

City of Wilsonville

Urban Renewal Agency Meeting

November 19, 2018



WILSONVILLE
OREGON

URA AGENDA

**CITY OF WILSONVILLE
URBAN RENEWAL AGENCY**

**NOVEMBER 19, 2018
7:00 P.M.**

**CITY HALL
29799 SW TOWN CENTER LOOP
WILSONVILLE, OREGON**

Immediately Following the City Council Meeting

Chair Tim Knapp

Board Member Scott Starr
Board Member Susie Stevens

Board Member Kristin Akervall
Board Member Charlotte Lehan

CALL TO ORDER

A. Roll Call

CITIZEN INPUT

NEW BUSINESS

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A. **URA Resolution No. 291**

A Resolution Of The City Of Wilsonville Urban Renewal Agency Authorizing Acquisition Of Real Property. (Jacobson/Bateschell/Weigel)

ADJOURN



URBAN RENEWAL MEETING STAFF REPORT

<p>Meeting Date: November 19, 2018</p>	<p>Subject: URA Resolution No. 291 Acquisition of Wilsonville Town Center Lot 1 (Pad A) Property</p> <p>Staff Member: Barbara Jacobson, City Attorney; Miranda Bateschell, Planning Manager; Zach Weigel, Capital Projects Engineering Manager</p> <p>Department: Legal / Community Development</p>	
<p>Action Required</p>	<p>Advisory Board/Commission Recommendation</p>	
<p><input type="checkbox"/> Motion</p> <p><input type="checkbox"/> Public Hearing Date:</p> <p><input type="checkbox"/> Ordinance 1st Reading Date:</p> <p><input type="checkbox"/> Ordinance 2nd Reading Date:</p> <p><input checked="" type="checkbox"/> Resolution</p> <p><input type="checkbox"/> Information or Direction</p> <p><input type="checkbox"/> Information Only</p> <p><input type="checkbox"/> Council Direction</p> <p><input type="checkbox"/> Consent Agenda</p>	<p><input type="checkbox"/> Approval</p> <p><input type="checkbox"/> Denial</p> <p><input type="checkbox"/> None Forwarded</p> <p><input checked="" type="checkbox"/> Not Applicable</p> <p>Comments: N/A</p>	
<p>Staff Recommendation: Staff recommends the Urban Renewal Agency (URA) adopt URA Resolution No. 291.</p>		
<p>Recommended Language for Motion: I move to approve URA Resolution No. 291.</p>		
<p>PROJECT / ISSUE RELATES TO:</p>		
<p><input checked="" type="checkbox"/> Council Goals/Priorities</p>	<p><input checked="" type="checkbox"/> Adopted Master Plan(s)</p>	<p><input type="checkbox"/> Not Applicable</p>

ISSUE BEFORE COUNCIL:

Whether or not to authorize the acquisition of an approximately 67,194 square foot commercial pad located in the Wil-Town-Cen Plat, adjoining the east side of Town Center Loop West. (“Property”).

EXECUTIVE SUMMARY:

The Wil-Ton-Cen development consists of five pads, three of which have already been developed, a fourth that is being developed as an Eye Health Clinic, leaving Lot 1 the remaining parcel, still on the market.

Community Development staff have recommended the Property to City Council for acquisition. Staff foresees using the Property for the easterly landing of the anticipated I-5 Pedestrian Bridge and for other related public purposes in conjunction with the Town Center Master Plan.

City legal staff ordered an MAI appraisal of the Property. The appraised value was \$1,512,000 or \$22.50 a square foot. The Property owner had been asking \$25.00 a square foot. The City offered the appraised value and the Property owner, Town Center Investment LLC agreed to accept the City's offer.

The Purchase and Sale Agreement requires removal of certain restrictive covenants that might limit development as a condition of sale. City staff and the seller are working cooperatively to remove the exceptions from title within the next 90 days. If one or more of the objected to exceptions cannot be removed within that time period, the City has the option of buying the Property subject to the remaining exceptions or terminating the transaction. A Phase I Environmental Site Assessment was conducted and found no evidence of contamination. No further environmental testing was recommended.

EXPECTED RESULTS:

To enter into a Purchase and Sale Agreement for the Property in essentially the form attached hereto as **Exhibit B**.

TIMELINE:

It is anticipated that Closing will take place on or before February 15, 2019, barring any unforeseen issues or delay in removal of certain Restrictive Covenants.

CURRENT YEAR BUDGET IMPACTS:

\$1,512,000 purchase price, plus related closing costs and due diligence expenses

FINANCIAL REVIEW / COMMENT:

Reviewed by: CAR Date: 11/13/2018

A supplemental budget hearing is set for the December 3, 2018 meeting.

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ Date: 11/6/2018

COMMUNITY INVOLVEMENT PROCESS:

N/A

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

Acquisition of the Property will provide an easterly landing location for the planned I-5 Pedestrian Bridge Project.

ALTERNATIVES:

Alternative is to not acquire this Property.

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

1. URA Resolution No. 291
 - A. Exhibit A - Staff Report
 - B. Exhibit B - Purchase and Sale Agreement
 - C. Exhibit C – Property Map

THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE

URA RESOLUTION NO. 291

A RESOLUTION OF THE CITY OF WILSONVILLE URBAN RENEWAL AGENCY AUTHORIZING ACQUISITION OF REAL PROPERTY.

