

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “**Agreement**”) is entered into as of this ___ day of _____, 2023 (the “**Effective Date**”), by and between SALEM LTC PROPERTIES, LLC, an Oregon limited liability company (“**Seller**”), and THE URBAN RENEWAL AGENCY OF THE CITY OF SALEM, an Oregon quasi-municipal corporation (“**Buyer**”). Buyer and Seller are each a “**Party**” and together the “**Parties**.”

RECITALS

- A. Seller is the owner of that certain real property located in Marion County, Oregon, identified as Tax Lot 073W27BA03100 and commonly known as 295 Commercial Street SE in Salem, at the location shown on Exhibit A (the starred parcel) and to be more particularly described on Exhibit B based upon the Title Report (as defined below) (the “**Property**”). The Property consists of approximately one and fourteen hundredths (1.14) acres.
- B. Buyer desires to purchase the Property from Seller, and Seller wishes to sell the Property to Buyer, on the terms and conditions contained herein.
- C. The Property is currently subject to a development agreement (“**Development Agreement**”) between the Parties dated as of March 10, 2015 (and as amended) (Exhibit C).

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Seller and Buyer agree as follows:

- 1. Agreement of Purchase and Sale.** Subject to and upon the terms and conditions herein, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property, together with all of Seller’s right, title and interest in and to any rights licenses, privileges, reversions and easements appurtenant to the Property.
 - (a) Upon Closing, the Development Agreement shall become null and void.
- 2. Purchase Price.** The purchase price for the Property (the “**Purchase Price**”) is THREE MILLION FIVE HUNDRED THOUSAND Dollars (\$3,500,000) all cash to Seller at the close of escrow.
- 3. Earnest Money.** Within fourteen (14) days of execution, Buyer shall deliver to Joan Cuff, Senior Escrow Officer of Fidelity National Title Company (the “**Title Company**”) located 1220 20th St. SE, Ste 150, Salem Oregon 97302, Twenty-Five Thousand Dollars (\$25,000) (“**Earnest Money**”) as earnest money. Should the transfer of the Property as contemplated by this Agreement not occur for any reason, except those listed in Sections 5 and 6, the Earnest Money shall be fully due and promptly paid to Seller as liquidated damages after which neither party shall have any further rights or obligations under this Agreement.
- 4. Title Company and Title Report.**
 - (a) Title Company. On or before three (3) business days after the Effective Date, the Parties shall deposit an executed copy of this Agreement with the Title Company.

(b) Title Report. As soon as practicable following the Effective Date, Buyer shall obtain and deliver to Seller a current preliminary commitment for title insurance for the Property, issued by the Title Company, together with copies of the underlying documents (the “**Title Report**”).

5. **Buyer’s Review Period.**

(a) Contingencies. In addition to the conditions to closing set forth in Section 6, Buyer’s purchase of the Property is contingent on the following:

- (i) Buyer’s written approval or waiver of the plans and scope of work related to the retaining wall and engineered fill on the Property; within thirty (30) days (the “**Review Deadline**”), after the Effective Date as herein defined;
- (ii) Buyer’s approval of the Title Report within thirty (30) days after the Effective Date as herein defined, it being understood and agreed that Buyer shall have the right by no later than the Review Deadline to advise Seller in writing of its objections to any matters set forth in the Title Report and Seller shall advise Buyer by the Review Deadline which, if any of the Buyer’s objections, Seller is willing to agree to cure prior to the Closing Date, it being understood and agreed that Seller shall have no obligation to cure any of the matters to which Buyer objects and that, unless Buyer exercises its right to terminate this Agreement pursuant to Section 5(b), all matters set forth in the Title Report and to which Buyer either does not object or to which Buyer objects but which Seller does not agree to correct shall be referred to herein as the (“**Permitted Encumbrances**”); and
- (iii) Buyer’s satisfaction with its inspection of the Property pursuant to Section 5(c) below.

(b) Objection and Termination. If any condition set forth in Section 5(a) above is not satisfied to Buyer’s satisfaction within the Review Deadline, then Buyer may terminate this Agreement by notifying Seller on or before three (3) business days after the Review Deadline, in which event the Parties shall have no further obligations under this Agreement except as otherwise expressly provided in this Agreement and the Earnest Money shall be returned to Buyer. Buyer’s failure to timely terminate this Agreement pursuant to this Section 5(b) shall be deemed a waiver or satisfaction of the conditions set forth in Section 5(a) above.

