

DECLARATION

OF

COVENANTS, CONDITIONS AND

RESTRICTIONS

BY CANNERY STATION, LLC

DRAFT AS OF JANUARY 4, 2010

Exhibit 12

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DRAFT AS OF JANUARY 4, 2010

CANNERY STATION

FLORENCE, OREGON

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration establishing reciprocal easements and covenants, conditions and restrictions for Cannery Station is made by Cannery Station, LLC, an Oregon limited liability company ("Declarant") with respect to the following facts, understandings, and intentions:

RECITALS

- A. Declarant owns all of that certain real property described in Schedule A attached hereto (the "Real Property"). Declarant is developing the Real Property as part of a larger planned mixed-use community, known as Cannery Station. Declarant has adopted this Declaration to provide for the maintenance and use of the Common Areas in Cannery Station.
- B. Each of the covenants, conditions, restrictions and easements set forth in this Declaration are intended to apply to all Lots in the Real Property and to enhance and protect the value, desirability and attractiveness of all such Lots and are hereby imposed as equitable servitudes upon the Real Property.
- C. Declarant reserves the right to further amend this Declaration to accommodate changing needs as the sale and development of Lots in Cannery Station continues and to better serve the emerging base of Owners.

Declarant hereby creates and establishes the following easements, reservations, covenants and restrictions, which shall run with the land and be binding upon and inure to the benefit of the Owners of the Real Property and every part thereof and interest therein as part of a common plan to regulate and govern the use and occupancy of the Real Property and the improvements, to enhance the value thereof and for other beneficial purposes. The foregoing Recitals are incorporated herein by reference.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article I shall have the meanings set forth below and shall apply throughout this Declaration:

- 1.1 "Assessment" means the amount charged an Owner by the Association for the cost of maintaining, improving, operating, managing, repairing and replacing the Common Areas.
- 1.2 "Association" means Cannery Station Association, as created pursuant to Article III.
- 1.3 "Board" or "Board of Directors" means the Board of Directors, as set forth in Article III.
- 1.4 "Common Areas" means the several areas identified as "common area" on the Plat.
- 1.5 "Declarant" means Cannery Station, LLC, an Oregon limited liability company, its successors and assigns.
- 1.6 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as it may from time to time be amended or supplemented.
- 1.7 "Design Guidelines" means the design guidelines, rules and regulations created by the Declarant, as may be amended from time to time for the design of specific site plans and Improvements in Cannery Station.
- 1.8 "Design Professional" means an Oregon licensed engineer, architect, landscape architect or traffic engineer.
- 1.9 "Design Review Committee" or "Committee" means the committee established and acting pursuant to Article 4 of this Declaration.
- 1.10 "Improvement" means any buildings, structures, underground installations, slope and grade alterations, paving, streets, walkways, trails, curbs, driveways, gutters, parking areas, loading areas, sidewalks, utility lines, fences, walls, railings and barriers, fountains, ponds and other water features, stairs, decks, poles, antennae, the paint on exterior surfaces, signs, hedges, plantings, planted trees and shrubs, irrigation systems, storm drains, drainage facilities, conduits, pipes, wires, grating, and all other improvements, structures, fixtures or landscaping of any kind that are within the Real Property.
- 1.11 "Lot" means a part of the Real Property identified on the Plat as a lot.
- 1.12 "Member" means a Member of the Association.
- 1.13 "Mortgage" means a recorded mortgage, deed of trust, or land sale contract (including any memorandum thereof) encumbering the fee or leasehold interest in any Lot.
- 1.14 "Mortgagee" means the mortgagee of a mortgage, the beneficiary of a deed of trust, or the vendor of a land sale contract, encumbering the record title of any Lot.
- 1.15 "Occupant" means the occupant of any Lot and includes the Owner, lessee, or other Person authorized by the Owner to occupy such Lot.
- 1.16 "Owner" means the record holder of fee simple title to any Lot, including Declarant and the vendee of a land sale contract on any Lot, but excluding any Person holding such an interest merely as security for the performance of an obligation. If ownership of the Lot is held separately from ownership of the improvements thereon, the owner of the Lot shall be deemed the Owner.
- 1.17 "Person" means any natural individual, corporation, partnership, limited partnership, association, limited liability company, limited liability partnership, trust, city, county, state, federal government or other entity of any kind.
- 1.18 "Plat" means the plat of the Cannery Station subdivision as platted and recorded in the Lane County Oregon Deed Records on _____

, at File

- 1.19 "Proportionate Share" means the percentage of the Real Property, excluding Common Areas, owned by each Owner, calculated on a square foot basis.
- 1.20 "Real Property" means that certain property described in Schedule A hereto.

ARTICLE II

DESCRIPTION OF REAL PROPERTY

2.1 <u>General Declaration</u>. Declarant hereby declares that all of the Real Property is, and shall be, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved or transferred in whole or in part, subject to this Declaration. All of the covenants, conditions and restrictions and easements set forth in this Declaration are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Property and every part thereof. All of such covenants, conditions, restrictions and easements shall run with all of the Real Property for all purposes and shall be binding upon and inure to the benefit of Declarant and all Owners, Occupants and their successors in interest as set forth in this Declaration.

2.2 Addition of Other Property. Declarant may, from time to time while this Declaration is still in effect, add to the Real Property other real property by recording in the Lane County, Oregon property records a Notice of Addition to Real Property as described in Section 2.3 below, and thereafter the provisions of this Declaration specified in such notice shall apply to such added real property in the same manner as if it were originally covered by this Declaration. Thereafter, the rights, powers, obligations and responsibilities of Declarant and the Owners and Occupants of Lots within such added real property shall be the same as Owners and Occupants of the Real Property.

2.3 <u>Notice of Addition to Real Property</u>. The notice of addition to Real Property referred to in Section 2.2 shall contain at least the following provisions:

- (a) A reference to this Declaration stating the recording information hereof;
- (b) A legal description of such added real property;
- (c) A statement declaring that the provisions of this Declaration shall apply to such added real property;
- (d) Such other or different covenants, conditions and restrictions as Declarant shall specify to regulate and control the use, occupancy and improvements of such added real property; and
- (e) A designation and description of any additional Common Areas.

ARTICLE III

ASSOCIATION

3.1 <u>Creation</u>. There is hereby created the Cannery Station Association. The Association shall have the power and duties and shall be organized and shall operate in accordance with the terms of this Declaration.

3.2 <u>Membership</u>. All Persons who collectively own one Lot shall be considered one single Member. If multiple Owners of a Lot cannot agree unanimously on how to cast their vote, their vote shall not be counted. If an Owner owns more than one Lot, such Owner shall still be deemed one single Member but shall have the number of votes provided in Section 3.3 below.

3.3 <u>Voting</u>. So long as Declarant is the Owner of at least thirty-five percent (35%) of the land area of the Real Property, Declarant shall be the sole voting Member of the Association. The Owner of each Lot other than Declarant shall be entitled to vote only after Declarant ceases to own at least thirty-five percent (35%) of the land area of the Real Property. When Declarant ceases to be the sole voting member of the Association, there will be one (1) vote allocated to each Member for every one-tenth (1/10) acre of the Real Property owned by such Member, rounded down to the nearest one-tenth (1/10) acre. (For example, an Owner of one (1) acre would receive ten (10) votes, and an Owner of one and one-quarter (1.25) acres would receive twelve (12) votes. Declarant shall have three (3) votes for each one-tenth (1/10) acre owned by Declarant, rounded down to the nearest one-tenth (1/10) acre.

3.4 Meetings.

(a) Meetings of the Association may be called either by the Board of Directors or upon the request of Members holding twenty percent (20%) of the Members' votes. A meeting shall be called by a written notice mailed by first class mail or personally delivered to each Member at the current address reflected on the Association records not less than fourteen (14) days prior to the date of the meeting. All meetings shall be convened at a location not more than five (5) miles from the Real Property.

(b) Voting Members present in person or by written proxy holding a majority of the total votes of the Members entitled to vote shall constitute a quorum.

(c) Except as otherwise provided in this Declaration, all decisions of the Association shall be decided by a simple majority of the votes cast at a meeting at which a quorum is present.

(d) Members may act without a meeting if the action is in writing and signed by Members with sufficient votes to approve such action at a meeting of the Members at which one hundred percent (100%) of the Members were in attendance.

3.5 Board of Directors.

(a) The affairs of the Association shall be managed and conducted by a Board of Directors. Declarant shall act as the Board so long as Declarant owns at least thirty five percent (35%) of the land area of the Real Property. Thereafter, the Board shall be comprised of five (5) directors. The Declarant shall appoint the initial five (5) directors, with terms staggered from one (1) to three (3) years, within ninety (90) days after Declarant ceases to own at least thirty-five percent (35%) of the land area of the Real Property. Thereafter the Members shall elect replacements annually for a three (3) year term for each director whose term expires. Vacancies created before the end of a term shall be filled for the remainder of the term by appointment by the remaining directors. Cumulative voting shall not be allowed for election of directors. A director may serve an unlimited number of terms. A director may be removed and replaced by Members holding two-thirds (2/3) of the Members' votes.

(b) The Board of Directors shall elect officers comprised of a President and a Secretary, and if it wishes, a Vice-president and a Treasurer. All of the officers shall be directors. The President shall preside over all directors and Association meetings, and the Secretary shall maintain the Association records.

(c) A majority of the directors shall constitute a quorum for the purposes of conducting business. All decisions of the directors shall be made by a majority vote of all directors.

(d) Meetings of the Board of Directors shall be convened at the call of the President, the Secretary or any two directors. Notice of each meeting shall be given to each director at least forty-eight (48) hours in advance of the meeting. Meetings shall be held within five (5) miles of the Real Property. The directors may meet by telephone conference call in which all the directors can speak and hear.

(e) The directors may act without a meeting, provided a majority of the Board approves the action in writing.

3.6 <u>Association Powers</u>. The Association, acting through the Board of Directors, has the authority to enforce all of the provisions of this Declaration and to carry out any other lawful activities necessary and proper for the Association, including, but not limited to:

(a) Levying Assessments on the Owners

(b) Filing and foreclosing liens against the Lot of any Owner who fails to pay Assessments.

(c) Initiating litigation to enforce compliance with the obligations hereunder.