WHEREAS, under and by virtue of the laws of the State of Oregon, the City of Wilsonville is duly authorized and empowered to acquire such real property as may be deemed necessary or beneficial for the public good; and

WHEREAS, a parcel of property located at Lot 1, Wil-Town-Cen, Town Center Loop West, Wilsonville, OR 97070 (“Lot 1”), has been on the market for sale by its owner (“Property”); and

WHEREAS, the City desires to acquire this Property, due to its location, for the siting of the East side landing of the planned I-5 Pedestrian Bridge Project (I-5 Bridge) and other related uses, as more particularly described in the Staff Report, attached hereto as **Exhibit A** and incorporated by reference herein; and

WHEREAS, staff obtained a professional appraisal of the Property in order to determine fair market value; and

WHEREAS, although listed for a higher amount, the seller is willing to sell the Property to the City for its appraised value of ONE MILLION FIVE HUNDRED TWELVE THOUSAND DOLLARS (\$1,512,000.00), subject to completion of due diligence by the City, as more particularly described in the Staff Report; and

WHEREAS, this acquisition is not included in the City’s 2018-19 adopted budget and a supplemental budget adjustment will therefore be needed; and

WHEREAS, the City’s Finance Director has identified Wilsonville Urban Renewal Agency Program Income funds available for the purchase of the Property, subject to an Urban Renewal resolution approving such expenditure, and to a the above described supplemental budget adjustment being made.

NOW, THEREFORE, THE URBAN RENEWAL AGENCY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The acquisition of the Property, above described as Lot 1, is a desirable and strategic acquisition for the City that could support many public purposes, including as the anticipated east side landing site for the planned I-5 Bridge.

2. The Property is currently for sale by the owner, who has offered to reduce the price to match the appraised price to the City.

3. Subject to a supplemental budget adjustment being approved and passage of a resolution by the Wilsonville Urban Renewal Agency approving the purchase using Program Income funds, the City Manager or designee is authorized to enter into the Purchase and Sale Agreement with the property owner, in a form as substantially attached hereto as **Exhibit B**, for a purchase price of ONE MILLION FIVE HUNDRED TWELVE THOUSAND DOLLARS (\$1,512,000.00).

4. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville Urban Renewal Agency at a regular meeting thereof this 19th day of November, 2018 and filed with the Wilsonville City Recorder this date.

Tim Knapp, Board Chair

ATTEST:

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

- Board Chair Knapp
- Board Member Starr
- Board Member Lehan
- Board Member Akervall
- Board Member Stevens

Attachments:

- A. Exhibit A - Staff Report
- B. Exhibit B - Purchase and Sale Agreement
- C. Exhibit C – Property Map



**URBAN RENEWAL MEETING
STAFF REPORT**

<p>Meeting Date: November 19, 2018</p>	<p>Subject: URA Resolution No. 291 Acquisition of Wilsonville Town Center Lot 1 (Pad A) Property</p> <p>Staff Member: Barbara Jacobson, City Attorney; Miranda Bateschell, Planning Manager; Zach Weigel, Capital Projects Engineering Manager</p> <p>Department: Legal / Community Development</p>
<p>Action Required</p>	<p>Advisory Board/Commission Recommendation</p>
<p><input type="checkbox"/> Motion</p> <p><input type="checkbox"/> Public Hearing Date:</p> <p><input type="checkbox"/> Ordinance 1st Reading Date:</p> <p><input type="checkbox"/> Ordinance 2nd Reading Date:</p> <p><input checked="" type="checkbox"/> Resolution</p> <p><input type="checkbox"/> Information or Direction</p> <p><input type="checkbox"/> Information Only</p> <p><input type="checkbox"/> Council Direction</p> <p><input type="checkbox"/> Consent Agenda</p>	<p><input type="checkbox"/> Approval</p> <p><input type="checkbox"/> Denial</p> <p><input type="checkbox"/> None Forwarded</p> <p><input checked="" type="checkbox"/> Not Applicable</p> <p>Comments: N/A</p>
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CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

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 - A. Exhibit A - Staff Report
 - B. Exhibit B - Purchase and Sale Agreement
 - C. Exhibit C – Property Map

PURCHASE AND SALE AGREEMENT

Seller: Town Center Investments, LLC
29100 SW Town Center Loop West, Suite 140
Wilsonville, OR 97070

Buyer: City of Wilsonville, Oregon
29799 SW Town Center Loop East
Wilsonville, OR 97070

Dated: November ____, 2018

1. **Purchase and Sale.** Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the real property located at Lot 1, Wilsonville Town Center, SW Town Center Loop West, Wilsonville, Oregon 97070, Map and Tax Lot No. 3S-1W-14D 226, Clackamas County, Oregon (“Property”). The Property consists of approximately 1.54 acres of land, legally described on **Exhibit A**.

2. **Purchase Price.** The Purchase Price for the Property will be **One Million Five Hundred Twelve Thousand Dollars (\$1,512,000)** (the “Purchase Price”).

