

## **RESOLUTION NO. 1311**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CANBY, OREGON GRANTING AN EXEMPTION FROM PROPERTY TAXES UNDER OREGON REVISED STATUTES FOR A 69 UNIT HOUSING DEVELOPMENT OWNED AND OPERATED BY CANBY DALIA LLC, AN OREGON LIMITED LIABILITY COMPANY**

**WHEREAS**, the Canby City Council values include livability, the importance of maintaining a small town feel while continuing to address economic development, and housing; and

**WHEREAS**, the City of Canby Community Vision identified integrating mixed use office and/or residential over retail within its Downtown Zone; encouraging higher density residential development in the downtown core, encouraging high quality development through flexibility and inducements, proactive outreach to developers, and evaluating incentives to attract them; and

**WHEREAS**, the Canby City Council adopted Resolution No. 1202 dated November 19, 2014, a Resolution requesting designation of a Vertical Housing Development Zone; and

**WHEREAS**, Canby Dalia LLC has constructed a four story mixed use building with a mix of residential and non-residential uses within Canby's Vertical Housing Zone; and

**WHEREAS**, the Economic Development Department of the City of Canby and Canby Dalia LLC, have entered into a Project Use Agreement, Declaration of Restrictive Covenants and Equitable Servitude, Vertical Housing Development Program, recorded in the official records of Clackamas County on June 27, 2018 (The "Agreement") attached hereto as Exhibit "A"; and

**WHEREAS**, The "Agreement" makes available a certification for a 10-year partial tax exemption on a Certified Vertical Housing Development Project, to stimulate the development of the housing project known as the Dahlia (the "Project") located in Canby, Oregon; and

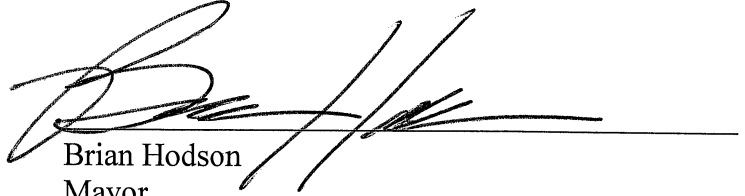
**WHEREAS**, the "Agreement" provides that the project's partial property tax exemption shall be 60% of the otherwise applicable real property taxes.

**NOW, THEREFORE, BE IT RESOLVED** by the City of Canby City Council that:

1. Canby Dalia LLC has qualified for a 60% property tax exemption for a 10 year period as set forth in the "Agreement"
2. A City of Canby, Economic Development Department, Vertical Housing Development Project Certificate (Exhibit B) shall be issued.

This resolution shall take effect March 20, 2019.

**ADOPTED** this 20<sup>th</sup> day of March, 2019 by the Canby City Council.



Brian Hodson  
Mayor

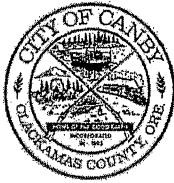
ATTEST:



Kimberly Scheafer, MMC  
City Recorder

Exhibit "A"

88  
2015  
5/17



RETURN TO: *Randy Mengelby*  
City of Canby  
222 NE 2nd St PO Box 990  
Canby, OR 97013  
Attn: Economic Development

Clackamas County Official Records  
Sherry Hall, County Clerk

2018-039997



\$153.00

02156164201800399970080080

06/27/2018 03:57:19 PM

D-OD Cnt=2 Stn=2 COUNTER3  
\$40.00 \$5.00 \$16.00 \$62.00 \$10.00 \$20.00

SPACE ABOVE FOR RECORDER'S USE

ECONOMIC DEVELOPMENT DEPARTMENT  
CITY OF CANBY

PROJECT USE AGREEMENT, DECLARATION OF RESTRICTIVE COVENANTS  
AND EQUITABLE SERVITUDE

VERTICAL HOUSING DEVELOPMENT PROGRAM

THIS PROJECT USE AGREEMENT, DECLARATION OF RESTRICTIVE COVENANTS AND EQUITABLE SERVITUDE (the "Agreement") is made and entered into this 16th day of June, 2018, by and between Mary Hanlon (the "Recipient") and the City of Canby, acting by and through its Economic Development Department (the "Department").

