CENTRAL ALBANY REVITALIZATION AREA (CARA) ADVISORY BOARD

AGENDA

Wednesday, November 28, 2018
5:15 p.m.
Council Chambers, Albany City Hall
333 Broadalbin Street SW

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF MINUTES
   a. October 17, 2018. [Pages 2-4]

4. SCHEDULED BUSINESS
   a. Business from the public
   
   b. Fortmiller Project contract extension request – Scott Lepman. [Pages 5-18] (Sherry)
      Action Requested: Information, discussion, and decision.

   c. Staff updates and issues. [Verbal] (Sherry)

5. BUSINESS FROM THE BOARD

6. NEXT MEETING DATE: Wednesday, January 16, 2019

7. ADJOURNMENT

The location of this meeting is accessible to the disabled. If you have a disability that requires accommodation, please notify the City Manager’s Office in advance of the meeting: cmadmin@cityofalbany.net | 541-791-0206 or 541-917-7519.
CALL TO ORDER

Chair Rich Catlin called the meeting to order at 5:16 p.m.

ROLL CALL

Advisory Board Members Present: Rich Catlin, David Abarr, Russ Allen, Bill Coburn, Sam Flande, Bessie Johnson, Rich Kellum, Sharon Konopa, Ray Kopczynski, Mark Spence, Mike Sykes

Advisory Board Members Absent: James Dufour (excused), Dick Olsen (excused), Maura Wilson (excused)

APPROVAL OF MINUTES

September 19, 2018

Catlin noted that Maura Wilson indicated that she should be shown as excused.

MOTION: Member Ray Kopczynski moved to approve the minutes as revised. Member Rich Kellum seconded the motion, and it passed 11-0.

SCHEDULED BUSINESS

Business from the Public

5:17 p.m.

Oscar Hult, 328 Water Avenue SW, read a statement in which he said that two properties currently available for purchase have the potential to make or break the Downtown Albany revitalization efforts. These properties – the Wells Fargo Bank building and the St. Francis Hotel – are ripe for renovation, and he encouraged that the urban renewal agency purchase them and ensure that they are made available for the highest and best use.

Lise Grato, Executive Director of the Albany Downtown Association (ADA), read a statement in which she said that the ADA supports the idea of CARA purchasing the Wells Fargo Bank property so the most can be made of that site consistent with downtown redevelopment plans.

Downtown Parking

5:22 p.m.

Economic Development Manager Seth Sherry noted that Rick Williams gave a presentation on downtown parking planning at the last Board meeting. Based on feedback from that meeting, Williams is present to review a draft proposal for a parking management plan for Downtown Albany.

Rick Williams, Rick Williams Consulting, Portland, Oregon, gave a presentation on a Downtown Albany Parking Study and Plan. The presentation included a proposal to create a comprehensive parking management plan for downtown which
would include the collection of current data; the creation of near-term, mid-term, and long-term strategies; the oversight of a stakeholder outreach process; and the implementation of a framework based on the data and stakeholder input. The resulting parking management plan would include guiding principles and policy, management and administration, improvement of off-street and on-street parking, awareness and communication, integration with other modes, impacts to residential areas, new capacity needs, and funding information.

In discussion and in response to questions from the Board, Williams provided additional information about the proposed study and discussed specific data points that could be collected and analyzed. He said it is important to establish policy regarding the City’s role and priorities even prior to collecting data.

Lise Grato said that the ADA supports having a parking study done and would like to be included in the process.

MOTION: Kopczynski moved to authorize staff to negotiate an agreement for a Downtown Albany parking management study for consideration by the Albany Revitalization Agency (ARA). Member Sharon Konopa seconded the motion.

Kellum said that ARA may authorize CARA funds for a parking study; however, any decision about parking changes would be made by the City Council. Sherry added that the City Council would be closely involved in policy development throughout the process.

The motion passed 11-0.

Staff updates and issues 6:23 p.m.

Sherry gave a presentation on CARA Project Prioritization. He noted that the Board previously discussed prioritization and expressed support for a proposal that the best way to meet the goals of CARA would be to focus remaining resources on Water Avenue Corridor redevelopment, as well as property acquisition. The City has buildable plans for Water Avenue, and the task would be to build on that conceptual work with the goal of having seamless integration between the Waterfront, Water Avenue, and potential mixed-use private development facing Water Avenue. Next steps would include identification of a design consultant and funding mechanisms, followed by selection of a builder. It would be most effective to have a comprehensive design for the entire corridor with construction done in phases. If the Board agrees to the proposed shift in focus and funding, Sherry suggests that existing grant programs be discontinued and that the Board consider future partnership proposals on an ad hoc basis.