(d) Maintaining and improving the Common Areas.

(e) Contracting for utility services for the Common Areas.

(f) Establishing reserves or sinking funds for repair or replacement of improvements to the Common Areas and other improvements for which the Association is responsible.

(g) Providing security services or patrols for the Real Property.

(h) Purchasing liability, casualty and other insurance.

(i) Paying property taxes on the Common Areas.

(j) Delegating to one or more Persons the power to exercise the authority of the Board of Directors.

(k) Employing Declarant or a property manager at the expense of the Association to perform the duties of the Association and Board of Directors and paying reasonable compensation for such services.

(I) Adopting rules and regulations governing the use and enjoyment of the Common Areas and other matters as may be appropriate.

(m) Granting easements and rights-of-way over the Common Areas to any Person.

(n) Operating and maintaining private stormwater management facilities in accordance with the Cannery Station Stormwater Drainage Operations and Maintenance Plan on file with the City of Florence.

(o) Appointing, removing and replacing members of the Design Review Committee.

ARTICLE IV

DESIGN REVIEW COMMITTEE AND CONSTRUCTION OF IMPROVEMENTS

4.1 <u>Design Review Committee</u>. So long as Declarant owns at least thirty-five percent (35%) of the land area within the Real Property, Declarant or the Declarant's designee shall be the sole member of the Design Review Committee. Thereafter, the Design Review Committee shall be comprised of three (3) members appointed by the Board. At least one member of the Committee must be a Design Professional and may not be an Owner. The term of the Design Professional member shall be two years, unless the Board agrees to extend the term for successive periods of not more than two years each. A majority of the members of the Design Review Committee represents a quorum and may act on behalf of the Committee. The Committee shall render its decisions in a written instrument setting forth the action taken by the Committee.

4.2 <u>Design Guidelines</u>. The Design Guidelines include without limitation the following design issues: standards for site planning, architecture (including height, bulk, exterior materials, and color), landscaping, signage, lighting, parking adequacy, layout, setbacks, and the flow of vehicular and pedestrian traffic. Copies of the Design Guidelines shall be provided to all prospective Owners and developers on request and to each Occupant or Owner at the time of closing a sale or signing a ground lease.

4.3 <u>Approval of Plans and Subdivision Required</u>. No Improvements shall be erected, placed, altered, maintained or permitted to remain on any portion of the Real Property, and no Lot (other than those owned by the Declarant) may be subdivided or partitioned by any Owner or Occupant until final plans and specifications have been submitted to and approved by the Design Review Committee. The Committee may grant its approval subject to reasonable conditions. Declarant may subdivide or partition a Lot without the approval of the Committee.

4.4 <u>Submittals</u>. Plans and specifications and any material modifications thereto shall be submitted by the Owner of the Lot or an authorized agent thereof. Such plans and specifications shall be in a form and shall contain information as may be reasonably required by the Design Review Committee and shall include the following:

(a) A site development plan showing the nature of the scheme, proposed lots, grading, kind, shape, composition and location of all Improvements with respect to the particular Lot (including proposed front, rear and side setback lines) and with respect to structures on adjoining Lots and the number and location of all parking spaces and driveways on the Lot;

(b) A landscaping plan, including landscaping for the Common Areas;

(c) A plan for location of Signs and lighting;

(d) Building elevations and floor plans showing dimensions, materials and the color scheme in such detail as required by the Committee.

4.5 <u>Basis for Approval</u>. Except as otherwise provided in this Declaration, the Design Review Committee shall have the right to conditionally approve or disapprove plans and specifications for any of the following reasons: (a) Failure to comply with the conditions and restrictions contained in this Declaration;

- (b) Failure to meet the intent of the Design Guidelines;
- (c) Failure to submit a complete application for approval.

4.6 <u>Review Fee</u>. The Design Review Committee may establish a reasonable fee for review of applications. While Declarant or its designee is the sole member of the Design Review Committee, no fee shall be required.

4.7 <u>Approval</u>. Upon approval or conditional approval by the Design Review Committee, one (1) copy of such approved plans and specifications, together with any conditions, shall be deposited for permanent record with the Association, and one (1) copy of such approved plans and specifications shall be returned to the applicant. If the Design Review Committee fails to either approve or disapprove within thirty (30) days after a complete application has been submitted, the application shall be deemed approved.

4.8 <u>Approval Expiration</u>. The Design Review Committee approval shall automatically be revoked one (1) year after issuance unless construction has commenced in accordance with a City-approved building permit or the applicant has applied for and received a written extension of time from the Committee. All extension requests shall be in writing.

4.9 Damage to Improvements. In the event all or any portion of any Improvement on any Lot is damaged or destroyed by fire or other casualty, or taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such Lot shall promptly restore or cause to be restored the remaining portion of such Improvement or, in lieu thereof, shall remove or cause to be removed the damaged portion of such Improvement together with all rubble and debris related thereto. All areas on which Improvements are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Real Property or any portion thereof, and shall be kept weed free and clean at the Owner's sole cost and expense until Improvements are reconstructed thereon. Any reconstruction, replacement or repair required by this section shall be in accordance with the original plans and specifications for the Lot and its Improvements or new plans and specifications approved by the Design Review Committee.

ARTICLE V

COMMON AREA MAINTENANCE

5.1 <u>Repair and Maintenance Duties of Association</u>. The Association shall maintain, repair, replace, resurface and make necessary improvements to the Common Areas so they remain in a good, sanitary and attractive condition. Such maintenance, repairs and improvements shall include, but not be limited to maintenance and replacement of shrubs, trees, vegetation, irrigation and drainage systems and other landscaping improvements located on the Common Areas, repair and payment for all utilities, mechanical and electrical equipment in the Common Areas and repair and maintenance of all walkways and other means of ingress and egress within the Common Areas.

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5.2 <u>Common Area Control</u>. The Association may:

(a) Limit the number of Persons using the Common Areas.

(b) Establish uniform rules and regulations pertaining to the use of the Common Areas.

(c) Suspend the right to use the Common Areas by an Owner or Occupant of the Owner's Lot for any period during which any Assessment against the Owner and its Lot remains unpaid for more than thirty (30) days or for an infraction of the published rules and regulations of the Association. In no event, however, shall any suspension preclude the Owner or Occupant from access to its Lot.

5.3 <u>Title</u>. Declarant may at any time convey any and all Common Areas to the Association, but in no event shall such conveyance occur later than ninety (90) days after Declarant ceases to own at least thirty-five percent (35%) of the land area of the Real Property.

Declarant (or the Association if it holds title) may at any time dedicate or grant an easement upon all or part of the Common Areas to the City of Florence, Lane County, the state of Oregon or other public entity.

5.4 <u>Damage or Destruction</u>. Except as otherwise provided in this Declaration, in the event of damage or destruction of any portion of the Common Area or the improvements thereon, the Association shall restore and repair the same as promptly as practical. The proceeds of any insurance shall be used for such purpose unless otherwise provided herein. The Common Area and all other improvements shall be reconstructed substantially in accordance with the original construction plans if they are available, with such changes as are reasonably determined by the Design Review Committee to be necessary or desirable. In the event the insurance proceeds are less than the cost of restoration and repair, a reconstruction Assessment shall be levied by the Association over and above the amount of the insurance proceeds. If the insurance proceeds exceed the cost of restoration and repair, the excess shall be retained by the Association and applied to other Association expenses.

5.5 Damage by Owner or Occupant. Any Owner or Occupant who damages any of the Common Area shall promptly repair such damage at the Owner's or Occupant's expense. If the Owner or Occupant fails to do so, the Association may repair the damage and assess the Lot of the responsible Owner or the Lot occupied by the responsible Occupant for the costs of such repair and for the Association's related expenses, as provided in Article VI, below.

ARTICLE VI

ASSESSMENTS

6.1 <u>Creation of the Lien and Personal Obligations of Assessments</u>. Every Owner is deemed to agree to pay all Assessments imposed by the Association. All such Assessments, together with late charges, interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien against the Owner's Lot and shall also be a separate, distinct and

CANNERY STATION DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - PAGE 8

personal obligation of the Owner at the time the Assessments fall due. This personal obligation cannot be avoided by abandonment of the Lot or by an offer to waive use of the Common Areas.

6.2 <u>Purpose of Assessments</u>. Assessments shall be used to pay the expenses of the Association, to pay taxes on and maintain the Common Areas, and to promote the general benefit of the Owners, their Lots, the Occupants, the Common Areas, and the Real Property. Nothing in this Declaration shall be construed to limit the right of the Association to use Assessments to abate any nuisance emanating from outside the physical boundaries of the Real Property.

6.3 Determination of Regular Assessments.

(a) Not later than sixty (60) days prior to the beginning of each fiscal year of the Association, the Board shall prepare and distribute a budget and the budgeted Proportionate Share of the proposed Assessment allocable to such Owner as the Assessment for the next ensuing fiscal year. Failure to provide a copy of the budget or summary of the budget shall not affect the validity of the Assessments based thereon. The Association shall levy the annual Assessment upon each Owner and the interest of such Owner in a Lot based upon the budget approved by the Board. Except for Assessments under Sections 5.5 and 12.1, Assessments shall be borne on a Proportionate Share basis by the Owners of Lots.

(b) The initial Assessment shall commence on the first day of the calendar month following the completion by Declarant of the initial improvements to a Common Area. Declarant shall provide each Owner with at least thirty (30) days prior notice of the commencement date, and Declarant's determination shall be final. The initial Assessment shall be determined by the Declarant for the period from the date of completion of the initial improvements to the Common Area until the end of the Association's fiscal year.

6.4 <u>Adjustment of Assessments</u>. Assessments for any partial year may be prorated. If, at the end of any fiscal year, there are excess Assessment funds remaining, the Board may at its option elect to refund the excess to the Owners or apply the excess to the Assessments for the next year.

6.5 Due Dates: Delinquent Assessments.

(a) The Board shall establish the due date or dates for each Assessment. Assessments shall become delinquent if not paid within thirty (30) days after their due date.

(b) If an Assessment is delinquent, the Association may recover the following from the delinquent Owner:

(i) Reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorneys' fees and collection costs.

(ii) A late charge not exceeding ten percent (10%) of the delinquent Assessment, or fifteen dollars (\$15), whichever is greater.