PURPOSE

The Department desires to make available to the Recipient a certification for a 10-year partial tax exemption on a Certified Vertical Housing Development Project, to stimulate the development of the housing project known as the Dahlia (the "Project") located in Canby, Oregon. The project's partial property tax exemption shall be 60% of the otherwise applicable real property taxes. The legal property description of said Project is set forth in Exhibit A, which also is attached hereto and incorporated herein by reference.

The Recipient is willing to receive the Certification, to satisfy the conditions thereof, and to execute and record this Agreement for the purpose, in part, of creating restrictive covenants and an equitable servitude that shall run with the Project land and bind any and all subsequent owners of the Project for the term of this Agreement.

AGREEMENT

In consideration of the above purposes and of the representations, covenants, warranties and agreements set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows in order to ensure that the Project will be operated in accordance with this Agreement and that the following covenants, restrictions and charges shall run with the land and shall be binding and a burden upon the Project, and all portions thereof, and upon any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein, for the length of time that this Agreement shall be in effect.

SECTION 1. REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE RECIPIENT CONCERNING USE OF THE CERTIFICATION AND MAINTENANCE OF PROJECT AS A CERTIFIED VERTICAL HOUSING DEVELOPMENT PROJECT. Recipient hereby represents, covenants, warrants and agrees that:

- a. Recipient will maintain the mixed residential and non-residential uses of the Certified Project for a period of 10 years (the "Compliance Period") from the first year the county assessor first partially exempts the project from the specified ad valorem taxes as certified. Mix of residential and non-residential uses shall remain as proposed in the Project Application as identified in Exhibit B.

- b. Certified Use of the project is restricted to a total of 3 eligible floors.
- c. Recipient will comply, and will cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Agreement and all otherwise applicable laws (including, without limitation, all applicable federal, state and local statutes, rules, regulations, ordinances and orders affecting the Project or activities related thereto).

**SECTION 2. COVENANTS TO RUN WITH THE LAND; EQUITABLE SERVITUDE.**

The Recipient represents, covenants, warrants and agrees that:

- a. The Department is making the Certification to the Recipient as an inducement to the Recipient to develop and operate the Project in accordance with the terms of this Agreement. In consideration of the receipt of the Certification, the Recipient has entered into this Agreement with the Department and has agreed to restrict the use of the Project during the Exemption Period as set forth in this Agreement.
- b. The covenants, restrictions, and charges set forth herein with respect to the Project shall be deemed restrictive covenants running with the Project land and also shall be deemed an equitable servitude running with the Project land. These restrictive covenants and equitable servitude shall pass to and be binding upon the Recipient's successors in title including any purchaser, grantee or lessee of any portion of the Project, shall pass to and be binding upon the respective heirs, executors, administrators, devisees, successors and assigns of the Recipient or any purchaser, grantee or lessee of any portion of the Project and shall pass to and be binding upon any other person or entity having any right, title or interest in the Project. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, and charges contained herein; provided, however, that any such contract, deed or instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, restrictions and charges regardless of whether or not such covenants, restrictions and charges are set forth or incorporated by reference in such contract, deed or instrument.

**SECTION 3. BURDEN AND BENEFIT.** The parties hereby declare their understanding and intent that the burdens of the covenants, restrictions, and charges set forth herein touch and concern the Project land and that the Recipient's legal interest in the Project may be rendered less valuable thereby. The parties further declare their understanding and intent that the benefits of such covenants, restrictions, and charges touch and concern the Project land by enhancing and increasing the enjoyment and use of the owners and tenants of the equivalent floors, the intended beneficiaries of such covenants, restrictions, and charges and by furthering the public purposes for which the partial exemption is certified.

**SECTION 4. COMPLIANCE REPORTING.** The Parties hereby agree that Recipient will provide an annual certification, in a format and on a schedule approved by the Department in its sole discretion, that the Recipient is fulfilling its obligations under this Agreement. The Department may inspect the Project, and any part thereof, and may inspect and copy all records of the Project, upon reasonable notice to the Recipient. The Recipient, its agents, employees, and subcontractors will cooperate fully with the Department in any requested inspection or compliance monitoring.

