

1
2
3
4
5
6
7
8
9

RESOLUTION NO. 2022-27

10
11
12
13
14
15
16
17
18
19

**A RESOLUTION OF THE CITY OF LINCOLN CITY AUTHORIZING AND DIRECTING
DISPOSITION OF CITY REAL PROPERTY TO INNOVATIVE HOUSING INC., AN
OREGON NOT-FOR-PROFIT CORPORATION, FOR AFFORDABLE HOUSING
PURPOSES.**

20
21
22
23
24
25
26
27
28

RECITALS

- 29
30
31
32
33
34
35
36
37
38
39
- A. The City of Lincoln City is the legal owner of real property located in proximity to the terminus of NE 25th Street, north of the St. James Santiago Episcopal church, consisting of three tax lots. The Highway 101 frontage lot is addressed as 2510 N. Highway 101, Lincoln City, Oregon; two additional lots are located to the east. The lots involved in the conveyance include Tax lot 07-11-11-BB-04301-00 (Hwy 101 frontage parcel), Tax Lot 07-11-11-BB-04302-00 (Middle Parcel)], Tax Lot 07-11-11-BB-04300-00 (Easterly Parcel). The legal descriptions for these parcels have been corrected and are set forth in **Exhibit A**, attached hereto and made a part hereof by this reference.
- B. The subject properties are proposed to be conveyed to Innovative Housing Inc., an Oregon 501(c)(3) not-for-profit corporation. IHI was selected following a public process and entered into an exclusive negotiating agreement with the city. The City approved three option agreements/ extension for the acquisition of the property by IHI. The options were not self-executing, and mainly established site control for funding purposes. The Options required a final ORS 221.725 public hearing and approval of the disposition/sale by the City Council in this Resolution.
- C. The City also authorized the processing of land development applications during this option period. A land use application to construct and operate 107 apartments to be rented between 30-60% of AMI was approved on May 9, 2022. No appeal of the apartment land use approval was taken and the decision is now final.
- D. On July 25, 2022, the Lincoln City City Council, at the Council Chambers at 801 SW Highway 101, Lincoln City, Oregon continued to August 8, 2022 the advertised public hearing on the disposition/sale of the subject property to IHI. The Agreement for disposition of the property was not ready on July 25, 2022. The Parties have subsequently agreed to simplify the transaction by

1 addressing the approval of the disposition in this Resolution and associated
2 documents.

3
4 E. On August 8, 2022, the Lincoln City City Council, at the Council Chambers at
5 801 SW Highway 101, Lincoln City, Oregon conducted an advertised public
6 hearing on the proposed sale / conveyance of the subject property, pursuant
7 to ORS 221.725, ORS 271.310 and ORS 271.330. City residents were given an
8 opportunity to comment on the proposed conveyance.

9
10 F. The advertised purpose of the conveyance / sale, and the reason the City
11 Council finds it necessary or convenient to sell the property, to Innovative
12 Housing, Inc., an Oregon nonprofit public benefit corporation, is the City's
13 desire to provide affordable housing to the City of Lincoln City's population.

14
15 G. The nature of the sale / conveyance was advertised as a conveyance to a non-
16 profit corporation (or associated entity) of a City-owned property valued at
17 over \$800,000 for affordable housing purposes, with a list of possible terms.
18 The general terms of the proposed sale and disposition of the property as
19 they are now includes the following: (1) IHI will construct and operate 107
20 apartment units restricted to 30% to 60% of area median income. (2) The
21 sale price is \$800,000.00 to be evidenced by an unsecured note from IHI to
22 the City and subject to forgiveness provisions; (3) a thirty (30) year City
23 required Affordability Covenant restricting the use of the property to
24 affordable housing at 30-60% AMI (with some alternatives); (4) IHI will
25 development the property using the Federal low income housing tax credit
26 (LIHTC); (5) Property Tax Abatement pursuant to city ordinance implementing
27 ORS Chapter 307; (6) thirty (30) year SDC Deferral Agreement incorporated
28 into Affordability Covenant; (7) City gap grant \$397,000.00 (of which
29 \$47,000.00 has already been provided). A standard real estate purchase and
30 sale agreement may also be required to close the transaction.

31
32 H. The nature of the conveyance, and evidence of value is that the City property
33 acquired a portion of the property in 2009-2010 for \$50,000. The most
34 recent appraisals of the two interior lots (2009) show a combined value of
35 \$433,000.00. The Urban Renewal Agency acquired the Hwy 101 frontage for
36 \$400,000. This property was subsequently conveyed to the City. The total
37 value of the properties to be conveyed to IHI is in excess of \$800,000,
38 probably \$833,000.00.