(iii) Interest on the delinquent Assessment, attorneys' fees, reasonable costs of collection, and late charges, at an annual percentage rate which is the lesser of: (A) five percent (5%) over the 90-day discount rate provided to banks by the Federal Reserve Board on the date of default, or (B) the maximum rate permitted by law. Interest shall begin to accrue thirty (30) days after the obligation becomes due.

6.6 <u>Estoppel Certificate</u>. The Association, on not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the Owner making the request, a statement in writing stating whether the Owner is in default as to its Lot under the provisions of this Declaration, and stating the date to which Assessments have been paid and the amount of any delinquent Assessments and other amounts owed by the Owner as to such Lot. Any certificate delivered pursuant to this section shall be binding on the Association may be relied on by any Mortgagee or prospective purchaser of the Lot.

6.7 <u>Right to Enforce</u>. The right to collect and enforce Assessments is vested in the Association. The Association, or its authorized representative, can enforce the obligations of the Owners to pay Assessments by commencement and maintenance of a lawsuit, or the Association may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 6.9, the lien created against any Lot. A lawsuit to recover a money judgment for unpaid Assessments, together with all amounts described in Section 6.5, may be maintained without waiving the lien against the defendant Owner's Lot.

Creation of Lien. Delinquent Assessments, together with any late charges, 6.8 interest, all costs and attorneys' fees, that are incurred by the Association or its authorized representative in the collection of the amount due, shall be a lien against the Lot upon which the Assessment was levied. Such lien shall be effective on the due date of the Assessment. Notice of delinguent Assessment should be recorded in the real property records of Lane County, Oregon. The notice shall state the due date and amount of the delinguent Assessment, amounts collectible pursuant to Section 6.5 hereof as of the date of the notice, a description of the Lot sufficient to identify it, the record Owner or reputed Owner thereof, the name and address of the representative (if any) authorized by the Association to enforce the lien by sale or otherwise, and the name and address of the Association. The Assessment lien shall be prior to all other liens recorded subsequent to recording the notice of delinquent Assessment, except for real property ad valorem taxes. assessments and other levies which by law would be superior thereto. The notice of delinquent Assessment shall be given concurrently to any Mortgagee of the assessed Lot that has previously notified the Association of such Mortgagee's address and requested a copy of the notice. Any payment by the Mortgagee of any delinquent Assessments shall have the same force and effect as if made by the delinguent Owner. If any Lot subject to a lien for delinquent Assessments is subject to a Mortgage recorded before recording the notice of lien, which is made in good faith and for value as an encumbrance against such Lot, (a) the foreclosure of the Assessment lien shall not operate to affect or impair such Mortgage; and (b) the purchaser of the Lot as a result of Mortgage foreclosure will take title to the Lot free of the lien for delinquent Assessments which accrued prior to the date of the foreclosure sale, but subject to all Assessments that shall accrue thereafter. For the purposes of this Section 6.8, a Mortgage shall be deemed given in good faith and for value even though the Mortgagee has constructive or actual knowledge of the provisions of this Declaration concerning liens for delinquent Assessments unless the Mortgagee has actual or constructive notice of any default hereunder or delinguent Assessment prior to recording its Mortgage.

6.9 <u>Enforcement of Assessment Lien</u>. The lien created pursuant to Section 6.8 above may be enforced in the same manner as a mortgage or trust deed (judicially or by CANNERY STATION DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS – PAGE 10

notice and sale), or in any other manner permitted or provided by the laws of the State of Oregon. The Board, acting on behalf of the Association and with the approval of the Members, shall have the right to bid for the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The Association may accept a deed in lieu of foreclosure.

6.10 <u>Transfer or Sale of a Lot</u>. An Assessment lien shall run with the land and, except as provided in Section 6.8, shall be binding on the Owner's successors-ininterest. An Assessment lien shall expire and lapse if foreclosure is not commenced within six (6) years following recording of the notice of delinquent Assessment.

6.11 <u>Curing the Default</u>. The Association shall record an appropriate release of any lien notice upon payment of a fee, to be determined by the Association, to cover the cost of preparing and recording such release, together with the payment of such other costs, interest, late charges, attorneys' fees and other fees as shall have been incurred by the Association by reason of such default, and all delinquent Assessments. Any purchaser or encumbrancer, who has acted in good faith and for value, may rely upon such release as conclusive evidence of the full satisfaction of the sums stated in the release.

ARTICLE VII

EASEMENTS AND RESERVATIONS

7.1 <u>Common Area</u>. Subject to the provisions of this Declaration governing use and enjoyment of the Common Areas, and such rules and regulations as may be established by the Association, the Common Areas may be used by all Owners and Occupants, and their tenants, invitees, and licensees transacting business on or temporarily visiting the Real Property, for such purposes as determined by this Declaration and the Association that are reasonably necessary for use and enjoyment of a Lot. Common Areas shall be dedicated in accordance with Florence City Code 10-23-6.

7.2 <u>Maintenance and Repair of Common Areas</u>. Declarant reserves, for the benefit of the Association, nonexclusive easements over the Lots and other portions of the Real Property as necessary to maintain and repair the Common Areas and to perform all other tasks in accordance with the provisions of this Declaration. Maintenance of Common Areas shall be in accordance with Florence City Code 10-23-5-G.

7.3 <u>Utilities</u>. Declarant and the Association reserve easements over the Common Areas for utility services, including main lines and lateral lines serving the Lots, and for the repair, replacement and maintenance of such utility lines. Declarant and the Association shall have the right to grant utility easements over the Common Areas for the benefit of specific Lots and utility companies.

7.4 <u>Building Setback Adjacent to Florentine Estates.</u> Buildings as defined by the Florence City Code 10-1-4 are prohibited within the 35-foot setback from the eastern property boundary next to Florentine Estates.

7.5 <u>Covered Parking</u>. Required covered parking for residential dwellings shall not be converted to living space.

CANNERY STATION DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS -- PAGE 11

ARTICLE VIII

REGULATION OF USES AND OPERATION

8.1 Upkeep and Maintenance. Each Owner shall at all times, at the Owner's expense, keep the Owner's Lot and all improvements thereon in a safe, clean and wholesome condition and shall comply in all respects with applicable governmental, health, fire and safety ordinances, regulations, requirements and directives, and this Declaration. Each Owner shall maintain the exterior of any improvement and the parking area located on such Owner's Lot in a first class and quality condition. Each Owner shall also maintain in good condition all landscaping, automatic sprinkler systems and water lines on the Owner's Lot, and shall repair and replace shrubs and other landscaping as necessary.

8.2 <u>Nuisances</u>. Nuisances, including but not limited to the following, are prohibited on all Lots:

- o Abandoned vehicles
- o Abandoned furniture
- o Loud noise (disturbing sound pressure)
- o Glare (bright reflective light)
- o Disturbing odors and fumes
- o Visible smoke and / or vapor emissions
- o Garbage / Rubbish
- o The use, storage, release or disposal of radioactive materials, hazardous substances, hazardous wastes and/or medical wastes as such terms are defined in applicable federal, state, regional or local laws, rules, regulations or orders governing such matters, as amended from time to time, except to the extent the use, storage, release or disposal of such materials: (a) involves only the presence of commercially reasonable quantities of such materials used or held for use in the ordinary course of business, where such use is ancillary or incidental to the on-site conduct of a primary business which is otherwise a permitted use under this Declaration; and (b) is conducted in compliance with all applicable laws.

The Association may prohibit additional activities that it determines, in its discretion, to be incompatible with the interests of the Members of the Association.

8.3 <u>Walkways and Driveways</u>. There shall be no obstruction of any streets, bike paths, walkways or driveways, that would interfere with the free circulation of pedestrian, bicycle or automobile traffic, except such obstructions as may be reasonably required in connection with repairs of such streets, bike paths, walkways or driveways.

ARTICLE IX

INSURANCE

9.1 <u>Duty to Obtain Insurance: Types</u>. The Association shall obtain and maintain in effect public liability insurance in an amount it deems appropriate to cover claims for

personal injury and property damage. The Association may also obtain and maintain in effect fire and casualty insurance with extended coverage in an amount equal to the full replacement value of the improvements in the Common Areas. Such insurance shall be maintained by the Association as a named insured for the benefit of the Association and the Owners, and shall contain waivers of subrogation of claims against all Owners. The Association may purchase such other insurance as necessary in the reasonable judgment of the Board, including, but not limited to, errors and omissions, medical payments, fidelity bonds and workers' compensation.

Right and Duty of Owners to Insure. Each Owner shall obtain fire and casualty 9.2 insurance in an amount equal to the full replacement value, without deduction for depreciation or co-insurance, of all of the improvements on such Owner's Lot. Each Owner shall carry public liability insurance to cover its individual liability for damage to persons or property occurring upon its Lot or elsewhere upon the Real Property. Such insurance shall be in an amount not less than One Million Dollars (\$1,000,000) or in such higher minimum amount as the Association may reasonably determine from time to time. All such policies carried by Owners shall contain waivers of subrogation of claims against the Association and all other Owners. The insurance policies carried by each Owner shall, to the maximum extent possible, be considered and written as primary, and any insurance carried by the Association covering the same loss shall be secondary. Such Owner's policies shall not adversely affect or diminish any coverage under insurance obtained by the Association. If any loss covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such Owner's insurance to the Association to the extent of such reduction. Each Owner shall provide the Board of Directors proof of insurance acceptable to the Board upon request.

ARTICLE X

PROTECTION OF MORTGAGEES

Neither the breach of any of the covenants, conditions restrictions, limitations and easements contained in this Declaration nor the enforcement of any lien created hereby shall affect, impair, defeat or render invalid the lien or charge of any prior Mortgage on any Lot made in good faith and for value, but all of said covenants, conditions, restrictions, limitations and easements shall be binding upon and effective against any Owner whose title is derived through foreclosure or deed in lieu thereof, or otherwise. The priority of any Mortgage with regard to any lien filed by the Association shall be determined under Section 6.8.

ARTICLE XI

DURATION AND AMENDMENT

<u>11.1</u> <u>Term</u>. This Declaration shall continue in full force until December 31, 2060, unless it is terminated or extended as provided in Sections 11.2 or 11.3 below.

