

RESOLUTION NO. 5106-12

RESOLUTION CONSENTING TO THE ASSIGNMENT OF A
DEVELOPMENT AGREEMENT BY BOONES FERRY ROAD
APARTMENTS INVESTORS LLC

WHEREAS the City of Tualatin and Bridgeport Apartments LLC entered into a Development Agreement dated June 9, 2008, regarding the proposed development on the former site of the Schneider Trucking and Lane International facilities on Lower Boones Ferry Road; and

WHEREAS Bridgeport Apartments LLC is in the process of selling all of its interests in the property to Boones Ferry Road Apartment Investors LLC, ("Boones Ferry Apartments") including transferring its rights and responsibilities in the Development Agreement and the subsequent letter agreement from Trammell Crow Residential dated November 19, 2008; and

WHEREAS Boones Ferry Apartments wishes to assign, transfer and set over its right, title and interest in the Development Agreement and letter to and for the benefit of its lender, the National Bank of Arizona, at closing;

WHEREAS the Development Agreement requires consent from the City to before such assignment can occur.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City Council consents to the assignment of the Development Agreement, including the November 9, 2008 letter agreement by Boones Ferry Road Apartments Investors LLC to and for the benefit of National Bank of Arizona.

INTRODUCED AND ADOPTED this 25th day of June, 2012.


CITY OF TUALATIN, OREGON

By  _____
Mayor

ATTEST:

By  _____
City Recorder

APPROVED AS TO LEGAL FORM



CITY ATTORNEY

ASSIGNMENT OF DEVELOPMENT AGREEMENT WITH CITY

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT WITH CITY ("Assignment") is made and entered into as of June 20, 2012, by BOONES FERRY ROAD APARTMENTS INVESTORS LLC, a Delaware limited liability company ("Assignor"), to and for the benefit of NATIONAL BANK OF ARIZONA, a national banking association ("Assignee").

FOR VALUE RECEIVED, Assignor does hereby collaterally assign, transfer, and set over to Assignee all of its right, title and interest in and to that certain Development Agreement, last dated June 9, 2008, by and between City of Tualatin ("City") and Assignor, and all amendments, modifications, supplements, general conditions, change orders and addenda thereto, including, without limitation, that certain letter agreement from Trammell Crow Residential dated November 19, 2003, to the City of Tualatin regarding Acknowledgment of Offsite Sewer Upgrade Work (collectively, the "Agreement"), heretofore and hereafter entered into in connection with the development of certain real property (the "Premises") more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

A. THIS ASSIGNMENT IS MADE FOR THE PURPOSE OF SECURING:

(1) The payment of all indebtedness evidenced by that certain Secured Promissory Note of even date herewith in the maximum principal amount of Forty-Three Million Seven Hundred Forty-Two Thousand Six Hundred Thirty-One and No/100 Dollars (\$43,742,631.00) with interest thereon, executed by Assignor and delivered to Assignee (as it may be amended, modified, extended, restated [in whole or in part], and renewed from time to time) (the "Note").

(2) The performance of and compliance with all of the terms, covenants and conditions set forth herein, in that certain Construction Loan Agreement of even date herewith, executed by Assignor, as Borrower, and Assignee, as Lender (as it may be amended, modified, extended, restated in whole or in part, and renewed from time to time) (the "Loan Agreement"), in the Note, the Deed of Trust, or any other Loan Document (all as defined in the Loan Agreement), and in any other loan agreement, promissory note or other agreement now or hereafter executed by Assignor which recites that performance of the obligations thereunder is secured hereby.

B. CONCURRENTLY HEREWITH ASSIGNOR HAS GRANTED TO ASSIGNEE A SECURITY INTEREST IN THE AGREEMENT PURSUANT TO THE SECURITY AGREEMENT CONTAINED IN THE DEED OF TRUST.

C. ASSIGNOR AGREES:

(1) To faithfully abide by, perform and discharge each and every material obligation, covenant and agreement of the Agreement to be performed by Assignor thereunder, at no cost or expense to Assignee, and: (a) to use commercially reasonable efforts to enforce or secure the performance of each and every material obligation, covenant, condition and agreement contained in the Agreement and to be performed by City; and (b) except as permitted under the Loan Agreement, not to modify, extend or in any way alter the terms of the Agreement in any material

manner or accept a surrender thereof, or to waive, excuse, condone or in any manner release or discharge City of or from the obligations, covenants, conditions and agreements to be performed by City in the manner and at the place and time specified therein. Subject to the provisions of the Loan Agreement, Assignor hereby expressly releases, relinquishes and surrenders unto Assignee all its right, power and authority to materially amend, modify, cancel, terminate or in any way materially alter the terms or provisions of the Agreement in any material manner without the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed.

(2) That, at no cost or expense to Assignee, Assignor shall appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Agreement or the obligations, duties or liabilities of Assignor thereunder, and shall pay all costs and expenses of Assignee, including reasonable attorneys' fees and expenses, in any action or proceeding concerning the Agreement in which Assignee may appear.

(3) That, if Assignor fails to make any payment or to do any act as herein provided or fails to do so promptly upon demand by Assignee, and does not promptly cure such failure within the time periods provided in the Loan Agreement, then Assignee shall have the right, but without the obligation so to do, without releasing Assignor from any obligation hereof and without notice to or demand upon Assignor, to make such payment or to do such act in such manner and to such extent as Assignee may deem necessary to prevent the material impairment of the security hereof, including, without limiting the generality of the foregoing, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and to perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Agreement, and in exercising any such rights or powers to employ counsel and pay such costs and expenses as Assignee shall incur, including, without limitation, reasonable attorneys' fees.

(4) To pay promptly upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the Agreed Rate (as defined in the Deed of Trust).

D. THE PARTIES HERETO MUTUALLY AGREE THAT:

(1) As long as no Event of Default has occurred and is continuing under the Loan Documents (as Event of Default is defined therein), Assignor shall have the right to exercise all of its rights (other than its rights to materially amend, modify, cancel, terminate or in any way alter the terms of the Agreement except as aforesaid and subject to the provisions of the Loan Agreement) under the Agreement.