(c) Access.

- (i) From the Effective Date through the Review Deadline, Seller grants to Buyer and Buyer’s agents a right of reasonable access to the Property, for the purposes of inspecting the Property in connection with the condition set forth in Section 5(a) above and/or for any other purpose which Buyer may deem relevant to its determination whether to proceed with the transaction provided for herein after the Review Deadline. With respect to any inspection or testing that is invasive or involves digging, boring or removing any portion of the Property, Buyer must first submit to Seller a written request for any such invasive testing, and Buyer may not proceed with any such invasive testing unless Seller has given written approval of Buyer’s plan; and Seller’s approval shall not be unreasonably withheld, conditioned or delayed. Buyer shall conduct any such invasive testing in strict accordance with the plan approved by Seller. Seller will be entitled to have a representative present at all times during any inspection or testing on the Property. Buyer shall pay when due all costs and expenses of Buyer’s inspections, tests and studies of the Property, including any repair costs necessitated by Buyer’s inspections or testing, regardless of whether the Closing of the purchase and sale of the Property occurs. Buyer shall also return the Property to pre-testing conditions after any testing. Buyer agrees to provide Seller with a true and complete copy of all

environmental studies, tests, and reports that Buyer obtains in connection with its inspection of the Property.

(ii) *Indemnification.* 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 which are the proximate result of the entry onto the Property and/or any activity thereon by Buyer, its agents, employees, representatives or contractors. This indemnity obligation shall survive the Closing or the termination of this Agreement, as applicable.

6. Buyer's Conditions to Close. In addition to the contingencies set forth in Section 5, the following are conditions precedent to Buyer's obligations to consummate the transaction described herein:

(a) Seller shall have timely performed, in all material respects, all the obligations required to be performed by Seller by the terms of this Agreement, including delivery of all of the items required to be delivered by Seller pursuant to this Agreement; and

(b) Buyer shall have obtained a commitment from the Title Company to issue to Buyer a standard coverage owner's title insurance policy in the amount of the Purchase Price subject to no exceptions other than the Permitted Encumbrances (the "Title Insurance Policy").

(c) Seller shall remove from the Property prior to Closing all of Seller's personal property if any located at the Property. The perimeter fence currently surrounding the site shall be left in place. Should the fence not be owned by Seller and leased through a third party, Seller shall assign to Buyer, and Buyer shall assume, Seller's rights relating to the fence, and the amount paid by Seller for the fence for the period in which the Closing Date occurs shall be prorated between the parties.

(d) Buyer may seek to obtain written confirmation from the Oregon Department of Environmental Quality ("DEQ") that Buyer's intended uses of the Property are not prohibited or materially restricted by the Order of Consent dated August 11, 2015 and recorded in Marion County on August 14, 2015 on Reel No. 3733, Page 125 and the Amended and Restated Easement and Equitable Servitudes dated July 27, 2018 and recorded in Marion County on August 1, 2018 on Reel 4106, Page 86. If Buyer is unable to obtain written confirmation from DEQ, then Buyer may, on written notice to Seller, terminate this Agreement and it shall be null and void for all purposes, and all of Buyer's Earnest Money shall be returned to Buyer. If such written notice to terminate is not given to Seller on or before three business days after the Review Deadline, this condition shall be deemed waived by Buyer for all purposes.

7. Seller's Conditions to Close. The following are conditions precedent to Seller's obligations to consummate the transaction described herein:

(a) Buyer shall have timely performed, in all material respects, all the obligations required to be performed by Buyer by the terms of this Agreement, including delivery of all the items required to be delivered by Buyer pursuant to this Agreement.

8. Closing. So long as all conditions precedent to closing set forth herein have then been satisfied or waived in accordance herewith, the closing of the purchase and sale of the Property ("**Closing**") under this Agreement shall take place as soon as possible, but no later than 30 days from the Review Deadline, unless mutually agreed upon by the Parties.

The date on which Closing occurs is the "**Closing Date.**"

9. Conveyance of Property. At Closing, Seller shall convey the Property to Buyer by a warranty deed (the “**Deed**”) conveying to Buyer fee simple title to the Property, subject only to the Permitted Encumbrances.