11.2 <u>Amendment</u>. Except as otherwise provided in Section 11.3, this Declaration may be terminated, extended modified or amended, as to the whole of the Real Property or any portion thereof, with the written consent of the Owners of more than sixty-five percent (65%) of the land area of the Lots (exclusive of the Common Area); provided however that (a) so long as Declarant owns fee simple title to at least fifteen percent (15%) of the land area within the Real Property or (b) for a period of fifteen (15) years from the date of recording hereof, whichever period is shorter, no such termination, extension, modification or other amendment shall be effective without the written approval of Declarant.

11.3 <u>Amendment by Declarant</u>. For so long as Declarant owns fee simple title to at least thirty-five percent (35%) of the land area within the Real Property, Declarant acting alone may terminate, extend, modify or amend the provisions of this Declaration. No such modification or amendment shall be effective until the Owners have been given thirty (30) days' prior written notice of the proposed amendment.

11.4 <u>Recordation</u>. No termination, extension, modification, or other amendment under Sections 11.2 or 11.3 shall be effective until an instrument in writing has been executed, acknowledged and recorded in the Lane County Deed Records reflecting such termination, extension, modification or amendment.

ARTICLE XII

ENFORCEMENT

12.1 <u>Abatement and Suit</u>. The Owner of each Lot, and the Occupant, if different from the Owner, shall be jointly and severally liable for the violation or breach of any covenant, condition or restriction contained in this Declaration. The Association, following thirty (30) days' written notice to the Owner or Occupant in question, shall have the right, privilege and license to enter upon the Lot where such violation or breach exists and to summarily abate and remove, at the expense of the Owner thereof, any improvement, thing or condition that is contrary to the provisions of this Declaration, or to prosecute a proceeding at law or in equity against the Person or Persons who have violated or are attempting to violate any of its covenants, conditions or restrictions to enjoin or prevent them from doing so, to cause such violation to be remedied, and to recover damages for each violation. No such entry by the Association or its agent shall be deemed a trespass, and neither the Association nor its agents shall be subject to liability to the Owner or Occupant of the Lot for such entry and any action taken to remedy or remove a violation. The Association may assess any Owner and the Owner's Lot in accordance with Article VI for the cost of any abatement, remedy or removal hereunder.

12.2 <u>Right of Entry</u>. During reasonable hours and upon reasonable notice and subject to reasonable security requirements, the Association or its agents shall have the right to enter upon and inspect any Lot and the improvements thereon to determine if the requirements of this Declaration have been or are being complied with, and neither the Association nor its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

12.3 <u>Nuisance</u>. Every violation of any covenant, condition or restriction herein contained shall constitute a nuisance, and the Association may exercise every remedy,

CANNERY STATION DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS - PAGE 14

either public or private, allowed by law or in equity against the offending Owner or Occupant.

12.4 <u>Remedies Not Exclusive</u>. All remedies provided in this Declaration, or at law or in equity, shall be cumulative and not exclusive.

12.5 <u>Attorneys' Fees</u>. In any suit or action for the enforcement or interpretation of this Declaration or any provision hereof, the prevailing party shall be entitled to recover its attorneys' fees and costs, at trial and on appeal, in any bankruptcy proceeding, and in enforcing or collecting any judgment rendered in such reasonable amounts as shall be fixed by the court.

12.6 <u>No Waiver</u>. The failure to enforce any requirement, covenant, condition, restriction or standard in this Declaration shall not be a waiver of the right to do so thereafter, in other cases, or to enforce any other requirement, covenant, condition, standard or restriction.

ARTICLE XIII

GENERAL PROVISIONS

13.1 <u>Covenants Run With the Land</u>. This Declaration shall be a burden on each Lot and shall be appurtenant to and for the benefit of the other Lots and run with each part of the Real Property.

13.2 <u>Successors and Assigns</u>. This Declaration shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any Person occupying or acquiring a Lot, or any portion thereof, or any interest therein, including a leasehold interest, whether by operation of law or otherwise; provided, however, that if an Owner sells all or any portion of its interest in any Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title, but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. Except as provided in Section 6.8, the new Owner of any such Lot or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Lot or portion thereof after the date of sale and conveyance of title, and for obligations arising prior to the date of sale to the extent such obligations are evidenced by a lien filed against the Lot prior to the date of sale.

13.3 <u>No Joint Venture</u>. Nothing contained in this Declaration shall be deemed or construed to create a partnership or joint venture between or among the Declarant and any other Person or the Association.

13.4 <u>Not a Public Dedication</u>. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Real Property to or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration be strictly limited to and for the purposes expressed herein.

13.5 <u>Breach Shall Not Permit Termination</u>. No breach of this Declaration shall entitle any Owner to terminate this Declaration, nor shall any such breach limit in any manner any other rights or remedies which such Owner may have hereunder. Any breach of this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

13.6 Notices. Unless otherwise permitted herein, all notices given pursuant to this Declaration shall be in writing and shall be given by delivery to the Owner at the Owner's Lot, or by United States first class, certified, or express mail or established delivery service (such as Federal Express), postage or delivery charge prepaid, addressed to an Owner to whom the notice is to be given at the address of the Owner's Lot and to other Persons at the address shown on the then current records of the Association or Declarant. The Persons and addresses to which notices are to be given may be changed at any time by any Person upon written notice to the Association of the change. All notices given pursuant to this Declaration shall be deemed given upon receipt. For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified for receiving notices, (ii) the date of actual receipt of the notice or other document by the Person to whom it is addressed, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

13.7 <u>Severability</u>. If any term or provision of this Declaration or the application of it to any person or circumstance is deemed to be invalid or unenforceable, the remainder of this Declaration shall remain in effect, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

13.8 <u>Third Party Beneficiary Rights</u>. This Declaration is not intended to create, nor shall it be construed to create, any third party beneficiary rights in any Person other than Declarant, Owners, Occupants, Mortgagees and the Association, unless otherwise expressly provided herein.

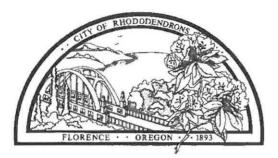
13.9 <u>Change in Ownership</u>. At least ten (10) days prior to the effective date of any change in the record ownership of fee title to a Lot, the Owner of the Lot shall give the Board written notice of the pending transfer, providing the name and address of the new Owner and the date the transfer is scheduled to close. Immediately upon the change of ownership, the former or new Owner shall confirm the change in writing to the Board by providing the Association with a conformed copy of the recorded deed or other instrument of transfer and the new Owner's address for purposes of mailing future notices. Until the Association receives such confirmation, it shall not be required to give notices to the new Owner, and the prior Owner shall continue to be personally liable, along with the new Owner, for any violation of this Declaration by the new Owner or Occupant.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the _____ day of _____, 2010.

CANNERY STATION, LLC

By:______ Suzanne K. Arlie, President Arlie & Company, an Oregon Corporation

By: ______ Veronica Alfero For Alfero Trust, Member



City of Florence

Community Development Department

250 Highway 101 Florence, OR 97439-7623 PH: (541) 997-8237 FAX: (541) 997-4109

July 2, 2012

Teresa Bishow, AICP Arlie & Company 2911 Tennyson Avenue Suite 400 Eugene, Oregon 97439 Mailed via email: teresa@arlie.com

RE: Preliminary Review- Letter of Completeness Cannery Station Phase I Final PUD, Tentative Subdivision Plan, and Design Review

Dear Ms. Bishow,

This letter is submitted as part of the Community Development Department's review of your application for Cannery Station's Phase I Final Planned Unit Development (PUD), Tentative Plan (Preliminary Subdivision) and Design Review for a commercial building on Lot 1, Map # 18-12-14-20 T/L 700. Specifically, Planning, Building, Public Works, and Siuslaw Valley Fire and Rescue looked at the submitted documents and reviewed them for completeness in order to process the land use application. This review is a preliminary review with the understanding that the codes which were reviewed at the time of preliminary PUD will be continued forward as stated in Condition 2 of Resolution PC 08 09 PUD 01. Condition 2 states:

"Regardless of the content of material presented for this Planning Commission decision, including application text and exhibits, staff reports, testimony and/or discussions; the Applicant agrees to comply with all regulations and requirements of the Florence City Code which are current on the date the application was submitted (March 28, 2008), EXCEPT where modification or deviation from such regulations and requirements has been specifically approved by formal Planning Commission action as documented by the records of this decision and the associated Conditions of Approval. In the event that modifications to the approved plans or change of use are approved by the Community Development Director or Planning Commission/Design Review Board, the codes in place at the time the application for a modification is submitted will apply."

The code provisions which were reviewed under the Preliminary PUD approval were Florence City Code Title 10, Chapter 3, Off-Street Parking and Loading, Title 10, Chapter 7, Special Development Standards, FCC, Title 10, Chapter 23, Planned Unit Development, FCC, Title 10, Chapter 30, North Commercial District, and by code references to the Realization 2020 Florence Comprehensive Plan. There are a number of updates to the Florence City Code since the approval of PC 08 09 PUD 01. Staff reviewed the application with today's current codes that were not reviewed in PC 08 09 PUD 01. The items with an "*" next to the number indicated that the item is reviewed under today's current code if different from 2008 codes. Please also note

that the application is being reviewed under Resolution PC 08 09 PUD 01 for conformance with the original approval.

Staff also looked at the application to help you prepare for the public hearing as the Planning Commissioners have been emphasizing the need for complete applications. During the review, staff found that there are some items that are needed to make the application complete. The following text includes items to make the application complete, items which will clarify submitted information, comments from Siuslaw Valley Fire and Rescue, and information for your records.

<u>Complete:</u> The following are needed to make the application complete:

1. Wetland Permit: As indicated in Compliance Statement for Phase 1 Final Planned Unit Development (page 8 of 13); the wetlands permit is not obtained yet. Condition 10 states, "Prior to application for Phase I Final PUD, the applicant shall have applied for all necessary removalfill permits and/or drainage into wetlands from the Department of State Lands and from the US Army Corps of Engineers." The application may not be deemed complete without showing evidence that you have applied for all necessary removal-fill permits and/or drainage into wetlands, unless you state the application is complete.