(2) Assignor agrees that Assignee does not assume any of Assignor's obligations or duties concerning the Agreement until and unless Assignee shall exercise its rights hereunder.

(3) Assignee shall not exercise its rights under this Assignment until the occurrence and during the continuation of an Event of Default under any of the Loan Documents. Upon the occurrence and during the continuation of such an Event of Default, Assignee may, at its option, upon written notice to City, exercise all of its rights granted under this Assignment. Upon giving

such notice to City, Assignee shall thereby assume all obligations of Assignor under the Agreement, including, without limitation, the right to receive and collect all moneys and other payments receivable by, or payable to, Assignor under the Agreement, the right to give and receive copies of all notices and other instruments or communications, and the right to cure or take action with respect to a default under the Agreement. Assignor hereby irrevocably constitutes and appoints Assignee, upon the occurrence and during the continuation of an Event of Default, as its attorney-in-fact to demand, receive and enforce Assignor's rights with respect to the Agreement, to give appropriate receipts, releases and satisfactions for and on behalf of Assignor, and to do any and all acts in the name of Assignor or in the name of Assignee with the same force and effect as Assignor could do if this Assignment had not been made. The exercise of any of the foregoing rights or remedies by Assignee under this Assignment shall not cure or waive, modify or affect any notice of Event of Default under any of the foregoing, or invalidate any act done pursuant to any such notice. Assignee may exercise its rights under this Paragraph 3 as often as any such Event of Default may occur and be continuing. The exercise of such rights shall not constitute a waiver of any of the remedies of Assignee under the Loan Documents, or any other document or agreement existing at law or in equity, by statute or otherwise.

(4) Assignor shall and does hereby agree to indemnify, defend and hold Assignee harmless for, from and against any and all liability, loss or damage which it may or might incur under the Agreement or under or by reason of this Assignment and for, from and against any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking in its part to perform or discharge any of the terms, covenants or agreements contained in the Agreement or under or by reason of this Assignment, except for gross negligence or willful misconduct of Lender and its agents and assigns. Except as expressly provided in the preceding sentence, should Assignee incur any such liability, loss or damage under the Agreement or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the Agreed Rate, shall be secured hereby, and Assignor shall reimburse Assignee therefor promptly upon demand.

(5) Until the indebtedness secured hereby shall have been paid in full and all obligations secured hereunder shall have been satisfied, Assignor covenants and agrees to transfer and assign to Assignee any and all subsequent agreements which are entered into pursuant to, in replacement of or to serve substantially the same purpose as, the Agreement, upon the same or substantially the same terms and conditions as herein contained, and to make, execute and deliver to Assignee, upon demand, any and all instruments that may be necessary therefor.

(6) Upon payment in full of all indebtedness secured hereby, this Assignment shall become and be void and of no effect, but the affidavit of any officer or loan correspondent of Assignee showing any part of said indebtedness remaining unpaid or any obligation not satisfied shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon. Upon such termination, all the estate, right, title, interest, claim and demand of Assignee under the Agreement shall revert to Assignor, and Assignee shall, at the request of Assignor, deliver to Assignor an instrument canceling the Assignment and reassigning the Agreement to Assignor.

(7) Assignor warrants that the Agreement has not been amended or modified except as set forth herein, that no default by Assignor exists thereunder, that no event has occurred or exists which, with notice or lapse of time or both, would constitute a default by Assignor thereunder, and that, to the best knowledge of Assignor, no default by City exists which, with notice or lapse of time or both, would constitute a default by City thereunder.

(8) All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand, or sent via overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, through the United States Postal Service to the addresses set forth in the Loan Agreement or such other addresses which the parties may provide in accordance therewith. Such notices, requests and demands, if sent by mail, shall be deemed given three (3) business days after deposit in the United States mail, and if delivered by hand or overnight delivery service, shall be deemed given when delivered.

(9) Assignor hereby represents and warrants to Assignee that no previous assignment of its interest in the Agreement has been made and, except for transfers to Assignee, Assignor agrees not to assign, sell, pledge, transfer, or otherwise encumber its interest in the Agreement so long as this Assignment is in effect.

(10) This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, or successors in interest of the Assignor and Assignee.

(11) This Assignment shall be governed by and construed and interpreted in accordance with the laws of the State of Arizona, without giving effect to conflict of laws principles.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the day and year first above written.

BOONES FERRY ROAD APARTMENTS
INVESTORS LLC, a Delaware limited liability
company

By: MCRT Bridgeport LLC, a Delaware limited
liability company, its managing member

By: _____

Name: Eric J. Lezak

Title: Chief Financial Officer

"ASSIGNOR"

CONSENT TO ASSIGNMENT OF DEVELOPMENT AGREEMENT WITH CITY

In consideration of NATIONAL BANK OF ARIZONA, a national banking association ("Assignee"), making a loan to BOONES FERRY ROAD APARTMENTS INVESTORS LLC, a Delaware limited liability company ("Assignor"), for Forty-Three Million Seven Hundred Forty-Two Thousand Six Hundred Thirty-One and No/100 Dollars (\$43,742,631.00), for the purpose, among other things, of financing the development of certain real property (the "Premises") described in and to be constructed under that certain Development Agreement, last dated June 9, 2008, by and between City of Tualatin ("City"), and Assignor, and all amendments, modifications, supplements, general conditions, change orders and addenda thereto, including, without limitation, that certain letter agreement from Trammell Crow Residential dated November 19, 2003, to the City of Tualatin regarding Acknowledgment of Offsite Sewer Upgrade Work (collectively, the "Agreement"), City hereby consents to the assignment to Assignee by Assignor of all of Assignor's right, title and interest in, to and under the Agreement, and agrees with Assignee as follows:

1. Representations. In connection with the Loan and the assignment of the Agreement by Assignor to the Assignee, the City certifies and represents to the Assignee that:

(a) The Agreement has not been altered, amended or modified since the date of its original execution, and is presently in full force and effect.