The Board expressed general support for the proposal to focus CARA resources on Water Avenue Corridor improvements and to consider additional partnership requests on an ad hoc basis. Staff was asked to bring back additional information, including sequencing, project integration, and staff capacity to accomplish the work.

BUSINESS FROM THE BOARD 6:55 p.m.

Kopczynski gave an update on fundraising activities to relocate the Cumberland Church building.

RECESS TO EXECUTIVE SESSION TO DISCUSS REAL PROPERTY TRANSACTIONS IN ACCORDANCE WITH ORS 192.660(2)(e) 6:56 p.m.

The Board recessed to Executive Session at 6:56 p.m.

RECONVENE

The Board reconvened at 7:23 p.m.
MOTION: Member Mark Spence moved to recommend that ARA authorize staff to negotiate for a building in the urban renewal district. Member Bill Coburn seconded the motion, and it passed 11-0.

NEXT MEETING DATE

Wednesday, November 14, 2018

ADJOURNMENT

Hearing no further business, Catlin adjourned the meeting at 7:25 p.m.

Submitted by, Reviewed by,

Teresa Nix Seth Sherry
Recorder Economic Development Manager
TO: Central Albany Revitalization Area (CARA) Advisory Board
FROM: Seth Sherry, Economic Development Manager
DATE: November 20, 2018 for the November 28, 2018, CARA Meeting

SUBJECT: Fortmiller Project Contract Extension Request

Action Requested:
CARA advisory board consider Scott Lepman’s request for an extension on the required (four) new construction residential units associated with the Fortmiller Redevelopment CARA Partnership contract.

Discussion:
In the attached letter, Mr. Lepman provides a thorough review of the unforeseen barriers that prevented new residential unit construction associated with the $336,000 forgivable loan awarded for the Fortmiller project in 2015 and modified in 2017. Staff concurs that unforeseen barriers have stalled progress relative to this contract and that the overarching goal of increased housing density within the CARA district can still be reached through contract extension.

Budget Impact:
None.

SS:ag
Attachments (3)
October 22, 2018

Seth Sherry, Economic Development Director
and CARA Board Members
City of Albany
P.O. Box 490
Albany, OR 97321

RE: Failure to Comply with CARA Board Requirements for Fortmiller Building

Ladies and Gentlemen;

We want to thank the City of Albany and the CARA board. The Fortmiller renovation project is complete and the building is fully occupied! We would have never undertaken the challenges and risks of the Fortmiller project without the support of the Citizens of Albany. We want to thank everyone!

**History**

The original CARA agreement included the requirement to not only renovate the Fortmiller Building but also to build four single-family attached units on the adjacent parking lot. The proposed four single-family attached units which were included in the original application were to be constructed as Phase II. We included this additional improvement as a sensible way to increase taxes. Our final amended CARA agreement required that we complete the construction of the four single-family attached units by Dec 31, 2018. While we have completed the Fortmiller Building, we are presently unable to build the four single-family attached units.

When our original CARA funding was approved, which included the legal commitment to build the four single-family attached units, we did not know that they could not be built to planning guidelines. The CARA Board and the City Council approved our proposal with the understanding that we were legally committed to not only renovate the Fortmiller building but also build four single-family attached units. We later discovered later, from the City of Albany Planning Department, that the existing zoning restrictions prevented our desired proposed residential project.

The conceptual single-family attached units that we proposed to the CARA Board with our original approval request for funding for the Fortmiller Building was later determined to not be allowed due to the requirements of: 1) A commercial use on the first floor that could not be a “work-live”
situation; 2) front and side yard setback restrictions; and 3) setback restrictions for our proposed attached garages.

**Attempted Solution**

Presented with this problem, on May 28, 2015 in a letter to Kate Porshe and the CARA Board, we modified our previously approved application for the funding of the renovation of the Fortmiller Building. We could not build the four single-family attached units on the adjacent parking lot on the west side of the Fortmiller Building due to zoning restrictions. As a substitute, we then proposed to build eight single-family attached units on vacant land we own on SE Third in downtown Albany instead of the four single-family attached units on SW Third. Both projects are residential units.

