

THE COMMONS PROJECT

AMENDED AND RESTATED AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

Between

**City of Medford,
Medford Urban Renewal Agency
and
Lithia Real Estate, Inc.**

February 26, 2010

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**THE COMMONS PROJECT
AMENDED AND RESTATED AGREEMENT FOR
DISPOSITION AND DEVELOPMENT
OF PROPERTY**

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5 **THIS AMENDED AND RESTATED AGREEMENT FOR DISPOSITION AND**
6 **DEVELOPMENT OF PROPERTY** (this “Agreement”) is made as of February 26, 2010,
7 by the **CITY OF MEDFORD** (“City”), a municipal corporation of the State of Oregon,
8 **MEDFORD URBAN RENEWAL AGENCY** (“Agency”), a public body corporate and
9 politic, organized and existing under ORS Chapter 457 as the urban renewal agency of the
10 City of Medford, Oregon and **LITHIA REAL ESTATE, INC.**, an Oregon corporation
11 (“Lithia”) City, Agency and Lithia are referred to jointly in this Agreement as “Parties”
12 and individually as a “Party” The Parties entered into an Agreement for Disposition and
13 Development of Property dated as of September 19, 2006, as amended by Amendment No
14 1 thereto dated December 6, 2007 (collectively “Original DDA”) By the execution of this
15 Agreement, the Parties are amending, restating and superseding the Original DDA, which
16 will be of no further force and effect and all the rights and obligations of the Parties with
17 respect to the subject matter hereof shall be as set forth in this Agreement
18

RECITALS

- 19
20
21 A WHEREAS, Agency is the duly authorized urban renewal agency of the City of
22 Medford, Oregon, and administers the City Center Revitalization Plan, adopted by
23 the Medford City Council on October 20, 1988 by Ordinance No 6213, and, as
24 amended from time to time, referred to herein as the “Plan”,
- 25 B WHEREAS, the Parties, following considerable public involvement and input,
26 have formulated a major redevelopment proposal consisting of a number of
27 projects and activities, as specified herein, involving public, private and private-
28 public investment within the Medford Urban Renewal Area defined by the Plan
29 located approximately between Bear Creek, Middleford Alley, Central Avenue
30 and Jackson Street (the “Project Area”, “Project” or “The Commons Project”), as
31 shown on the aerial map attached hereto as Exhibit “A”,
- 32 C WHEREAS, Lithia owns, leases or otherwise controls a significant portion of the
33 private property located within the Project Area and intends to and has already
34 relocated some of its existing automobile sales and service activities outside of the
35 Project Area, thereby creating unique opportunities for redevelopment of the
36 Project Area,
- 37 D WHEREAS, Lithia intends to design and construct its Headquarters Building on
38 property wholly owned or controlled by Lithia within the Project Area,
- 39 E WHEREAS, Lithia has under the Original DDA prepared design documents for
40 the construction of the Park Blocks which are the subject of the Medford Site Plan
41 and Architectural Commission Order dated November 2, 2007 in connection with
42 Commission File AC-07-144 (the “SPAC Approval”),

1 F WHEREAS, the Parties acknowledge that this Agreement amends and restates the
2 Original DDA to simplify certain aspects of the Original DDA, to better match
3 the current economic and development climate, and to shift responsibilities for
4 portions of the development contemplated herein to match each Party's current
5 ability to participate in such development,

6 G WHEREAS, City and Agency find that The Commons Project, as described in
7 this Agreement, will help achieve the community's, City's and Agency's goals for
8 revitalization of the City Center consistent with the Plan, will serve as the catalyst
9 for subsequent private and public investment both within and without the Project
10 Area and is in the best interests of the City and the health, safety, and welfare of
11 its residents, and is in accord with the public purposes and provisions of
12 applicable state, federal, and local laws and requirements

13

14 **NOW, THEREFORE**, in consideration of the mutual covenants contained in this
15 Agreement, the Parties agree as follows

16

17 **SECTION 1. DEFINED TERMS**

18

19 Words that are capitalized, and which are not the first word of a sentence, are defined
20 terms. A defined term has the meaning given it when it is first defined in this Agreement.
21 Some defined terms are first defined in the text of this Agreement, and some are first
22 defined in Schedule 1. Defined terms may be used together and the combined defined term
23 has the meaning of the combined defined terms. A defined term that is a noun may be used
24 in its verb or adjective form and vice-versa. If there is any difference between the
25 definition of a defined term in the text of this Agreement and the definition of that term in
26 Schedule 1, the definition in the text controls. Defined terms may be used in the singular or
27 the plural.

28

29

30 **SECTION 2. DESCRIPTION OF PROJECT AND COMPLETED ASPECTS**

31

32 **2.1 In General.**

33 **2.1.1** The plan for The Commons Project consists of a number of separate
34 projects and activities situated within the Project Area, some of which
35 are public and which will be completed by City and Agency, now or at a
36 later date, and others which are private and which are intended to be
37 completed by Lithia, parties related to Lithia or other private developers.

38 **2.1.2** Initial development in the Project Area is anticipated to include the
39 Headquarters Building described in Section 7, the remodel of the
40 Existing Parking Facility described in Section 6, the Park Blocks
41 described in Section 5, the Infrastructure described in Section 9 and,
42 potentially, the New Parking Facilities described in Section 8.

1 **3.2 Availability of Agency’s Financial Participation** The Agency anticipates
2 incurring debt through third party sources, and secured by tax increment
3 revenues generated pursuant to the Plan, to fund a portion of the Agency’s
4 Financial Participation (“Third Party Borrowing”) Due to the method for
5 collection of tax increment amounts pursuant to ORS 457 420 et seq , the
6 Parties recognize that the amount and availability of Third Party Borrowing is
7 dependent to a significant extent on the completion of private development
8 under the Plan and within the Project Area by Lithia and other private
9 developers Therefore, the Agency’s timing to make the Agency’s Financial
10 Participation or otherwise to perform its obligations under this Agreement, and
11 as set forth in Schedule 3 1, related to the making of the Agency’s Financial
12 Participation may be delayed because there will not be sufficient tax increment
13 funds, as calculated using the Agency’s usual tax increment debt underwriting
14 practices, to service such Third Party Borrowing

15 The Agency will provide to Lithia within ten (10) days after July 1st and January
16 1st of each year a summary of the Agency’s Financial Participation that will be
17 available for the succeeding twelve (12) month period and the status of all Third
18 Party Borrowings and other bond offerings related to the Agency’s Financial
19 Participation

20 **3.3 Allocation of Agency’s Financial Participation.** The Agency shall use the
21 Agency’s Financial Participation, until depleted, for the following purposes

22 **3.3.1** The cost to acquire the Park Block Properties as provided for in Section
23 4

24 **3.3.2** The costs for the application or other fees associated with seeking to
25 secure New Markets Tax Credit for the Project as provided in Section 12
26 in an amount not to exceed \$50,000

27 **3.3.3** The costs to develop the Park Block Properties as provided in Section 5,
28 including costs related to design, construction, demolition, and
29 environmental remediation as provided in Section 5 and infrastructure
30 costs as provided in Section 9

31 **3.3.4** The costs to remodel the Existing Parking Facility as provided in Section
32 6, in an amount not to exceed \$300,000

33 **3.3.5** The cost to reimburse Lithia for the costs incurred for the Park Plans
34 pursuant to Section 3 6

35 **3.3.6** The costs to develop New Parking Facilities as provided for in Section 8,
36 including the costs of planning, acquisition, design, construction,
37 demolition and environmental remediation

38 The Agency acknowledges that the scheduling and amounts allocated to the
39 development activities set forth in this Agreement and Schedule 3 1 are only
40 approximates, unless otherwise noted as “not to exceed”, and the Agency will
41 not unreasonably withhold its consent to a request by Lithia for the Agency to

1 allocate additional funds from one development activity to another development
2 activity

3 **3.4 Agency's Administrative Expenses.** The Parties agree that Agency's
4 Financial Participation will be used only for the items specified in Section 3 3,
5 which may include the costs of Third Party Borrowing ("Third Party Borrowing
6 Costs") and the costs of third parties retained by the Agency in carrying out the
7 Agency's obligations under this Agreement ("Additional Costs"), provided that
8 such Additional Costs shall not exceed 4% of the final cost of each item in
9 Section 3 3 and the sum of the Third Party Borrowing Costs and the Additional
10 Costs shall not exceed \$500,000 Except as specifically provided herein, no
11 portion of the Agency's Financial Participation shall be used for the Agency's
12 administrative or overhead expenses incurred

13 **3.5 Documentation for Agency's Funds.** From and after the Agency first
14 expends funds for the purposes set forth in Section 3 3 ("Agency Actions") on
15 or before March 1 and September 1 of each year, the Agency shall provide
16 Lithia with an accounting for such funds for the respective preceding six month
17 periods of July 1 through December 31 and January 1 through June 30 setting
18 forth in reasonably adequate detail a description of the items paid for and costs
19 incurred to carry out the Agency Actions Not later than three (3) months after
20 receipt of any such semi-annual accounting, upon written request by Lithia to do
21 so, the Agency shall provide written supporting documentation In addition,
22 during such three (3) month period, Lithia, using an independent certified public
23 accountant that does not perform work for Lithia, the City or the Agency, shall
24 have the right to audit the Agency's records with respect to the expenditures
25 made with respect to the Agency Actions If the audit discloses that any of the
26 funds spent were not properly attributed to the Agency Actions, those amounts
27 will be deducted from the Agency's Financial Participation and the Agency
28 shall reimburse Lithia for its reasonably incurred audit expenses plus Lithia's
29 reasonable attorneys fees incurred as a part of such audit process