2. Open Space: Condition # 5h states, "At each phase of the Final PUD, the applicant shall demonstrate that a minimum of 20 percent of the net developable area within the current phase combined with any previously approved phases will be dedicated as common open space to be owned in accordance with FCC 10-23-5-G and maintained in accordance with FCC 10-23-6." On page 6 of 13 of the Compliance Statement for Phase 1 Final Planned Unit Development, it states that Phase I has about 18.5% of net developable area dedicated for open space. Indicate how the remainder of the 1.5% of open space will be provided.

3*. Off-Site Conditions: Florence City Code (FCC) 10-1-1-4-B-3* states, "3. Shall identify offsite conditions including property lines, utility locations and sizes, existing and future streets, land uses, significant grade changes and natural features such as streams, wetlands and sand dunes for an area not less than three hundred (300) feet from the proposed application site that is one (1) acre or larger and within 100 feet from the proposed application site that is less than one (1) acre in size. (Amd. By Ord. No. 4, Series 2011)."

This information is helpful for the reviewing body to locate the site and understand its context. Keep in mind that the Planning Commission will be in the Council Chambers, not on site, during the public hearing. The drawings need to provide sufficient context for an informed discussion. Please note that a survey is not needed for the off-site information, but may be collected from public documents such as the local wetlands inventory and aerial photography. This information may be shown on an aerial photograph or on the site plan.

4*. Colors: (FCC 10-6-5 H*) Colors and exterior building materials are required to be submitted and reviewed for design review. If you are uncertain on the colors for the building you may also submit a color pallet from which what the color of the building will be selected.

5. Site Plan: (FCC 10-6-6-A) Sheets A1.1 and A1.2 shows the building with the parking lot layout, landscape islands, but the drawings are too small to see what is really being proposed.

The site plan for Lot 1 will also need to label the dimensions of the building's length and width, setbacks, and parking lot dimensions. Please also see #13 of this letter.

6*. Detailed Landscaping: (FCC 10-6-6-B) The master landscaping plan is good for reviewing the entire Phase 1. However, during design review, a detailed landscaping plan showing what type of plant is planted where for Lot 1 is needed. Please also refer to FCC 10-34-3-2*.

7. Floor Plan: To determine the number of required parking spaces, a floor plan is required for the commercial building on Lot 1. FCC 10-3-3 (also referred as the "Old parking lot standards") allows the exclusion of private office space, walk-in coolers, vent shafts, courtyards, stairwell, elevator shafts, restrooms, and storage.

8. Grades: FCC 11-3-8 requires grades of proposed street to be included with the tentative plan. Please also provide the % of the slope proposed.

9*. Erosion Control: FCC 10-36-4* states, "In addition to standard City requirements for stormwater, erosion control and sand management, projects that disturb one (1) or more acres of land over a period of time, a National Pollution Discharge Elimination System (NPDES) Permit must be obtained from the Department of Environmental Quality prior to the issuance of a development permit or land use permit based on appropriate criteria."

<u>Additional Information</u>: The following additional information will be helpful to clarify the application:

10. Roads: On page 11 of 13 of the Compliance Statement for Phase 1 Final Planned Unit Development, it states that the streets are proposed to meet City Standards. Does that mean that you have decided to move forward with dedicating the streets to the public?

<u>Comments from Sean Barrett, Fire Marshal Siuslaw Valley Fire and Rescue</u>: Since there is no guaranty that this will be built out in its entirety, these additions will negate the requirement to have a second fire apparatus access road.

11. Will all of the buildings have a NFPA 13 sprinkler system?

12. The district requires a fire hydrant within 50 feet of the FDC.

13. For proper coverage, with approval from Public Works Director, Mike Miller, the Fire District requests adding two more fire hydrants; one at the entrance of 47th on the south side and one at the apartment entrance on the north side of 47th.

<u>For Your Information</u>: The following information is to address some things that are raised during the review. No additional information is needed to meet the completeness requirements for this project.

14. Overhang: Sheet A2.2, Lot 2 shows an overhang that goes to the right-of-way. The Planning Commission approved modifications to setbacks as listed in Resolution PC 08 09 PUD

01. Resolution PC 08 09 PUD 01 states, "b. Portions of the building facades to be a minimum of 8 feet from the property line along the Spruce Street and 47th Street right-of-way, as illustrated on Exhibit 45, Sheet A1.2, with the condition that within the 10.5-foot planting and sidewalk area along Spruce Street and 47th Street, a 6-foot sidewalk is provided (the 10.5-foot planting and sidewalk area is illustrated on Exhibit 45, Sheets C6.0, C6.1 and C6.2)." The modification approved did not address the overhang within the right-of-way. The overhang will be addressed during design review for that building.

15. Development of Roads: On page 11 of 13 of the Compliance Statement for Phase 1 Final Planned Unit Development the developer requests "that some of the streets be partially complete with final improvements done as the project is built-out". The property owner may build one building on the site prior to recording of the final subdivision plat. In this case, during the Design Review for the first building, a site plan shall show and label the setbacks from the entire 17-acre property (see also #4).

As part of the final subdivision approval, all the construction improvements will be required to be complete and approved prior to the approval of the final subdivision plat. If the improvements are not completed, a bond or other financial security will be required to insure that the improvements will be complete in a timely manor.

16. Parking: In reviewing the sheet A1.1 and the extra sheet which provides PUD parking data, staff has found:

- The number of parking spaces provided in the entire PUD is the same as the Tentative PUD development
- The number of required parking spaces per lot has not changed
- The number of parking spaces provided per lot has changed
- The number of parking spaces shown on the PUD plan is different than what the chart shows of the number of parking spaces per lot.
- Once a lot is reviewed under Design Review, the number of required parking spaces shall be provided on that lot. In the code, there are two ways to reduce the number of required parking spaces. One option is a variance (meeting the requirements of FCC 10-5) and the other is Common Facilities for Mixed Uses (meeting the requirements of FCC 10-3-5).
- Parking will not be an issue for the Design Review for Lot 1, but will come an issue built out occurs.

17. Wall Construction: Condition 5i states, "Before installation of public improvements for the "South 47th" or the "Spruce" Phase of the PUD (as illustrated in Exhibit 45, Sheet A1.3) has begun, the wall between Florentine Estates and the project site shall be constructed." Phase I includes South 47th and Part of Spruce phases from the Tentative PUD. In the Compliance Statement for Phase 1 Final Planned Unit Development, it is indicated that the intent is to build the wall where Phase I abuts Florentine Estates. The justification provided will be given to the Planning Commission, but the Commission may decide to require the entire wall be constructed with Phase I.

The additional/revised information may be emailed to me at <u>michelle.pezley@ci.florence.or.us</u>. It would be helpful if we could also receive the submitted drawings and tentative plan with contours by email as well. These clarifications will help staff in preparing the staff report and providing the clearest information for the public record, and reduce conflict between documents.

Teresa Bishow Page 5 of 5 July 2, 2012

You do have the right to deem the application complete at any time during this process, but please be aware that you have the burden of proof to meet the applicable criteria as stated in Florence City Code (FCC) 2-10-6. Furthermore, you have up to 180 days from the original submittal date to provide the needed information or the application will be voided. Thus, you have until November 11, 2012 to provide additional information.

Please note that in reviewing the application for completeness, we did not complete an analysis as to whether or not the project meets the code. We will do that analysis as we prepare the staff report and make sure you are aware of any issues in a timely manner so you can address them prior to the public hearing.

If you have any questions, please feel free to contact me at <u>michelle.pezley@ci.florence.or.us</u> or at 541-997-8237. Please note that I will be out of the office between July 5th - July 19th. Please feel free to contact Sandra Belson at <u>sandra.belson@ci.florence.or.us</u> in my absence.

Sincerely,

Michelle K. Perley

Michelle K. Pezley Assistant Planner

cc: Jacque Betz, City Manager Sandra Belson, Community Development Director Land Use File PC 12 12 FPUD 01 PC 12 13 SUB 01 PC 12 14 DR 01

Michelle Pezley

From:Sandra BelsonSent:Thursday, June 14, 2012 9:07 AMTo:Michelle PezleySubject:FW: Cannery Station Final PUD Phase 1FYI.

Sandra Belson

From: Teresa Bishow [mailto:Teresa@arlie.com]
Sent: Thursday, June 14, 2012 8:55 AM
To: Sandra Belson
Cc: matt.keenan@kpffcivilpdx.com; Lorri Nelson
Subject: Cannery Station Final PUD Phase 1

Sandra,

Thanks for calling me this morning to discuss the Phase 1 Final PUD. Based on our conversation, this is written confirmation that Cannery Station LLC grants an extension to the 30 day period for reviewing the application for completeness to Monday, July 2. This timeline extension also applies to the Preliminary Subdivision and Design Review applications that were submitted at the same time.

We appreciate the time staff are spending reviewing the applications.

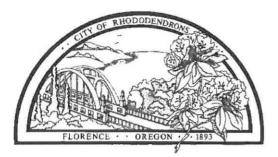
I look forward to hearing from you by July 2nd.

/Teresa

Teresa Bishow, AICP Director of Planning & Development Arlie & Company 2911 Tennyson Avenue, Suite 400 Eugene, OR 97408 Ph: 541-344-5500 Fax: 541-485-2550

http://www.arlie.com www.crescent-village.com

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City of Florence

Community Development Department

 250 Highway 101
 PH: (541) 997-8237

 Florence, OR 97439-7623
 FAX: (541) 997-4109

November 7, 2012

Teresa Bishow, AICP Arlie & Company 2911 Tennyson Avenue Suite 400 Eugene, Oregon 97439 Mailed via email: teresa@arlie.com

RE: 180 days expiration for: Cannery Station Phase I Final PUD, Tentative Subdivision Plan, and Design Review

Dear Ms. Bishow,

On May 17[,] 2012, the City received the three applications for Cannery Station: Phase I Final PUD, Tentative Subdivision Plan, and Design Review. On July 2, 2012, the City provided a letter explaining what was needed before the City may deem the applications three applications complete (see attached).

On October 23, you asked if the City may extend the 180 day deadline to receive a complete application. The 180 day deadline is from Oregon Revised Statute (ORS) 227.178. The ORS states:

"(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided."

As mentioned in our conversation on October 25, 2012, the city may not extend the 180 day timeframe. However, staff is willing to work with you in the land use process to wait to gain the needed information before moving forward with a public hearing if we hear that you do want to continue with the applications.