(b) As of this date, the City has fulfilled all of its duties and obligations under the Agreement to be fulfilled as of this date and is not in default under the terms, conditions, covenants and obligations of the Agreement. To the best of the City's actual knowledge, and as of this date, Assignor is not in default under the terms, conditions, covenants and obligations of the Agreement.

(c) The City acknowledges the collateral assignment of the Agreement from Assignor to Assignee as security for the Loan.

(d) During the term of the Loan, the City shall not enter into any agreement with Assignor to modify the Agreement or any attachment thereto without the prior written consent of Assignee, which consent shall not be unreasonably withheld or delayed.

(e) Whenever the City shall deliver any notice of default to Assignor with respect to the Agreement, the City shall, at the same time, deliver to Assignee a copy of such notice of default.

(f) Upon an Event of Default by Assignor under the Loan Documents, Assignee, upon satisfying all of Assignor's obligations under the Agreement, and the continued satisfaction of all of Assignor's obligations under the Agreement, shall be entitled to all of the rights and benefits of Assignor under the Agreement.

(g) The City shall take no action to terminate or cancel the Agreement for any reason including any breach by Assignor unless and until it shall have given Assignee fifteen (15) days prior written notice advising Assignee of the action proposed to be taken

and the reasons therefor. During such fifteen (15) day period, Assignee may, at its option, and without relieving Assignor of any of its obligations under any Loan Document, the Agreement or hereunder, take any actions necessary in order to eliminate the reasons for the proposed action of the City, provided, however, in the event a default by Assignor is not reasonably curable by Assignee within any time limitations or deadlines under the Agreement, Assignee shall have such longer period of time as may be reasonably necessary to effect such cure, so long as Assignee promptly cures such defaults and at all times diligently pursues such cure.


(h) The City warrants that this Consent to Assignment and the Agreement have been duly authorized.

2. Waiver and Discharge. To the extent that the City renders performance to Assignee under the Agreement pursuant to any notice delivered by Assignee to the City pursuant to the attached Assignment of Development Agreement or this Acknowledgment, the City shall, to the extent of such performance, be discharged under the Agreement and Assignor waives any claim or demand it might otherwise have against the City and the City acting in reliance upon any notice delivered by Assignee to the City pursuant to this Acknowledgment or the attached Assignment of Development Agreement.

[SIGNATURE PAGES FOLLOW]

Dated: June 20, 2012.

CITY OF TUALATIN

By: 
Name: Lou Ogden
Title: Mayor

“City”

ATTEST:



APPROVED AS TO FORM:

By: 
City Attorney

Date: 6/25/2012

BOONES FERRY ROAD APARTMENTS
INVESTORS LLC, a Delaware limited liability
company

By: MCRT Bridgeport LLC, a Delaware
limited liability company, its managing
member

By: _____
Name: Eric J. Lezak
Title: Chief Financial Officer

“Assignor”

STATE OF OREGON)
) ss.
County of Washington)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, the _____ of the CITY OF TUALATIN.

NOTARY PUBLIC

My commission expires:

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

On _____ before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

Legal Description of Premises

PARCEL I:

Lot 62, TUALATIN VALLEY HOMES, in the City of Tualatin, County of Washington and State of Oregon, and that part of Lot 72, described as the Southeasterly 196.33 feet of Tract 72, TUALATIN VALLEY HOMES, in the City of Tualatin, County of Washington and State of Oregon, the Northwesterly line of the tract being parallel to the Southeasterly line of said Tract 72.

EXCEPTING THEREFROM that portion thereof granted to the City of Tualatin for street, road, right of way and public utility purposes described in Deed recorded June 29, 1987 as Recorder's Fee No. 87-033303.

TOGETHER WITH an Easement for landscaping and sidewalks, over portions of Lots 73 and 74, TUALATIN VALLEY HOMES, described more fully in Agreement recorded December 26, 2008 as fee no. 2008-100456.

PARCEL II:

Lots 63 and 64, TUALATIN VALLEY HOMES, in the City of Tualatin, County of Washington and State of Oregon. EXCEPTING THEREFROM, the South 148.5 feet of said Lot 64, as described in Deed to Joe A. Mayfield, recorded in Book 239, Page 665, Washington County Deed Records.

EXCEPTING THEREFROM that portion thereof conveyed to Washington County, a political subdivision of the state of Oregon, by right-of-way Dedication Deed recorded October 3, 2008 as fee no. 2008-083153.

PARCEL III:

THE SOUTH 148.5 FEET OF LOT 64, TUALATIN VALLEY HOMES, A PLAT OF RECORD IN WASHINGTON COUNTY, SITUATED IN THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 1 WEST, W.M., WASHINGTON COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF SAID LOT 64 WITH THE NORTHWESTERLY RIGHT OF WAY LINE OF SW LOWER BOONES FERRY ROAD AS DEDICATED TO WASHINGTON COUNTY IN DOCUMENT NUMBER 2008-083153, WASHINGTON COUNTY DEED RECORDS, SAID POINT OF BEGINNING BEARS N37°28'21"W, 4.02 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 64; THENCE ALONG THE WEST LINE OF SAID LOT 64, N37°28'21"W, 145.17 FEET; THENCE LEAVING

SAID LINE, ALONG A LINE PARALLEL WITH THE SOUTHEASTERLY LINE OF SAID LOT 64, N47°01'32"E, 220.90 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID LOT 64; THENCE ALONG SAID LINE, S37°28'41"E, 145.17 FEET TO SAID NORTHWESTERLY RIGHT OF WAY LINE; THENCE ALONG SAID LINE, S47°01'32"W, 220.92 TO THE POINT OF BEGINNING.