We initiated a discussion with the planning staff regarding specific zoning problems. As one example, the parking lot proposed for the four units is 40’ wide but the setback from the property line required a 1’ setback for every 1’ of building height. Thus, the setback would be 30’ for a 40’ wide lot. We also noticed other planning restrictions that prevented us from building the four single-family attached units are we legally committed to build.

Our discussions with the planning staff were productive. In July of 2016, a planning review process for the downtown zoning districts was initiated by the City with CARA’s support. We hoped that this process would result in changes to the zoning and development requirements that would allow us to build our single-family attached unit projects.

After the revisions to the development code were adopted, we later discovered that despite many favorable changes, we are still unable to build either of our proposed projects.

Significant changes to the downtown zoning requirements were attained. The Development Code was amended to create a new zone for the SW Third site that allowed single-family attached units in the new DMU (Downtown Mixed Use) zoning district without a commercial component. The requirement for a commercial component in the CB (Downtown Central Business) zoning district was also removed. Both zoning districts now allow for garages to be set back five feet from a right-of-way line and allow residential buildings to be built on the property line if the height of the building does not exceed 35 feet. These were helpful and necessary changes to help us build our proposed residential units.

However, we cannot build to the property line without a maintenance easement from the adjacent property owner(s) since our project is residential. The new planning revisions continue to allow **commercial** buildings to be built to the property line within both zoning districts in conformance with the height restriction of the zoning district without any maintenance easement from the abutting property(ies). However, we still cannot meet one of the following adopted provisions which is highlighted below:

1. **ADC5.115(2)(b) Special interior setbacks:** Special interior setbacks in the HD, DMU, CB, and WF zoning districts. New buildings and expansions to existing building must provide setbacks as follows:

   (b) Setbacks abutting Historic Residential Buildings.

   """
a. **Purpose:** To respect and respond to the character and scale of recognized historic residential buildings and ensure adequate light and air to such buildings, while allowing reasonable use of abutting properties consistent with the vision for Central Albany.

b. **Applicability:** Properties in the DMU, CB, and WF zoning districts abutting a historic Landmark, as defined in ADC 7.020 that was originally built for residential use.

c. **Standard.** For new buildings and expansions that exceed 35 feet in height, the minimum interior setback shall be 5 feet.

Neither the single family attached units on SW Third nor SE Third will exceed 35 feet in height.

2. **ADC5.150 Zero Lot Line:** Any residential dwelling unit or accessory building may be located on the property line when: (1) There are no openings or windows in the lot line wall. Additionally, a six-foot setback and maintenance easement must be recorded on the adjoining property deed or plat. This easement is not revocable without City approval. OR (2) Two or more dwelling units are attached at the property line and are approved for such in accordance with other provisions of this Code.

**SW THIRD: FOUR SINGLE-FAMILY ATTACHED HOMES**

The properties to the immediate west of the subject property on the west side of the Fortmiller Building contains a 1½-story florist shop at the corner of Third Avenue and Washington Street (305 Washington Street) and a 1½ story historic house (313 Washington Street) at the corner of Washington Street and the alley between Third and Fourth Avenues.

The existing historic single-family house is approximately 15 feet from the rear property line as the house faces Washington Street. The required 6-foot wide access easement continues to be a problem. Approximately seven months ago we prepared the necessary easement and presented the document to one of the heirs to the property. However, we learned approximately three months ago that the property is owned 50% by the cooperative heir and 50% by the estate of the prior owner and the family has not probated the estate of deceased prior owner. As the heirs of the property have not properly probated the estate, they do not have legal capacity to provide any easement according to the Title Company. It also appears from our observation that there is no motivation to resolve the probate issue. We believe this probate issue will only be solved when the property is sold or refinanced.

The northwestern portion of our property on SW Third is adjacent to a commercial business (Bill’s Flower Tree) that has expanded the building and detached buildings to within 2 or 3 feet of the property line. The change in use from a residence to a commercial use appears to have occurred in 1950. The building is not listed with a historic rating and is rated non-contributing modern. The 6-foot easement requirement could not be met on this property as existing commercial structures would fall within the easement area.