30 **3.6 Documentations of Lithia's Costs to be Reimbursed.** Subject to the
31 commencement of construction of Park Block 1, the Agency agrees to
32 reimburse Lithia for costs incurred by Lithia with respect to Lithia's preparation
33 of the Park Plans ("Plans Reimbursement Amount") The payment of the Plans
34 Reimbursement Amount shall occur in two payments as identified in Schedule
35 3 1 As a condition of reimbursement from the Agency, Lithia shall provide the
36 Agency with an accounting for such expenses incurred in preparation of the
37 Park Plans, by providing in reasonably adequate detail a description of each
38 expense incurred for which reimbursement is sought Not later than twenty (20)
39 days after the Agency's receipt of such accounting, upon written request by the
40 Agency to do so, Lithia shall provide written supporting documentation within
41 ten (10) days after such request Within sixty (60) days after receipt of the
42 supporting documentation from Lithia, the Agency shall have the right to
43 commence and complete an audit Lithia's records with respect to such costs for
44 which reimbursement is sought using an independent certified public accountant

1 that does not perform work for either the Agency, the City or Lithia. If the audit
2 discloses that any of such expenses spent were not related to costs for which
3 reimbursement may be sought, those costs will not be reimbursed and Lithia
4 shall reimburse the Agency for its reasonably incurred audit expenses plus the
5 Agency's reasonable attorneys fees incurred as a part of such audit process
6

7 **SECTION 4. ACQUISITION OF REIT PARCELS**

8 **4.1 Park Block Parcels.** Park Blocks 1 and 2 shall be comprised of all or portions
9 of the following Parcels as shown on Schedule 4.1

	<u>Park Block 1</u>	<u>Park Block 2</u>
	("Park Block 1 Parcels")	("Park Block 2 Parcels")
10	Parcel	18
11		10
12		20
13		12
14		21
15		14
16		24
17		15

17 The Parties acknowledge that portions of the Park Block 1 Parcels may not be
18 necessary for the development of Park Block 1 and the public alley adjacent to
19 Park Block 1's eastern boundary and any remnant portions of the Park Block 1
20 Parcels will be conveyed to Lithia as provided for in Section 4.7
21

22 **4.2 Present Ownership.** As to Park Block 1 and Park Block 2, the following
23 parcels ("REIT Parcels") are owned of record by CARS-DB 4 L P, a Delaware
24 limited partnership (the "REIT")

	<u>Park Block 1</u>	<u>Park Block 2</u>
25	18	10
26	20	12
27	24	14
28		

29 Parcels 21 and 15 are owned by the Agency

30 Lithia has the right to acquire the REIT Parcels, having previously sold to and
31 leased those Parcels back from the REIT with an option to purchase

32 **4.3 Acquisition of REIT Parcels.** The Agency initially allocated \$1,050,000
33 ("Agency's Park Block Contribution Amount") for the acquisition of the REIT
34 Parcels. With this Agreement the Agency has increased the Agency Park Block
35 Contribution from \$1,050,000 to \$3,600,000. Based on information currently
36 available, the Agency hereby allocates these funds (the "Agency's Park Block 1
37 Contribution Amount" and the "Agency's Park Block 2 Contribution Amount")
38 as set forth in Schedule 3.1. The parties acknowledge and agree that, depending
39 upon the market conditions in effect at the time of the acquisitions, the Agency
40 Park Block Contribution may be reallocated between the two Park Blocks as a
41 Minor Modification under Section 17.10

1 The Agency's acquisition of the REIT Parcels is subject to the procedures and
2 requirements as set forth in the Agency's Relocation and Real Property
3 Acquisition Policies ("Acquisition Policies") Lithia, on behalf of the Agency,
4 shall negotiate the terms of the purchase of the REIT Parcels in accordance with
5 the Acquisition Policies Lithia in negotiating the purchase of the REIT Parcels
6 will use its best efforts to secure adjustments in the purchase prices based upon
7 the costs of anticipated environmental remediation Lithia will secure the
8 necessary consents from the REIT permitting the direct transfer of the REIT
9 Parcels to the Agency as set forth in Schedule 3 1

10 Although not required to do so, if Lithia elects to negotiate and purchase the
11 REIT Parcels located in Park Block 2 prior to the Agency's Park Block 2
12 Contribution Amount being available, Lithia agrees to resell such REIT Parcels
13 to the Agency on the same terms and conditions that it purchased such REIT
14 Parcels from the REIT

15 Provided however, notwithstanding Schedule 3 1 or any other provision of this
16 Section 4 3, Agency shall not be required to acquire any of the REIT Parcels
17 unless one of the following conditions has been satisfied (i) Lithia has
18 commenced construction of the Headquarters Building or (ii) Lithia has
19 provided to the Agency written confirmation and agreement to proceed with
20 construction of its Headquarters Building, accompanied by proof of financing
21 for said construction approved by the Agency, which approval will not be
22 unreasonably withheld

23 **4.4 Title to REIT Parcels.** The Agency shall acquire title to each of the REIT
24 Parcels directly from the REIT by Statutory Special Warranty Deed the form of
25 which is attached hereto as Schedule 4 4, subject only to current ad valorem real
26 property taxes, not delinquent and the other Permitted Exceptions which shall
27 be determined pursuant to the provisions of Section 4 5

28 **4.5 Title Review.**

29 **4.5.1 Preliminary Title Report** Lithia shall order preliminary title reports
30 for the REIT Parcels Upon Lithia's receipt of the preliminary title
31 reports for the REIT Parcels, Lithia will make available to the Agency
32 such reports and copies of all exception documents (the "Title Reports")
33 The Agency will have twenty (20) days after the date Lithia provides the
34 Title Reports to request any additional materials it may reasonably need
35 to review the title to the REIT Parcels Within ten (10) days after the
36 Agency's request, Lithia will deliver a copy of any documents or
37 materials within its control with respect to each of the REIT Parcels,
38 including, appraisal, survey, environmental and other investigatory
39 materials or documents The Agency will have thirty (30) days after the
40 date of receiving the Title Reports (and any requested additional
41 materials), whichever is later, to notify Lithia in writing of any objection
42 to any item in the Title Reports Those items to which the Agency does
43 not object are the "Permitted Exceptions" If the Agency objects to any

item, then Lithia shall have twenty (20) days after receiving the written objection to notify the Agency in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing Any monetary encumbrances shall be removed by Lithia at closing whether objected to or not by the Agency

4.5.2 Pro forma Title Policy. Lithia will obtain a pro forma title policy at least fifteen (15) days prior to the conveyance of any REIT Parcel being acquired by the Agency showing only the Permitted Exceptions

4.6 Title Insurance, Survey, Property Taxes and Closing Costs.

4.6.1 Title Insurance. The Agency, as part of the Agency’s Financial Participation, shall secure a standard coverage Owner’s Policy of Title Insurance, issued by Escrow Agent, and covering the REIT Parcels being acquired by the Agency in the amount of the purchase price paid by the Agency for each REIT Parcel, free and clear of encumbrances, except the Permitted Exceptions The Agency, upon instruction by the City to do so may elect to obtain extended coverage under such policy of title insurance

4.6.2 Recording Costs and Property Taxes. The Agency, as part of the Agency’s Financial Participation, will be responsible for recording any Deed to any of the REIT Parcels Even though the Deeds for the REIT Parcels may be directly from the REIT to the Agency, all closing costs and escrow fees shall be paid by Agency as part of the Agency’s Park Block Contribution Amount Any special assessments and property taxes assessed against any of the REIT Parcels shall be prorated between Lithia and the Agency as of the date of closing

4.7 Establishment of Boundaries for Park Block 1, Adjoining Public Alley and Conveyance of Remnant Parcels to Lithia. Lithia shall undertake the necessary survey to initially determine those portions of the Park Block 1 Parcels that are needed for the Park Block 1, the adjoining public alleyway and any remnant portion, which initial determination shall be reviewed and approved by the Agency and the City, which approval will not be unreasonably withheld, conditioned or delayed The Agency and the City hereby acknowledge and agree that any remnant portion of any of the Park Block 1 Parcel (each a “Remnant Parcel” and collectively “Remnant Parcels”) will be of insufficient size for any public use and that since the Remnant Parcel will immediately adjoin the parcels on which the Headquarters Building is intended to be built and to provide for a fully developable Headquarters Parcel, the Agency hereby agrees to transfer the Remnant Parcels to Lithia subject only to the Permitted Exceptions as determined pursuant to Section 4 5 Lithia shall be responsible for all costs and expenses related to the transfer of the Remnant Parcels to Lithia The Agency agrees to undertake such other administrative or other procedures as may be required to permit the transfer of the Remnant Parcels to Lithia as provided for by this Section 4 7 The Parties agree to cooperate with

1 one another so that the determination of the boundaries for the Park Block 1, the
2 adjoining public alley and the Remnant Parcels will take place in sufficient time
3 so that the Remnant Parcels can be conveyed by the Agency to Lithia
4 immediately after the acquisition of the REIT Parcels by the Agency

5 **4.8 Right to Modify or Relocate Headquarters Building.** In the event any one or
6 more of the following events occurs

7 **4.8.1** Lithia is not able or fails to negotiate the purchase, on behalf of the
8 Agency, the REIT Parcels, on the terms and conditions of this Section 4,
9 or the Agency is unable or fails to purchase the REIT Parcels on the
10 terms and conditions of this Section 4

11 **4.8.2** One or more of the Park Block Parcels is determined to require
12 environmental remediation the costs or time for which to complete are
13 determined by all Parties to be cost prohibitive or impractical to
14 undertake

15 **4.8.3** Such other circumstances occur that are beyond the reasonable control
16 of Lithia and which make the location and the scope of Headquarters
17 Building practically or financially infeasible

18 Then Lithia shall have the right, subject to customary land use review and
19 permitting processes to relocate the Headquarters Building to be constructed by
20 Lithia within the Project Area, such relocation being subject to the approval of
21 the City and Agency, which approval will not be unreasonably withheld,
22 conditioned or delayed

23
24 **SECTION 5. CONSTRUCTION OF PARK BLOCKS**

25 **5.1 Description.** Park Block 1 and Park Block 2 (collectively the “Park Blocks”),
26 are shown on Schedule 5 1 and are located between Sixth Street and Fourth
27 Street and fronting on Bartlett Street, and designated in the Plan as Activity No
28 20