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TUALATIN AND
BRIDGEPORT APARTMENTS LLC**

RECITALS

- A. This development agreement (“Agreement”) is entered into between the City of Tualatin (“Tualatin” or “City”) and Bridgeport Apartments LLC, a Delaware limited liability company (“Bridgeport Apartments”).
- B. The subject property, which was formerly the site of the Schneider Trucking and Lane International facilities, includes approximately 4.61 acres within the City of Durham (“Durham”) and approximately 4.35 acres within Tualatin (Exhibit A).
- C. On January 9, 2008, Tualatin and Durham entered into an Urban Services Intergovernmental Agreement (“IGA”) in which both cities agreed to “work with the developer of the Site to negotiate a development agreement that addresses development-related issues, such as, but not limited to, limiting traffic impacts, number of residential units, required off-site improvements and applicable criteria.” IGA, Section 2.3.6 (Exhibit B).
- D. An entity which is affiliated with Bridgeport Apartments or managed by Bridgeport Apartments (such entity is referred to as “Developer”) intends to be the developer of the Site (defined in Section 1 of this Agreement). Developer intends to redevelop the Site with a mixed-use project titled the Alexan Bridgeport Project for which an Architectural Review application was submitted to Tualatin on April 14, 2008 (the “Project”) and subsequently modified on May 28, 2008. The Scope of Development is defined in Section 3 of this Agreement.
- E. The Parties desire to enter into this Agreement, in accordance with IGA Section 2.3.6, for the purpose of addressing the Project’s development-related issues (such as, but not limited to, number of residential units, vehicular circulation and pedestrian connectivity, traffic impacts, and off-site improvements) for Developer’s proposed development of the Site (see Section 1). Because the Project is subject to land use approval by the City, the City cannot predetermine conditions of approval; however, the Agreement sets forth the Parties’ expectations for the Project.
- F. This Agreement is not a statutory development agreement (ORS Chapter 94).

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. AREA AFFECTED BY THIS AGREEMENT. The area affected by this Agreement is property generally referred to as that portion of the former Schneider Trucking site and Lane International facility located at 18045, 18067 and 18075 SW Lower Boones Ferry Road and comprising approximately 4.35 acres in Tualatin (Tax Lots 1300, 1800, and 1900 of Map 2S113DC). The entire Alexan Bridgeport project site also includes approximately 4.61

Y-500

acres in Durham (Tax Lot 1400 of Map 2S113DC) and, therefore, is comprised of a total of approximately 8.96 acres as shown on Exhibit A, however, the area affected by this Agreement is only that portion located within Tualatin.

SECTION 2. PROJECT AFFECTED BY THIS AGREEMENT. This Agreement shall apply only if the Site is developed as the Project.

SECTION 3. SCOPE OF DEVELOPMENT. If the Site is developed as the Project, Developer shall cause to be completed a development with the following characteristics:

3.1 A mixed-use development including a maximum of 370 multifamily residential units (apartments and live-work units) and a maximum of 24,000 square feet of retail and restaurant space on the 8.96-acre Site of which approximately 4.61 acres are in Durham and approximately 4.35 acres are in Tualatin. An Architectural Review application was submitted to Tualatin on April 14, 2008, which includes the following distribution of multifamily residential units and commercial space between Tualatin and Durham:

	Tualatin	Durham	Total
Residential Dwelling Units			
Studio	0	19	19
1 Bedroom	115	102	217
2 Bedroom	23	71	94
3 Bedroom	8	4	12
Live/Work (1 Bedroom)	0	12	12
Townhouse (2 Bedroom)	8	6	14
Total	154	214	368
Commercial ^{*1}			
Specialty Retail	18,000	0	18,000
Restaurant	6,000	0	6,000
Total	24,000	0	24,000

^{*1} April 14, 2008 Architectural Review application indicates 22,603 square feet of retail space; however, the Transportation Impact Analysis prepared by Kittelson & Associates, Inc. (March 2008) assumes 24,000 square feet of retail space including a 6,000 square foot restaurant and 18,000 square feet of specialty retail.

Exhibit C includes a site plan for the proposed Project. The Parties acknowledge that the Architectural Review application was modified on May 28, 2008, and may be further modified through the land use process.

3.2 Development that reflects the architectural richness and quality of the design concepts and elevations, and that includes building materials and detailing similar to that discussed at the Joint Design Advice Charette for the Alexan Bridgeport Project in Durham and Tualatin with the Tualatin Architectural Review Board and Durham Planning Commission and Design Review Board on November 29, 2007 (Exhibit D), and that is compatible with, appropriate to, and compliments the design of other development in the general vicinity with

respect to location, design, size, color and materials of the exterior of all structures. The design presented in the Architectural Review submittal on April 14, 2008, and revised on May 28, 2008, per staff comments, represents Developer's efforts to respond to the comments received at the Joint Design Advice Charette. The Parties expect that the design concepts will continue to be refined through the land use process.

3.3 Development consistent with the purposes of the Mixed Use Commercial Overlay District (MUCOD) including: (1) To recognize and accommodate the changing commercial/residential marketplace by allowing commercial and residential mixed uses in the Durham Quarry Site and Durham Quarry Area. Retail, office business services and personal services are emphasized, but residential uses are also allowed. (2) To recognize that when developed under certain regulations commercial and residential uses may be compatible in the General Commercial District. [TDC 57.010]

3.4 Development consistent with all the design standards of the MUCOD with particular emphasis on the following: New development is expected to create a high-quality mixed-use area, provide a convenient pedestrian and bikeway system and utilize streetscape to create a high-quality image for the area [TDC 57.200(1)(a)]. New development is expected to contribute to the character and quality of the area [TDC 57.200(1)(b)]. Mixed-use development is defined as "development of a tract of land, building or structure with a variety of complementary and integrated uses, such as but not limited to, residential, office, research and development, retail, public or entertainment, in a compact urban form" [TDC 57.005].

3.5 Development that complies with the criteria and standards for Architectural Review Approval as specified in TDC 73.050 including: (1)(a) The proposed site development, including the site plan, architecture, landscaping, parking and graphic design, is in conformance with the standards of this and other applicable City ordinances insofar as the location, height, and appearance of the proposed development are involved; (b) The proposed design of the development is compatible with the design of other development in the general vicinity; and (c) The location, design, size, color and materials of the exterior of all structure are compatible with the proposed development and appropriate to the design character of other developments in the vicinity.