**SE THIRD: EIGHT SINGLE-FAMILY ATTACHED UNITS OR EIGHT TOWNHOUSE-STYLE APARTMENT UNITS**

The proposed 8-unit development on SE Third is adjacent to existing apartment building (Craftsman style, c1910) that lies to the west of the proposed development. The building is 5 feet
from the common property line. We will need to obtain Variance approval to have less than a six-foot easement. However, we recently negotiated a purchase of this property so, upon purchase, we will be able to grant ourselves the necessary easement. The property to the immediate east (238 Third) contains a Historic Rural Vernacular style church (1875) which is located 10 feet from the common property line. This property is currently for sale and it is unlikely that the current owner would want to place an easement encumbrance on the property.

3. **ADC5.160 Setbacks for Attached Single-Family Dwellings.** The interior setback requirement for attached single-family dwellings is zero where the units adjoin; however, all other setbacks must conform to the requirements of this Code.

**Title Issues Prevent Obtaining Easement from Neighbor**

The DMU (Downtown Mixed Use) and the CB (Downtown Central Business) zoning districts allow for a zero-lot line setback for all allowed uses except for residential uses. We have attempted to obtain a 6-foot easement from the adjoining property owners to the proposed 4 single-family attached units adjacent to the Fortmiller Building but not all the heirs have legal capacity to provide an easement.

We could provide a 6-foot easement on the east side of the proposed buildings on the Fortmiller building lot (Tax Lot 2801) since we own the adjacent property. An easement also most likely will not happen adjacent to the existing florist shop because the existing buildings extend into the area required for the 6-foot maintenance easement area.

4. **Section 5.160 states that “the interior setback requirement for attached single-family dwellings is zero where the units adjoin; however, all other setback must conform to the requirements of this Code.”**

This is a standard that is typically used in residential zoning district situations where attached dwelling units could be constructed and the end units would be a minimum of six feet from the lot line adjacent to another residential lot. This is not a standard that is typically used in a commercial zoning district in a downtown area where development is normally building-to-building (lot-to-lot). In both the HMU (Historic Mixed Use) and CB (Downtown Central Business) zoning districts, commercial structures could be built on the property line without any requirement for obtaining a maintenance easement from the abutting property owner.

The zoning restriction requiring a maintenance easement prevents us from building our original proposed four single-family attached units project that was approved with the CARA funding request for the Fortmiller building or our amended eight single-family attached units or eight townhouse-style apartment units on SE Third as approved by the CARA board and City Council.

**Zoning Restrictions Still Prevent Our Projects from Being Built**

We discussed this problem with Bob Richardson on August 15, 2018. He proposed to meet with the Planning Staff to review this issue. We have not heard a solution to the maintenance easement requirement problem.
We have met all of the requirements of the CARA’s financial participation in renovating the Fortmiller building except for the construction of the four attached single family attached units on the lot adjacent to Fortmiller building (SW Third) or the eight townhouse-style apartment units or eight single-family attached units on Third Avenue SE.

Our goal has always been to construct residential developments on both our SE and SW Third Avenue properties as noted in our original and amended CARA application. A total of twelve new residential units on the two properties would result in an additional value of $3,300,000 to the urban renewal area.

**Extension Of Time Requested To Build Our Projects**

We are requesting a one year extension of our construction date on the four single-family attached units on SW Third and a two-year extension of our construction date of the eight single-family attached or eight townhouse-style apartment units that begins from the date that the maintenance easement requirement affecting our proposed developments is resolved.

We want to thank the City of Albany and the CARA Board for their help with our Fortmiller project. We believe in downtown Albany, and believe that these projects will provide an opportunity to prove that increased living downtown will help make Albany more livable and the downtown more viable.

We are hopeful that you can encourage the planning staff to resolve the maintenance easement requirement in Commercial zoning districts.

Thank you for your thoughtful consideration.

Respectfully,

__________________________  ________________  __________________________  ________________
Scott D. Lepman             Date                  Spencer C. Lepman        Date
Forgivable Loan Contract

This Forgivable Loan Contract (“Contract”) is made and entered into this 31st day July 2015 by and between the Albany Revitalization Agency hereinafter referred to as “ARA” and Sable Drive, LLC an Oregon limited liability company, Scott D. and Angela M. Lepman, husband and wife, and Spencer C. and Carolyn M. Lepman, husband and wife, hereinafter referred individually and collectively as “Borrower.”