29 **5.2 Exemption From Public Bidding.** As a condition of this Agreement, the
30 Agency will consider the necessary findings under ORS Chapter 279C and
31 Section 58 of the Agency’s Administrative Regulations Relating to Contracting
32 and Purchasing Code (“Agency’s Contracting Code”) exempting Lithia from the
33 normal bidding procedures for the construction of the Park Blocks and the
34 remodel of the Existing Parking Facility (“the Exemption From Competitive
35 Bidding”) If the Exemption From Competitive Bidding is not approved by the
36 Agency within forty-five (45) days after approval of this Agreement (“Outside
37 Approval Date”) Lithia shall have the right to terminate this Agreement by
38 giving written notice of termination to the Agency and the City within thirty
39 (30) days after the Outside Approval Date

40 The provisions of Sections 5 3 through 5 9 are subject to the securing of the
41 Exemption From Competitive Bidding If the Exemption From Competitive

1 Bidding is not secured, then the Agency will be responsible for the ongoing
2 design and construction of the Park Blocks and the remodel of the Existing
3 Parking Facility pursuant to the Agency's Contracting Code, subject to the
4 termination provisions of this Section 5 2 or Section 7 3 If the Agency
5 becomes responsible for the ongoing design and construction of the Park Blocks
6 and the remodel of the Existing Parking Facility, nothing in this Agreement
7 shall prevent Lithia from bidding to become the CM/GC on any or all of such
8 projects

9 Notwithstanding anything in this Agreement to the contrary, Lithia shall have
10 the right to elect not to act as the CM/GC for the remodel of the Existing
11 Parking Facility or the construction of Park Blocks 1 or 2 by giving written
12 notice of such election to the Agency Written notice of such election as to the
13 remodel of the Existing Parking Facility and Park Blocks 1 or 2 shall be given
14 not later than six (6) months prior to the anticipated date of commencement of
15 construction for each project as shown on Schedule 3 1, or as may be otherwise
16 agreed to in writing by the Parties and such agreement by the Parties may be
17 treated as a Minor Modification under Section 17 10

18 **5.3 Park Plans, Specifications, and Supplemental Phase II ESA.** Based upon
19 the Park Plans prepared under the Original DDA, and which are the subject of
20 the SPAC Approval, Lithia, as part of the construction procedures set forth in
21 Section 5 4, and in accordance with the timing set forth in Schedule 3 1, will
22 prepare construction drawings and specifications in form and content suitable
23 for submittal to the City for approval under the City's normal development
24 process (the "Final Park Plans")

25 As part of the construction procedures set forth in Section 5 4, Lithia agrees to
26 complete supplemental Phase II ESAs as may be required by applicable law or
27 as mutually agreed by the Parties and to secure the Agency's review and
28 comment on any proposed environmental remediation plan or to the Final Park
29 Plans prior to submission of the Final Park Plans to the City under the City's
30 normal development process

31 **5.4 Construction Procedures.** Lithia shall be responsible for the construction of
32 the Park Blocks using the Construction Manager/General Contractor delivery
33 methodology based upon prevailing terms and conditions used in Jackson
34 County, Oregon ("CM/GC") Construction of the Park Blocks by Lithia shall
35 be based on the timing as shown on Schedule 3 1, pursuant to the procedures
36 therefore as established in the Exemption From Public Bidding Lithia will
37 contract with the Agency for the supplemental Phase II ESAs, completion of
38 Park Plans, demolition, environmental remediation, and construction ("Park
39 Block Construction") of the Park Blocks in separate CM/GC contracts, one for
40 Park Block 1 and one for Park Block 2

41 **5.5 Construction Funding.** The Agency, as part of the Agency's Financial
42 Participation (and subject to the availability of funds), shall fund monthly
43 construction draws submitted by Lithia to the Agency Each monthly

1 construction draw shall be submitted by the 5th day of the month for the
2 previous month's work. Provided that each monthly construction draw contains
3 all the required documentation as specified in the construction contracts
4 between Lithia and the Agency, the Agency shall fund the draw within thirty
5 (30) days after submittal by Lithia.

6 **5.6 Construction Contracts.** The contract(s) between Lithia and the Agency for
7 the construction of the Park Blocks shall be negotiated as a CM/GC contract by
8 Lithia and the Agency no later than forty-five (45) days after one of the
9 contingencies relating to the Headquarters Building set forth in the last
10 paragraph of Section 4.3 has been satisfied and shall be consistent with the
11 Exemption from Public Bidding and otherwise comply with the requirements of
12 applicable public contracting law. The Agency shall promptly authorize the
13 construction of Park Block 1 and Park Block 2 so long the Agency has
14 reasonably determined that it will have adequate funds available, during the
15 course of construction from the Agency's Financial Participation, to fund the
16 costs of construction of Park Block 1 and Park Block 2, respectively. If the
17 Agency determines that it does not have sufficient funds, Lithia, at its option,
18 shall have the right to advance the costs of such construction which shall
19 include (i) all of Lithia's hard and soft costs, including the costs of
20 infrastructure related to the respective Park Block, professional fees, financing
21 and interest costs incurred and legal expenses and (ii) all SDCs and other fees
22 paid in connection with the respective Park Block (collectively "Park Block
23 Construction Costs"). The Park Block Construction Costs will be reimbursed to
24 Lithia as funds are available to the Agency.

25 **5.7 Park Standard.** The Agency agrees upon completion of the construction of
26 Park Block 1 and Park Block 2, respectively, the Agency shall convey Park
27 Block 1 or Park Block 2, as applicable, to the City and the City hereby agrees to
28 accept each such conveyance within thirty (30) days after completion of each of
29 Park Block 1 and Park Block 2. After such acceptance by the City, the City
30 agrees to maintain the Park Blocks, through its Parks and Recreation
31 Department, or successor or substitute department, in a manner consistent with
32 the repair, replacement and maintenance of all other parks located in the central
33 business district of the City ("Park Standard"). At the time of the transfers, the
34 properties comprising the Park Blocks shall be free and clear from all
35 encumbrances including monetary encumbrances other than ad valorem real
36 property taxes not delinquent and easements and covenants which do not
37 interfere with the use of the Park Blocks.

38 **5.8 SDC Charges.** Agency shall be entitled to credits against applicable system
39 development charges ("SDCs") or other fees with respect to the Park Blocks
40 and any infrastructure related to the Park Blocks as permitted by the City's
41 Municipal Code Section 3.878, and any other applicable sections of the City's
42 Municipal Code.
43

1 **5.9 Creation of Funding Mechanism to Implement a Park Amenities and**
2 **Maintenance Plan.** The City agrees to work cooperatively with Lithia and
3 other affected property owners (i) in the creation of a local improvement district
4 or other funding mechanism (“Funding Mechanism”) which would be imposed
5 on those properties bordering on Park Blocks and (ii) in the creation of park
6 amenities and maintenance plan (“Park Amenities and Maintenance Plan” or
7 “PAMP”) that would be funded by the Funding Mechanism. The PAMP will be
8 prepared as set forth in Schedule 3.1. Additionally, the City agrees to work
9 cooperatively with Lithia to establish within the Project Area a streetscape
10 program consistent with the PAMP.
11
12

13 **SECTION 6. REMODEL OF EXISTING PARKING FACILITY**

14 **6.1 Existing Parking Facility.** The Existing Parking Facility is owned by the City
15 and presently provides for approximately 400 parking stalls.

16 **6.2 Remodel.** The remodel is to include the following (“Remodel”). An expansion
17 of the existing walkway through the Existing Parking Structure from 6th Street
18 to Main Street, which may allow for additional commercial space along the
19 walkway.

20 **6.3 MURA’s Responsibility.** MURA has agreed to pay a maximum of \$300,000
21 towards the Remodel.

22 **6.4 City’s Responsibility.** City hereby authorizes the Agency to act as the project
23 manager for construction of the Remodel subject to Section 6.5.

24 **6.5 Design and Construction.** Subject to the securing of the Exemption From
25 Public Bidding and the provisions of Section 5.2, Lithia, as an independent
26 contractor, will be responsible for the design and construction of the Remodel
27 on the terms and conditions of the Exemption from Public Bidding using the
28 CM/GC delivery methodology, and design and construction costs will be
29 reimbursed on a monthly basis as provided for in Section 5.5. The design and
30 construction of the Remodel shall otherwise be subject to the City’s normal
31 development process.
32

33 **SECTION 7. HEADQUARTERS BUILDING AND PARCEL**

34 **7.1 Description of Headquarters Building and Parcel.** Lithia presently owns or
35 controls the following parcels of land shown in Schedule 4.1 bounded by
36 Riverside Avenue, East 5th and East 6th Streets and the existing alleyway on
37 the eastside of Park Block 1 (“Headquarters Parcel”). Parcels 17, 19, 22 and 23.
38 Lithia intends to design and construct an office building with a minimum of
39 40,000 square feet of floor area for the corporate headquarters of Lithia Motors,
40 Inc. (“LMI”) with adjoining surface parking (the “Headquarters Building”).
41 The City acknowledges that a 40,000 square foot office building is of a
42 permissible size under the present zoning within the Project Area.