SECTION 4. TRAFFIC IMPACTS FROM THE PROJECT

4.1 Transportation Impact Analysis. The Transportation Impact Analysis for the Project (Kittelson & Associates, Inc., March 2008) follows up on the zone change traffic impact analysis, which was required to examine the reasonable worst-case traffic scenario for the Site. The March 2008 Project-specific report demonstrates the following:

4.1.1 Trip Generation. Traffic impacts from the Project will be significantly less than the reasonable worst-case scenario for the Site. For example, the zone change traffic analysis estimated 720 p.m. peak hour trips as the reasonable worst-case scenario. The Project-specific report demonstrates that the Project will generate only 255 p.m. peak hour trips. Overall, the Project is estimated to generate approximately 2,865 net new trips on a typical weekday, including 195 during the a.m. peak hour and 255 during the p.m. peak hour.

4.1.2 Study Intersections. Kittelson concluded that, with mitigation to be provided in connection with the Project, all of the study intersections will operate at acceptable levels of service. All of the study intersections are forecast to operate at acceptable levels of service (LOS D or better) during the weekday a.m. and p.m. peak hours, with the following exceptions:

4.1.2.1 The critical eastbound through-left movements at the SW Lower Boones Ferry Road/Project primary access intersection will operate at LOS F and will be over capacity during both the a.m. and p.m. peak hours. This intersection will meet operating standards if mitigated with a traffic signal.

4.1.2.2 The critical eastbound approach of the SW Lower Boones Ferry Road/Private Driveway intersection (rear access serving the REI, Whole Foods, etc., via the Gionet property) will operate at LOS F during the weekday; however, there is adequate capacity ($v/c = 0.41$) to accommodate the approximately 30 vehicles at this approach, and vehicles have alternative access via the main entry which is a traffic signal at SW Bridgeport Road.

4.1.2.3 Weekday p.m. peak hour queues at the SW Upper Boone Ferry Road/Lower Boones Ferry Road intersection would not be significantly increased by the proposed project. Nevertheless, Kittelson noted that the existing queuing issues, not caused by the Project, could be slightly improved by modifying the traffic signal timing to provide protected/permitted left turns at the east and west approaches.

4.1.3 Recommended Mitigation. The Transportation Impact Analysis (Kittelson & Associates, Inc., March 2008) for the Project provides the following list of recommended mitigation measures:

4.1.3.1 The primary site access intersection on SW Lower Boones Ferry Road should be constructed with a southbound right-turn deceleration lane for vehicles entering the site. A traffic signal should be constructed to accommodate future year total traffic volumes.

4.1.3.2 The secondary access driveway, necessary for emergency access, should be restricted to right-out movements from the site, with a traversable median on SW Lower Boones Ferry Road to allow emergency vehicle access.

4.1.3.3 Landscaping, signage, and above ground utilities should be located and maintained to preserve adequate intersection sight distance at the access points.

4.1.3.4 Crashes at the SW Lower Boones Ferry Road/SW Bridgeport Road intersection should be monitored to determine whether recent changes in crash frequencies indicate any safety mitigations are needed.

4.2 Traffic Signal at Primary Site Access onto SW Lower Boones Ferry Road. The Transportation Impact Analysis includes a signal warrant analysis for the proposed SW Lower Boones Ferry Road/Primary Access intersection. The analysis was conducted according to the procedures outlined in the Manual of Uniform Traffic Control Devices (MUTCD) for future year total traffic conditions. This analysis demonstrates that Warrant 1 (8 hour), Warrant 2 (4 hour), and Warrant 3 (peak hour) for a traffic signal (the "Traffic Signal") and related right turn deceleration lane into the Site (the "Turn Lane") will be met with build out of the commercial

development and occupancy of 250 residential units of the Project. See Exhibit E for a detail of the Site Access and Right Turn Deceleration Lane.

4.2.1 Washington County has jurisdiction over SW Lower Boones Ferry Road in the vicinity of the Site and will determine if the Traffic Signal and Turn Lane are warranted. Washington County's May 15, 2008 Staff Report responding to the Project's land use submission includes conditions to construct the deceleration right turn lane and traffic signal which suggests they will likely approve the construction of these improvements. Additionally, the County will make the determination on when the signal will become operational.

4.2.2 If the Traffic Signal and Turn Lane are approved by Washington County, the Developer agrees to dedicate required right-of-way/easements, obtain necessary permits, construct the required improvements, and pay all associated costs of permitting, construction and installation. The Developer will receive no traffic impact fee (TIF) credit for these improvements.

4.3 Frontage Improvements Along SW Lower Boones Ferry Road. As a part of this Agreement and in accordance with Section 2.3.4 of the IGA (the "Frontage Improvements"), the Developer agrees to obtain necessary permits, construct the required improvements, and pay all associated costs of permitting, construction and installation of the required improvements along the Site's frontage on SW Lower Boones Ferry Road.

4.3.1 Undergrounding Utilities on SW Lower Boones Ferry Road. As part of the frontage improvements on SW Lower Boones Ferry Road, the Developer will underground any overhead utility lines located on the Project's side of SW Lower Boones Ferry Road.

4.3.2 Accelerated Site Work. Frontage improvements and utility work within the right of way must be approved by Washington County through several different permits. A Facilities Permit application cannot be submitted until a staff report is issued in the City's land use process, and typical processing time for the Facilities Permit is up to six months after application. The City agrees to work with Developer to issue City permits for on-site work before the County Permits are issued. The Developer will be required to be deemed complete at the County with an approximate review timeline, have an approved Public Works Permit (except for the County permit), and an approved Water Quality Permit before any acceleration will be considered. The Developer also agrees that all work undertaken prior to obtaining a County permit will be done at their own risk. The Parties agree that under no circumstances shall a Certificate of Occupancy or Temporary Certificate of Occupancy be issued before the Developer completes all required work within the right of way and the work is accepted by the appropriate agency.