**SECTION 5. SUBORDINATION.** The parties agree that this Agreement and the restrictive covenants and equitable servitude created hereunder is subordinated to the lien of Recipient's primary financing loan. The Department, at its sole discretion, may subordinate this Agreement to other financing on the Project.

**SECTION 6. TERM OF AGREEMENT.** The parties agree that this Agreement and the restrictive covenants and equitable servitude created hereunder shall become effective upon execution of this Agreement and shall remain in full force and effect for the 10-Year Partial Exemption Period (Compliance Period). Notwithstanding any other provision of this Agreement, this Agreement shall terminate and be of no further force and effect in the event of a completed foreclosure by the primary financing lender or by a lender to whom the Department has subordinated this Agreement, or their successors or assigns, or in the event of a delivery by the Recipient of a deed for the Project to the primary financing lender in lieu of foreclosure, or to a lender to whom the Department has subordinated this Agreement, or their successors or assigns.

**SECTION 7. TERMINATION.** The Department may terminate this Agreement, without further liability, immediately upon notice to the Recipient:

- a. If the Recipient fails to perform or breaches any of the terms of this Agreement; or
- b. If the Recipient is unable or fails to commence the Project within six (6) months from the date of this Agreement;
- c. If the Department loses the authority to administer the Program, is determined by its counsel or otherwise as lacking the authority to administer the Program, or fails to receive or loses necessary funding, appropriations, limitations or other expenditure or position authority sufficient to carry out the terms of this Agreement; or

**SECTION 8. REMEDIES.** If the Recipient defaults in the performance or observance of any covenant, agreement, or obligation set forth in this Agreement and if such default remains uncured for a period of 30 days (or such shorter period as the Department may indicate in its notice) after the notice thereof shall have been given by the Department to the Recipient, then the Department, at its option, may take any one or more of the following steps:

- a. Have access to and inspect, examine and make copies of all of the books and records of the Recipient pertaining to the Project;
- b. May decertify the project or a portion thereof;
- c. Take such other action under this Agreement, at law or in equity as may appear necessary or desirable to the Department to enforce the covenants, agreements, warranties, and obligations of the Recipient hereunder.

No waiver or delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any person entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

**SECTION 9. RECORDING AND FILING.** The Recipient shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the real property records of the county in which the Project is located and in such other places as the Department may reasonably request. The Recipient shall pay all fees and charges incurred in connection with any recording. The Recipient shall provide either the original recorded document or a certified copy of the recorded document within ten days of the date of this agreement.

**SECTION 10. GOVERNING LAW; VENUE.** This Agreement shall be governed by the laws of the State of Oregon. The courts of the State of Oregon, or to the degree necessary, the U.S. District Court for the District of Oregon shall have exclusive jurisdiction over any action brought by or against the Department under this Agreement. The Recipient hereby consents to such exclusive jurisdiction and waives any and all objections it might have thereto.

**SECTION 11. AUTHORITY.** Recipient hereby represents, warrants and certifies that:

- a. It possesses legal authority to apply for and accept the terms and conditions of the Certification and to carry out the proposed Project;
- b. Its governing body, if any, has duly authorized the filing of the application, including all understandings and assurances contained therein;
- c. The person identified as the official representative of the Recipient in the application is duly authorized to act in connection therewith and to provide such additional information as may be required. The Recipient's official representative has sufficient authority to make all certifications on its behalf;
- d. This Agreement does not and will not violate any provision of any applicable law, rule, regulation or order of any court, regulatory commission, board or administrative agency applicable to the Recipient or any provision of the Recipient's organic laws or documents;

e. This Agreement has been duly executed by an official representative of Recipient, delivered by Recipient, and will constitute the legal, valid and binding obligations of the Recipient, enforceable in accordance with their terms.

**SECTION 12. INDEPENDENT CONTRACTOR.** Recipient acknowledges and agrees that it is acting in its own independent capacity under this Agreement and not as an agent or subcontractor for the Department. Grantee assumes full responsibility for its own actions and shall provide for its own insurance and other compliance responsibilities, including providing for its own workers' compensation and other insurance coverage, as needed.