If you would like to move forward, the City is willing to delay the public hearing date if you agree to wave the 120 day rule (ORS 227.178 (5) and (6)) or wave the 120 day rule to a time

Teresa Bishow Page 2 of 2 November 6, 2012

certain. Please note that the 180 days from original submittal date to provide the needed information is November 13, 2012. The applications will be void on November 14, 2012.

Staff is supportive of Cannery Station would like to see the project move forward. Please let me know in writing or email how you would like to move forward. The additional/revised information may be emailed to me at michelle.pezley@ci.florence.or.us.

If you have any questions, please feel free to contact me at <u>michelle.pezley@ci.florence.or.us</u> or at 541-997-8237. Please note that I will be out of the office between November 12th to November 23rd. Please feel free to contact Kelli Weese, Interim Planning Director, at <u>kelli.weese@ci.florence.or.us</u> or at 541.997.3437 in my absence.

Sincerely,

Michelle K. Perley

Michelle K. Pezley Associate Planner

Enclosure

cc: Jacque Betz, City Manager Kelli Weese, Interim Planning Director Land Use File PC 12 12 FPUD 01 PC 12 13 SUB 01 PC 12 14 DR 01



MEMORANDUM

TO:	Michelle Pezley Kelli Weese
FROM:	Teresa Bishow, AICP
DATE:	November 12, 2012
SUBJECT:	CANNERY STATION

This memo is written to let you know that Cannery Station, LLC does not plan to submit any supplemental material concerning the following land use applications by November 13, 2012:

Cannery Station, Phase I Final PUD (*PC 12 12 FPUD 01*) Cannery Station Tentative Subdivision Plan (*PC 12 13 SUB 01*) Cannery Station Design Review (*PC 12 14 DR 01*)

In accordance with ORS 227.178 (4)(c), we respectfully request that the City consider this written notice that none of the missing information identified by the City in a letter dated July 2, 2012 will be provided.

I understand this memo will retain the status of the above applications as "pending" instead of being deemed void. Furthermore, I understand since we have elected not to submit missing information within 180 days from the original submittal date, the City will begin processing the applications.

Please let me know if you have any questions or need further clarification. I can be reached at 541-344-5500 or via e-mail at <u>Teresa@arlie.com</u>.



City of Florence

Planning Department

250 Highway 101 Florence, OR 97439-7623 PH: (541) 997-8237 FAX: (541) 997-4109

December 12, 2012

Teresa Bishow, AICP Arlie & Company 2911 Tennyson Avenue Suite 400 Eugene, Oregon 97439 Mailed via email: teresa@arlie.com

RE: Preliminary Review- Letter of Completeness Cannery Station Phase I Final PUD, Tentative Subdivision Plan, and Design Review

Dear Ms. Bishow,

Thank you for your memorandum dated Nov. 12, 2012, which states that Cannery Station LLC does not plan to submit any supplemental material concerning the three applications: Cannery Station, Phase I Final PUD (PC 12 12 FPUD 01); Cannery Station Tentative Subdivision Plan (PC 12 13 SUB 01); Cannery Station Design Review (PC 12 14 DR 01).

Per our conversation on November 26, 2012, we talked about the possibility of extending the City's 120-day review to give more time to submit additional information. The City has not received a request to extend the 120 days at this point; therefore, the City needs to begin processing the applications to make sure there is adequate time for a final decision by March 13, 2012.

The public hearing is scheduled for January 8, 2013 at 7:00 PM. Notice of Hearing will be mailed December 19, 2012.

If you have any questions, please feel free to contact me at <u>michelle.pezley@ci.florence.or.us</u> or at 541-997-8237.

Sincerely,

Michelle K. Perley

Michelle Pezley Associate Planner cc: Jacque Betz, City Manager Kelli Weese, Planning Director Land Use File PC 12 12 FPUD 01 PC 12 13 SUB 01 PC 12 14 DR 01



MEMORANDUM

то:	Michelle Pezley Kelli Weese
FROM:	Teresa Bishow, AICR
DATE:	December 13, 2012
SUBJECT:	CANNERY STATION

This memo is written to grant a waiver to the 120-day rule concerning the following land use applications:

Cannery Station, Phase I Final PUD (PC 12 12 FPUD 01) Cannery Station Tentative Subdivision Plan (PC 12 13 SUB 01) Cannery Station Design Review (PC 12 14 DR 01)

I understand entirely waiving the 120 day rule will allow the City to delay the mailing of the Notice of Hearing to April 24, 2013 for a Public Hearing on May 14, 2013.

I understand this memo will retain the status of the above applications as "pending" instead of being deemed void.

If you have any questions, I can be reached via e-mail at <u>Teresa@arlie.com</u> or by phone at 541-344-5500.



City of Florence

Planning Department

250 Highway 101 Florence, OR 97439-7623 PH: (541) 997-8237 FAX: (541) 997-4109

December 18, 2012

Teresa Bishow, AICP Arlie & Company 2911 Tennyson Avenue Suite 400 Eugene, Oregon 97439 Mailed via email: teresa@arlie.com

RE: Cannery Station Phase I Final PUD, Tentative Subdivision Plan, and Design Review

Dear Ms. Bishow,

Thank you for your memorandum dated December 13, 2012, which waives the 120 day rule concerning the three applications: Cannery Station, Phase I Final PUD (PC 12 12 FPUD 01); Cannery Station Tentative Subdivision Plan (PC 12 13 SUB 01); Cannery Station Design Review (PC 12 14 DR 01).

The public hearing is now scheduled for May 14, 2013 at 7 p.m. Notice of Hearing will be mailed April 23, 2013.

If you have any questions, please feel free to contact me at <u>michelle.pezley@ci.florence.or.us</u> or at 541-997-8237.

Sincerely,

Michelle K. Perley

Michelle Pezley Associate Planner cc: Jacque Betz, City Manager Kelli Weese, Interim Planning Director Land Use File PC 12 12 FPUD 01 PC 12 13 SUB 01 PC 12 14 DR 01

Settlement Agreement and Release of Claims

This Settlement Agreement and Release of Claims ("Agreement") is entered between Cannery Station LLC, an Oregon Limited Liability Company ("Cannery Station"), and the City of Florence, an Oregon Municipal Corporation ("City").

RECITALS

- A. The City formed a local improvement district ("LID") by City Council Resolution No. 8, Series 2005 in May, 2005, for the construction of certain public improvements in the general area of Highway 101 and Munsel Lake Road. Cannery Station owns property within the LID which is generally identified by tax lot as 18-12-14-20-00700 ("Cannery Station LID Property").
- B. After construction of the improvements called for in the LID, the City Council adopted Ordinance No. 15, Series 2009 in October, 2009. This ordinance established the assessments on the properties within the LID. The ordinance established an assessment of \$193,936.93 for the Cannery Station LID Property.
- C. After the passage of the assessment ordinance, Cannery Station filed a writ of review action (Lane County Circuit Court Case No. 16-09-28167) challenging the assessment ordinance and the amount of Cannery Station's assessment under the ordinance ("Writ of Review Action").
- D. The parties wish to settle the Writ of Review Action and all claims related to the establishment of the LID and assessment of the Cannery Station LID Property under the LID.

AGREEMENT

In recognition of the above recitals, which are incorporated herein, the parties agree as follows:

- 1. Communications.
 - a. In an effort to improve ongoing communications between Cannery Station and the City, the City designates the Assistant City Manager as the City's primary contact person for Cannery Station inquiries and Cannery Station designates its Planning Director as the primary contact person for City inquiries.
 - b. To ensure that the design and construction of public utilities are done in an efficient manner and address existing and future development needs, the City and Cannery Station agree to coordinate utility plans in and around the LID and the Cannery Station LID Property.

Page 1

- c. To improve efficiencies and keep expenses under consideration, the Assistant City Manager and the Cannery Station Planning Director agree, within reason, to authorize respective staff or consultants to directly communicate on technical issues.
- 2. Sanitary Sewer.
 - a. The parties have agreed on a conceptual drawing showing the location for a new gravity sewer line that will cross under Highway 101 to the Cannery Station LID Property. If the final location for the sewer line needs to be adjusted from the conceptual drawing, the location will be mutually agreed to, taking into account requirements of both Cannery Station and the City. The conceptual drawing showing the location of this work is attached as Exhibit 1 (one page of the exhibit shows the City's sewer line work by showing the location of the bore under Highway 101, the other page of the exhibit shows the likely location and configuration of the on-site sewer work to be completed by Cannery Station).
 - b. For the sewer line work, the City will drill a bore under Highway 101, set a manhole, and run a lateral stub towards the Cannery Station LID Property. All the City work will be within the Highway 101 right-of-way. The City will set the lateral line at a practical and reasonably accessible distance to the Cannery Station LID Property, taking into consideration the topography and existing vegetation. The City will prepare the detailed construction drawings for this work no later than May 31, 2011.
 - c. The City will use its best efforts to put the sewer line work addressed here out to bid in March, 2011 and complete the work by December, 2011.
 - d. The City agrees that changes to the Cannery Station PUD utility plan incorporating the new gravity sewer line and removing the pump station are substantially consistent with the Tentative PUD and will not trigger the need for a PUD modification.
- 3. Water Service.
 - a. Cannery Station has water service to the Cannery Station LID Property from Munsel Lake Road. Due to the size of the site and the land uses approved in the Cannery Station Tentative PUD, water service to the southern portion of the site requires an 8-inch water line to be bored under Highway 101 in the location of the future 47th Street.
 - b. As part of the sewer line work addressed in paragraph 2, the City will seek an alternate bid setting forth the incremental additional cost to drill a second bore for the 8-inch water line. Cannery Station would pay for the second bore, as addressed below, as long as there are adequate cost savings to utilize the City's contractor and mobilized equipment. A conceptual drawing of the likely location of the water line bore is shown on the attached Exhibit 2.
 - c. Once the City receives a qualified responsive low bid for the sewer line work that includes an alternate bid for the water line bore, the City will provide written notice to Cannery Station of the costs for the alternate bid water line work. Cannery Station will then respond within 5 business days if it wants to

proceed with this method for completing the water line work. If Cannery Station does not respond or indicates it does not want to proceed, the City's obligations under this paragraph 3 are satisfied.