3. **Due Diligence Contingencies.** Buyer shall have the right to enter the Property, upon reasonable notice to Seller, to conduct the following “Due Diligence Contingencies” during the Due Diligence periods set forth below:

(a) Buyer shall be entitled to conduct a Phase 1 environmental assessment of the Property and, if recommended by the Phase 1, a Phase 2 follow-up study. The Phase 1 must be completed within forty-five (45) days of the date of final execution of this Agreement. If a Phase 2 is recommended and pursued, the Due Diligence Period for environmental assessment will be extended to ninety (90) days from the date of the Phase 1 report. Seller will be entitled to a copy of the Phase 1 report and the Phase 2 report, if a Phase 2 report is generated.

(b) Buyer shall be entitled to, but not obligated to, survey the Property within a sixty (60) day Due Diligence period. If a survey is conducted, a copy of the survey will be provided to Seller.

(c) Buyer shall have a ninety (90) day Due Diligence Period to seek and obtain releases of the Property from the Declaration and Grant of Restrictive Covenants, dated November 1, 2007, Recording No. 2007-095506, and the Planned Business Community Declaration for Wilsonville Town Center Property, dated February 14, 1992, Recording No. 92-08575, and all amendments and Supplemental Declarations thereto. If Buyer is not able to obtain such release or obtain satisfactory assurances that its intended use of the Property as a bridge landing and associated public amenities is acceptable to the Declarant now in control, the City may elect not to purchase the Property within that ninety (90) day period.

(c) Seller shall complete the statutory Seller's Property Disclosure Statement, attached hereto as **Exhibit B** and incorporated by reference herein, and provide it to Buyer within three (3) business days of the date of this Agreement so that it may be utilized by the various inspectors performing their inspections.

4. **Earnest Money.** Within three (3) days after execution of this Agreement, Buyer will deliver to the Escrow Agent the sum of ONE HUNDRED THOUSAND DOLLARS (**\$100,000**) in the form of a promissory note. If Buyer is satisfied with the results of all of the Due Diligence Contingencies listed above, Buyer will convert the Promissory Note to cash, to be delivered to the Escrow Agent within three (3) business days of Buyer's acceptance of Due Diligence results. This sum comprises the Earnest Money. The Earnest Money shall be applied to the payment of the Purchase Price for the Property at Closing. Any interest earned on the Earnest Money shall be considered part of the Earnest Money. The Earnest Money shall be returned to Buyer in the event any condition of Buyer's obligation to purchase the Property shall fail to be satisfied or waived through no fault of Buyer.

5. **Permitted Title Exceptions.** Within ten (10) days after the Execution Date, Buyer shall have obtained an updated preliminary title report from the title company (the "Preliminary Report"), together with all copies of all documents shown therein as exceptions to title, showing the status of Seller's title to the Property. Buyer shall have ten (10) days after receipt of a copy of the Preliminary Report within which to give notice in writing to Seller of any disapproval of any exceptions set forth in the Preliminary Report. Within ten (10) days after the date of such notice from Buyer, Seller shall give Buyer written notice of whether Seller is willing and able to remove the disapproved exceptions. Within ten (10) days after the date of such notice from Seller, Buyer shall elect by notice to Seller to either (i) purchase the Property subject to the disapproved exceptions that Seller is not willing or able to remove, or (ii) terminate this Agreement and receive a refund of the Earnest Money. On or before the Closing Date, Seller shall have removed all Buyer disapproved exceptions that Seller agreed Seller is willing and able to remove; provided, however, if Seller is unable to remove any disapproved exceptions that Seller has agreed to remove through no fault of Seller, Buyer may terminate this Agreement and receive a refund of the Earnest Money. Those exceptions Buyer does not object to are referred to as the "Permitted Exceptions."

6. **Representations and Warranties.** Seller represents and warrants to Buyer that:

(a) The Property is not in violation of any agreements, covenants, conditions, or restrictions affecting the Property.

(b) Seller has received no notice from any governmental agency having jurisdiction in the matter of any violation of any statute, law, ordinance, deed restriction, or rules or regulations with respect to the existence, construction, maintenance, or operation of the Property.

(c) Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, and at Closing Seller shall deliver a certification to this effect to Buyer.

(d) There are currently no known underground storage tanks located on the Property. Seller has no knowledge of any underground storage tank located on the Property, unless otherwise set forth in Seller's Property Disclosure Statement.

(e) During Seller's ownership of the Property there have been no releases, disposals, or burials of any Hazardous Substance on the Property and Seller knows of no prior release, disposal, or burial of any Hazardous Substance on the Property. As used herein "Hazardous Substance" shall mean any and all substances defined or designated as hazardous, toxic, radioactive, dangerous, or regulated wastes or materials, or any other similar term in or under any applicable Environmental Laws. Hazardous Substance shall also include fuels, petroleum, and petroleum-derived products. "Environmental Laws" shall mean any and all federal, State of Oregon, and local laws, regulations, rules, permit terms, codes, and ordinances now or hereafter in effect, as the same may be amended from time to time, and applicable decision law, which govern materials, substances, regulated wastes, emissions, pollutants, animals or plants, noise, or products and/or relate to the protection of health, natural resources, safety, or the environment.

(f) There are no actions, claims, or proceedings pending or, to Seller's knowledge, threatened by any party against Seller in connection with the Property or against the Property, nor to Seller's knowledge is there any basis for any such action or proceeding.

(g) At the Closing Date, there will be no unpaid or deferred property taxes (including but not limited to deferred farm or forest).

(h) Seller is the sole owner of the Property and has the sole legal power, right, and authority to enter into this Agreement and to consummate the transactions contemplated herein.