1 The Headquarters Building and Parcel in relationship to the Park Blocks are
2 conceptually shown on Schedule 7 1

3 **7.2 Cost of Headquarters.** Lithia shall be responsible for all costs and expenses
4 relating to the design and construction of the Headquarters Building The City
5 and the Agency shall have no obligations to contribute any funds or to reduce
6 the fees (including SDCs) for the permits or approvals with respect to the
7 Headquarters Building, provided that Lithia shall be entitled to credits against
8 applicable SDCs with respect to any infrastructure related to the Headquarters
9 Building as permitted by the City's Municipal Code

10 **7.3 Timeframe for Construction.** Lithia intends to commence construction of the
11 Headquarters Building by December 2010 but in no event shall construction
12 commence later than December 31, 2011 ("Commencement of Construction")
13 and intends to occupy the Headquarters Building by October 2012 but in no
14 event shall occupancy occur later than December 31, 2013 ("Commencement of
15 Occupancy") The Parties acknowledge that there is no obligation for Lithia to
16 commence construction by any particular date prior to December 31, 2011 At
17 any time Lithia determines that it is unable to secure construction and
18 permanent financing for the Headquarters Building on terms and conditions
19 acceptable to Lithia in its sole discretion, Lithia shall have the right to terminate
20 this Agreement upon written notice given to the Agency and the City
21 Notwithstanding the foregoing, if Lithia has not commenced construction by
22 December 31, 2011, or has not substantially completed construction by
23 December 31, 2013, then this Agreement shall automatically terminate, unless
24 within thirty (30) days of said date all parties mutually agree in writing to a date
25 specific extension of the termination date The provisions of Section 15 6
26 regarding Unavoidable Delay will not be applicable to the date for
27 commencement of construction of the Headquarters Building but will be
28 applicable to the date of substantial completion of the Headquarters Building
29 Lithia understands that the timing and availability of the Agency's Financial
30 Participation is dependent upon development by private parties within the
31 Project Area including the development of the Headquarters Building

32 **SECTION 8. NEW PARKING FACILITIES**

33 **8.1 Parking Analysis.** Based on the Plan and the Project Area and as a part of the
34 Agency's Financial Participation, the Parties will mutually agree upon the
35 timing for undertaking a parking study ("Parking Study") The Parking Study
36 will determine the location, size and timing for construction of new parking
37 facilities ("New Parking Facilities") The purpose of the Parking Study will be
38 to determine the need, cost and time for additional off-street parking to serve the
39 Project Area Prior to commencement of the Parking Study, the Agency will
40 provide to the City and Lithia a written draft scope of work for the Parking
41 Study, which shall, among other items, address the number of parking spaces to
42 be leased by Lithia Within thirty (30) days after receipt of the written draft
43 scope of work, the City and Lithia shall provide written comments thereto and
44 the Agency will take such comments into account in finalizing the scope of

1 work The Agency will use its normal contracting policies in having the
2 Parking Study prepared by an outside parking consultant Upon completion of a
3 draft of the Parking Study, the Agency shall provide a copy to the City and
4 Lithia for their review and comment Within thirty (30) days after receipt of the
5 draft Parking Study, the City and Lithia shall provide their written comments
6 thereto to the Agency for inclusion in the final Parking Study The final Parking
7 Study shall be subject to review and approval by the Agency, City and Lithia,
8 which approval will not be unreasonably withheld, conditioned or delayed

9 **8.2 Environmental Due Diligence.** Provided the Parking Study has determined
10 that an additional parking facility or facilities are required for the Project Area,
11 the Agency will cause to be undertaken a Phase 1 environmental investigation
12 for the parcels identified (“Designated Properties”) as being suitable for the
13 New Parking Facilities and a Phase 2 investigation if recommended by the
14 Phase 1 The Phase 2 environmental investigation will provide an estimate of
15 the cost to mitigate any environmental contamination discovered on the
16 properties Based upon the Phase 2 and estimated cost to mitigate, the City, the
17 Agency and Lithia shall mutually agree whether or not to proceed with the
18 acquisition for the properties for the New Parking Facilities If it is agreed to
19 proceed with acquisition of the Designated Properties, the Parties shall amend
20 Schedule 3 1 to include acquisition, design, and construction for the New
21 Parking Facilities

22 **8.3 Acquisition of Designated Properties** Based upon the determination of the
23 Parties pursuant to Section 8 2 to acquire the Designated Properties, the Agency
24 will acquire for direct deeding to the City the Designated Properties through
25 negotiation, or through the exercise of its powers of eminent domain as
26 provided in ORS 457 170(3) and exercised pursuant to ORS Chapter 35 The
27 Parties acknowledge that the Agency agrees to consult with Lithia, as may be
28 reasonably requested by Lithia, as costs are being incurred by the Agency to
29 purchase the Designated Properties, including the costs incurred in connection
30 with the exercise of its powers of eminent domain, if required The Parties
31 acknowledge that increased costs to purchase the Designated Properties will
32 reduce the amount of the Agency’s Financial Participation to be used for the
33 other purposes set forth in Section 3 3

34 **8.4 Design and Construction of New Parking Facilities** The Parties recognize
35 that the New Parking Facilities could be surface parking, structured parking or a
36 combination of both depending upon the needs identified in the Parking Study
37 The City and the Agency recognize that it may be cost effective to have Lithia
38 design and construct whatever New Parking Facilities is ultimately determined
39 to be appropriate because of Lithia’s background, involvement and investment
40 within the Project Area and the Agency, agrees to use reasonable efforts to
41 make the necessary findings in compliance with ORS Chapter 279C and with
42 Section 58 of the Agency’s Contracting Code to allow Lithia to design and
43 construct the New Parking Facilities The design and construction of the New
44 Parking Facilities would be carried out using the CM/GC delivery method and

1 the design and construction costs shall be reimbursed on a monthly basis as
2 provided for in Section 5.5. The documentation of the design and construction
3 costs would follow the same CM/GC procedures as used for the Park Blocks
4 subject to any modifications that may be required by ORS Chapter 279C and the
5 then applicable Agency's Contracting Code

6 **8.5 Timing.** The timing for the construction of the New Parking Facilities will be
7 determined by the Parking Study. Once the timing and the Designated
8 Properties have been established, the Parties will cause the design and
9 construction of the New Parking Facilities in accordance with the modified
10 Schedule 3.1

11 **8.6 Ownership and Management of New Parking Facilities.** Within thirty (30)
12 days of completion of the New Parking Facilities the Agency will convey
13 ownership of the New Parking Facilities to the City. The City will take title to
14 the Designated Properties and will own and operate the New Parking Facilities.
15 The City of Medford will operate the New Parking Facilities as a public parking
16 facility in a manner consistent with the requirements for tax-exempt financing
17 of public parking garages. The City of Medford will offer monthly parking on a
18 first come first serve basis, subject to limitations imposed by the Internal
19 Revenue Service in connection with the tax-exempt financing of public parking
20 garages.

21 **8.7 Lithia's Ability to Contract For Parking Spaces.** Lithia shall have the right
22 to contract with the City to use parking spaces in the Existing Parking Facility
23 from and after substantial completion of Lithia's Headquarters Building. The
24 terms and conditions for such parking space in the Existing Parking Facility
25 shall be on the same basis that parking spaces are made available to other
26 businesses in the Project Area that require long term parking for their owners,
27 officers or employees. The City will advise Lithia in writing from time to time,
28 upon Lithia's written request, of the number of available parking spaces
29 generally available on a monthly basis in the Existing Parking Facility.
30 Additionally, prior to substantial completion of the Headquarters Building, the
31 City agrees to notify Lithia in writing of any proposed contracts to make
32 available twenty (20) or more parking spaces to a single business, solely for the
33 purpose of allowing Lithia to contract for the use of any other available parking
34 spaces in the Existing Parking Facility. At such time as the New Parking
35 Facilities (or any portion thereof) have been completed and open to the public,
36 provided the Headquarters Building has been substantially completed, Lithia
37 shall have the right to contract with the City to use the number of parking spaces
38 in the New Parking Facilities as recommended in the Parking Study. The terms
39 and conditions for the parking spaces in the New Parking Facilities shall be on
40 the same basis parking spaces are made available to other businesses in the
41 Project Area that require long term parking for their owners, officers or
42 employees.

1 **SECTION 9. INFRASTRUCTURE**

2 The Parties acknowledge that certain public improvements or infrastructure will be
3 required to support the projects identified in Section 3.3 of this Agreement, including, but
4 not limited to, sidewalks, curbs, gutters, traffic and street improvements, lighting and
5 utilities, and other improvements, both on-site and off-site

6

7 **SECTION 10. PARK BLOCK PARCELS ENVIRONMENTAL CONDITIONS**
8 **AND ABATEMENT**

9 **10.1 Environmental Reports.** Under the Original DDA, the Agency retained an
10 environmental consultant and conducted a Petroleum Phase 1 Environmental
11 Assessment (“Phase 1 Report”) in accordance with ASTM Standard E1527-05
12 (Standard Practice for Environmental Site Assessments Phase 1 Environmental
13 Site Assessment Process) or comparable standards recognized as such by DEQ
14 or U.S. Environmental Protection Agency as to each of the Park Block Parcels.
15 For those Phase 1 Reports that recommended that there be soil, groundwater or
16 other petroleum based testing (“Phase 2 Testing”), the Agency undertook a
17 Limited Petroleum Phase 2 Testing and the preparation of Interim Planning for
18 Brownfield Redevelopment (IPBR) reports for six (6) tax lots describing the
19 need and the cost for the preparation of Supplemental Phase II ESA

20 **10.2 Environmental Remediation.** The Parties acknowledge and Lithia and the
21 Agency recognize that the environmental remediation activities will occur as a
22 component of the CM/GC contract for Park Block Construction. As a condition
23 of the CM/GC Park Block Construction contract, Lithia will

24 **10.2.1** Cause to be prepared, Supplemental Phase II ESAs as required by
25 applicable law or as mutually agreed by the Parties. It shall be the
26 responsibility of Lithia to submit the completed Phase II for the
27 Agency’s and City’s review and approval as set forth in Section 5.2,

28 **10.2.2** The Agency, as specified in the CM/GC Contract, will not unreasonably
29 withhold its consent to the commencement of the environmental
30 remediation so long as there are funds available in the Agency’s
31 Financial Participation. If funds are not available, Lithia, at its option,
32 may incur such costs and be reimbursed by the Agency in the same
33 manner as provided for in Section 5.5

34 **10.2.3** Secure for the benefit of the Agency, a no further action letter or other
35 approval (“NFA”) from the Oregon Department of Environmental
36 Quality (“ODEQ”), if required by the ODEQ, and deliver the NFA to the
37 Agency prior to commencement of construction of each Park Block

38

39 **SECTION 11. LIBERTY PARK**

40 The City and the Agency desire to develop a neighborhood park in or nearby to the Liberty
41 neighborhood in the City of Medford (“Liberty Park”) described as Urban Renewal Project

1 URP No 017 (Beatty/Manzanita) in the Plan A plan for Liberty Park shall be prepared
2 and approved in accordance with Schedule 3 1 Lithia will contribute up to \$500,000 of
3 value towards the development of Liberty Park, which may consist of land, materials,
4 services and/or cash contributions The timing, terms and conditions for such contribution
5 shall be included as part of the plan for Liberty Park The City will complete construction
6 of Liberty Park on or before the Commencement of Occupancy for the Headquarters
7 Building as provided for in Section 7 3