10. Closing Costs and Taxes. Seller shall pay one-half of any Title Company closing fees, including escrow fees. All recording fees, transfer taxes and assessments, deed stamps, premiums for the Title Insurance Policy, and one-half of any Title Company closing fees, including escrow fees, shall be paid by Buyer. Any property taxes paid by Seller shall be prorated as of the Closing Date, and Buyer shall be responsible for any additional or deferred taxes that may result from this sale or Buyer’s use of the Property. Each party shall pay its own attorney fees, consultant fees and costs, and other expenses solely incurred by that Party. All closing costs not specifically provided for herein shall be allocated between the Parties in accordance with prevailing custom and practice in Marion County, Oregon.

11. Buyer’s Closing Deliveries. On or before the Closing Date, Buyer shall deliver the following:

- (a) to the Title Company:
 - (i) all documents required to be executed in connection with this Agreement; and
 - (ii) immediately available funds in the amount of the Purchase Price minus the Earnest Money, and the amount of all Closing costs and other expenses to be paid by Buyer at Closing pursuant to Section 10, above.

12. Seller’s Closing Deliveries. On or before the Closing Date, Seller shall deliver the following:

- (a) to the Title Company:
 - (i) the executed and acknowledged Deed; and
 - (ii) such other documents and instruments as are reasonably necessary to convey title to the Buyer in accordance with the terms hereof.

13. Representations and Warranties.

(a) Parties’ Representations and Warranties. Each Party makes the following representations and warranties which are true on the date hereof and shall be true on the Closing Date as if made on such date:

(i) *Power and Authority.* The Party is duly organized and existing under the laws of Oregon, and has the requisite right, power and authority to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The Party has taken all action necessary to authorize the execution, delivery and performance of this Agreement. The performance by the Party of its obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, document or instrument to which the Party is a party or by which it is bound or affected. All proceedings required to be taken by or on behalf of the Party to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken.

(ii) *Validity of Agreement.* This Agreement and all other documents required by this Agreement to be executed by Party shall constitute, when so executed, the valid and binding obligation of the Party thereto, enforceable against it in accordance with their respective terms.

(b) Survival. All representations and warranties made by the Parties hereunder shall survive Closing.

14. Purchase AS-IS; No Representations by Seller.

(a) Buyer understands, acknowledges and agrees that Buyer is buying Property “AS-IS” and “WHERE-IS,” with all faults and without any representations or warranties, express, implied or statutory, of any kind whatsoever (including, without limitation, any representations or warranties regarding environmental matters), by Seller, its agents, brokers, consultants, counsel, employees, managers or any other person, except those expressly set forth in this Agreement.

(b) The Parties acknowledge that the closing of the sale of the Property is conditioned upon Buyer’s inspection of the Property, to Buyer’s satisfaction, as provided in Section 5, above. Buyer shall have the opportunity, prior to closing, to fully inspect, investigate and complete all due diligence relating to the Property as and to the extent provided by this Agreement.

15. Attorneys’ Fees. In the event of any arbitration or litigation between the parties to declare or enforce any provision of this Agreement, the prevailing party or parties shall be entitled to recover from the losing party or parties, in addition to any other recovery and costs, reasonable attorneys’ fees incurred in such action in arbitration, trial and all appellate courts.

16. Statutory Disclaimer. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

17. Defaults and Failure to Close

(a) Default by the Seller. If the close of escrow and the consummation of this transaction herein contemplated does not occur by reason of any default by Seller, the Buyer shall be entitled to either (i) sue for specific performance of Seller’s obligations under this Agreement or (ii) terminate this Agreement on written notice to Seller, in which case Seller shall be required to reimburse Buyer for its actual out of pocket costs and expenses incurred in connection with the transaction prior to the date of termination, up to a maximum of Twenty-Five Thousand Dollars (\$25,000); provided, however, if Buyer has not commenced an action for specific performance within thirty (30) days of first becoming aware of the Seller’s default, Buyer shall be deemed to have elected the remedy in clause (ii).