(i) The foregoing representations and warranties are true and correct as of the date of this Agreement and shall be true and correct at Closing. These representations and warranties shall survive the Closing and be fully enforceable thereafter.

7. Buyer's Representations and Warranties. Buyer represents and warrants to Seller:

(a) Buyer has all requisite power and authority to execute and deliver this Agreement and the documents to be executed at Closing or otherwise in accordance with the terms of this Agreement, and this Agreement is valid and binding on Buyer in accordance with its terms.

(b) Neither the entering into this Agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Buyer of any judgment, order, writ, injunction, or decree issued against or imposed upon it, or result in a violation of any applicable law, order, rule, or regulation of any governmental authority.

(c) The foregoing representations and warranties are true and correct as of the date of this Agreement and shall be true and correct at Closing. These representations and warranties shall survive the Closing and be fully enforceable thereafter.

8. **Condition of the Property.** Buyer agrees the Property is being sold and conveyed by Seller and accepted by Buyer without any representation or warranty by Seller except as expressly set forth in this Agreement. Except as otherwise specified in this Agreement, Buyer hereby acknowledges and agrees that Buyer shall rely solely upon the inspection, examination, and evaluation of the Property by Buyer or its representative(s). In the event of the purchase and sale of the Property hereunder, Seller shall sell the Property to Buyer, and Buyer shall accept the Property from Seller, in the condition “As Is”, “Where Is”, and “With All Faults”. Buyer acknowledges that, except as otherwise expressly set forth in this Agreement, Seller makes no warranty or representation with respect to the quality, physical condition, or value of the Property, the Property’s habitability, suitability, merchantability, or fitness for a particular purpose.

9. **Operation Through the Closing Date.** From and after the execution date of this Agreement, through and including the Closing Date, Seller, at Seller’s sole cost and expense, shall (a) keep all existing insurance policies affecting the Property in full force and effect; (b) continue to operate, manage, and maintain the Property in such condition so that the Property shall be in substantially the same condition on the Closing Date as on the execution date, reasonable wear and tear expected; (c) not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way, or similar matters without the prior written consent of Buyer; and (d) not make any alterations to the Property except in the ordinary course of business.

10. **Closing, Escrow, Prorates.** If the Due Diligence Contingencies described in **Section 3** have been timely satisfied or waived by Buyer, the purchase and sale of the Property shall close as soon as practical, but no more than 15 days from expiration or satisfaction of Due Diligence periods as set for in **Section 3** (referenced herein as “Closing Date” or “Closing”). The transaction shall close in escrow at Fidelity National Title, 5400 Meadows Rd., Lake Oswego, OR 97035 (“Escrow Agent”). Prior to the Closing Date, each party will deposit with the Escrow Agent the funds, documents, and instructions necessary for Closing. The cost of the escrow shall be shared equally between Buyer and Seller, per standard escrow protocol. Current real property taxes on the Property will be prorated between the parties as of the Closing Date. Seller shall pay all deferred taxes, if any. Buyer shall be entitled to possession of the Property on the Closing Date. Seller will provide Buyer at Closing with a Statutory Warranty Deed and will purchase an Owner’s Policy of Title Insurance for Buyer, with Buyer named as the insured. If Buyer surveys the Property and wishes to purchase extended title insurance coverage, Seller shall only be required to pay the cost of a standard title insurance policy, and Buyer shall pay the additional premium for extended coverage. The Escrow Agent shall collect and pay all taxes owed on the Property at Closing. Further escrow instructions may be provided by either party to the Escrow Agent.

11. **Broker.** Both Buyer and Seller represent to each other that no broker has been involved in this transaction. Seller has acknowledged that a broker was involved and that listing has long expired but, should there be a brokerage claim, Seller will be solely responsible and will indemnify Buyer therefrom.

12. **Voluntary Sale and Purchase Price.** Seller acknowledges that this is a voluntary sale and the Purchase Price is just and full compensation for this transaction and that the Purchase Price is based upon two appraisals performed by an appraiser retained by Buyer and an appraiser retained by Seller and is equal to a negotiated amount based on the two appraisals.

13. **Default.**

(a) In the event 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.

(b) In the event 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), or (ii) seek specific performance of this Agreement.

14. **Assignment.** This Agreement may not be assigned or transferred by Buyer at any time without the prior written consent of Seller, which consent may not be unreasonably withheld.

15. **General and Miscellaneous Provisions.**

(a) **Prior Agreements.** This instrument is the entire, final, and complete agreement of the parties pertaining to the sale and purchase of the Property, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Property is concerned. Neither party shall be bound by any promises, representations, or agreements, except as are herein expressly set forth.

(b) **Time is of the Essence.** Time is expressly made of the essence of each provision of this Agreement.

(c) **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, postage prepaid, addressed to the addresses set forth below with the names of the parties on the first page hereof, or to such other address as one party may indicate by written notice to the other party.

If notice is given to Seller, it shall be addressed as follows:

Town Center Investments, LLC
Attn: Susan Myers
29100 SW Town Center Loop West, Suite 140
Wilsonville, OR 97070

with copy to: Susan Myers, General Manager
Capital Realty
29100 SW Town Center Loop West, Suite 300A
Wilsonville, OR 97070

If notice is given to Buyer, it shall be addressed as follows:

City of Wilsonville
Attn: Capital Projects Engineering Manager
29799 SW Town Center Loop E
Wilsonville, Oregon 97070

with a copy to: City of Wilsonville
Attn: City Attorney
29799 SW Town Center Loop E
Wilsonville, Oregon 97070

The addresses or contacts set forth above may be changed by notice given in accordance with the terms of this Section.