**SECTION 13. AMENDMENTS.** This Agreement may be amended only by a written instrument executed by the parties hereto or by their successors and duly recorded in the real property records of the County.

**SECTION 14. SEVERABILITY.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**SECTION 15. CONSTRUCTION.** The parties to this Agreement acknowledge that each party and its counsel have participated in the drafting and revision of this Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment, modification, supplement or restatement of the foregoing or of any exhibit to this Agreement.

**SECTION 16. NO LIMITATIONS ON ACTIONS OF ISSUER IN EXERCISE OF ITS GOVERNMENTAL POWERS.** Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of the Department in the exercise of its governmental powers. It is the express intention of the parties hereto that the Department shall retain the full right and ability to exercise its governmental powers with respect to the Recipient, the Project, the land, and the transactions contemplated by this Agreement to the same extent as if it were not a party to this Agreement or the transactions contemplated thereby, and in no event shall the Department have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.

**SECTION 17. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of the obligations of this Agreement.

**SECTION 18. NOTICES.** Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery or first class mail, postage prepaid, at the addresses specified below, or at such other addresses as may be specified in writing by the Department or the Recipient:

To the Department: City of Canby  
222 NE 2nd Street, PO Box 930  
Canby, OR 97013  
Attn: Economic Development Department

To the Recipient: Mary Hanlon  
Canby Dalia, LLC.  
101 SW Main Street, Suite 825  
Portland, Oregon 97204



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

RECIPIENT:

CANBY DALIA LLC, an Oregon limited liability company

By: Hanlon Development, LLC,  
an Oregon limited liability company  
Its: Manager

By: [Signature]  
Mary Hanlon  
Its: Sole Member

DEPARTMENT:

CITY OF CANBY acting by and through its Economic Development Department.

By: [Signature]  
Renate Mengelberg  
Its: Economic Development Director

STATE OF OREGON )  
County of Clackamas ) ss:

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of June, 2018 by Erin E. Burckhard, who is a Notary Public of The State of Oregon, on behalf of the Recipient.

[Signature]  
Notary Public for the State of Oregon  
My commission expires: 9/15/2018

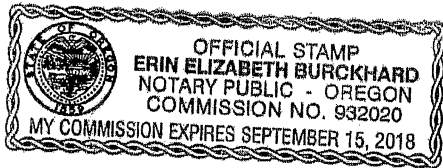


EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT

Property 1 - City Hall/Council Chambers:

Lots 7 and 8, Block 1, CANBY, in the City of Canby, Clackamas County, Oregon;

Property 2 - Finance and Development Services:

Lot 2 and the Easterly one-half of Lot 3; Block 1, CANBY; Lot 11 and the Easterly one-half of Lot 10; Block 1, CANBY; Lot 12 and the Northerly 9 feet of Lot 1, Block 1, CANBY, said 9 feet being parallel and abutting the North line of Lot 1, Block 1, CANBY, all in the City of Canby, Clackamas County, Oregon;

PARTITION PLAT NO. 2017-043

A REPLAT OF  
LOTS 2, 7 - 12, AND PORTION OF LOTS 1 & 3,  
BLOCK 1, CANBY

SITUATE IN THE SOUTHWEST 1/4 OF SECTION 33, T. 3 S., R. 1 E., W.M.,  
CITY OF CANBY, COUNTY OF CLACKAMAS, STATE OF OREGON

SURVEYED: JUNE 1, 2017  
JOB NO.: 148-40  
SCALE: 1" = 30'

BY: CHASE JONES & ASSOCIATES, INC.  
718 S.E. 11TH AVENUE  
PORTLAND, OREGON  
PHONE: 503-228-8844

DEED REFERENCES:

- D1. PERSONAL REPRESENTATIVE'S DEED RECORDED SEPTEMBER 5, 2015 AS DOCUMENT NUMBER 2015-05872.
- D2. STATUTORY MORTGAGE DEED RECORDED JANUARY 3, 2017 AS DOCUMENT NUMBER 2017-00162.
- D3. STATUTORY MORTGAGE AND SALE DEED RECORDED MAY 2, 2017 AS DOCUMENT NUMBER 2017-02524.
- D4. STATUTORY MORTGAGE AND SALE DEED RECORDED MAY 2, 2017 AS DOCUMENT NUMBER 2017-02524.