(b) **Default by the Buyer.** If the close of escrow and the consummation of this transaction herein contemplated does not occur by reason of any default by Buyer, the Seller shall be entitled to retain the Earnest Money as liquidated damages. SELLER'S SOLE REMEDY SHALL BE TO RETAIN BUYER'S EARNEST MONEY, INCLUDING ANY ACCRUED INTEREST, AS FULL AND COMPLETE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGING AND AGREEING THAT THE AMOUNT OF DAMAGES WHICH SELLER MAY INCUR AS A RESULT OF SUCH TERMINATION IS DIFFICULT TO ASCERTAIN AND THAT THE AMOUNT OF THE EARNEST MONEY IS A REASONABLE AND FAIR ESTIMATE THEREOF.

(c) **Cancellation Charges.** If this Agreement is terminated because of the Seller's default, the Seller will bear any cancellation charges required to be paid to the Title Company. If this escrow terminates because of the Buyer's default, the Buyer will bear any cancellation charges required to be paid to the Title Company. Otherwise, the Parties shall each pay one-half of any required cancellation charges.

(d) **Limitation on Damages.** Notwithstanding anything to the contrary set forth in this Agreement, neither Party shall be liable to the other for special, incidental, consequential or punitive damages.

18. Notices.

(a) Addresses. An “**Address**” means the address set forth beneath a Party's signature on this Agreement. Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 18(b) below to the other Party's Address, unless one Party modifies its Address by notice to the other Party, given in accordance with Section 18(b) below.

(b) Delivery.

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email	the day sent (unless sent after 5:00 p.m., P.T., in which case the email shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt
Courier delivery	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

19. Miscellaneous.

(a) Time is of the Essence; Calculation of Days. Time is of the essence in relation to the Parties' performance of any and all of their obligations under this Agreement. Any reference in this Agreement to “days” shall mean calendar days, unless specified as “business days.” A business day is any day that is not a Saturday, Sunday or a federal or state of Oregon holiday.

(b) Integration. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. The Parties have no understandings, agreements or representations, oral or written, regarding this Agreement that are not specified herein.

- (c) Amendments and Assignment. This Agreement may be amended or modified only by a written instrument signed by both Parties. This Agreement may not be assigned by Seller. This Agreement may not be assigned by Buyer without the consent of Seller, which consent may be withheld in its sole and absolute discretion.
- (d) No Waiver of Performance. No waiver by a Party of performance of any provision of this Agreement by the other Party shall be deemed a waiver of nor prejudice the other Party's right to otherwise require performance of the same provision, or any other provision.
- (e) Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- (f) Counterparts. This Agreement and any amendments hereto may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.
- (g) Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim between Seller and Buyer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.
- (h) No Presumption against Drafter. No inference, presumption or conclusion shall be drawn against either Party by virtue of that Party having drafted this Agreement or any portion thereof.
- (i) Brokers. Buyer hereby represents, covenants, and warrants to Seller that Buyer has employed no broker or finder in connection with the transaction contemplated herein. Seller hereby represents, covenants, and warrants to Buyer that Seller has employed no broker or finder in connection with the transaction contemplated herein other than Ken Howe of Berkshire Hathaway HomeServices Real Estate ("**Seller's Broker**"). Seller's Broker shall be paid by Seller at Closing pursuant to the terms of a listing agreement between Seller and Seller's Broker. Each party hereby agrees to indemnify, defend and hold harmless the other from and against any and all losses, liability, costs, damages and expenses resulting from any action taken by the indemnifying party which would result in any other commission, finder's fee or other fees being due and payable to any other party with respect to this transaction.
- (j) Exhibits. The Exhibit listed below is incorporated as part of this Agreement:
- Exhibit A: Site Map
 - Exhibit B: Legal Description (to be based upon the Title Report)
 - Exhibit C: Development Agreement

Each person signing this Agreement below on behalf of a Party represents and warrants that he or she is duly authorized by such Party and has legal capacity to do so.