8

9 SECTION 12. NEW MARKET TAX CREDITS

10 The City and Lithia acknowledge that various projects within the Project Area may qualify
11 for the New Markets Tax Credits (“NMTC”) Program The City and Lithia agree to jointly
12 provide a written request to the Agency for the payment of the costs to pursue the NMTC
13 in an amount not to exceed \$50,000

14

15 SECTION 13 GENERAL OBLIGATIONS OF THE PARTIES

16 **13.1 Design Processes.** All design and construction in the Project Area shall be
17 subject to all applicable provisions and public processes of the Medford City
18 Code, including, but not limited to, the Medford Land Development Code

19 **13.2 Demolition and Environmental Mitigation.** As part of the Park Block
20 Parcels and New Parking Facilities construction Lithia will be responsible for
21 demolition and environmental remediation as part of the CM/GC contract for
22 the construction of those facilities subject to monthly reimbursement as
23 provided in Section 5 5

24 **13.3 Construction Standards.** Any Party undertaking construction of
25 improvements pursuant to terms of this Agreement shall comply with all
26 applicable laws, including, but not limited to, the Americans with Disabilities
27 Act (42 U S C Section 1201 et seq)

28 **13.4 Prevailing Wages.** In connection with the construction of the Park Blocks, the
29 remodel of the Existing Parking Facility, or the New Parking Facilities (if
30 agreed to be constructed), Lithia will select contractors who pay Oregon Bureau
31 of Labor and Industries published Prevailing Wage rates (OAR 389-025-0220)
32 and will otherwise comply with Oregon’s Prevailing Wage Law With regard to
33 the construction of the Park Blocks, the remodel of the Existing Parking Facility
34 or the New Parking Facilities, and all infrastructure related thereto, Lithia and
35 its contractors and subcontractors shall comply with ORS 279C 840, and Lithia
36 shall include in its contracts and subcontracts all of the contractual provisions
37 required by ORS 279C 830

38 **13.5 Cooperation by City and Agency.** The City and the Agency, as applicable,
39 shall use good faith efforts to coordinate and consolidate all necessary permits
40 and approvals for the Park Blocks, the Headquarters Building, the Existing
41 Parking Facility and the New Parking Facilities in order to secure the required
42 approvals To the extent that street vacations, dedications or modifications to

1 any streets, roadways or alleyways located in the Project Area are required, the
2 City and Agency, as applicable, shall use good faith efforts in undertaking such
3 activities in order for the Park Blocks, the Headquarters Building, the remodel
4 of the Existing Parking Facility, and the New Parking Facilities to be approved
5 and constructed in a timely manner

6 **13.6 Coordination Meetings.** To coordinate the various components of the Project,
7 the City, the Agency, and Lithia agree to attend twice-monthly meetings during
8 the planning, development and construction of the Park Blocks, the
9 Headquarters Building or the remodel of the Existing Parking Facility and to
10 have the appropriate representatives from the various departments of each
11 organization, including appropriate outside professionals in order to expedite all
12 required approvals for the Project The City, the Agency and Lithia may
13 mutually agree to modify the number and timing of such meetings as needed for
14 the planning, development and construction of the Project

15 **13.7 No New Adverse Regulations.** Until the improvements intend to be
16 constructed hereunder by Lithia and placed into service, the City shall not adopt
17 any ordinance, regulation, rule or requirements that would materially and
18 adversely affect such improvements, unless adoption of any such ordinance,
19 regulation, rule or requirements are mandated by federal or state statutes

20 21 **SECTION 14. ASSIGNMENT AND TRANSFER PROVISIONS**

22 **14.1 Definition of Transfer.** As used in this Agreement, the term “Transfer” means
23 any one or more of the following

24 **14.1.1** Any assignment by Lithia of all or any part of this Agreement, or

25 **14.1.2** Any assignment by operation or law, but excluding a merger or
26 consolidation of Lithia into another entity, or any sale or lease of all or
27 substantially all of the assets of Lithia to another entity provided that
28 the succeeding entity agrees to assume all of Lithia’s obligations under
29 this Agreement

30 **14.2 Purpose of Restrictions.** Lithia represents and agrees that its undertakings
31 pursuant to this Agreement, are and shall be used for the purposes of timely
32 development thereof and not for speculation in land holding Lithia recognizes
33 that in view of the following factors, the qualifications of Lithia are of particular
34 concern to the community, City and Agency

35 **14.2.1** The importance of the development of the Park Block Parcels to
36 Agency’s interest in the adjacent blocks and properties to be
37 developed as part of the Project, and to the general welfare of the
38 community, with particular reference to the community’s objectives in
39 the Project

40 **14.2.2** The reliance by Agency upon the unique qualifications and ability of
41 Lithia to serve as the catalyst for development of the Project and upon

1 the continuing interest which Lithia shall have in the Project to assure
2 the quality of the use, operation and maintenance deemed critical by
3 Agency in the development of the Project

4 **14.2.3** The importance to City, Agency and the community of the standards
5 of use, operation and maintenance of the Project

6 **14.2.4** Lithia further recognizes that it is because of such qualifications and
7 identity that City and Agency are entering into this Agreement with
8 Lithia No voluntary or involuntary successor in interest of Lithia
9 shall acquire any rights or powers under this Agreement except as
10 expressly set forth herein

11 **14.3** **Permitted Transfers.** Notwithstanding anything in Section 14 1 or 14 2 to the
12 contrary, the following Transfers shall be permitted

13 **14.3.1** The granting of easements or permits to facilitate the development of
14 the Project

15 **14.3.2** The granting of any security interest for financing the acquisition and
16 development of the Project

17 **14.3.3** Formation of joint ventures, limited liability companies or partnerships
18 entered into by Lithia with third parties for the purpose of Project
19 financing and development so long as Lithia or a wholly owned
20 subsidiary of Lithia or its parent company, LMI, remains the sole
21 general partner or managing general partner or managing venture
22 partner of any joint venture or partnership and holds at least a fifty-one
23 percent (51%) ownership interest in such joint venture or partnership,
24 or Lithia, or a wholly owned subsidiary of Lithia or LMI, is the sole
25 manager or managing member of any member managed limited
26 liability company and holds at least a fifty-one percent (51%)
27 membership interest in any limited liability company and that are
28 approved in writing by the City through the City's City Manager
29 ("City Manager") after review by the City Manager with City Council
30 Neither the City Manager's approval nor the City Council's review
31 shall be unreasonably withheld, conditioned or delayed, provided the
32 City Manager may condition the City's approval on Lithia remaining
33 fully responsible to the Agency and the City to the extent of its
34 obligation under this Agreement, and the proposed joint venture
35 agreement, limited liability operating agreement or partnership
36 agreement does not require or result in any diminution of City's or
37 Agency's rights under this Agreement Unless rejected or approved
38 subject to conditions by the Agency within ten (10) calendar days of
39 submission by Lithia, the formation of such joint venture, limited
40 liability company or partnership and admission of the proposed joint
41 venturers, limited liability company, members or managers, or partners
42 as a result thereof shall be deemed approved In connection with
43 obtaining the City's approval pursuant to this Section 14 3 3, Lithia

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may be required to submit the proposed joint venture agreement, limited liability company agreement or partnership agreement to the City Manager as is reasonably necessary for the City Manager to determine compliance with the foregoing conditions for approval

14.3.4 A merger or consolidation of Lithia into another entity, or any sale or loss of all or substantially all of the assets of Lithia, provided that the succeeding entity agrees to assume all of Lithia’s obligations under this Agreement

14.3.5 The provisions of this Section 14 shall only apply to the Park Blocks, New Parking Facilities, and the Headquarters Building and shall not apply to any other improvements developed by Lithia or by any third parties whether or not they may joint venture or otherwise participate with Lithia in such other improvements

14.4 **Transfers by City or Agency.** Neither the City nor the Agency shall transfer any of their respective rights or obligations under this Agreement (except by operation of law in accordance with ORS 457 055 and 457 075) without the prior written approval of Lithia, which approval shall not be unreasonably be withheld, conditioned or delayed

SECTION 15. DEFAULT; REMEDIES

15.1 **Default by Lithia.** A default shall occur

15.1.1 If Lithia breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Lithia receives written notice from the City specifying the breach, provided in the case of a breach which cannot with due diligence be cured within such thirty (30) day period, a default shall occur if Lithia does not commence to cure the breach within such thirty (30) day period and thereafter diligently prosecutes the cure to completion

15.1.2 If Lithia makes any assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor’s committee appointed over it that is not removed within ninety (90) days after appointment

15.1.3 If Lithia voluntarily or involuntarily undertakes or attempts to undertake a Transfer in violation of Section 14 4,

15.2 **Default by City.** A default shall occur

15.2.1 If City breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after the City receives written notice from

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Lithia specifying the breach, provided in the case of a breach which cannot with due diligence be cured within such thirty (30) day period, if the City does not commence to cure the breach within such thirty (30) day period and thereafter diligently prosecutes the cure to completion

15.2.1 If City voluntarily or involuntarily undertakes to assign any of its rights or obligations under this Agreement in violation of Section 14 4

15.3 Default by Agency. A default shall occur

15.3.1 If Agency breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after the Agency receives written notice from Lithia specifying the breach, provided in the case of a breach which cannot with due diligence be cured within such thirty (30) day period, if the Agency does not commence to cure the breach within such thirty (30) day period and thereafter diligently prosecutes the cure to completion

15.3.2 If Agency voluntarily or involuntarily undertakes to assign any of its rights or obligations under this Agreement in violation of Section 14 4

15.4 Nonexclusive Remedies. The rights and remedies provided by this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to any and all rights otherwise available at law or in equity The exercise by any Party of one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default by the another Party, including, without limitation, the right to compel specific performance Any limitation of remedies set forth herein should not limit or affect the obligations of a Party under any contractual indemnities set forth herein

