

AGRICULTURAL BUFFERING AGREEMENT

Appendix A

Exhibit 9 SUPP1

"Effective Date": 10/5/2004
(date of last signature)

Parties:

COGSWELL LIMITED PARTNERSHIP,
a Washington Limited Partnership
c/o Hillcrest Corporation
attn: Walter T. Bagnall
2303 Seattle Tower
Seattle, WA 98101

RECEIVED
FEB 2 2005
PLANNING DEPT.
("Cogswell")

ARTHUR R. DUBS
2249 Dellwood Ave.
Medford, OR. 97504

("Dubs")

Recitals:

1. Cogswell is the owner of the real property described in EXHIBIT "A", attached hereto ("Cogswell property"). Dubs is currently the owner of the real property described in EXHIBIT "B", attached hereto ("Dubs property").

2. The parties desire to settle all issues between them relating to the development of the Dubs property (EXHIBIT B) and the creation of an agricultural buffer between their properties (EXHIBITS A and B).

Agreements:

1. No Opposition by Cogswell. Cogswell agrees that neither it nor any Affiliate will appear in opposition to, or appeal the decisions on a Plat Application, a PUD Application or Future Land Use Applications so long as: i) such applications do not seek approval for uses other than those allowed under the Single-Family Residential or Multiple-Family Residential zoning districts of the Medford Land Development Code in effect as of the Effective Date; and ii) such applications or decisions do not allow for modification of the Agricultural Buffer for the property that is the subject of such application or decision, as provided in Section 3 hereof. For purposes of this Agreement, "Affiliate" shall mean with respect to any person or entity: i) any person or entity controlling Cogswell; ii) any person or entity controlled by Cogswell; or iii) any person or entity under common control with Cogswell. The terms "controlling", "controlled by" or "under common control with" shall mean, with respect to an entity, the possession of the power to direct the management and policies of an entity.

2. Water Control, Fencing, Vegetation, Irrigation and Easement. Dubs agrees to provide the following water control, fencing, vegetation, irrigation and easement:

- a) Dubs shall vegetate the agricultural buffer (described in section 3) as required by the Medford Land Development Code and in a manner that will reasonably prevent erosion onto the Cogswell Property. In the event erosion occurs as a result of Dubs negligence, Dubs shall indemnify Cogswell from any costs or damages resulting from erosion.
- b) Dubs shall construct a drain system commonly known as a "french drain" along the entire boundary between the Cogswell property and the Dubs property to prevent the drainage of ground water and surface water from the Dubs property onto the Cogswell property. An engineer shall design the drain system. Dubs shall bear the engineering cost. Cogswell shall have the right to review and approve the engineered plans with Cogswell's own engineer prior to construction. Cogswell's approval shall not be unreasonably or arbitrarily withheld and Cogswell shall bear the expense of its own engineer.
- c) On or before the expiration of 60 days following the execution of this Agreement, Dubs shall install a standard 7-foot chain link fence on the northern boundary of the Cogswell property. The fence shall be constructed within and immediately adjacent and contiguous to the north boundary of the Cogswell property. The existing fence, brush and other obstacles to the installation of such fence shall be removed by Dubs. The fence will be installed from the northwest corner of the Cogswell property to the westerly terminus of an existing chain link fence along the northerly boundary of the Cogswell property. The fence shall include two gates. One gate shall be installed approximately mid-way in the easterly half of said fence and one gate should be installed approximately mid-way in the westerly half of said fence. The boundary line between the Cogswell property and the Dubs property shall be surveyed and staked prior to the construction of the fence. Dubs shall bear the cost of the survey and staking. Cogswell shall have the right to review and approve the survey and staking prior to the construction of the fence. Cogswell's approval shall not be unreasonably or arbitrarily withheld.
- d) Dubs shall vegetate the agricultural buffer (described in Section 3) prior to receiving final plat approval from the City of Medford. When the agricultural buffer is planted with vegetation, Dubs shall construct an irrigation system adequate to support the vegetation. The irrigation system may be constructed in a manner allowing the

use of a single water meter. Dubs shall be responsible for providing water to vegetation within the agricultural buffer during development of the subdivision and shall also be responsible for replacing or repairing any damage to the vegetation, irrigation system or the boundary fence occurring during development and construction of the subdivision. After a homeowner's association has been formed for the purpose of managing common areas within the subdivision (the Dubs property), the homeowner's association shall also be responsible for providing adequate water to vegetation within the agricultural buffer and shall be further responsible for replacing or repairing any damage to the vegetation, the irrigation system or the boundary fence. Upon receiving final plat approval, Dubs agrees to record restrictive covenants creating the homeowner's association and requiring said association to maintain and replace any damaged or dead vegetation within the agricultural buffer requiring the association to provide adequate water to such vegetation and requiring the association to replace or repair any damage to the irrigation system or the boundary fence between the Dubs and Cogswell properties. Dubs shall provide a copy of the restrictive covenant to Cogswell within a reasonable time after receiving final plat approval. The irrigation system shall be constructed in a manner that will permit Cogswell to access and utilize city water for the purpose of providing water to the vegetation within the agricultural buffer. Cogswell's access to city water for such purposes shall be located within the easement described in Section 2(e) of this agreement. Cogswell shall not be required to water or maintain any vegetation within the agricultural buffer (which shall remain the responsibility of Dubs and the homeowner's association), but may do so at its discretion. Dubs and/or the homeowner's association shall pay the cost of any city water furnished to irrigate vegetation within the agricultural buffer.

- e) Upon approval of any tentative plat for the development of the Dubs property, Dubs shall forthwith execute and record a non-exclusive, perpetual easement granting Cogswell the right to enter upon the agricultural buffer described herein for the purpose of maintaining, replacing, adding or improving the vegetation, or using, maintaining or replacing the irrigation system.