4.4 Secondary Project Access onto SW Lower Boones Ferry Road. Developer agrees that secondary Project access (west end of the Project) will be limited to a right-out egress, with a traversable median on SW Lower Boones Ferry Road to allow emergency vehicle ingress. If allowed by Washington County, the Developer will landscape and irrigate the median and be responsible for ongoing maintenance. Exhibit E shows the proposed location of the secondary access and traversable median on SW Lower Boones Ferry Road.

4.5 Traffic Mitigation at SW Lower Boones Ferry Road/SW Upper Boones Ferry Road Intersection. As discussed in Section 4.1.2.3 above, Kittelson's Transportation Impact Analysis determined that weekday p.m. peak hour queues at the SW Upper Boone Ferry Road/Lower Boones Ferry Road intersection would not be significantly increased by the Project. Kittelson also noted an existing queuing issue, not caused by the Project, and stated that the existing problem could be slightly improved by modifying the traffic signal timing to provide protected/permitted left turns at the east and west approaches. Kittelson did not conclude that traffic signal timing was required to mitigate impacts from the Project. However, as a gesture of Developer's willingness to cooperate in the effort to improve traffic conditions in the general area, Developer will deposit with the City \$20,000.00 to be applied toward retiming the traffic signal at the SW Lower Boones Ferry Road/SW Upper Boones Ferry Road Intersection at a future date.

SECTION 5. OTHER OFF-SITE IMPROVEMENTS

5.1 Pedestrian Connectivity. Facilitating pedestrian connectivity within the Site as well as off-site to surrounding properties is a priority of the Parties. The area in the vicinity of the Site is emerging as a dynamic mixed-use area, with retail, office, entertainment, residential and service uses, all within walking distance of one another. Pedestrian connectivity is another traffic mitigation measure because it enables people to avoid using vehicles for short trips, thus preserving the capacity of the transportation system.

In accordance with Tualatin's Pedestrian Plan [TDC 11.640(1)] providing a connected network of pedestrian facilities is important for: (a) serving shorter pedestrian trips from neighborhoods to area activity centers, such as schools, churches, and neighborhood commercial uses; (b) providing access to public transit; and (c) meeting residents' recreational needs." The City's street standards call for sidewalks to be provided along all new streets, and identifies the part of Tualatin in which the Site is located as a Pedestrian District per Metro's Regional Transportation Plan (RTP) and Tualatin's Transportation System Plan (TSP) [TDC 11.640(4); Figure 11-4]. A Pedestrian District is defined in the RTP (p. 1-57, 8-10-00) as an area of "high, or potentially high, pedestrian activity where the region places priority on creating a walkable environment... These areas will be characterized by buildings oriented to the street and boulevard-type street design features such as wide sidewalks with buffering from adjacent motor vehicle traffic, marked street crossings at all locations with special crossing amenities at some locations, special lighting, benches, bus shelters, awnings, and street trees." Because the Site is located in a Pedestrian District, as well as in the MUCOD, which similarly requires pedestrian connectivity both within a site and to abutting street frontages [TDC 57.300(8)], and subject to the provisions of Architectural Review [TDC Chapter 73], the City will require pedestrian connectivity both internal and external to the Site in connection with development applications for the Site and for adjacent properties that may develop or redevelop in the future. Exhibit F indicates the general location of pedestrian connections internal and external to the Site.

5.1.1 As a good faith effort to encourage adjacent property owners to allow pedestrian connections across their property, once the Project is constructed and prior to obtaining a Certificate of Occupancy (CO), the Developer agrees to grant easements to the public allowing pedestrian access across the Site in designated pedestrian accessways that are maintained by the Developer (or the Developer's assignee) at their own expense. One easement

shall be perpendicular to SW Lower Boones Ferry Road (roughly northwest-southeast in orientation) along the eastern part of the Site, as generally depicted on Exhibit G. Developer shall provide City notice of any closure of the pedestrian access for 72 hours or longer.

5.1.2 To achieve the pedestrian connectivity goals stated above, Tualatin, where appropriate, may assist the Developer in negotiating off-site public pedestrian access easements over properties neighboring the Site. Specific assistance includes, but is not limited to, the Verizon-owned parcel to the north of the Site, the REI-owned parcel to the north and east of the Project, and the Gionet-owned parcel to the east of the Project.

5.2 Sanitary Sewer. Tualatin has identified potential existing sanitary sewer capacity restrictions downstream of the Site, due to the approved Plan Text and Plan Map Amendments. The Project will contribute waste to the Pipe Sections, which may warrant the need to upgrade the Pipe Sections to mitigate capacity impacts from the Project. The Developer needs to provide a sewer modeling analysis to determine if the Project warrants upgrades to the Pipe Sections (the "Pipe Sections Upgrades"). If the modeling analysis concludes that upgrades are warranted, those upgrades will be constructed by either by the City or by Developer, depending upon whether the upgrades fall within the City's Capital Improvement Project as provided below. All work associated with replacement of the Pipe Sections shall be complete prior to issuance of a Certificate of Occupancy for any building on the Site. If the City's project is not complete, the Developer will need to construct the improvements necessary to provide sanitary sewer service for this Project.

5.2.1 Upgrades to be Constructed by the City. For Pipe Section upgrades that already are part of the City's Capital Improvement Project work program, the City will construct the Pipe Section replacements and Developer will pay its proportional share of the needed improvement, in addition to any Sanitary Sewer System Development Charges.

5.2.2 Upgrades to be Constructed by Developer. For Pipe Section upgrades that are not part of the City's Capital Improvement Project work program, or if the City's project does not occur, Developer will cause the Pipe replacements to be constructed at its cost, including the required permits. Developer will pay all Sanitary Sewer System Development Charges, but may be eligible for credits against those charges if Pipe Section upgrades constructed by Developer create additional sewer capacity beyond that necessary to serve the Project.