(d) **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

(e) **No Merger.** The obligations set forth in this Agreement shall not merge with the transfer or conveyance of title to the Property but shall remain in effect until fulfilled.

(f) **Amendments.** This Agreement may be amended, modified, or extended without new consideration, but only by written instrument executed by both parties.

(g) **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon. Venue for any proceeding shall be in Clackamas County, Oregon.

(h) **Attorney Fees.** In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the U.S. Bankruptcy Code, instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, 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, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

(i) **Severability.** If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

(j) **Counting of Days.** Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(k) **Number, Gender and Captions.** In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

(l) **Recording.** Upon request of either party, the parties shall execute, in a form sufficient for recording, a memorandum of this Agreement, which may be recorded at the expense of the party requesting the same.

(m) **Binding Effect.** The covenants, conditions, and terms of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties hereto.

(n) **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

16. **1031 Exchange.** Seller 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. Buyer shall not be required to take title to any property, incur any costs, or be subject to any liability whatsoever in connection with such cooperation.

17. **Authority.** This Purchase and Sale Agreement is subject to final authorization and approval by the City Council of the City of Wilsonville and the Board of Commissioners of Washington County.

18. **Zoning and Land Use.** 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.

SELLER:

BUYER:

TOWN CENTER INVESTMENTS, LLC

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Bryan Cosgrove

As Its: _____

As Its: City Manager

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney

EXHIBIT "A"
Legal Description

Lot 1, WIL-TOWN-CEN, in the City of Wilsonville, County of Clackamas and State of Oregon, according to the plat Recorded November 9, 2006 as Document No. 2006-104276.

SELLER'S PROPERTY DISCLOSURE STATEMENT
NOT A WARRANTY (ORS 105.464)

If required under ORS 105.465, a seller shall deliver in substantially the following form the seller's property disclosure statement to each buyer who makes a written offer to purchase real property in this state:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. Please refer to the line number(s) of the question(s) when you provide your explanation(s). If you are not claiming an exclusion or refusing to provide the form under ORS 105.475(4), you should date and sign each page of this disclosure statement and each attachment.

Each seller of residential property described in ORS 105.465 must deliver this form to each buyer who makes a written offer to purchase. Under ORS 105.475(4), refusal to provide this form gives the buyer the right to revoke their offer at any time prior to closing the transaction. Use only the section(s) of the form that apply to the transaction for which the form is used. If you are claiming an exclusion under ORS 105.470, fill out only Section 1.

An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not excluded, the seller must disclose the condition of the property or the buyer may revoke their offer to purchase any time prior to closing the transaction. Questions regarding the legal consequences of the seller's choice should be directed to a qualified attorney.

Section 1. EXCLUSION FROM ORS 105.462 TO 105.490 *(Do not fill out this section unless you are claiming an exclusion under ORS 105.470.)*

You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not claiming an exclusion, you must fill out Section 2 of this form completely. *Initial only the exclusion you wish to claim:*

_____ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed under building or installation permit(s) # _____, issued by _____.

_____ This sale is by a financial institution that acquired the property as custodian, agent, or trustee, or by foreclosure or deed in lieu of foreclosure.

_____ The seller is a court appointed receiver, personal representative, trustee, conservator, or guardian.

_____ This sale or transfer is by a governmental agency.

Signature(s) of Seller claiming exclusion
Print Name: _____
Date: _____

Signature(s) of Seller claiming exclusion
Print Name: _____
Date: _____

Buyer(s) to acknowledge Seller's claim
Print Name: _____
Date: _____

Buyer(s) to acknowledge Seller's claim
Print Name: _____
Date: _____

Section 2. SELLER’S PROPERTY DISCLOSURE STATEMENT (If you did not claim an exclusion in Section 1, you must fill out this section.)

NOTICE TO THE BUYER: THE FOLLOWING REPRESENTATIONS ARE MADE BY THE SELLER(S) CONCERNING THE CONDITION OF THE PROPERTY LOCATED AT: Tax lots 03S01W14A1800 and 03S01W14A1900
 (“THE PROPERTY”).

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER’S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. BUYER HAS FIVE DAYS FROM THE SELLER’S DELIVERY OF THIS SELLER’S DISCLOSURE STATEMENT TO REVOKE BUYER’S OFFER BY DELIVERING BUYER’S SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER’S DISCLOSURE STATEMENT, UNLESS BUYER WAIVES THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY, BUYER IS ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON BUYER’S BEHALF, INCLUDING, FOR EXAMPLE, ONE OR MORE OF THE FOLLOWING: ARCHITECTS, ENGINEERS, PLUMBERS, ELECTRICIANS, ROOFERS, ENVIRONMENTAL INSPECTORS, BUILDING INSPECTORS, CERTIFIED HOME INSPECTORS, OR PEST AND DRY ROT INSPECTORS.

Seller is is not occupying the property.