PLAT REFERENCES:

- P1. PLAT OF "CANBY" BEING PLAT NO. 14.

SURVEY REFERENCES:

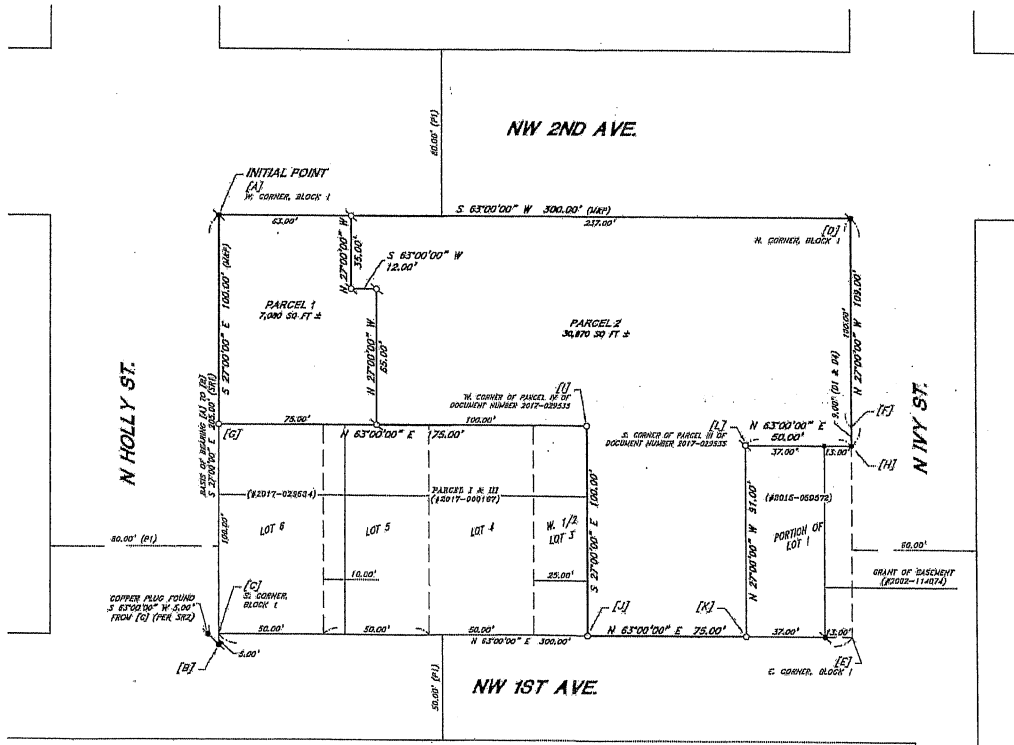
- S10. BOUNDARY SURVEY FILED FEBRUARY 13, 2015 AS SURVEY NUMBER S2015-026.

LEGEND

- 1/2" ROUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "LOT #412" PER CLACKAMAS COUNTY SURVEY NUMBER SN 2015-026.
- 1/2" ROUND 1-1/8" COPPER PLUG MARKED "1604P 888-3151" PER CLACKAMAS COUNTY SURVEY NUMBER SN 2015-026.
- SET 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CHASE JONES & ASSOCIATES", ON JUNE 1, 2017.
- SET 1" DIAMETER COPPER ROD STAMPED "CHASE JONES", ON JUNE 1, 2017.
- DOCUMENT RECORDED IN CLACKAMAS COUNTY DEED RECORDS.
- P = PLAT DIMENSION FROM P1
- M = MEASURED



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
  
OREGON  
MAY 10, 2011  
BRADY L. MCCARRY  
85288  
EXPIRES: 12-31-18



SHEET 1 OF 2

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EXHIBIT B

MIX OF RESIDENTIAL & NON-RESIDENTIAL SQUARE FOOTAGES

Project Name: The Dahlia, Canby Oregon

## Vertical Housing Equalized Floor Calculator

Use	Market Rate (MR)			Income Restricted (IR)			Subtotal	
	No. of Units	Average Size	Total Size	No. of Units	Average Size	Total Size	No. Total Units	Total Size
Residential								
Studio	36	460.00	16,106.00				36	16,560.00
1 Bed	33	645.00	21,922.00				33	21,285.00
2 Bed							0	-
3 Bed							0	-
<b>Subtotal</b>	<b>69</b>		<b>38,028.00</b>	<b>0</b>			<b>69</b>	<b>37,845.00</b>

