that may have attached to that lot. We were not able to locate any legal authority that allows a local jurisdiction to render a decision that places a restriction on property that the owner to which the owner does not consent. Taking the residential density from Lot 3 appears likely to violate ORS 195.305 (Measure 49) by restricting the residential use of that Lot

Deacon asserts that if an applicant gets consent from an owner to submit an application, the applicant has the unfettered right to complete that application and presumably develop the property regardless

of any intervening change in fact. An example helps illustrate the fundamental flaw in Deacon's claim that the city can still issue a decision that includes development rights belonging to the owner of Lot 3. It is not uncommon for a developer to tie up property with a PSA, and to acquire a long due diligence period to seek land use entitlements before they have to close. The PSA in that case requires the owner to consent to the land use applications. Suppose the developer defaults on the PSA before the land use process is complete and the transaction is terminated. Under Deacon's theory, the developer could still complete the land use process and develop property it does not own and is not under contract to acquire. Under Deacon's apparent theory, that change in fact does not matter because at the time of the application, the owner consented. That leads to an absurd situation.

3. *The 2017 Approval requires that Lot 2 be developed with a hotel and the application fails to present a basis to remove that specific condition.*

In our January 24, 2022 letter, we discussed *NE Medford Neighborhood Coalition v. City of Medford*, 53 Or LUBA 277 (2007), where LUBA held that when an application states that the proposed development is for a specific type of development, specific conditions of approval limiting the use to that proposed are not necessary. The evidence of specific and detailed representations by the applicant is in the record. The Planning Commission must determine whether those representations created a condition that Lot 2 be developed as a hotel.

If the Planning Commissions agrees with us, the application is deficient. The applicant has not addressed any questions over whether it can remove that condition. As we noted previously, the application assumes Lot 2 is vacant and there is no condition requiring that it be developed with a hotel. If there is a condition requiring a hotel, the applicant must carry the burden of showing that it is appropriate to remove that condition before it can propose a revised or modified site plan for an apartment. Currently, the applicant has not attempted to show why it should be allowed to remove a condition requiring a hotel.

Deacon's argument that the Lot 3 owner never made title objections is a red herring. No title report would ever reflect a pending land use application. Title reports often do not even reflect final land use decisions. They are excluded from most coverage because they are not recorded with title plants. There was no way the owner of Lot 3 would have known about the application unless Deacon had complied with its legal duty to disclose material facts about the property.

4. *Minimum parking requirements are not met.*

We previously explained how staff reversed its position on the number of required parking spaces the applicant needs on the Deacon Tract. In its revised position, we feel staff is misconstruing the shared parking standards.

The analysis of the required minimum off-street parking involves the interplay between SDC 16.94.010.C (options to reduce required parking) and SDC 16.94.010.E (location of parking).

Again, the methodology set forth in *PGE v BOLI* and *State v. Gaines*[2] applied. We begin with SDC 16.94.010.E which requires that for residential uses all required off-street parking must be on the lot or within the development in which the use is proposed. Nothing in the text of that provision allows any reduction in parking. It simply provides where it must be. SDC 16.94.010.C allows a reduction in the required minimum, but only if certain conditions are met. The provision the applicant here wants to use is the reduction for uses that are located in a mixed-use development. If a proposed use is in a mixed-use development and parking demands do not overlap, the primary use in the development must have 100% of the required parking but other uses can have a reduced number. That provision does not apply automatically just because a proposed residential use is in a mixed-use development. The plain text requires that the proponent of the reduction provide proof that it has the legal right to use parking that is not on the lot where the development is located. A residential use may be in a larger development but if it does not have the legal right to use other lots for residential parking, the applicant for that development cannot apply the reductions in SDC 16.94.010.C.

As we noted, in the initial staff report, staff took a position consistent with the text. It concluded that because the applicant did not provide evidence that it had the right to use parking on the Ackerly (also referred to as the Rembold Tract) or Providence Tracts for residential uses, it could not apply the reductions for shared parking. Now, it appears staff bought the applicant's view that simply because Lot 2 is in a larger development that allows some shared parking, it can consider the assisted living development the primary use and reduce its required parking by 10%. The code text does not support staff's revised position.

The context in which the shared parking provision must be viewed undercuts staff's revised position. To make shared parking workable, the legal proof of the right to use parking must be legal proof that the applicant can use parking on other parcels for the proposed use. Just showing some right to use parking on other parcels means nothing if the right does not extend to the use being proposed. If there is no right for the proposed use to share parking, parking spaces on adjacent parcels mean nothing.

Accepting for now the notion that the Deacon Tract does not have to be considered a separate development for parking under SDC 16.94.010.E, and that Lot 2 is part of the larger development with the Ackerly and Providence Tracts, to use the parking reduction provision in SDC 16.94.010.C, the applicant must have evidence that it has the right to use parking on the Ackerly and Providence Tracts for residential use. There is no dispute; the applicant cannot use either of those tracts for residential parking. The 2017 Declaration of CC&Rs prohibits residents on Lot 2 from parking on the Ackerly and Providence Tracts.

It appears staff read SDC 16.94.010 to mean that if a residential use is part of a mixed-use development, it can automatically use the parking reduction provision for shared parking and consider uses on other tracts as primary regardless of whether the residential use has any rights to

[2] *State v. Gaines*, 346 Or 160 (2009).

park on those tracts. The code text does not support that position. Moreover, sound reasoning undercuts such a position. If an applicant for residential or other uses were allowed to reduce the required parking claiming that a use in the same development is primary even though the applicant has no right to use the parking on the other portions of the development, the city would have many under parked developments.

Another flaw in Deacon's position and the parking analysis Kittleson prepared is how Deacon and Kittleson look at the overall parking that is available. As Mr. Petersen illustrates, even if one gives Deacon the benefit of the parking reduction, Kittleson's own numbers show that there is not enough unrestricted parking on the Deacon Tract for the apartments and other uses. There is a deficiency of 39 spaces. To reach the conclusion Deacon and Kittleson desire, one has to assume that those 39 spaces will always be used only by invitees and guests of the uses on the Deacon Tract. Those spaces are not eligible for residential parking. Without some enforceable restriction on the apartment parking, we believe it is unreasonable and inappropriate to make the assumption Deacon needs.

The correct application of SDC 16.94.010 impacts the current application in at least two material ways. First, the current parking analysis upon which the applicant seeks approval is based on the premise that the applicant needs only 110 total off-street parking spaces for the proposed apartments. That is not the correct number; the applicant needs either 122 or 123, depending on which staff number is used. The applicant has not demonstrated how the parking requirements are satisfied using the correct minimum.

The second problem with parking is the overall shortage in parking on the Deacon Tract and the need to use parking on the Providence Tract. As we noted above, Deacon's own study reveals that if the applicant looks only to the Deacon Tract, upon which it has the right to have residential parking, there are insufficient parking spaces. The applicant's study shows that to meet the total minimum number of spaces, the applicant must use parking on the Providence Tract. Yet, it has not provided proof that it has the legal right to use that tract for residential parking and it is not reasonable to assume only non-residential users will need that parking.

Very truly yours,

HATHAWAY LARSON LLP

s/ Christopher P. Koback

Christopher P. Koback

CPK/ep

Enclosures