SELLER:

Salem LTC Properties, LLC

_____ Date: _____
Phillip G. Fogg, Jr.

Notices to be sent to:

Address: 4560 SE International Way Suite 100
City, State, ZIP: Milwaukie, OR 97222
ATTN: Steve Fogg
Email: sfogg@marquiscompanies.com

BUYER:

The Urban Renewal Agency of the City of Salem, an Oregon quasi-municipal corporation

By: _____ Date: _____
Name: Keith Stahley, ICMA-CM
Its: Executive Director

Notices to be sent to:

Address: 350 Commercial St. NE
City, State, ZIP: Salem, OR 97301
ATTN: Real Property Services Manager
Email: cdameron@cityofsalem.net

EXHIBIT A
Site Map

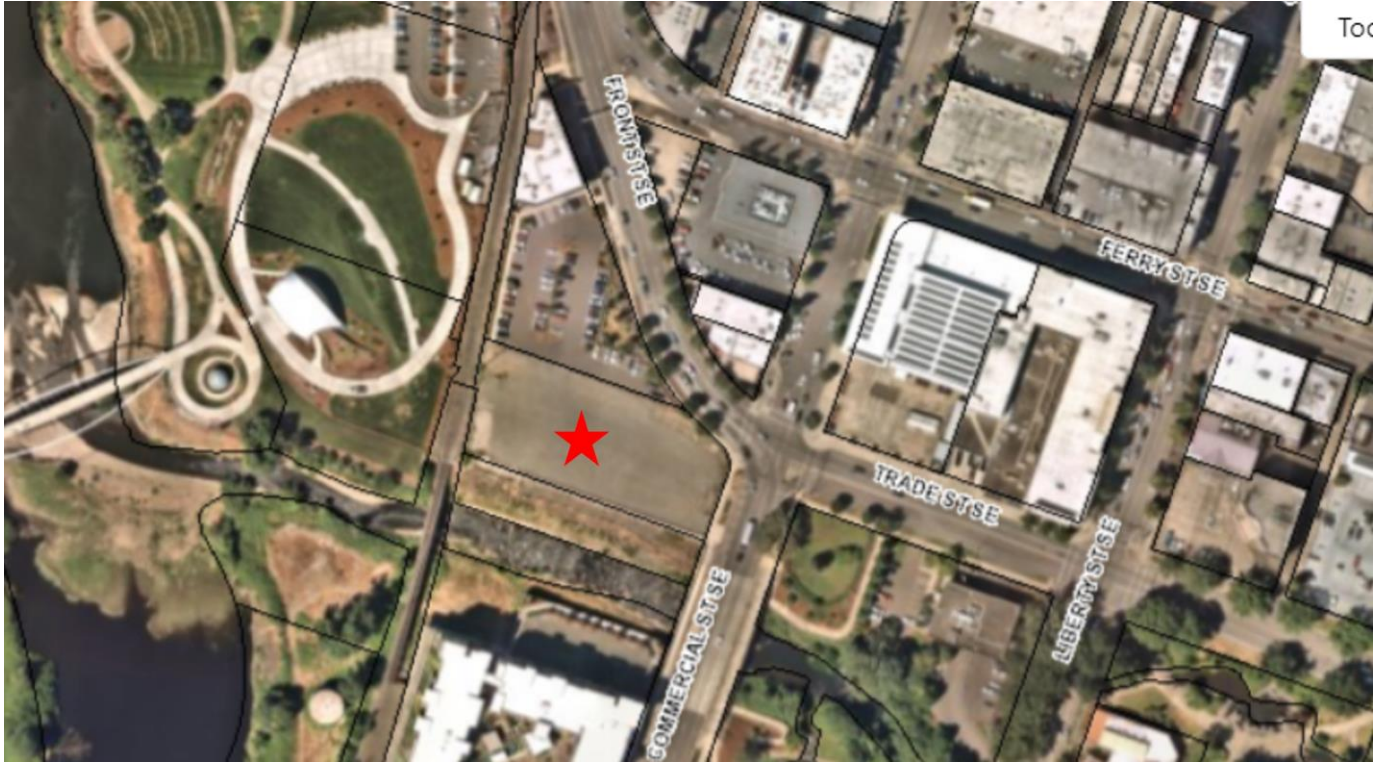


EXHIBIT B
Legal Description

[to be conformed as appropriate to mutually agreed legal description based upon the Title Report]

Parcel #: 589301
Tax Lot: 073W27BA03100
Legal: P.P. 2015-033, Parcel 2 0.66 Acres

Parcel #: 343273
Tax Lot: 073W27BA03100
Legal: P.P. 2015—033, Parcel 2 0.48

EXHIBIT C
Development Agreement

See attached.