### Summary

Gross Building Area	54,409.00
Number of Floors greater than 500 sf*	4
Equalized Floor Area	13,602.25

\*simple average, if multiple buildings

Total Residential Area	46,373.00
Equalized Floor Area	13,602.25
Residential Allocation of Eq. Floors	3.41

Common Area	7,679.00
Common Area (IR)	-
Total Residential Area	46,373.00
Total Commercial Area	8,036.00
Gross Building Area	54,409.00
Gross Land Area	30,774.00

#### No. Equalized Floors

Residential Allocation of Eq. Floors	3.41	3	60%	Exemption on Building
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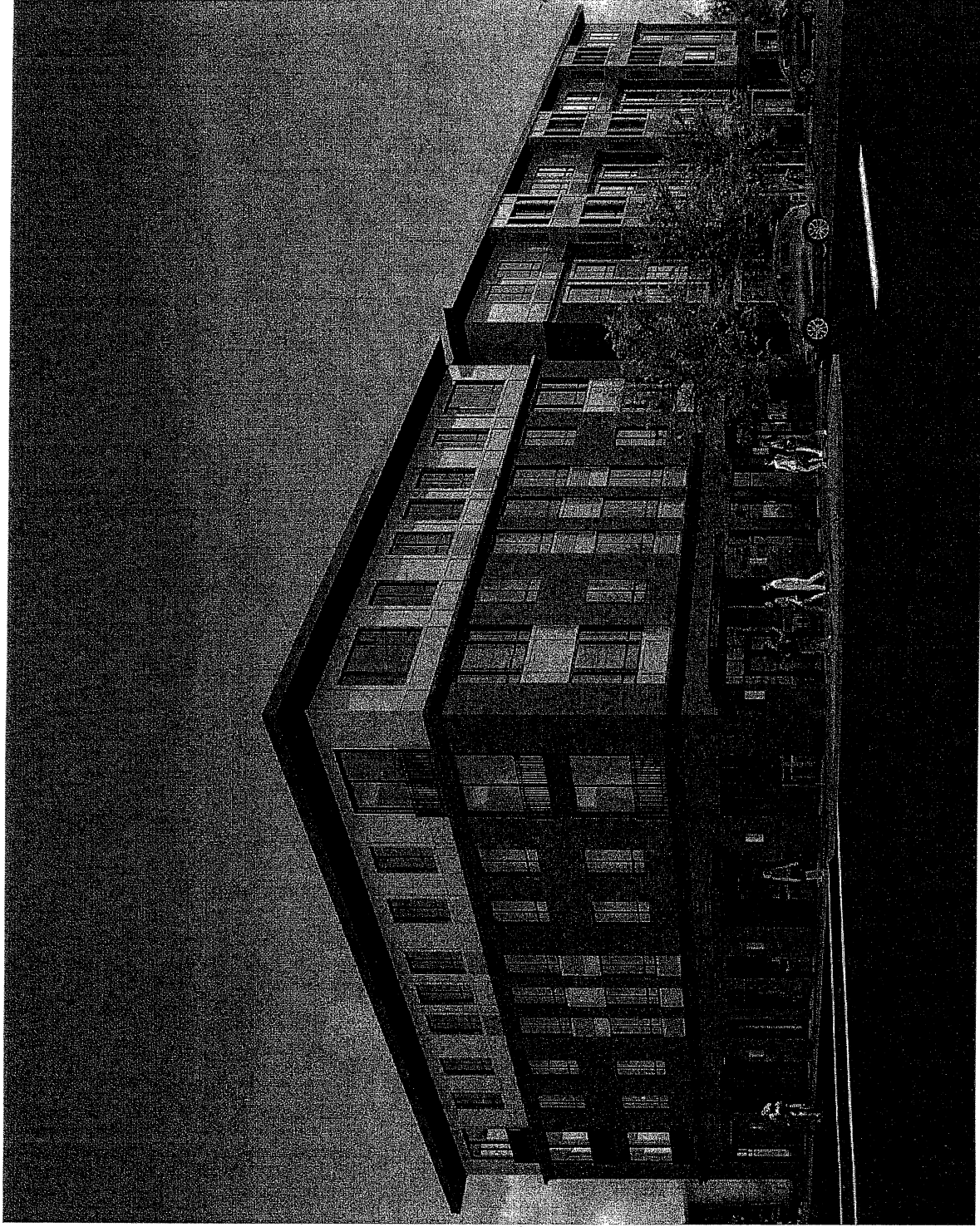
Total Income Restricted Area	-
Equalized Floor Area	13,602.25
Income Restricted Allocation of Eq. Floors	-