5.3 Timing of Paying System Development Charges ("SDCs") and Traffic Impact Fees ("TIFs"). In order to construct the Project, it is expected that Developer will need to seek a number of permits that may be considered building permits, such as, but not limited to, demolition permits, site work permits, plumbing permits for site work, and permits to pour concrete. The Developer shall pay the applicable SDCs and TIFs at the time an approved major building permit for a multifamily residential or retail structure is retrieved by the Developer (i.e., not the minor permits described above).

SECTION 6. ON-SITE IMPROVEMENTS AND SERVICES.

6.1 Garbage and Recycling Service. Allied Waste Services ("Allied") typically provides garbage and recycling service in Tualatin, and Pride Disposal Company ("Pride") typically provides garbage and recycling service in Durham. Although Section 4.5.1 of the IGA indicates that a separate agreement may need to be entered into to determine how garbage and recycling service will be provided to the Site because the Site includes property within each city and each garbage/recycling provider's territory, it is expected that garbage and recycling services within the Project will be handled as provided in this Section, unless an alternative written agreement is reached between Allied and Pride and approved by the City with respect to the Project.

6.1.1 Garbage and recycling enclosures for residential and commercial development located within Tualatin will be located on the Tualatin portion of the Site and will be serviced by Allied Waste Services.

6.1.2 Garbage and recycling enclosures for residential and commercial development located within Durham will be located on the Durham portion of the Site and will be serviced by Pride Disposal Company.

6.2 Tree Planting by City Using Kearney Tree Restitution Monies. The City has \$2,974.16 in account 001-0000-481.01-03 (posted April/May 2004) paid by Robert Kearney in restitution for illegally cutting down 25 trees on the property he then owned at 18045 SW Lower Boones Ferry Road (former Schneider Trucking Facility site). The money is to be used to plant trees on the site at such time as it is redeveloped. The trees must be planted by the City, but are to be maintained by the developer of the property. Therefore, pursuant to court order, the Developer agrees to grant the City a right of entry to plant trees, in addition to those proposed by Developer as landscaping, on the Tualatin portion of the Site in mutually agreed upon locations with mutually agreed upon tree species and caliper size using the restitution monies. Developer further agrees to maintain the trees planted by the City as part of the landscaping of the Site.

SECTION 7. TERM OF AGREEMENT. This Agreement shall be effective upon final signature and shall remain in effect until the final Certificate of Occupancy is obtained for the Project. If the Developer chooses not to develop the Site as the Project, the Developer shall provide City with a written Notice of Intent to Terminate the Agreement. This Notice shall be presented to the City Council. Upon the termination of this Agreement, Parties shall be released from all obligations under this Agreement.

SECTION 8. ASSIGNMENT OF AGREEMENT. As provided in Section 2, this Agreement applies only if the Site is developed as the Project. If the Developer chooses to transfer the Site to another entity ("Transferee") and Transferee intends to develop the Site as the Project, the Developer shall provide City with a written Notice of Intent to Transfer the Site. This Notice shall be presented to the City Council. After the transfer is presented to City Council, the Agreement shall be assigned to Transferee and Developer shall be released from all obligations under this Agreement. If the Transferee intends to develop the Site for a use other than the Project, upon the transfer of the Site to Transferee, Developer and City shall be automatically released from all obligations under this Agreement. If the Transferee chooses to assign or

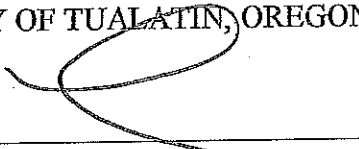
terminate this Agreement, Transferee shall provide City with written notice of any assignment or termination. This notice shall be presented to the City Council. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

SECTION 9. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state and local ordinances, statues and regulations that are applicable to the services provided under this Agreement.

SECTION 10. MODIFICATION. This writing is intended as the final expression of the agreement between the parties with respect to the included terms and as complete and exclusive statement of the terms of the Agreement. Amendments to this Agreement are valid only if made in writing and signed by both Parties.

In WITNESS THEREOF, the parties have executed this Agreement on the date set below their signatures.

CITY OF TUALATIN, OREGON

By: 

Lou Ogden, Mayor
City of Tualatin

Date: June 9, 2008

ATTEST:

By: 

City Recorder

Approved as to legal form:

By: 

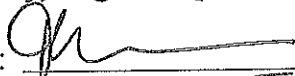
City Attorney

DEVELOPER

Bridgeport Apartments LLC, a Delaware limited liability company

By: NW 114 Bridgeport Apartments Limited Partnership, a Delaware limited partnership, its member

By: NW 115 Bridgeport Apartments GP LLC, a Delaware limited liability company, its general partner

By: 
Its: VICE PRESIDENT

Date: 6/2/08

EXHIBITS:

- A. Site Map
- B. Urban Services Intergovernmental Agreement Between The City of Durham and The City of Tualatin
- C. Site Plan, April 14, 2008
- D. PowerPoint Presentation from Joint Design Advice Charette for the Alexan Bridgeport Project in Durham and Tualatin with the Tualatin Architectural Review Board and Durham Planning Commission and Design Review Board , November 29, 2007
- E. Right Turn Deceleration Lane, Traffic Signal, and Right Out Emergency Access on SW Lower Boones Ferry Road
- F. Pedestrian Connectivity and Potential Public Easements



630 NW 10th Avenue
Portland, OR 97209
Tel: (503) 241-3989
Fax: (503) 241-3162

November 19, 2008

VIA ELECTRONIC MAIL

Mike McKillip
City Engineer
City of Tualatin
18880 SW Martinazzi Avenue
Tualatin, OR 97062

Re: Acknowledgment - Off-Site Sewer Upgrade Work - Bridgeport
Apartments (AR-08-09)

Dear Mike:

Your office has directed Bridgeport Apartments, LLC ("Bridgeport Apartments"), to upgrade an off-site segment of the City of Tualatin ("City") sewer system—specifically, to upsize BFR 13 from 10 inches to 12 inches in the manner described in detail below ("the sewer upgrade"). Bridgeport Apartments agrees, as a condition of its development, to undertake this work at its cost because the upgrade will be a long-term benefit to the City and the Bridgeport Apartments project approved in AR-08-09 ("the Project"). (To be clear, Bridgeport Apartments does not agree to undertake the sewer upgrade if it does not develop the Project.)