WHEREAS, ARA periodically provides financial loans for appropriate purposes; and

WHEREAS, Borrower has applied to ARA for a loan wherein Borrower has proposed to use ARA funds for an appropriate governmental purpose; and

WHEREAS, Borrower received approval to substitute the new construction project located on Third Avenue SE for the new construction project at Third Avenue SW at the June 9, 2015, CARA Advisory Board meeting and this contract includes that change; and

WHEREAS, it is the purpose of this Contract to set forth the terms under which ARA funds shall be provided to Borrower.

NOW, THEREFORE, in consideration of the promises contained herein, it is agreed as follows:

1. References to “ARA” Include City of Albany “City.” Loan funds are authorized from time to time by City or by ARA. References to “ARA” include the City of Albany and the officers, agents, and employees of ARA and the City of Albany (“City”) and the officers, agents, and employees of ARA and City.

2. Purpose of Loan Funding. Borrower has submitted to ARA a Forgivable Loan application (“Application”) setting forth the purposes for and uses of ARA funding. This Application is attached hereto as Exhibit A and by this reference incorporated herein. All representations made by Borrower in this Application shall be deemed contractual obligations of Borrower, and funds provided by ARA pursuant to this Contract shall be used only for the purposes set forth in Exhibit A.

3. ARA Agreement to Fund Loan. Subject to, and conditioned upon, Borrower’s compliance with the terms of this Contract and the representations contained in the Application, ARA agrees to provide Borrower a loan in an amount not to exceed three hundred thirty-six thousand dollars ($336,000.00) at a loan interest rate of four (4) percent per annum on a reimbursement basis.

   • This loan shall be secured by a Promissory Note and Trust Deed placed on the property to be improved. ARA agrees to subordinate its secured position on the property to other financing obtained by Borrower for the purpose of improving the property as described in the Application on the following terms:
      a) All financing must fund improvements called for in Exhibit A.
      b) ARA shall subordinate only to financing for improvements to the parcel on which the subordination is granted.
      c) ARA shall not be required to execute any subordination agreement which may not be reasonably expected to add value to the property in question that is proportionate to the amount of the subordination.
      d) ARA has the right to evaluate any subordination to ensure compliance with these terms.
• Title insurance will be required.
• The costs of a title search, title insurance, and credit reports, and recording ARA’s security interest against the property are considered eligible project expenses and shall be paid by the loan proceeds as the first draw on the loan.
• Borrower will be responsible for reconveyance costs either through the remainder of loan proceeds or by making a separate payment to the City.
• The term of the loan cannot exceed the life of ARA.
• Borrower authorizes any person or consumer reporting agency to complete and furnish to ARA’s agents any information it may have or obtain in response to ARA’s credit inquiries.
• Borrower authorizes ARA to provide information concerning Borrower’s credit relationship to credit reporting agencies or other creditors.
• Accompanying ARA grant proceeds may not be used to fund the applicant’s match for this loan.

4. Forgiveness of Loan. ARA agrees to forgive the loan principal and accrued interest if, by July 31, 2018, Borrowers or their assigns are in strict compliance with all of the following conditions:

• Completion of the work as outlined in Section 2 has been achieved and Certificate of Occupancy for the renovation of the Fortmiller building located at 420 Third Avenue SW, Albany, Oregon, Tax-Lot 11S-3W-07BB-02800 has been issued no later than July 31, 2016.
• Completion of the work as outlined in Section 2 has been achieved and Certificate of Occupancy for the renovation of the new construction building to be located on property currently addressed as 226, 228, 230, 232, and 234 Third Avenue SE (Tax-Lot 11S-03W-06CD-03021, 12600, 12700, 12800, 12900, and 13000) have been issued no later than July 31, 2018.
• ARA has exclusive discretion to determine borrower’s compliance with these conditions and may conduct such investigations and consider such evidence as it deems applicable.
• If Borrower sells, or cannot provide proof of compliance as outlined above, the loan will become immediately due and payable in full with accrued interest.

In the event Borrowers are determined to be in strict compliance with the above conditions, the loan shall be forgiven over a period not to exceed ten years from the date that a Certificate of Occupancy is issued. Borrower shall have the right to designate the amount to be forgiven in each year.