Income Restricted Allocation of Eq. Floors	-	0	0%	Exemption on Land
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Analyst's Signature \_\_\_\_\_  
 Title \_\_\_\_\_

Date of Certification/Analysis \_\_\_\_\_

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**2. Describe the residential and non-residential uses by building, by floor.**

Ground Floor: This floor features 4 retail spaces totaling 8,036 sf. Spaces will front Ivy Street and partially on 2<sup>nd</sup> Avenue. They will be "warm shell" spaces, with built out restroom facilities and free design services to help customize the space for future tenants. The retail spaces will feature high ceilings and large floor to ceiling windows and glass doors and high end modern finishes.

Current configuration:

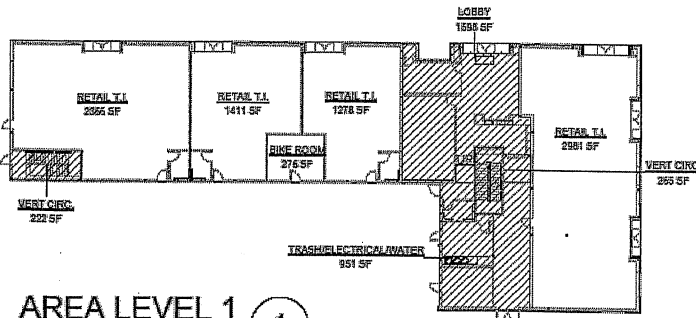
Retail space 1: 2,365 sf  
Retail space 2: 1,412 sf  
Retail space 3: 1,278 sf  
Retail space 4: 2,981 sf

The common area will front on 2<sup>nd</sup> Street and provides services to apartment tenants including a leasing office, fitness room, and lounge/coffee bar area.

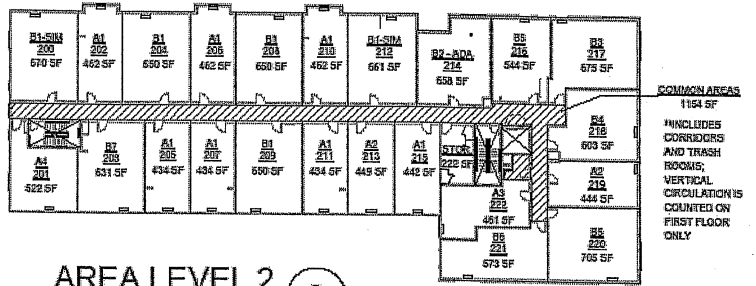
Residential: The three residential floors feature studio and one bedroom units in a variety of floor plans that range from 434 sf to 705 sf. Some units feature Juliet balconies or alcoves to provide ample light and views. All units will have high end finishes, appliances and air conditioning. Each floor has elevator access, two stairwells, a storage space, and trash area.