SELLER’S REPRESENTATIONS:

The following are representations made by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property, or any real estate licensee engaged by the seller or the buyer. **If you mark yes on items with *, attach a copy or explain on an attached sheet.*

I. TITLE

- A. Do you have legal authority to sell the property? Yes No Unknown
- *B. Is title to the property subject to any of the following:
 - (1) First right of refusal Yes No Unknown
 - (2) Option Yes No Unknown
 - (3) Lease or rental agreement Yes No Unknown
 - (4) Other listing Yes No Unknown
 - (5) Life estate Yes No Unknown
- *C. Is the property being transferred an unlawfully established unit of land? Yes No Unknown
- *D. Are there any encroachments, boundary agreements, boundary disputes, or recent boundary changes? Yes No Unknown
- *E. Are there any rights of way, easements, licenses, access limitations, or claims that may affect your interest in the property? Yes No Unknown
- *F. Are there any agreements for joint maintenance of an easement or right of way? Yes No Unknown
- *G. Are there any governmental studies, designations, zoning overlays, surveys, or notices that would affect the property? Yes No Unknown
- *H. Are there any pending or existing governmental assessments against the property? Yes No Unknown
- *I. Are there any zoning violations or nonconforming uses? Yes No Unknown
- *J. Is there a boundary survey for the property? Yes No Unknown
- *K. Are there any covenants, conditions, restrictions, or private assessments that affect the property? Yes No Unknown
- *L. Is the property subject to any special tax assessment or tax treatment that may result in levy of additional taxes if the property is sold? Yes No Unknown

II. WATER

A. Household Water:

(1) The source of the water is (check ALL that apply):

Public Community Private Other: _____

(2) Water source information:

*a. Does the water source require a water permit? Yes No Unknown

If yes, do you have a permit? Yes No

b. Is the water source located on the property? Yes No Unknown

*If not, are there any written agreements for a shared water source? Yes No Unknown N/A

*c. Is there an easement (recorded or unrecorded) for your access to or maintenance of the water source? Yes No Unknown

d. If the source of water is from a well or spring, have you had any of the following in the past 12 months? Yes No Unknown N/A

Flow test Bacteria test Chemical contents test

*e. Are there any water source plumbing problems or needed repairs? Yes No Unknown

(3) Are there any water treatment systems for the property? Yes No Unknown

Leased Owned

B. Irrigation:

(1) Are there any water rights or other irrigation rights for the property? Yes No Unknown

*(2) If any exist, has the irrigation water been used during the last five-year period? Yes No Unknown N/A

*(3) Is there a water rights certificate or other written evidence available? Yes No Unknown N/A

C. Outdoor Sprinkler System:

(1) Is there an outdoor sprinkler system for the property? Yes No Unknown

(2) Has a back flow valve been installed? Yes No Unknown N/A

(3) Is the outdoor sprinkler system operable? Yes No Unknown N/A

III. SEWAGE SYSTEM

A. Is the property connected to a public or community sewage system? Yes No Unknown

B. Are there any new public or community sewage systems proposed for the property? Yes No Unknown

C. Is the property connected to an on-site septic system? Yes No Unknown

(1) If yes, when was the system installed? _____ Unknown N/A

*(2) If yes, was the system installed by a permit? Yes No Unknown N/A

*(3) Has the system been repaired or altered? Yes No Unknown

*(4) Has the condition of the system been evaluated and a report issued? Yes No Unknown

(5) Has the septic tank ever been pumped? Yes No Unknown

If yes, when? _____ N/A

(6) Does the system have a pump? Yes No Unknown

(7) Does the system have a treatment unit such as a sand filter or an aerobic unit? Yes No Unknown

*(8) Is a service contract for routine maintenance required for the system? Yes No Unknown

(9) Are all components of the system located on the property? Yes No Unknown

*D. Are there any sewage system problems or needed repairs? Yes No Unknown

E. Does your sewage system require on-site pumping to another level? Yes No Unknown

IV. COMMON INTEREST

A. Is there a Home Owners' Association or other governing entity? Yes No Unknown

Name of Association or Other Governing Entity: _____

Address: _____

Contact Person: _____ Phone Number: _____

B. Regular periodic assessments: \$ _____
per Month Year Other: _____

- *C. Are there any pending or proposed special assessments? Yes No Unknown
- D. Are there shared "common areas" or joint maintenance agreements for facilities like walls, fences, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others? Yes No Unknown
- E. Is the Home Owners' Association or other governing entity a party to pending litigation or subject to an unsatisfied judgment? Yes No Unknown N/A
- F. Is the property in violation of recorded covenants, conditions, and restrictions or in violation of other bylaws or governing rules, whether recorded or not? Yes No Unknown N/A

V. GENERAL

- A. Are there problems with settling, soil, standing water, or drainage on the property or in the immediate area? Yes No Unknown
- B. Does the property contain fill? Yes No Unknown
- C. Is there any material damage to the property or any of the structure(s) from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides? Yes No Unknown
- D. Is the property in a designated floodplain? Yes No Unknown
- E. Is the property in a designated slide or other geologic hazard zone? Yes No Unknown
- *F. Has any portion of the property been tested or treated for asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel, or chemical storage tanks or contaminated soil or water? Yes No Unknown
- G. Are there any tanks or underground storage tanks (e.g., septic, chemical, fuel, etc.) on the property? Yes No Unknown
- H. Has the property ever been used as an illegal drug manufacturing or distribution site?
*If yes, was a Certificate of Fitness issued? Yes No Unknown
- *I. Has the property been classified as forestland-urban interface? Yes No Unknown

VI. FULL DISCLOSURE BY SELLERS

*A. Are there any other material defects affecting this property or its value that a prospective buyer should now about?
 Yes No
*If yes, describe the defect on attached sheet and explain the frequency and extent of the problem and any insurance claims, repairs, or remediation.