To ensure that a shared understanding of this situation exists, our agreement to undertake this work, is conditioned upon you acknowledging, by placing your signature below, that the contents of this letter are accurate with respect to the Project.

Bridgeport Apartments acknowledges that the CESNW Report shows that the Project will cause some sewer pipes to become surcharged. However, Bridgeport Apartments does not agree that any City Code provision can be interpreted to require the sewer upgrade in connection with developing the Project. By agreeing to voluntarily undertake the sewer upgrade, Bridgeport Apartments does not implicitly agree that the City's demand that Bridgeport Apartments perform the sewer upgrade is justified by law. Nonetheless, Bridgeport Apartments agrees that it will voluntarily perform the sewer upgrade according to the terms of this letter and will not challenge, seek damages or restitution, by filing a claim for a constitutional takings violation or inverse condemnation under Dolan or asserting any other a claim against the City with regard to the City's requirement that Bridgeport Apartments perform the sewer upgrade. This provision shall be binding on any successors in interest or assigns with respect to the Project.

Mr. Mike McKillip
November 19, 2008
Page 2 of 4

Scope of Sewer Upgrade

Subject to your acknowledgment of this letter, Bridgeport Apartments will upsize BFR 13 from 10 inches to 12 inches in the manner described in detail below. This description constitutes the entire scope of work required by the City and agreed to by Bridgeport Apartments and the City agrees that it will not require Bridgeport Apartments to undertake any additional sewer upgrades in connection with the Project.

The improvements within Boones Ferry Road shall include replacement of one pipe run that is an existing 10 inch diameter sanitary sewer line with a proposed 12" diameter line, as identified in the downstream sewer analysis prepared by CES NW, dated July 22, 2008 as pipe section "BFR-13," which is located within ODOT right-of-way in between existing manholes "21017" and "21016." The length of sanitary sewer pipe to be installed shall be between manholes "21018" and "21016" and will run adjacent to the existing sanitary sewer system, which will be abandoned in place. It is assumed that the new alignment will require a grind and overlay to be performed up the existing western fog line to match existing roadway surface improvements and will require replacement of approximately 90 lf of curb and 450 SY of sidewalk. The existing effluent will require bypass pumping measures during construction. ODOT approved traffic control will also be required during construction. Permit coordination will be required through ODOT, Portland & Western Railroad, and the City of Tualatin. Bridgeport Apartments will apply for, obtain, and comply with, at its sole cost, all permits necessary to complete the sewer upgrade, and the City will cooperate with Bridgeport Apartments as necessary to obtain those permits.

1. Logistics, permitting, and timing

Surcharging is not an unsafe sanitary sewer condition in this instance, and the sewer upgrade is not necessary for the safe functioning of the Project or other upstream parties using this sewer line. Therefore, no City permits will be delayed or withheld for reasons related to the off-site sewer upgrade (other than certificates of occupancy, in the circumstances described below).

Bridgeport Apartments will use all commercially available reasonable efforts to complete the off-site sewer upgrade prior to receiving a final certificate of occupancy for the Project. The City will grant temporary certificates of occupancy for the Project so long as Bridgeport Apartments is making substantial progress toward completion of the sewer upgrade.

The final certificate of occupancy for Bridgeport Apartments may be granted prior to completion of the sewer upgrade only upon a showing by Bridgeport Apartments that:

- a. It is making substantial progress toward completion of the sewer upgrade; and
- b. It has used reasonable efforts and made substantial progress toward design, permitting and construction; and

Mr. Mike McKillip
November 19, 2008
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Accepted and acknowledged
on behalf of the City of Tualatin by:

Michael A. McKillip
Mike McKillip, City Engineer

Date: 11/19/08

Approved as to form by:

Brenda L. Braden

Brenda Braden, City Attorney

cc: Kaaren Hoffman
Dayna Webb
Brie Underwood
Doug Rux
Noel Johnson

Mr. Mike McKillip
November 19, 2008
Page 3 of 4

- e. It has experienced delays due only to one or more of the following:
- i. Unforeseen weather conditions or force majeure;
 - ii. Permitting or approval delays caused by involved agencies, such as but not limited to the Oregon Department of Transportation, City of Tualatin, Clean Water Services, and the Portland & Western Railroad.

If the City grants the final certificate of occupancy before the sewer upgrade is complete, Bridgeport Apartments agrees to complete the sewer upgrade not later than one year after the City issues the final certificate of occupancy.

Bridgeport Apartments will undertake all usual and appropriate bonding mechanisms for the sewer upgrade. This bonding will provide the City with additional assurance that the sewer upgrade will be completed, even if unforeseen events prevent completion of the sewer upgrade before issuance of the final certificate of occupancy for the Project.

2. Prevailing wages

Because the City has required the sewer upgrade to be built by, and at the sole cost of, Bridgeport Apartments, the sewer upgrade project will not be subject to prevailing wage rates and the City agrees to provide whatever assistance Bridgeport Apartments reasonably requires to support this determination should any person or entity claim that the sewer upgrade is subject to prevailing wage rates. Bridgeport Apartments and the City intend that any future payment of SDC credits, if any, will not affect the non-applicability of prevailing wage rates.

3. Conclusion

Subject to your acknowledgment of the terms of this letter, Bridgeport Apartments agrees to undertake the City's requested sewer upgrade as a condition of its development approval that will benefit the City and the Project.

Sincerely,

Bridgeport Apartments LLC, a Delaware limited liability company

By: NW 114 Bridgeport Apartments Limited Partnership, a Delaware limited partnership, its member

By: NW 115 Bridgeport Apartments GP LLC, a Delaware limited liability company, its general partner

By: 

Thomas A. DiChiara

Its: Vice President

Date: 11/19/08