The Loan may be forgiven in increments upon satisfactory proof to CARA that all work called for in the Contract has been properly completed. To be eligible for forgiveness, the requests shall be limited to one per year and must be received by the City of Albany at least thirty (30) days prior to the end of the calendar year. To be eligible for forgiveness the request must be in writing accompanied by documentary proof that all required work has been completed and proof that all subcontractors and material suppliers who have participated in, or provided materials for the work have been paid. Previously submitted and approved expense reimbursement requests will satisfy this requirement. All requests for incremental forgiveness must be submitted and properly documented by July 31, 2028.

5. Funding. ARA’s obligations hereunder are expressly made subject to the availability of uncommitted funds on all dates anticipated for ARA payments. If funds are not available on the anticipated date, but are expected in the future, ARA funding may be deferred until funds become available.

6. Disbursement of Loan Proceeds. ARA shall segregate the loan proceeds to a specific City of Albany account number held for the use of Borrower pursuant to the terms of this contract. Loan payments shall only be due from City upon receipt of a written invoice detailing Borrower’s entitlement to payment and explaining the basis therefore. The following additional invoice requirements shall apply:
• With the exception of SDC payments and City of Albany permits, which may be made directly from ARA to the City of Albany, Borrower will provide City staff with all invoices and proofs of payment associated with the project; and ARA will reimburse 100 percent of documented, eligible expenses to Borrower within 30 days of receiving Borrower’s request. Copies of invoices or receipts and canceled payment checks must be submitted. With the exception of the final loan draw, loan funds must be drawn in amounts of at least $1,000.

• City staff may physically inspect and review the finished project to ensure that all elements have been satisfactorily completed. ARA shall have reasonable discretion to determine whether or not Borrower has complied with Borrower’s obligations herein. ARA’s determination on this matter shall be final and binding. The project above must be completed within thirty-six (36) months of the date Borrower signs this Loan Funding Contract.

• Expenses incurred prior to the date of ARA approval Wednesday, March 26, 2014, and received at the City of Albany’s City Manager’s Office are not eligible for assistance.

• Notwithstanding any language herein, items eligible for reimbursement from ARA shall be new construction and permanent improvements to the structure(s) identified in paragraph five of the Application (Exhibit A). Examples of items not eligible include: Ongoing utility costs or administration costs. City staff shall have final determination on items eligible for reimbursement.

• All construction and material supply contracts will be between Borrower and Borrower’s contractors and suppliers. The City of Albany and ARA are not parties to these contracts by virtue of providing this financial assistance.

• CARA’s funding assumes that final completion of the project will require expenditure of all sums represented by the applicant as being necessary for the project. If the total project costs are less than the projected amount, CARA’s contribution is to be proportionately reduced. Ten percent (10%) of the total CARA funding will be held back from the final draw and released only upon satisfactory completion of the project and receipt of documentation establishing that the total expenditures match the estimated cost outlined in the application (Exhibit A). If the total costs are less than the amount set forth in the application, the final draw will be reduced proportionately.

If, at the completion of the project, or the deadline for completion of the project hereinafter set forth, any loan funds remaining undisbursed, an amount equal to the undisbursed balance thereof shall be credited against Borrower’s loan from ARA and a modified Promissory Note signed.

7. Consequences of Unauthorized Expenditure by Borrower. In the event that Borrower expends any loan funds for a purpose outside of, or beyond that, set forth in the Application or this Contract, City/ARA may withhold any future loan funding and Borrower shall be immediately obligated to repay ARA all loan funds which have been expended for a purpose outside or beyond that set forth in the Application or this Contract. Expenditures shall be subject to inspection annually by City auditors.

8. Project Completion. Borrower agrees to complete the project described in Exhibit A within the time schedule provided hereafter for loan funding. The project shall be deemed complete when all permits required for use or occupancy of the structure have been issued and the project has been completed, in a good and workmanlike manner, in conformance with the Application (Exhibit A). If necessary, Borrower may request in writing, an extension to complete the work. This extension will be authorized by the CARA Advisory Board at its discretion.

9. Consequences of Failing to Complete Project or Other Breach of this Contract. In the event that the Borrower fails to complete the project described in the Application and ARA Resolution (Exhibits A and B), on or before within the timelines outlined in Section 4, or commits any other material breach of this Contract, all sums loaned or granted by the City shall then be immediately repaid to City by Borrower. In addition, if City has issued a companion grant to Borrower in connection with the Application and ARA Resolution (Exhibits A and B), said grant shall be immediately due and payable, with interest, upon Borrower’s breach of any of its obligations hereunder including, but not limited to, failure to complete the project by the date set forth above.
10. **Force Majeure:** If Borrower is delayed by reason of weather, fire, strikes, Acts of God, or other circumstances beyond Borrower’s reasonable control, Borrower shall be entitled to additional time to complete this project equal to that lost by any or all of the above causes.