15.5 Dispute Resolution.

15.5.1 Mediation. If a dispute between the Parties arises out of or relating to this Agreement or the interpretation of this Agreement, the Parties agree to submit such dispute to a mutually agreed upon mediator, and to continue good faith mediation efforts until such dispute is resolved or any Party notifies the others in writing that it elects to withdraw from mediation

15.5.2 Tolling of Clock. The Parties acknowledge and agree, if it is necessary to renegotiate any of the provisions contained in this Agreement and/or either party initiates mediation pursuant to Section 15 5 1, the time periods for performance and/or calendar deadline(s) shall be tolled and/or suspended temporarily until completion of such renegotiation and/or mediation, after which time such party's performance shall recommence and/or such calendar deadline(s) shall be recalculated

1 **15.6 Unavoidable Delay.**

2 **15.6.1 Definition.** No Party nor that Party’s successor in interest shall be
3 considered in breach of or in default with respect to any obligation
4 created hereunder or progress in respect thereto if the delay in
5 performance of such obligations (the “Unavoidable Delay”) is due to
6 causes that are unforeseeable, beyond its control, and without its fault
7 or negligence, including but not limited to acts of God, acts of the
8 public enemy, acts of the government, acts of the other Party, fires,
9 floods, epidemics, quarantine restrictions, strikes, freight embargoes,
10 earthquake, explosion, mob violence, riot, inability to procure or
11 general sabotage or rationing of labor, equipment, facilities, sources of
12 energy, material or supplies in the open market, litigation or arbitration
13 involving a Party or others relating to zoning or other governmental
14 action or inaction pertaining to the Project, malicious mischief,
15 condemnation action delays of litigation, and unusually severe weather
16 or delays of suppliers or subcontractors due to such causes or any
17 similar events and/or occurrences beyond the control of such Party
18 Instances of Unavoidable Delay shall not include or be based primarily
19 upon the existence of unfavorable market or financial conditions
20 affecting the Project or its economic viability

21 **15.6.2 Request.** It is the purpose and intent of this provision that, in the event
22 of the occurrence of any such Unavoidable Delay, the time or times for
23 performance of the obligations of any Party, shall be extended for the
24 period of the Unavoidable Delay, provided, however, that the Party
25 seeking the benefit of this Section shall, within fifteen (15) days after
26 the Party becomes aware of the causes of any such Unavoidable Delay,
27 notify the other Party or Parties in writing of the cause or causes of the
28 delay and the estimated time of correction and the other Party or
29 Parties mutually agree there is an Unavoidable Delay and also agree to
30 the time of correction. In any event, the total period of Unavoidable
31 Delay shall not exceed 180 days

32
33 **SECTION 16. TERM AND TERMINATION**

34 **16.1 Effective Date.** This Agreement is effective when all Parties have executed the
35 Agreement, and this Agreement shall have an effective date which is the
36 Effective Date mutually agreed upon by all Parties and first set forth above

37 **16.2 Termination.** This Agreement shall terminate upon the earlier of

38 **16.2.1** In the event Lithia gives a notice of termination pursuant to Section
39 5 2 or Section 7 3

40 **16.2.2** In the event this Agreement terminates automatically pursuant to the
41 provisions of Section 7 3

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17.4.3 Notices to Agency. In the case of a notice or communication to Agent, addressed as follows

Medford Urban Renewal Agency
45 S Holly
Medford, OR 97501
Attn Executive Director

With a copy to Daniel Thorndike, Attorney at Law
P O Box 1588
Medford, OR 97501-0244

17.4.4 Notices to City. In the case of a notice or communication to City, addressed as follows

City of Medford
411 W 8th Street, Room 312
Medford, OR 97501
Attn City Manager

With a copy to John Hutt
City Attorney's Office
411 W 8th Street, Room 332
Medford, OR 97501

, or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing dispatched as provided in this Section 17 4 Notice given in any other manner shall be effective upon receipt by the Party for whom the same is intended

17.5 Successors and Assigns. Subject to the provisions of Section 14, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties

17.6 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Jackson County, or the United States District Court for the District of Oregon, in the venue assigned for Medford, Oregon

17.7 No Partnership. Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties

17.8 Non-Waiver of Government Rights. Subject to the terms and conditions of this Agreement, by making this Agreement and complying with the applicable provisions hereof, City and Agency are specifically not obligating the Agency, the City, or any other agency with respect to any discretionary governmental action relating to development or operation of the improvements to be constructed within or as a part of the Project, including, but not limited to,

1 rezoning, variances, environmental clearances or any other governmental
2 approvals which are or may be required, except as expressly set forth herein

3 **17.9 Reasonable Approvals.** The approval of a Party of any documentation or
4 submissions herein called for shall not be unreasonably withheld, except where
5 rights of approval are expressly reserved to a Party's sole discretion in this
6 Agreement. All such approvals shall be given or denied in a timely and
7 expeditious fashion

8 **17.10 Amendments and Modifications.** Any amendments or modifications to this
9 Agreement shall be made in writing, approved in the manner as this Agreement
10 was initially approved, and executed by all Parties. Notwithstanding this
11 general requirement, the City Manager and Agency Director may approve
12 Minor Modifications to this Agreement without City Council or Agency Board
13 approval. "Minor Modifications" include corrections of errors, clarifications,
14 or other modifications that do not change the substantive content of this
15 Agreement

16 **17.11 Time is of the Essence.** Time is of the essence in the performance of and
17 adherence to each and every provision of this Agreement

18 **17.12 Non-Waiver.** Waiver by any Party of strict performance of any provision of
19 this Agreement shall not be deemed a waiver of or prejudice a Party's right to
20 require strict performance of the same or any other provision in the future. A
21 claimed waiver must be in writing and signed by the applicable Party granting a
22 waiver. A waiver of one provision of this Agreement shall be a waiver of only
23 that provision. A waiver of a provision in one instance shall be a waiver only
24 for that instance, unless the waiver explicitly waives that provision for all
25 instances

26 **17.13 Partial Invalidity.** If any provision of this Agreement is held to be invalid or
27 unenforceable, the remainder of this Agreement, and the application of such
28 provision to persons or circumstances other than those to which it is held invalid
29 or unenforceable, shall not be affected thereby, and each provision of this
30 Agreement shall be valid and enforceable to the fullest extent permitted by law.
31 If a material provision of this Agreement is held invalid or unenforceable such
32 that a Party does not receive the benefit of its bargain, then the other Parties
33 shall renegotiate in good faith terms and provisions that will effectuate the spirit
34 and intent of the Parties' agreement herein

35 **17.14 Calculation of Time.** Unless referred to as Business Days, all periods of time
36 shall include Saturdays, Sundays, and Legal Holidays. However, if the last day
37 of any period falls on a Saturday, Sunday, or Legal Holiday, then the period
38 shall be extended to include the next day which is not a Saturday, Sunday, or
39 Legal Holiday. "Business Days" shall mean Monday through Friday, and
40 "Legal Holiday" shall mean any holiday observed by the State of Oregon

- 1 **17.15 Headings, Table of Contents.** The section Headings and Table of Contents
2 are for convenience in reference and are not intended to define or limit the
3 scope of any provision of this Agreement
- 4 **17.16 Counterparts.** This Agreement may be executed in counterparts, each of
5 which shall be deemed to be an original, and such counterparts shall constitute
6 one and the same instrument
- 7 **17.17 Attorneys' Fees.** If a suit, action, or other proceeding of any nature
8 whatsoever (including any proceeding under the U S Bankruptcy Code) is
9 instituted in connection with any controversy arising out of this Agreement or to
10 interpret or enforce any rights or obligations hereunder, the prevailing party
11 shall be entitled to recover its attorney, paralegal, accountant, and other expert
12 fees and all other fees, costs, and expenses actually incurred and reasonably
13 necessary, as determined by the court at trial or on any appeal or review, in
14 addition to all other amounts provided by law
- 15 **17.18 Entire Agreement.** This Agreement constitutes the entire agreement between
16 the Parties as to the subject matter covered by this Agreement
- 17 **17.19 Interpretation of Agreement.** This Agreement is the result of arm's-length
18 negotiations between the Parties and shall not be construed against any Party by
19 reason of its preparation of this Agreement
- 20 **17.20 Future Assurances.** Each of the Parties shall promptly execute and deliver
21 such additional documents and shall do such acts that are reasonably necessary,
22 in connection with the performance of their respective obligations under this
23 Agreement and any applicable schedules so as to carry out the intent of this
24 Agreement
- 25 **17.21 Capacity to Execute; Mutual Representations.** The Parties each warrant and
26 represent to the others that this Agreement constitutes a legal, valid, and binding
27 obligation of that Party Without limiting the generality of the foregoing, each
28 Party represents that its governing authority and, in the case of the Agency and
29 the City, its board and council respectively, has authorized the execution,
30 delivery, and performance of this Agreement by it The individuals executing
31 this Agreement warrant that they have full authority to execute this Agreement
32 on behalf of the entity for whom they purport to be acting Each Party
33 represents to the others that neither the execution and delivery of the
34 Agreement, nor the consummation of the transactions contemplated hereby will
35 violate any constitution, statute, regulation, rule, injunction, judgment, order,
36 decree, ruling, charge, or other restriction of any government, government
37 agency, or court to which it is subject or any provision of its charter or bylaws,
38 or conflict with, result in a breach of, or constitute a default under any other
39 agreement to which it is a party or by which it is bound Each Party represents
40 to the others that it does not need to give any notice to, make any filing with, or
41 obtain the consent of any other entity or person to consummate the transaction
42 contemplated by this Agreement

1 **17.22 Exhibits and Schedules.** The Exhibits and Schedules attached to this
2 Agreement are an integral part of this Agreement and are fully incorporated into
3 this Agreement where they are referenced in the text of this Agreement

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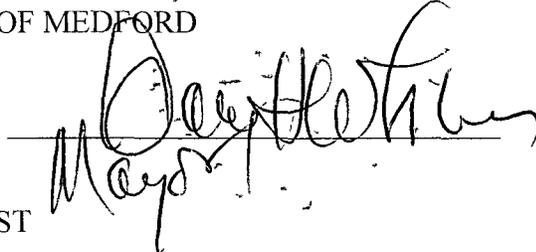
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Executed in multiple counterparts as of the day and year first below