- 1 I. The August 8, 2022 City Council public hearing and Resolution staff reports are
2 incorporated herein by this reference. All evidence of market value was fully
3 disclosed and entered into the record at the public hearing.
4
- 5 J. Pursuant to ORS 221.725, any resident of the City was provided with an
6 opportunity to present oral or written testimony to the City Council on the subject
7 conveyance/sale at the public hearing.
8
- 9 K. On August 8, 2022, after hearing the staff report, public input, and due
10 deliberation, Council closed the hearing and the record, made the findings set
11 forth herein and directed the conveyance/sale of the real property with the
12 conditions identified in the staff report and this Resolution.

13
14 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF**
15 **LINCOLN CITY, AS FOLLOWS:**

16
17 **SECTION 1. RECITALS.** The above recitals are true and correct and are
18 incorporated herein by this reference.
19

20 **SECTION 2. FINDINGS.**

21
22 The Council finds and determines that the relevant statutory criteria for disposition
23 of City real property are found in or referenced in ORS Chapter 271 (specifically ORS
24 271.310 and ORS 271.330) as well as ORS 221.725.

25
26 ORS 271.330(2) provides (**emphasis added**):
27

28 (2)(a) Any political subdivision is granted **express power to relinquish the**
29 **title to** any of the political subdivision's property to **a qualifying nonprofit**
30 **corporation** or a municipal corporation **for the purpose of providing** any of
31 the following:

32 **(A) Low income housing;**

33 (B) Social services; or

34 (C) Child care services.

35 (b) As used in this subsection:

36 **(A) "Qualifying nonprofit corporation" means a corporation**
37 **that is a public benefit corporation as defined in ORS 65.001 (35)**
38 **and that has obtained a ruling from the federal Internal Revenue**
39 **Service providing that the corporation is exempt from federal**
40 **income taxes under section 501(c)(3) of the Internal Revenue Code.**

1 (B) "Social services" and "child care services" include but are not
2 limited to education, training, counseling, health and mental health
3 services and the provision of facilities and administrative services to
4 support social services and child care services.
5

6 ORS 271.310(1) & (4) provide, (**emphasis added**) in pertinent part:
7

8 **271.310 Transfer or lease of real property owned or controlled by**
9 **political subdivision; procedure in case of qualified title; notice; rules.**

10 (1) Except as provided in subsection (2) of this section and subject to
11 subsection (3) of this section, whenever any political subdivision possesses or
12 controls real property not needed for public use, **or whenever the public**
13 **interest may be furthered, a political subdivision may sell,** exchange,
14 convey or lease for any period not exceeding 99 years **all or any part of the**
15 **political subdivision's interest in the property to a governmental body or**
16 **private individual or corporation.** The consideration for the transfer or lease
17 may be cash or real property, or both.
18

19 (4) Unless the governing body of a political subdivision determines under
20 subsection (1) of this section **that the public interest may be furthered,** real
21 property needed for public use by any political subdivision owning or
22 controlling the property may not be sold, exchanged, conveyed or leased
23 under the authority of ORS 271.300 to 271.360, except that it may be
24 exchanged for property that is of equal or superior useful value for public use.
25 Any such property not immediately needed for public use may be leased if, in
26 the discretion of the governing body having control of the property, the
27 property will not be needed for public use within the period of the lease.
28

29 **221.725 Sale of city real property; publication of notice; public hearing.**
30

31 (1) Except as provided in ORS 221.727, when a city council considers it
32 necessary or convenient to sell real property or any interest therein, the city
33 council shall publish a notice of the proposed sale in a newspaper of general
34 circulation in the city, and shall hold a public hearing concerning the sale prior
35 to the sale.

36 (2) The notice required by subsection (1) of this section shall be published
37 at least once during the week prior to the public hearing required under this
38 section. The notice shall state the time and place of the public hearing, a
39 description of the property or interest to be sold, the proposed uses for the
40 property and the reasons why the city council considers it necessary or

1 convenient to sell the property. Proof of publication of the notice may be
2 made as provided by ORS 193.070.

3 (3) Not earlier than five days after publication of the notice, the public
4 hearing concerning the sale shall be held at the time and place stated in the
5 notice. Nothing in this section prevents a city council from holding the hearing
6 at any regular or special meeting of the city council as part of its regular
7 agenda.

8 (4) The nature of the proposed sale and the general terms thereof,
9 including an appraisal or other evidence of the market value of the property,
10 shall be fully disclosed by the city council at the public hearing. Any resident of
11 the city shall be given an opportunity to present written or oral testimony at
12 the hearing.