2nd Floor: 23 Units: 12 x Studio, 11 x 1 Bed  
3rd Floor: 23 Units: 12 x Studio, 11 x 1 Bed  
4th Floor: 23 Units: 12 x Studio, 11 x 1 Bed

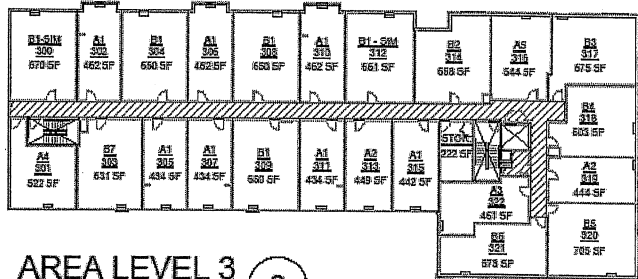




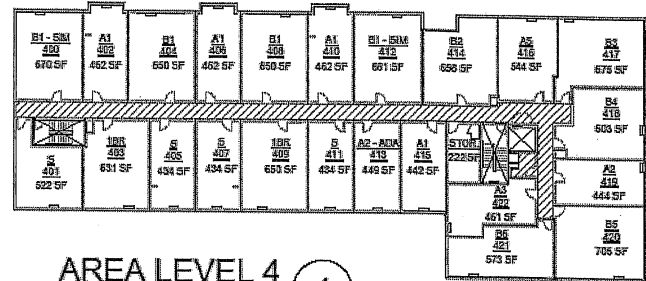
**AREA LEVEL 1**  
1" = 30'-0" ①



**AREA LEVEL 2**  
1" = 30'-0" ②



**AREA LEVEL 3**  
1" = 30'-0" ③



**AREA LEVEL 4**  
1" = 30'-0" ④

TOTAL BUILDING AREA	
LEVEL 1 -	11,235 SF + 2,779 SF (TUCK UNDER PARKING)
LEVEL 2 -	14,292 SF
LEVEL 3 -	14,292 SF
LEVEL 4 -	14,292 SF
<b>TOTAL</b>	<b>54,409 SF + 2,779 SF</b>

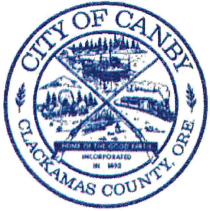
LEASEABLE AREA	
LEVEL 1 -	8036 SF
LEVEL 2 -	12,576 SF + 222 STORAGE
LEVEL 3 -	12,576 SF + 222 STORAGE
LEVEL 4 -	12,576 SF + 222 STORAGE
<b>TOTAL</b>	<b>6036-SF RETAIL + 38,028 SF RESIDENTIAL + 655 STORAGE</b>



CANBY CIVIC BLOCK

13 JUNE 2017

LEASEABLE AREA PLANS DR 1



## City of Canby Economic Development Department

PO Box 930, Canby, OR 97013  
Vertical Housing Development Project Certificate

Effective Date of Certificate: March 20, 2019

Owner: Canby Dalia, LLC  
Attn: Mary Hanlon  
100 SW Main Street, Suite 825  
Portland, Oregon 97204

Project Name: The Dahlia

Project Address: 111 NW 2<sup>nd</sup> Avenue  
Canby, OR 97013

Vertical Housing Development Zone: City of Canby

Tax Account Number: 00791450

Tax Lot Number: 31E33CA06100

Percent Improvement Exemption: 60% Property Tax Exemption

Percent Low-Income Land Exemption: 0% Low income Land Exemption

Partial Exemption Period: July 1, 2019 to June 30, 2029 - 10 Consecutive Years

  
Richard Robinson, City Administrator

# Certificate of Occupancy

## Clackamas County

### Building Codes Division

This certificate is issued pursuant to the requirements of the State of Oregon Structural Specialty Code certifying that at the time of issuance this structure was inspected and was in compliance with the ordinances and codes regulating building construction and use.

Building Address: 111 NW 2nd Ave, Canby, OR 97013 Permit No: B0062717

Township: 3S Range: 1E Section: 33CA Taxlot: 06300 Zone: C-1

Owner: Hanlon Development (Mary Hanlon) Construction Type: V-A

Owners Address: 101 SE Main St, #825, Portland, OR 97204

Use of Building: Canby Civic Block Apartments - 4-story mixed use Occupancy Group: R-2/B/M/S-2

Total Occupancy Load: 504 Code Edition: 2014 OSSC Sprinklers Required: Yes

Special Conditions: \_\_\_\_\_

Scott Caufield  
Scott Caufield,  
Building Official

10/23/18  
Date

THIS CERTIFICATE MUST BE CONSPICUOUSLY AND PERMANENTLY POSTED