11. **Inspection and Regulatory Review:**
   - City staff may physically inspect and review the finished project to ensure that all elements have been satisfactorily completed. City staff shall have reasonable discretion to determine whether or not Borrower has complied with its obligations herein. City staff’s reasonable determination on this matter shall be final and binding.
   - It is Borrower’s responsibility to obtain all necessary regulatory reviews and approvals including but not limited to land-use review, historic review, and requisite permits. The project must remain in compliance with all regulatory bodies and approval agencies. It will be Borrower’s responsibility to resolve any regulatory issues.

12. **Funding Schedule.** City shall fund the loan according to the following schedule:
   - Funding up to three hundred thirty-six thousand dollars ($336,000.00) is available for fiscal year 2016 ending June 30, 2016, and will be carried over to the 2016-2017, 2017-2018, and 2018-2019 fiscal years, if necessary, and must be expended by July 31, 2018, or the completion of the project, whichever comes first.

13. **Special Provisions.** In addition to compliance with all representations made in the loan Application (*Exhibit A*), this loan shall further be conditioned upon Borrower’s compliance with the following special conditions:
   - Any deviation of work from the building improvements detailed in the Application (*Exhibit A*) must be preapproved in writing by City staff to be eligible for reimbursement.
   - **Design Review:** The project is subject to design review and approval against the ARA Design Guidelines. If the project does not pass the design review, funding is hereby revoked. Borrower hereby acknowledges receipt of the ARA design guidelines.
   - Borrower agrees to indemnify ARA from any claims, demands, damages, or expenses (including attorney fees) resulting from this contract or Borrower’s actions and those of your agents and assigns undertaken with regard to this Contract or the project.
   - Borrower may be asked to post two signs provided by ARA during the construction period of this project at a visible, protected location agreed to with City staff.
   - Borrower will provide ARA with before and after photos of the work completed with Borrower’s final reimbursement request.
   - Borrower may be asked to coordinate an open house showcasing the improvements funded under this project in cooperation with ARA within an agreed upon time after project completion.

14. **Attorney’s Fees.** Should suit or action be filed to enforce this Contract or seek damages for its breach, the prevailing party shall be entitled to an award of its reasonable attorney fees including those incurred upon appeal.

15. **Indemnification and Regulatory Compliance.** Borrower shall be responsible, and shall comply with, all requirements of law including, but not limited to, compliance with all applicable federal, state, and local regulations and hereby covenants and agrees to indemnify and hold harmless ARA, from any claim, demand, or damage, resulting in any manner from the extension in loan funds from ARA to Borrower and/or any use of ARA funds by Borrower, this Contract, Borrower’s actions in connection with the project, including its agents and assignees, and from any use of ARA funds.
16. **Prevailing Wages.** Borrower and its subcontractors shall comply with ORS 279C.840 requiring Borrower and its subcontractors to pay workers on the project the prevailing rate of wage as established by the Oregon Bureau of Labor and Industries unless exempt therefrom. Borrower will be responsible for compliance and reporting under the Oregon Prevailing Wage Law and its implementing rules, ORS 279C.800 et. seq. Borrower will hold the City and ARA harmless for all costs, fees, and penalties that may be incurred, and for all reports, fines, and/or litigation costs, including reasonable attorney fees, that may result from Borrower’s application of the Oregon Prevailing Wage Law to the project.

17. **Borrower’s obligations hereunder are not assignable without City permission.** The obligations of Borrower hereunder and under any accompanying loan or personal obligations of Borrower are not assignable or transferable without written consent of City.

18. **Interest.** In the event Borrower breaches any term of this Contract or any accompanying companion contract between Borrower and City for completion of the project described in the Application (*Exhibit A*), Borrower’s obligation shall bear interest at the rate of twelve percent (12%) per annum.

19. **Tax Consequences.** ARA makes no representations concerning the tax consequences to the recipient of any agency grant or loan. Any questions in this regard should be resolved by the recipient with his/her own tax professional.