13 (5) As used in this section and ORS 221.727, "sale" includes a lease-option
14 agreement under which the lessee has the right to buy the leased real property
15 in accordance with the terms specified in the agreement.

16
17 The Council finds and determines that it has received all information necessary to make
18 a decision based on the Staff Report, public hearing testimony and the exhibits and
19 evidence received.

20
21 The Council finds and determines that this proposal to convey the subject property to
22 Innovative Housing, Inc. (IHI), an Oregon nonprofit public benefit corporation] meets
23 all applicable statutory minimum criteria for eligibility to convey real property, as more
24 fully set forth herein. IHI is a qualifying nonprofit corporation. Further the City
25 Council finds and determines that the proposed conveyance / sale is deemed
26 "necessary or convenient" to the City and "furthers the public interest" as the sale will
27 further the City Council's desire to provide affordable housing for the City of Lincoln City's
28 population. The Council further finds and determines that the property identified herein is
29 not needed for City public use. The findings herein are supported by competent
30 substantial evidence in the whole record, incorporated herein by this reference.

31
32 **SECTION 3. ORDER.** Based on the above Findings set forth herein and based upon
33 the evidence in the whole record, the City Council hereby approves and directs the
34 sale / conveyance of the subject property to Innovative Housing Inc., (IHI), subject to
35 all identified conditions, included or referenced herein. Without limitation on the
36 foregoing, the sale/conveyance is subject to execution and recording of the
37 Affordability Covenant, [Exhibit B] in its final approved form, as well as execution of
38 the Note [Exhibit C] for the Purchase price by IHI. The closing of the
39 transaction is delegated to the City Manager and City Attorney who are
40 authorized to execute all documents as is necessary to effectuate the

1 conveyance/sale, including but not limited to execution of all deeds, Affordability
2 Covenants, acceptance of dedications, acceptance of easements, and other necessary
3 documents. The City Attorney must approve all documents as to form. The Manager
4 is expressly delegated the authority to sign documents for the City. The manager
5 and Attorney are authorized to make such adjustments to the documents referenced
6 herein [i.e. Exhibits A-C] and other documents so as to achieve the Council's objective
7 to facilitate affordable housing. The Manager and Attorney are authorized to sign an
8 "award letter" consistent with this Resolution and further may expend such funds as
9 are necessary to effectuate the disposition of the property. The parties acknowledge
10 that a formal disposition and development agreement is not required, but the parties
11 may execute a purchase and sale agreement, if desired. The terms and conditions of
12 the associated land use approval for this development are unaltered by this
13 Resolution. Failure to abide by land use approvals is subject to land use enforcement
14 actions and citation under the terms of the municipal code. The real property sale will
15 be, as is, and subject to all encumbrances of record.

16
17 **SECTION 4. EFFECTIVE DATE.** This resolution is effective as of the date of its
18 adoption and signature by the Mayor.

19
20 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 8th day of
21 August, 2022.

22 
23
24
25 SUSAN WAHLKE, MAYOR

26
27 ATTEST:

28
29 
30
31 JAMIE YOUNG, CITY RECORDER

32
33 APPROVED AS TO FORM:

34 
35
36
37 RICHARD APPICELLO, CITY ATTORNEY

EXHIBIT A
LEGAL DESCRIPTIONS AHEAD OF DEDICATION DEED

Parcel I:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

The Westerly 100 feet, measured along the North line, of the following described property:

Beginning at a point on the South line of Government Lot 8, Section 11, Township 7 South, Range 11 West, Willamette Meridian, in the County of Lincoln, State of Oregon, that is 46 feet East of the West line of said Section 11 (said point also being 40.00 feet East of the center line of Highway 101 and also being on the East right of way line of said Oregon Coast Highway 101); said point being the true point of beginning of the tract herein described; thence East 396.66 feet along the South line of Government Lot 8; thence North 285 feet, more or less, to the South line of the R. L. Neal property, described in deed recorded in Book 102, page 563, Deed Records; thence West along the South line of the Neal property, 197.2 feet, more or less, to the Northeast corner of that tract recorded in Deed Book 204, Page 455; thence South 0°25 1/2' East 100 feet along the East line of said tract to the Southeast corner of said property in Deed Book 204, Page 455; thence West 201.67 feet, more or less, to the Southwest corner of said property in Deed Book 204, Page 455; thence South 0°25 1/2' East 185 feet, along the East boundary of Oregon Coast Highway 101, to the point of beginning.

EXCEPTING THEREFROM any portion within the Oregon Coast Highway right of way, and EXCEPTING THEREFROM any portion within the right of way of NE 25th Street.