CITY OF MEDFORD

By



Executed Date

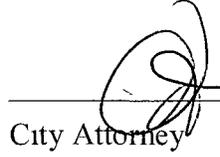
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Its

ATTEST

APPROVED AS TO FORM

By

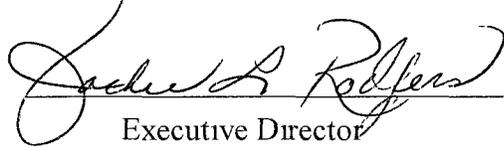
 953-8
City Attorney

Date

2/18/10

MEDFORD URBAN RENEWAL AGENCY

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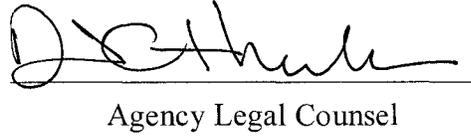

Executive Director

Executed Date

02/11/10

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By

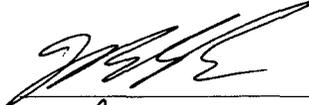

Agency Legal Counsel

Date

11 Feb. 2010

LITHIA REAL ESTATE , INC , an Oregon corporation

By


Title VP

Executed Date

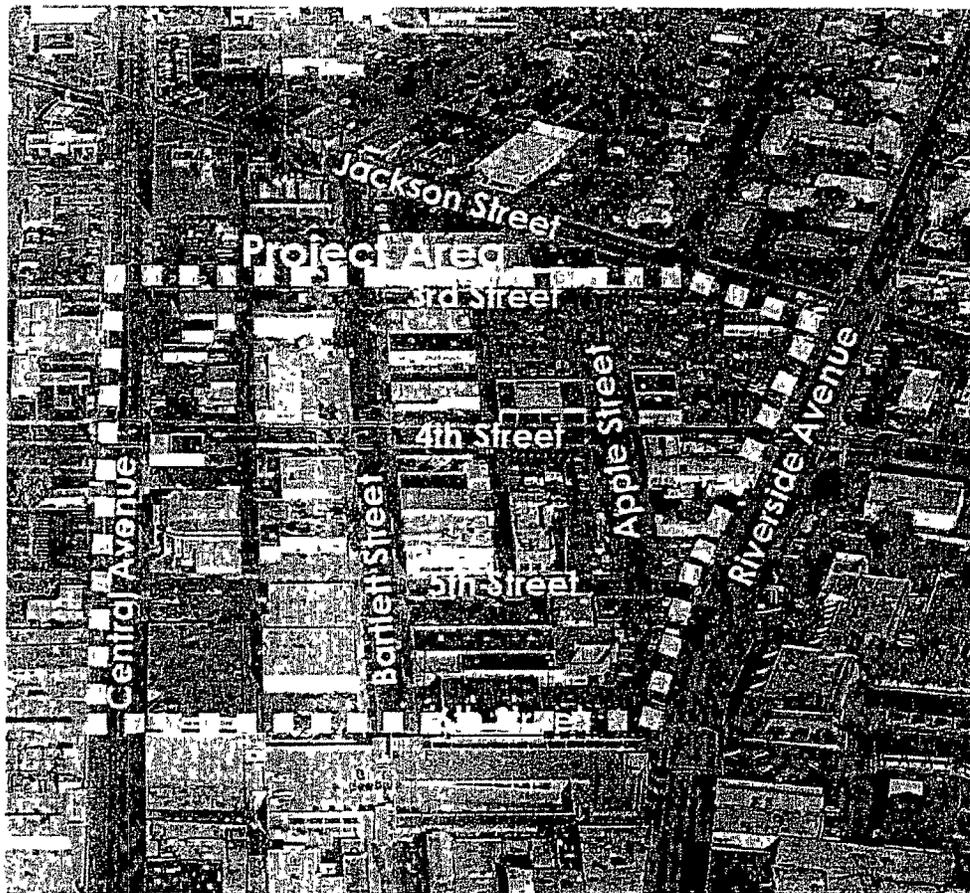
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TABLE OF EXHIBITS AND SCHEDULES

Exhibit A	Project Area
Schedule 1	Defined Terms
Schedule 3.1	Anticipated amounts and the timing of the availability of the Agency’s Financial Participation
Schedule 4.1	Parcel Designations and Map
Schedule 4.4	Form of Statutory Special Warranty Deed
Schedule 5.1	Location of Park Blocks 1 and 2
Schedule 7.1	Headquarters Building and Parcel

Exhibit A



THE COMMONS PROJECT AREA

SCHEDULE 1

DEFINED TERMS

“Acquisition Policies”	is defined in Section 4 3
“Additional Costs”	is defined in Section 3 4
“Agency”	means the Medford Urban Renewal Agency
“Agency Actions”	is defined in Section 3 5
“Agency’s Contracting Code”	is defined in Section 5 2
“Agency’s Financial Participation”	is defined in Section 3 1
“Agency’s Park Block Contribution Amount”	is defined in Section 4 3
“Agency’s Park Block 1 Contribution”	is defined in Section 4 3
“Agency’s Park Block 2 Contribution”	is defined in Section 4 3
“Agreement”	means Amended and Restated Agreement for Disposition and Development of Property
“Business Day”	is defined in Section 17 15
“City”	means the City of Medford
“City Manager”	is defined in Subsection 14 3 3
“CM/GC”	is defined in Section 5 4
“Commencement of Construction”	is defined in Section 11
“Commencement of Occupancy”	is defined in Section 11
“Designated Properties”	is defined in Section 8 2
“Escrow Agent”	means Lawyers Title Insurance Company, 502 West Main Street, Suite 103, Medford, OR 97501

“Existing Parking Facility”	means the existing parking facility owned by the City as shown on Exhibit A containing approximately 400 parking spaces
“Exemption From Public Bidding”	is defined in Section 5 2
“Funding Mechanism”	is defined in Section 5 9
“Headquarters Building”	is defined in Section 7 1
“Headquarters Parcel”	is defined in Section 7 1
“Indexed”	means taking the amount in question and increasing it on July 1 st each year by an amount equal to the increase, but not decrease, of Revised Consumer Price Index for Urban Consumers (all Items) U S Cities Average (1982-4 = 100) (“Index”) published by the United States Department of Labor ninety (90) days prior to July 1 st of each year If the Index is converted to a different standard reference base or otherwise revised, the determination of the applicable percentage increase shall be made with the use of a conversion factor, formula or table to arrive at the different reference base If the Index is discontinued or a conversion table to the new standard is unavailable, the Park Utility Plan shall provide that the City shall select a substitute standard that closely approximates the prior Index
“Legal Holiday”	is defined in Section 17 14
“Liberty Park”	is defined in Section 11
“Lithia”	means Lithia Real Estate, Inc
“LMI”	means Lithia Motors, Inc
“Minor Modification”	is defined in Section 17 10

“New Parking Facilities”	is defined in Section 8 1
“NFA”	is defined in Section 10 2
“NMTC”	is defined in Section 12
“ODEQ”	is defined in Section 10 1
“Original DDA”	means Agreement for Disposition and Development of Property and Amendment No 1
“Outside Approval Date”	is defined in Section 5 2
“Park Amenities and Maintenance Plan” or “PAMP”	is defined in Section 5 8
“Park Block 1”	means that park block located and designated as such on Schedule 5 1
“Park Block 1 Parcels”	is defined in Section 4 1
“Park Block 2”	means that park block located and designated as such on Schedule 5 1
“Park Block 2 Parcels”	is defined in Section 4 1
“Park Block Construction”	is defined in Section 5 4
“Park Block Construction Costs”	is defined in Section 5 6
“Park Blocks”	is defined in Section 5 1
“Park Plans”	is defined in Subsection 2 2 2
“Park Standard”	is defined in Section 5 7
“Parking Study”	is defined in Section 8 1
“Parties” and “Party”	is defined as jointly reference to City, Agency and Lithia, with each individually as a “Party”
“Permitted Exceptions”	is defined in Section 4 5 1

“Phase 1 Report”	is defined in Section 10 1
“Phase 2 Testing”	is defined in Section 10 1
“Plan”	is defined in Recital A
“Plans Reimbursement Amount”	is defined in Section 3 6
“Project Area”, “Project” or “The Commons Project”	is defined in Recital B
“REIT”	is defined in Section 4 2
“REIT Parcels”	is defined in Section 4 2
“Remnant Parcel and Remnant Parcels”	is defined in Section 4 7
“Remodel”	is defined in Section 6 2
“SDCs”	is defined in Section 5 8
“The Commons Project”	is defined in Recital B
“Third Party Borrowing”	is defined in Section 3 2
“Title Reports”	is defined in Subsection 4 5 1
“Transfer”	is defined in Section 14 1
“Unavoidable Delay”	is defined in Section 15 6 1
“Water Service Upgrade”	is defined in Subsection 2 2 1