20. **Legal Representation.** This Contract was prepared by the law firm of Long, Delapoer, P.C. in their capacity as attorneys for City. Borrower has had this Contract reviewed by its own legal counsel prior to its execution. In light of the participation of both parties in the drafting of this instrument, the customary rule of contract construction which resolves ambiguity against the drafter shall not apply.

21. **Venue.** Venue for litigation concerning this Contract shall rest exclusively with the court of the State of Oregon for Linn County.

22. **Obligations Binding on Trusts, Successors and assigns.** The obligations of Borrower shall be binding upon Borrower, Borrower’s successors and assigns, Borrower’s estate, any trusts in which Borrower is a trustor or beneficiary, and any other entity or instrument owned or controlled by Borrower.
ARA:
Albany Revitalization Agency

By: _____________________________________
Printed Name: Wes Hare
Title: City Manager
Date: ________________________________

BORROWER:
Sable Drive, LLC
Federal Tax ID# 93-1316744

By: _____________________________________
Printed Name: _________________________
Title: Managing Member
Date: ________________________________

By: ________________________________
Printed Name: Scott Lepman
Title: ________________________________
Date: ________________________________

By: ________________________________
Printed Name: Angie Lepman
Title: ________________________________
Date: ________________________________

By: ________________________________
Printed Name: Spencer Lepman
Title: ________________________________
Date: ________________________________

By: ________________________________
Printed Name: Carolyn Lepman
Title: ________________________________
Date: ________________________________

Signed individually as a joint and several obligation of each.
This Agreement modifies and amends the Forgivable Loan Contract “Contract” originally dated July 31, 2015, is made and is effective January 31, 2017.

Between: Sable Drive, LLC, an Oregon limited liability company ("Sable Drive")
Scott D. and Angela M. Lepman, husband and wife ("Scott Lepman")
Spencer C. and Carolyn M. Lepman, husband and wife ("Spencer Lepman"), hereinafter referred to individually and collectively as “Borrower.”

And: Albany Revitalization Agency (ARA)
333 Broadalbin Street SW
Albany, Oregon 97321

1) The forgivable loans made by ARA and documented by the Forgivable Loan Funding Contract, Deed of Trust, and Promissory Note, each dated July 31, 2015, are modified in the following ways:

   a. Promissory Note (ARA-FL-2015-1) dated July 31, 2015, shall remain in effect and will secure compliance with the Contract.

   b. Trust Deed dated July 31, 2015, shall be replaced by a new trust deed dated June 10, 2016, to be recorded at Linn County and will secure compliance with the Contract. The trust deed dated July 31, 2015, will be subsequently reconveyed.

   c. Subsection 1 of Paragraph 4 of the Forgivable Loan Contract is modified to read:
      Completion of the work as outlined in Section 2 has been achieved and Certificate of Occupancy for the renovation of the Fortmiller building located at 420 Third Avenue SW, Albany, Oregon, Tax-Lot 11S-3W-07BB-02800, as well as the buildings located at 224 to 234 Third Avenue SE, Albany, Oregon, Tax-Lots 11S-3W-06CD-12600, 11S-3W-06CD-12700, 11S-3W-06CD-12800, 11S-3W-06CD-12900, 11S-3W-06CD-13000, 11S-3W-06CD-3201, has been issued no later than December 31, 2018.

   d. Item b) of Subsection 1 of Paragraph 3 of the Forgivable Loan Contract is modified to read:
      ARA may subordinate only to financing for improvements to the parcel on which the subordination is granted. Subordination will be at ARA’s sole discretion.

   e. Unless expressly modified by this agreement, all terms of the July 31, 2015, Contract shall remain in full force and effect.
ARA:

Albany Revitalization Agency

By: ________________________________

Printed Name: Wes Hare

Title: City Manager

Date: ______________________________

BORROWERS,
JOINTLY AND SEVERALLY:

Sable Drive, LLC
Federal Tax ID: 93-1316744

By: ________________________________

Printed Name: _______________________

Title: Managing Member

Date: ______________________________

By: ________________________________

Printed Name: Scott D. Lepman

Date: ______________________________

By: ________________________________

Printed Name: Angela M. Lepman

Date: ______________________________

By: ________________________________

Printed Name: Spencer C. Lepman

Date: ______________________________

By: ________________________________

Printed Name: Carolyn M. Lepman

Date: ______________________________

Signed individually as a joint and several obligation of each.