B. Verification: The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy of this disclosure statement. I/we authorize my/our agents to deliver a copy of this disclosure statement to all prospective buyers of the property or their agents.

SELLER: TOWN CENTER INVESTMENTS, LLC,
an Oregon limited liability company

By: _____

Print Name: _____

Title: _____

Date: _____

BUYER’S ACKNOWLEDGEMENT

- A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects that are known to me/us or can be known by me/us by utilizing diligent attention and observation.
- B. Buyer acknowledges and understands that the disclosures set forth in this statement and in any amendments to this statement are made only by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property, or of any real estate licensee engaged by the seller or buyer. A financial institution or real estate licensee is not bound by and has no liability with respect to any representation, misrepresentation, omission, error, or inaccuracy contained in another party’s disclosure statement required by this section or any amendment to the disclosure statement.
- C. Buyer (which term includes all persons signing the “buyer’s acknowledgement” portion of this disclosure statement below) hereby acknowledges receipt of a copy of this disclosure statement (including attachments, if any) bearing seller’s signature(s).

DISCLOSURES, IF ANY, CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER’S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. IF THE SELLER HAS FILLED OUT SECTION 2 OF THIS FORM, YOU, THE BUYER, HAVE FIVE DAYS FROM THE SELLER’S DELIVERY OF THIS DISCLOSURE STATEMENT TO REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER’S DISCLOSURE UNLESS YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS SELLER’S PROPERTY DISCLOSURE STATEMENT.

BUYER: CITY OF WILSONVILLE

By: _____
Bryan Cosgrove
As Its: City Manager

Date: _____

Agent receiving disclosure statement on buyer’s behalf to sign and date:

Real Estate Licensee’s Signature
Print Name: _____

Real Estate Business Name

Date received by agent: _____

After recording, return to:
City of Wilsonville
Attn: City Attorney
29799 SW Town Center Loop East
Wilsonville OR 97070

**FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS
(Removal and Release of Lot 1)**

This is the First Amendment to the Declaration and Grant of Restrictive Covenants, dated November 1, 2007, and recorded under Recording No. 2007-095506 in the records of Clackamas County, Oregon. This First Amendment is made by **Town Center Investments LLC**, an Oregon limited liability company (“TCI”), and **29100 Town Center, LLC**, an Oregon limited liability company (“29100 Town Center”), effective the _____ day of November, 2018.

RECITALS

A. WHEREAS, the above-named TCI and 29100 Town Center (collectively, the “Parties”) entered into the above-referenced Declaration of Restrictive Covenants (“Declaration”), as described above, and the Parties now wish to amend the Declaration to remove and exclude Lot 1, as described in the Declaration, from the Declaration and to forever remove the restrictive covenants from Lot 1 so that the title exception for the Declaration will be removed from title to Lot 1; and

B. WHEREAS, Wilsonville is purchasing Lot 1 in furtherance of its updated Master Plan for Town Center and may use it for a purpose not currently allowed under the Declaration; therefore, removal of the restrictive covenants is being done as a condition of and in consideration of the sale of Lot 1 to the City of Wilsonville;

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated into this First Amendment to the Declaration and Grant of Restrictive Covenants (“First Amendment”), and for good and valuable consideration, the receipt of which is acknowledged by the Parties, the Parties hereby agree as follows:

AGREEMENT

1. In consideration of and as a condition of the sale of Lot 1 to the City of Wilsonville, legally described on **Exhibit A**, attached hereto and incorporated by reference herein, the Parties agree that the restrictive covenants shall be removed from Lot 1 and shall not impact the use, development, or any other aspect of Lot 1 in any way.

2. The Parties hereby direct the escrow officer to record this First Amendment as a part of the Closing transaction, thereby releasing and removing Lot 1 from the Declaration immediately prior to recording the Statutory Warranty Deed conveying Lot 1 to the City of Wilsonville so that the restrictive covenants shall not appear on title to Lot 1 when the title insurance policy is issued to the City of Wilsonville for Lot 1.

3. The Declaration of Restrictive Covenants shall remain in place as to Lots 2, 3, 4, and 5.

4. The individuals executing this First Amendment each represent and warrant that he/she has the full power and authority to do so on behalf of the respective party and to bind said party to the terms of this First Amendment.

5. This First Amendment may be executed in counterparts.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment effective as of the date first above written.

TOWN CENTER INVESTMENTS LLC

By: _____

Print Name: _____

As Its: _____

STATE OF OREGON)
) ss.
 County of _____)

This instrument was acknowledged before me on _____, 2018, by _____, who personally appeared before me, was identified by satisfactory evidence, and acknowledged that he/she executed the instrument in his/her authorized capacity as the _____ of Town Center Investments LLC, an Oregon limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

 Notary Public – State of Oregon

29100 TOWN CENTER, LLC

By: _____

Print Name: _____

As Its: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 2018, by _____, who personally appeared before me, was identified by satisfactory evidence, and acknowledged that he/she executed the instrument in his/her authorized capacity as the _____ of 29100 Town Center, LLC, an Oregon limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Notary Public – State of Oregon

ACCEPTED AND AGREED TO:

CITY OF WILSONVILLE

By: _____
Bryan Cosgrove
As Its: City Manager

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on _____, 2018,
by Bryan Cosgrove, as City Manager of the City of Wilsonville.