SCHEDULE 4.1

PARCEL DESIGNATIONS AND MAP

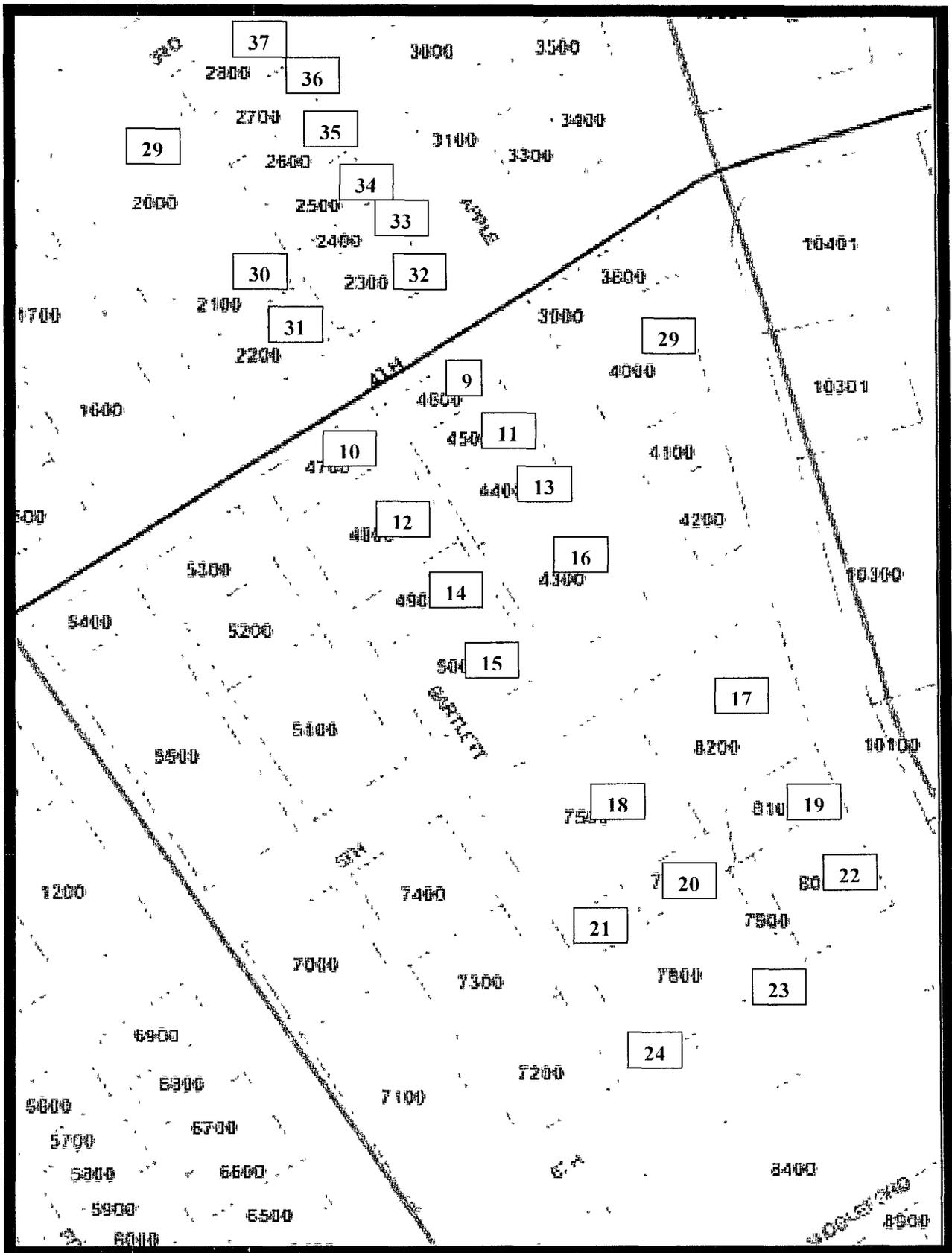
(follows)

Schedule 4.1

THE COMMONS PROJECT November 11, 2009

#	MAP/TAX LOT	PROPERTY OWNER	ACCOUNT #	LAND S/F	BLDG S/F
9	371W30BB/4600	CARS-DB4	1-036871-8	3,920	-0-
10	371W30BB/4700	CARS-DB4	1-036872-6	4,792	-0-
11	371W30BB/4500	CARS-DB4	1-036870-0	4,792	-0-
12	371W30BB/4800	CARS-DB4	1-036873-4	10,019	4,000
13	371W30BB/4400	CARS-DB4	1-036869-6	6,534	-0-
14	371W30BB/4900	CARS-DB4	1-036874-2	4,792	5,000
15	371W30BB/5000	MURA	1-036875-9	10,019	7,664
16	371W30BB/4300	CARS-DB4	1-036868-8	13,504	5,941
17	371W30BB/8200	CARS-DB4	1-036907-4	20,909	6,140
18	371W30BB/7500	CARS-DB4	1-036900-9	22,216*	7,400
19	371W30BB/8100	CARS-DB4	1-036906-6	4,792	1,900
20	371W30BB/7700	CARS-DB4	1-036902-5	3,484*	3,332
21	371W30BB/7600	MURA	1-036901-7	1,742	1,700
22	371W30BB/8000	CARS-DB4	1-036965-8	10,019	-0-
23	371W30BB/7900	CARS-DB4	1-036904-1	2,614	-0-
24	371W30BB/7800	CARS-DB4	1-036903-3	13,504*	10,000
29	371W30BB/2000	CARS-DB4	1-036845-9	17,424	11,000
30	371W30BB/2100	LITHIA REAL RE	1-036846-7	4,792	-0-
31	371W30BB/2200	LITHIA REAL RE	1-036847-5	7,405	3,936
32	371W30BB/2300	MURA	1-036848-3	7,405	7,500
33	371W30BB/2400	CARS-DB4	1-036849-1	2,613	-0-
34	371W30BB/2500	CARS-DB4	1-036850-7	4,792	-0-
35	371W30BB/2600	CARS-DB4	1-036851-5	4,792	-0-
36	371W30BB/2700	CARS-DB4	1-036852-3	4,792	-0-
37	371W30BB/2800	CARS-DB4	1-036853-1	4,792	-0-

*The square footage will be reduced partially at such time as the width of the alley way adjacent to Park Block 1 is determined.



SCHEDULE 4.4

FORM OF STATUTORY SPECIAL WARRANTY DEED

Until a change is requested, all tax statements shall be sent to

After recording, send to

STATUTORY SPECIAL WARRANTY DEED

_____, Grantor, conveys and warrants to **MEDFORD URBAN RENEWAL AGENCY**, a public body corporate and politic, organized and existing under ORS Chapter 457 as the urban renewal agency of the City of Medford, Oregon, Grantee, the following described real property described in attached Exhibit A, which is incorporated herein by this reference (the "Property"), free of encumbrances created or suffered by the Grantor, except as specifically set forth in Exhibit B, which is incorporated herein by this reference.

The true and actual consideration for this transfer is other property or other value given or promised.

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

DATED this ____ day of _____, 20__

By _____
Name _____
Its _____

[Acknowledgment follows]

STATE OF _____

)

) ss

County of _____

)

This instrument was acknowledged before me on the _____ day of _____, 20__ by _____ as _____ of _____

Notary Public for _____

My Commission Expires _____

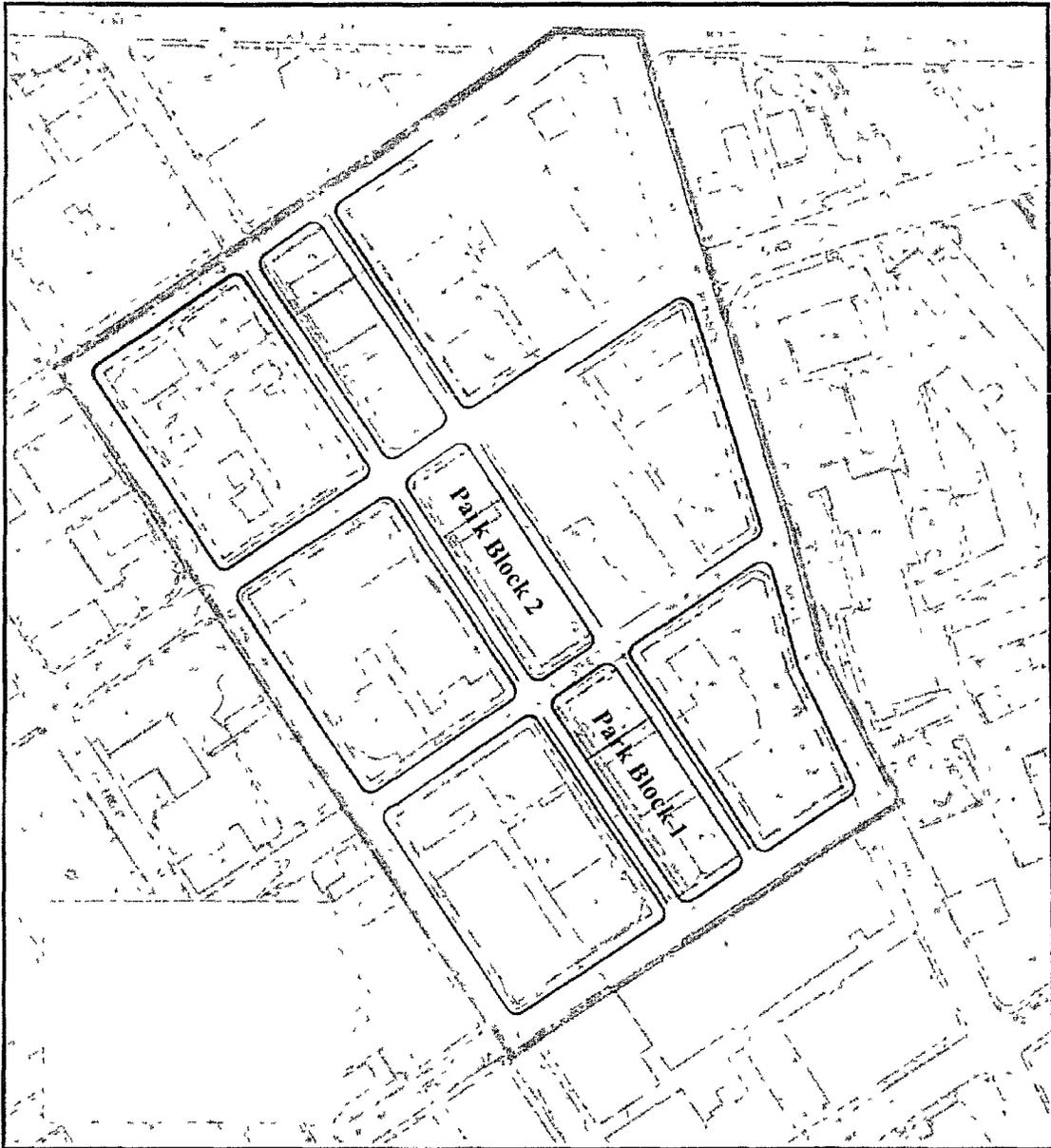
EXHIBIT A

Legal Description

EXHIBIT B

Encumbrances

Schedule 5.1



LOCATION OF PARK BLOCKS 1 AND 2