Parcel II:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

Beginning at the Southwest corner of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence from said point of beginning South 89°59' East 141.43 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter to the true point of beginning of the tract herein described; said true point of beginning being also the Southeast corner of that tract of land described in Book 222, Page 343, Deed Records of Lincoln County; thence North 1°02'30" East 194.50 feet, more or less, along the East line of said tract described in Book 222, Page 343, to the South line of that tract of land described in Book 204, Page 455, Deed Records; thence East 101.67 feet; thence North 0°25'30" West 100 feet, along the East line of said Deed Book 204, Page 455 tract, to the South line of the Neal tract described in Book 102, Page 563, Deed Records of Lincoln County; thence East 150 feet along the South line of said Neal tract, thence South 23°15'21" East 320.63 feet to the South line of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence North 89°59' West 381.06 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter of said section, to the true point of beginning.

Parcel III:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

Beginning at the Southwest corner of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence from said point of beginning South 89°59' East 522.49 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter to the true point of beginning of the tract herein described; thence from said true point of beginning North 23°15'21" West 320.63 feet, more or less, to the South line of the Neal tract described in Book 102, Page 563, Deed Records of Lincoln County; thence East 257.60 feet, more or less, along the South line of said Neal tract to the West line of that tract of land conveyed to Wilbur L. and Marian V. Rogers, husband and wife, by Jerry Emery and Margaret Hannah Page Holmes Emery, husband and wife, by Deed recorded in Book 159, Page 470, Deed Records of Lincoln County; thence South along said tract 9.68 feet, more or less, to the Southwest corner thereof; thence East 117.67 feet along the South line of said Rogers tract to the Northwest corner of that tract described as Parcel 3 in Deed 200412394; thence South 0°30' West 284.98 feet, more or less, along the West line of said Parcel 3 in Deed 200412394, to the South line of the said Northwest quarter of the Northwest quarter of said Section 11; thence North 89°59' West 246.19 feet, more or less, to the true point of beginning.

**EXHIBIT A
LEGAL DESCRIPTION**

Parcel I:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

The Westerly 100 feet, measured along the North line, of the following described property:

Beginning at a point on the South line of Government Lot 8, Section 11, Township 7 South, Range 11 West, Willamette Meridian, in the County of Lincoln, State of Oregon, that is 46 feet East of the West line of said Section 11 (said point also being 40.00 feet East of the center line of Highway 101 and also being on the East right of way line of said Oregon Coast Highway 101); said point being the true point of beginning of the tract herein described; thence East 396.66 feet along the South line of Government Lot 8; thence North 285 feet, more or less, to the South line of the R. L. Neal property, described in deed recorded in Book 102, page 563, Deed Records; thence West along the South line of the Neal property, 197.2 feet, more or less, to the Northeast corner of that tract recorded in Deed Book 204, Page 455; thence South 0°25 1/2' East 100 feet along the East line of said tract to the Southeast corner of said property in Deed Book 204, Page 455; thence West 201.67 feet, more or less, to the Southwest corner of said property in Deed Book 204, Page 455; thence South 0°25 1/2' East 185 feet, along the East boundary of Oregon Coast Highway 101, to the point of beginning.

EXCEPTING THEREFROM any portion within the Oregon Coast Highway right of way, and EXCEPTING THEREFROM any portion within the right of way of NE 25th Street.

Parcel II:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

Beginning at the Southwest corner of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence from said point of beginning South 89°59' East 141.43 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter to the true point of beginning of the tract herein described; said true point of beginning being also the Southeast corner of that tract of land described in Book 222, Page 343, Deed Records of Lincoln County; thence North 1°02'30" East 194.50 feet, more or less, along the East line of said tract described in Book 222, Page 343, to the South line of that tract of land described in Book 204, Page 455, Deed Records; thence East 101.67 feet; thence North 0°25'30" West 100 feet, along the East line of said Deed Book 204, Page 455 tract, to the South line of the Neal tract described in Book 102, Page 563, Deed Records of Lincoln County; thence East 150 feet along the South line of said Neal tract, thence South 23°15'21" East 320.63 feet to the South line of said Northwest quarter of the Northwest quarter of said Section, Township and Range;

thence North 89°59' West 381.06 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter of said section, to the true point of beginning.