Notary Public – State of Oregon

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney

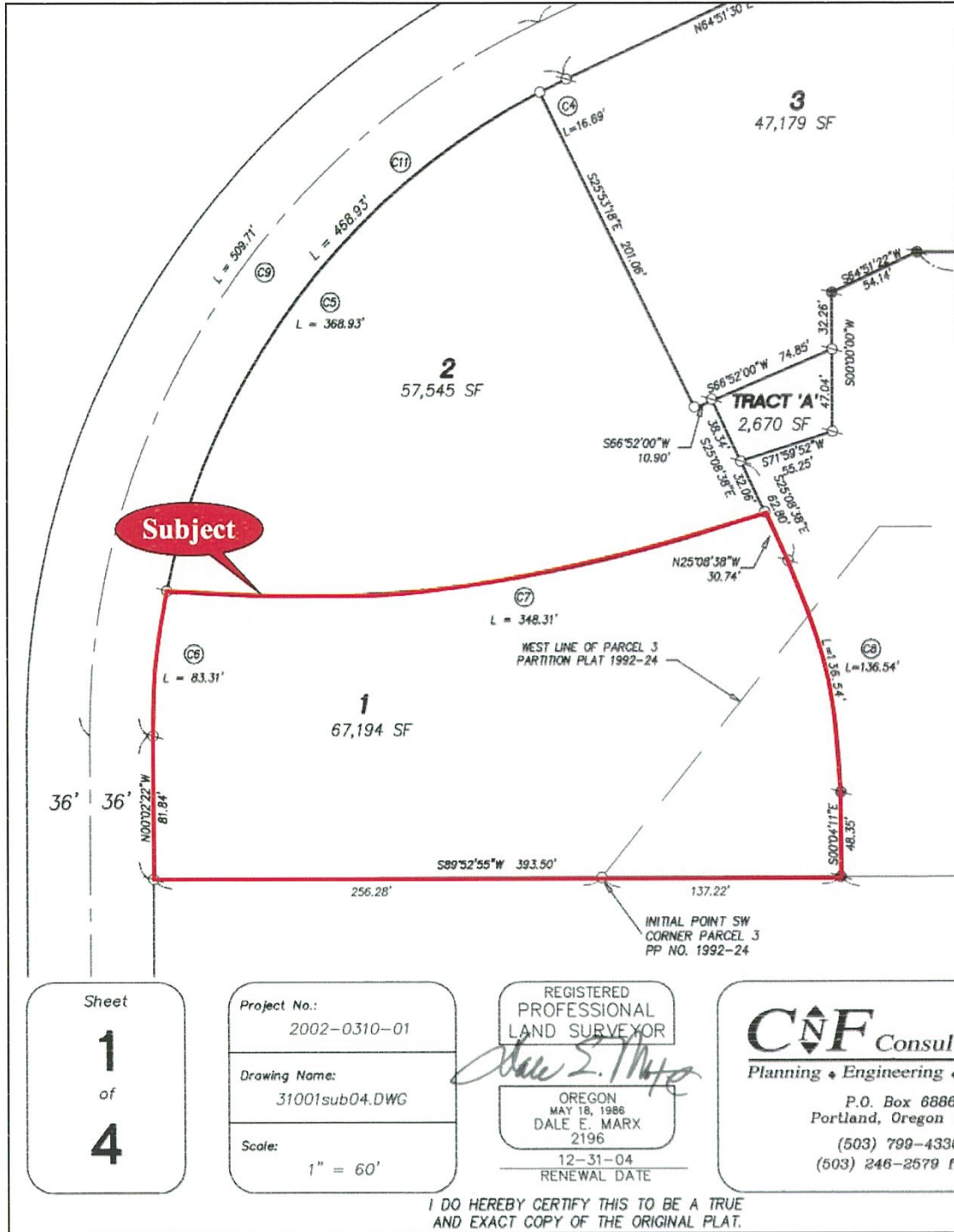
APPROVED AS TO LEGAL DESCRIPTION:

M. Patty Nelson, P.E., City Engineer

EXHIBIT "A"
Legal Description

Lot 1, WIL-TOWN-CEN, in the City of Wilsonville, County of Clackamas and State of Oregon, according to the plat Recorded November 9, 2006 as Document No. 2006-104276.

PLAT MAP



Sheet
1
 of
4

Project No.:
 2002-0310-01

Drawing Name:
 31001sub04.DWG

Scale:
 1" = 60'

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

Dale E. Marx

OREGON
 MAY 18, 1986
 DALE E. MARX
 2196
 12-31-04
 RENEWAL DATE

CNF Consult
 Planning • Engineering •

P.O. Box 6886
 Portland, Oregon 97208
 (503) 799-4330
 (503) 246-2579 fax

I DO HEREBY CERTIFY THIS TO BE A TRUE
 AND EXACT COPY OF THE ORIGINAL PLAT.