- d. If Cannery Station elects to proceed with the water line work, the City shall cause the work to be completed. Within 180 days after the City notifies Cannery Station in writing that the water line bore work is complete, Cannery Station will fully reimburse the City for the City's actual construction costs associated with the water line boring work, not to exceed the alternate bid price as adjusted by the amount of any change orders therefor that have been approved in writing by Cannery Station.
- e. The Cannery Station Preliminary PUD contains a phasing plan that provides flexibility with regard to the order and sequence of development. During review of the Preliminary PUD, there was no specific area identified as Phase 1, although at the time it was assumed development would begin near the intersection of Munsel Lake Road and Highway 101. Cannery Station needs City services for both the northern and southern portions of the development site to allow rapid response to changes in market conditions and financing. As part of the land use approval for the Tentative PUD plan, an 8-inch water line south of the future 47th Street intersection on the west side of Highway 101 was identified.
- f. The City agrees that Cannery Station is not responsible for the construction of the new 8-inch water line along Highway 101 south of 47th Street. In compliance with the Tentative PUD, Cannery Station agrees to amend the utility plan to show the location of the future 8-inch water line within the public right-of-way to be constructed by other parties. The City agrees that this clarification to the utility plan will not trigger the need for a PUD modification.
- 4. <u>Stormwater Runoff</u>. The stormwater pipe recently constructed as part of the LID was not designed for Highway 101 stormwater conveyance. For the Cannery Station LID Property, Highway 101 stormwater runoff will need to be handled with bio-swales and existing ODOT ditches. This was confirmed with ODOT District staff on January 28, 2010. The City will accept bio-swales as part of the conceptual drainage plan. The City will accept runoff from the northern segment of Highway 101 draining into the Highway 101 ditch and continuing to follow the existing drainage pattern of runoff flowing into the Munsel Lake Road ditch. Apart from additional costs that may result from requirements set by other government entities, the City will not require additional work resulting in additional costs incurred by Cannery Station for stormwater runoff south of the site.
- 5. Traffic Signal.
 - a. The City Public Works Department will propose to make the traffic signal at Highway 101 and Munsel Lake Road a City project, with coordination from ODOT and County. City Staff notified the City Council that the City should adjust the City's Transportation System Plan and change associated methodology to make the traffic signal project 100% SDC eligible. The City

made this recommendation in the February, 2010 Public Works Department Monthly Report to the City Council dated March 15, 2010.

- b. Based upon information from Cannery Station presented to date concerning transportation SDC credits eligibility for Cannery Station traffic signal work, the parties agree to the following costs as being eligible for transportation SDC credits:
 - i. JRH work on the Munsel Lake Road approach permit application in the amount of \$2,484.58.
 - ii. JRH costs on the SARF application in the amount of \$29,029.78.
 - iii. Due to the complexities of the JRH work for offsite improvements and comingling of projects that would normally be considered customary and normal work for frontage improvements, only 30% of this JRH work can be attributed towards the traffic signal, which equates to an amount of \$19,105.90.
 - iv. The environmental work is associated with wetlands outside of the traffic signal area and is not eligible for SDC credit.
 - v. 50% of the surveying costs are attributable to the traffic signal, which equates to an amount of \$5,085.50.

As a result, the total amount of Cannery Station work to date that can be applied towards transportation SDC credits is \$55,705.76. To receive the credits, the City will need to benefit from the work by receiving the work product produced for the traffic signal project. Except as provided below, this Agreement resolves the amount of work eligible for transportation SDC credits for the traffic signal work; otherwise, all credits will be subject to the City's current code and policy requirements.

- c. On January 27, 2010, ODOT determined that an additional two feet of pavement was needed for a future center turn lane widening to be constructed by others at the time of the new traffic signal installation. Since this improvement to Highway 101 directly relates to the traffic signal installation, the City agrees to allow the incremental portion of this work to be a transportation SDC credit eligible expense. To be eligible to receive the transportation SDC credits for this incremental work, the costs for the work must be for the actual incremental construction costs of the additional pavement width to accommodate the traffic signal.
- d. No additional transportation SDC credit eligible expenses shall be accumulated on the traffic signal project by Cannery Station unless agreed upon by both parties in advance.
- Promptly after the execution of this Agreement, Cannery Station shall file pleadings necessary to dismiss the Writ of Review Action with prejudice and with no costs or attorneys fees due either party.
- Within 30 days of the execution of this Agreement, Cannery Station shall pay its LID assessment or execute the assessment contract attached as Exhibit 3.

- 8. If Cannery Station unreasonably fails to fully reimburse the City for the water line work as provided in paragraph 3, the City, at its discretion, may withhold occupancy permits for structures on the Cannery Station LID Property or may withhold any pending building permits for work on the Cannery Station LID Property.
- Cannery Station releases City, its officers, employees and agents from any and all claims known or unknown related to the City's establishment of the LID, the construction of the LID improvements, and the assessments assessed against the LID property.
- 10. This Agreement shall be interpreted, enforced and governed under the laws of the State of Oregon.
- 11. This Agreement constitutes the entire agreement between the parties on the subject matters addressed herein. The terms of this Agreement cannot be waived, altered, modified, supplemented or amended, except by written instrument signed by the parties. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- 12. The parties acknowledge and agree that the parties have carefully read and fully understand all of the provisions of this Agreement, and that they voluntarily enter into this Agreement by signing below. The individuals signing below are authorized to, and by signing do, bind the parties to the terms of this Agreement.

CITY:

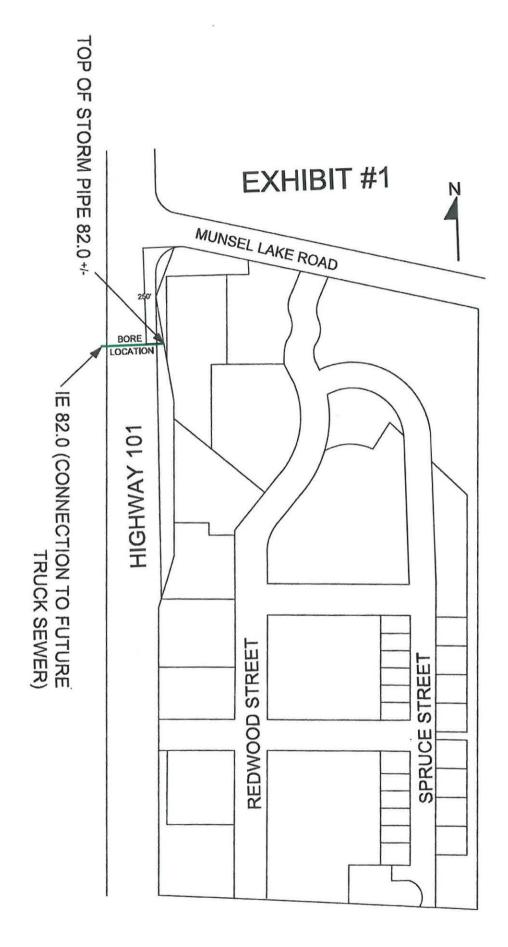
Robert S. Willoughby City Manager

Date: 33010

CANNERY STATION

Scott M. Diehl Vice President

Date: 3/3/



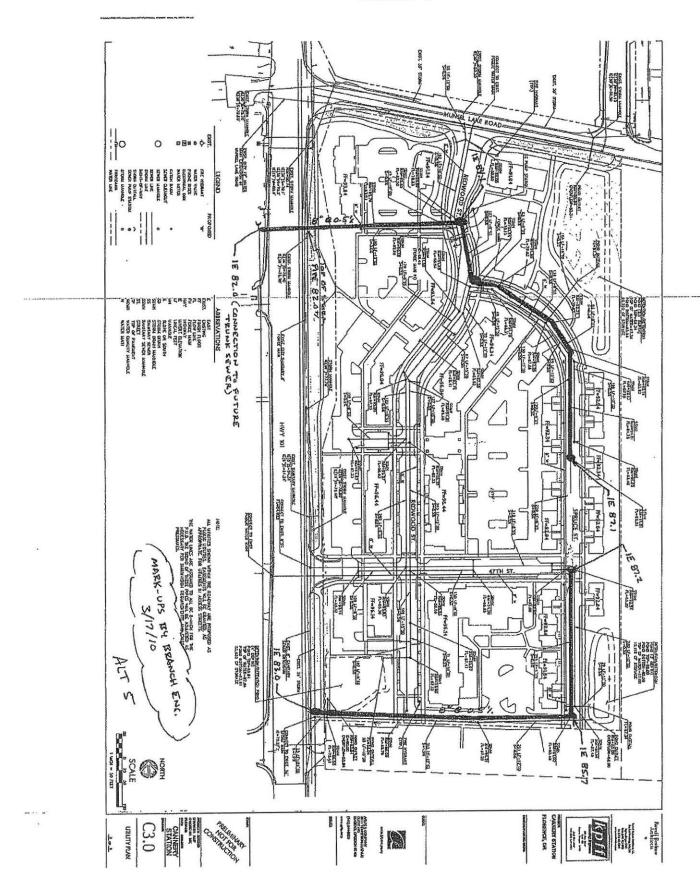


EXHIBIT 1

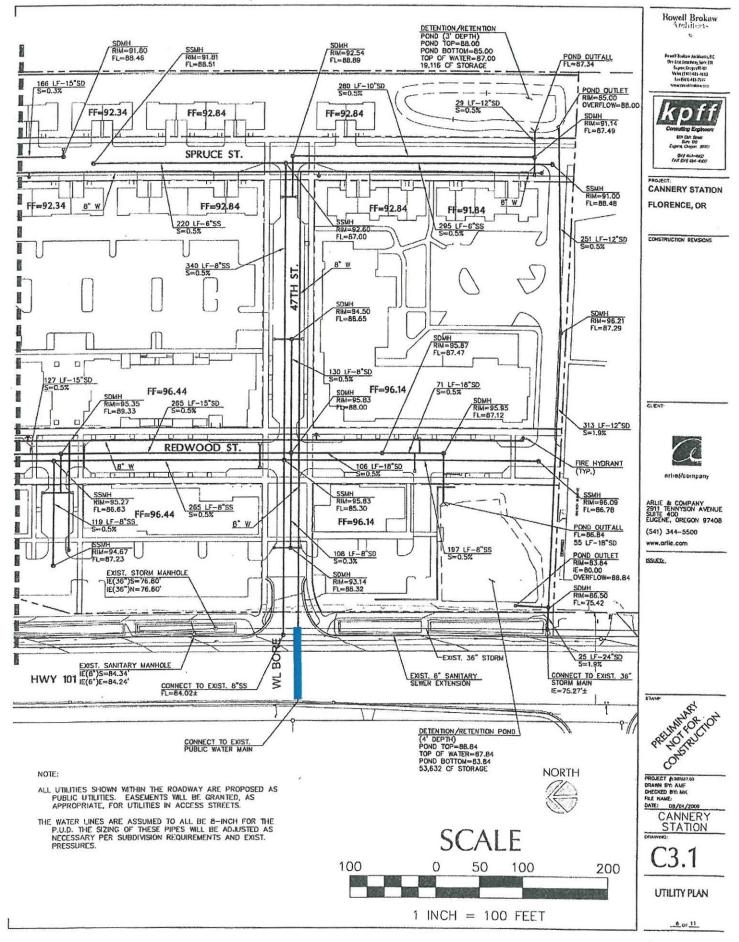


EXHIBIT 3



NAME: Cannery Station LLC 2911 Tennyson Ave. Suite 400 Eugene, OR 97408

City of Florence

City Manager's Office

250 Highway 101 Florence, OR 97439-7628 Voice/TDD: (541) 997-3437 FAX: (541) 997-6814

DATE: April 1, 2010

TAX LOT NUMBER: 18121420-00700

ASSESSMENT STATEMENT

Project: SPRUCE STREET LID A LOCAL IMPROVEMENT DISTRICT

The City Council has assessed properties for the Spruce Street Local Improvement District as described in an assessment ordinance (City Ordinance No. 15, Series 2009) enacted at the October 26, 2009 City Council meeting. The City has assessed your property as follows:

Amount assessed: \$193,936.93 Payment Due Date: May 1, 2010 Tax Lot Number: 18121420-00700 Legal Description: See attached Exhibit "A" Florence, Oregon 97439

Please return your payment with the bottom portion of this statement or complete and return the attached installment contract by May 1, 2010. See the following pages for additional payment information.

Return this portion with your payment

ASSESSMENT PAYMENT COUPON

PROJECT: SPRUCE STREET LID A LOCAL IMPROVEMENT DISTRICT

NAME: Cannery Station LLC 2911 Tennyson Ave. Suite 400 Eugene, OR 97408

TAX LOT NUMBER: 18121420-00700

Amount Due: \$193,936.93 Payment Due Date: May 1, 2010 Amount Paid:

MAKE CHECKS PAYABLE TO:

City of Florence

Mail Payments to:

City of Florence Pat Heinze, City Recorder 250 Hwy 101N Florence, OR 97439

Deliver Payments to:

City of Florence City Recorder's Office 250 Hwy 101 N Florence, Oregon 97439

ASSESSMENT PAYMENT OPTION

Please take a few minutes to study your assessment bill and the following payment option. This special assessment is not part of your property taxes and will not be included in your county property tax billing. The City must receive your cash payment or signed installment payment contract before May 1, 2010.

CASH PAYMENTS

You may pay all or part of the special assessment in cash by May 1, 2010. If you do not pay your entire special assessment in cash by that date you must sign and file an installment payment contract with the city for the unpaid amount by May 1, 2010. The interest-free period ends on the payment due date and unless you file an installment payment contract by such date, the unpaid balance will accrue interest at a rate of 6.75% per annum from the date of the assessment ordinance and will subject your property to foreclosure as described below. Include your tax lot number on your check and mail or deliver to:

Mail Payments to:	City of Florence Pat Heinze, City Recorder 250 Hwy 101 N Florence, OR 97439
Or .	
Deliver Payments to:	City of Florence City Recorder's Office 250 Hwy 101 N Florence, Oregon 97439

INSTALLMENT PAYMENT CONTRACT

If your special assessment is the sum of one hundred dollars (\$100.00) or more, you may pay all or part of your special assessment in 40 semiannual installments of principal and interest in accordance with the provisions of Section 8-1-1-11 of the City Code. The City will sell improvement bonds to finance your contract and charge you interest based on the true interest cost, as determined by the City's financial advisor, of the bonds. The true interest cost of the bond sale is currently not known. The bond sale is expected to occur by May, 2010. The City will notify you of that interest rate when it sends your first invoice.

If the City has not issued bonds by your first payment date, your interest rate will be determined by the City Recorder until bonds are sold.

Please read carefully the attached installment payment contract. It must be signed by all owners of record. If you are buying your property on contract, please include a copy of your recorded contract.

FORECLOSURE

You must return a cash payment or signed installment payment contract in a total amount equal to your special assessment by May 1, 2010, or the City may commence a foreclosure action on your property.

CITY OF FLORENCE, OREGON INSTALLMENT PAYMENT CONTRACT

The undersigned agree to pay the assessment in 40 semi-annual installment payments of principal and interest and any penalties or other costs as set forth in the Terms and Conditions of this contract, in accordance with the provisions at Section 8-1-1-11 of the Florence City Code. Further, the undersigned understands that the amount owing shall be a lien against the benefited property and the lien shall be recorded in the Docket of City Liens.

NAME: Cannery Station LLC 2911 Tennyson Ave. Suite 400 Eugene, OR 97408 DATE: April 1, 2010 CONTRACT DUE DATE: May 1, 2010 TAX LOT NUMBER: 18121420-00700

I hereby agree to pay in installments the following special assessment:

Special Assessment	\$193,936.93	

This loan is a lien on the property described below:

Legal Description: See attached Exhibit "A"

TAX LOT NUMBER: 18121420-00700

Florence, Oregon 97439

I elect to pay the assessment amount in 40 semi-annual installments of principal and interest and any penalties or other costs. The first installment payment will be due on May 1, 2010, and subsequent payments are due every six months thereafter.

This contract is submitted in accordance with provisions of ORS 223.205-295, and Florence Ordinance 15, Series 2009. In consideration of and pursuant to these legal provisions, the undersigned hereby expressly waives all irregularities and defects, jurisdictional or otherwise, in the proceedings to cause the local improvement for which the final assessment is levied and in the calculation of the actual cost of the local improvement and the assessment of that cost against the properties described in this contract. The undersigned has read and agrees to abide by the attached "Installment Payment Contract Terms and Provisions."

Note: All recorded owners must sign. If contract purchaser, please attach contract of sale.

Signed:

Signed:

Date:

Date:

INSTALLMENT PAYMENT CONTRACT TERMS AND PROVISIONS

Payment Schedule. The City uses the following calculations when preparing installment bills: Installment payments are billed every six months. The first installment payment date will be March 1, 2010. Each installment is an equal payment sufficient to amortize the special assessment, with interest, over 40 payments, plus any costs or penalties imposed under this "Installment Payment Contract Terms and Provisions".

Interest Rates. The City finances this installment loan by selling improvement bonds. Your interest will be 1.5% (one and one half percent) above the true interest cost, as determined by the City's financial advisor, of those bonds. The true interest cost of the bonds is currently not available. You agree that you will not purchase any of the improvement bonds issued by the City to finance this installment loan.

If the City determines not to issue bonds, your interest will be determined by the City Recorder.

Billing and Payment. The City bills you directly for your installment assessment payments. Your installments are not a part of your property tax bill. Payments are due in our office on or before the payment due date. Include your tax account number on your check and make the check payable to the City of Florence. You may shorten the payment period by paying more than the required amount. All or any portion of the unpaid balance may be prepaid at any time, without prepayment penalty. Prepayments will be applied first to any unpaid penalties and costs that are then due, then to the interest, and then to the unpaid principal balance. However, excess payments or prepayments shall be credited in inverse order of maturity and shall not be credited as regular future payments, nor excuse you from making the regular semi-annual installment payments.

Penalties for Non-Payment. The City charges a penalty equal to 0.50% (.0050) of the balance owing on your assessment contract whenever any installment payment is more than 15 days past due. Beyond 30 days past due, the City may declare this contract in default. The City may also require payment of the entire amount of delinquent installments, plus interest, penalties, and costs, including but not limited to attorney fees.

This loan is secured by a lien on the benefited property. The City lien may be assumed when the property is transferred — banks and financial institutions generally require full payment of this loan before closing a private mortgage or refinancing transaction.

The City may enforce its property lien by foreclosing and selling the property to collect the outstanding loan balance and all related costs, including costs of enforcing the lien.

Time of the Essence. Time is of the essence for each and every provision of this Agreement.

Change of Address. You are responsible for notifying the City of Florence of any change of ownership or billing address.

Exhibit A 18121420-00700

Beginning at a point on the Easterly right-of-way line of the Roosevelt Highway 100.0 feet North 0° 17' West of a point on the East-West centerline through Section 14, Township 18 South, Range 12 West of the Willamette Meridian; and running thence North 0º 17' West along the Easterly right-of-way of said Highway to a point opposite and 40.0 feet distant from Engineer's Centerline Station 162+00 (said centerline point being 1900.0 feet South 0° 17' East of a point on the North line of said Section 14, 629.0 feet South 89° 38' East of the Northwest corner of said Section 14); thence North 89° 43' East 10.0 feet; thence North 0° 17' West 300.0 feet; thence South 89° 43' West 20.0 feet; thence North 0° 17' West 217.51 feet; thence on a 70.32 foot radius curve to the right (the chord of which bears North 50° 33' East 109.04 feet), a distance of 124.78 feet to the Southerly right-of-way of County Road No. 1083 as is presently constructed and traveled; thence South 78° 37' East along the Southerly right-of-way of said County Road to its intersection with the East line of the West one-half of the Northwest onequarter of said Section 14; thence South along the East line of the West one-half of the Northwest one-quarter of said Section 14 to a point 100.0 feet North of the East-West centerline through said Section 14; thence Westerly to the Place of Beginning, in Lane County, Oregon.

EXCEPT that portion conveyed to the State of Oregon Department of Transportation, Highway Division, by Deed Recorded August 2, 1985, Reception No. 85-27329, Lane County Oregon Records.

ALSO EXCEPT that portion conveyed to Lane County, a political subdivision of the State of Oregon, by Deed Recorded February 12, 1996, Reception No. 96-09583, Lane County Oregon Records,