Parcel III:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

Beginning at the Southwest corner of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence from said point of beginning South 89°59' East 522.49 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter to the true point of beginning of the tract herein described; thence from said true point of beginning North 23°15'21" West 320.63 feet, more or less, to the South line of the Neal tract described in Book 102, Page 563, Deed Records of Lincoln County; thence East 257.60 feet, more or less, along the South line of said Neal tract to the West line of that tract of land conveyed to Wilbur L. and Marian V. Rogers, husband and wife, by Jerry Emery and Margaret Hannah Page Holmes Emery, husband and wife, by Deed recorded in Book 159, Page 470, Deed Records of Lincoln County; thence South along said tract 9.68 feet, more or less, to the Southwest corner thereof; thence East 117.67 feet along the South line of said Rogers tract to the Northwest corner of that tract described as Parcel 3 in Deed 200412394; thence South 0°30' West 284.98 feet, more or less, along the West line of said Parcel 3 in Deed 200412394, to the South line of the said Northwest quarter of the Northwest quarter of said Section 11; thence North 89°59' West 246.19 feet, more or less, to the true point of beginning.

EXHIBIT A

LEGAL DESCRIPTION

Parcel I:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

The Westerly 100 feet, measured along the North line, of the following described property:

Beginning at a point on the South line of Government Lot 8, Section 11, Township 7 South, Range 11 West, Willamette Meridian, in the County of Lincoln, State of Oregon, that is 46 feet East of the West line of said Section 11 (said point also being 40.00 feet East of the center line of Highway 101 and also being on the East right of way line of said Oregon Coast Highway 101); said point being the true point of beginning of the tract herein described; thence East 396.66 feet along the South line of Government Lot 8; thence North 285 feet, more or less, to the South line of the R. L. Neal property, described in deed recorded in Book 102, page 563, Deed Records; thence West along the South line of the Neal property, 197.2 feet, more or less, to the Northeast corner of that tract recorded in Deed Book 204, Page 455; thence South $0^{\circ}25' 1/2''$ East 100 feet along the East line of said tract to the Southeast corner of said property in Deed Book 204, Page 455; thence West 201.67 feet, more or less, to the Southwest corner of said property in Deed Book 204, Page 455; thence South $0^{\circ}25' 1/2''$ East 185 feet, along the East boundary of Oregon Coast Highway 101, to the point of beginning.

EXCEPTING THEREFROM any portion within the Oregon Coast Highway right of way, and EXCEPTING THEREFROM any portion within the right of way of NE 25th Street.

Parcel II:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

Beginning at the Southwest corner of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence from said point of beginning South $89^{\circ}59'$ East 141.43 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter to the true point of beginning of the tract herein described; said true point of beginning being also the Southeast corner of that tract of land described in Book 222, Page 343, Deed Records of Lincoln County; thence North $1^{\circ}02'30''$ East 194.50 feet, more or less, along the East line of said tract described in Book 222, Page 343, to the South line of that tract of land described in Book 204, Page 455, Deed Records; thence East 101.67 feet; thence North $0^{\circ}25'30''$ West 100 feet, along the East line of said Deed Book 204, Page 455 tract, to the South line of the Neal tract described in Book 102, Page 563, Deed Records of Lincoln County; thence East 150 feet along the South line

of said Neal tract, thence South 23°15'21" East 320.63 feet to the South line of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence North 89°59' West 381.06 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter of said section, to the true point of beginning.

Parcel III:

A tract of land situated in the Northwest quarter of the Northwest quarter of Section 11, Township 7 South, Range 11 West of the Willamette Meridian, Lincoln County, Oregon, and more particularly described as follows:

Beginning at the Southwest corner of said Northwest quarter of the Northwest quarter of said Section, Township and Range; thence from said point of beginning South 89°59' East 522.49 feet, more or less, along the South line of said Northwest quarter of the Northwest quarter to the true point of beginning of the tract herein described; thence from said true point of beginning North 23°15'21" West 320.63 feet, more or less, to the South line of the Neal tract described in Book 102, Page 563, Deed Records of Lincoln County; thence East 257.60 feet, more or less, along the South line of said Neal tract to the West line of that tract of land conveyed to Wilbur L. and Marian V. Rogers, husband and wife, by Jerry Emery and Margaret Hannah Page Holmes Emery, husband and wife, by Deed recorded in Book 159, Page 470, Deed Records of Lincoln County; thence South along said tract 9.68 feet, more or less, to the Southwest corner thereof; thence East 117.67 feet along the South line of said Rogers tract to the Northwest corner of that tract described as Parcel 3 in Deed 200412394; thence South 0°30' West 284.98 feet, more or less, along the West line of said Parcel 3 in Deed 200412394, to the South line of the said Northwest quarter of the Northwest quarter of said Section 11; thence North 89°59' West 246.19 feet, more or less, to the true point of beginning.