3. Agricultural Buffer. The Cogswell property is used for agricultural purposes. Dubs intends to develop his property for residential purposes. In order to provide a buffer between the agricultural use and residential use on the properties, Dubs shall provide one or more of the following buffers (depending on the type of use) within the Dubs property:

- a) Single-family residential. If the use is single-family residential, as

defined in the Medford Codes as of the Effective Date, the following buffering requirements shall apply:

- i) A 50-foot agricultural buffer shall be designated on the tentative and final subdivision plats and shall be described in restrictive covenants. The agricultural buffer is to be located along the most southerly portion of the Dubs property and adjacent to the boundary with the Cogswell property. Notwithstanding anything herein to the contrary, the agricultural buffer shall be 75 feet along a portion of the most southerly boundary with the Cogswell property. The westerly end of the portion of the boundary affected by the 75 foot buffer is to be located in the center of a gully located in the easterly portion of the common boundary between the Dubs property and the Cogswell property. The easterly end of the boundary affected by the 75 foot buffer is the easterly end of common boundary between the Dubs property and the Cogswell property. Upon receiving final plat approval, Dubs agrees to place restrictive covenants on the Dubs property imposing the agricultural buffer requirements provided for herein and, specifically, providing that within areas designated for single-family residential use, no structures or improvements of any type or nature will be erected, placed, altered or permitted to remain on, under or within the agricultural buffer, except as provided herein.
- ii) Ground cover shall be planted in a 25-foot wide area within the southerly most portion of the agricultural buffer. The ground cover species shall include *Arctostaphylos* v. 'Emerald Carpet' (Kinnikinnick), *Cotoneaster salicifolia* 'Repens' (Willowleaf Cotoneaster) and *Baccharis pilularis* (Coyote Brush). Alternate species may include *Arctostaphylos* v. 'Massachusetts' (Kinnikinnick), *Cotoneaster dammerii* 'Lowfast' (Bearberry Cotoneaster) and *Hypericum Calycinum* (St. Johns Wart). These species are the same species used between the southerly boundary of McAndrews Road and the northerly boundary of the Cogswell property in a location that is easterly of the agricultural buffer described in this agreement. Dubs will provide any additional landscape vegetation required by the City of Medford pursuant to its land development code.
- iii) No habitable structures may be constructed within the 50 or 75 foot agricultural buffer. Garages and other non-habitable structures may be constructed in the northerly 25 feet of the agricultural buffer, provided the doors and other openings to

any such buildings face north. No uncovered or unenclosed garages, habitable structures or open-air parking areas may be constructed or maintained within the 50 or 75 foot agricultural buffer.

- b) Multiple-family residential. If the use is multiple-family residential, as defined in the Medford Code as of the Effective Date, the following buffering requirements shall apply:
- i) A 50-foot agricultural buffer shall be designated on the tentative and final subdivision plats and shall be described in restrictive covenants. The agricultural buffer is to be located along the most southerly portion of the Dubs property and adjacent to the boundary with the Cogswell property. Notwithstanding anything herein to the contrary, the agricultural buffer shall be 75 feet along a portion of the most southerly boundary with the Cogswell property. The westerly end of the portion of the boundary affected by the 75 foot buffer is to be located in the center of a gully located in the easterly portion of the common boundary between the Dubs property and the Cogswell property. The easterly end of the boundary affected by the 75 foot buffer is the easterly end of common boundary between the Dubs property and the Cogswell property. Upon receiving final plat approval, Dubs agrees to place restrictive covenants on the Dubs property imposing the agricultural buffer requirements provided for herein and, specifically, providing that within areas designated for single-family residential use, no structures or improvements of any type or nature will be erected, placed, altered or permitted to remain on, under or within the agricultural buffer, except as provided herein.
 - ii) Ground cover shall be planted in a 25-foot wide area within the southerly most portion of the agricultural buffer. The ground cover species shall include *Arctostaphylos* v. 'Emerald Carpet' (Kinnikinnick), *Cotoneaster salicifolia* 'Repens' (Willowleaf Cotoneaster) and *Baccharis pilularis* (Coyote Brush). Alternate species may include *Arctostaphylos* v. 'Massachusetts' (Kinnikinnick), *Cotoneaster dammerii* 'Lowfast' (Bearberry Cotoneaster) and *Hypericum Calycinum* (St. Johns Wart). These species are the same species used between the southerly boundary of McAndrews Road and the northerly boundary of the Cogswell property in a location that is easterly of the agricultural buffer described in this agreement. Dubs will provide any additional landscape vegetation required by the

City of Medford pursuant to its land development code.

- iii) No habitable structures may be constructed within the 50 or 75 foot agricultural buffer. Garages and other non-habitable structures may be constructed in the northerly 25 feet of the agricultural buffer, provided the doors and other openings to any such buildings face north. No uncovered or unenclosed garages, habitable structures or open-air parking areas may be constructed or maintained within the 50 or 75 foot agricultural buffer.
- c) Plat/deed declaration. Upon receiving final plat approval, Dubs agrees that restrictive covenants shall forthwith be placed on the Dubs property and on the final subdivision plat and such restrictive covenants shall: i) identify and describe the applicable agricultural buffer described above (the restrictive covenants, not the plats, shall describe each of the buffering requirements applicable to the intended use); ii) include the following declaration, "This property abuts or lies within close proximity to agricultural land. Property owners may be subjected to noise, dust, odor, spray residue or other types of pollution incidental to common, customary and accepted farm practices"; iii) contain a restriction that removal or damage to boundary line fences on the Cogswell property is prohibited; iv) contain a restriction to the effect that the construction of cross fences in the most southerly 25 feet of the agricultural buffer is prohibited unless gates are included in the fences in order to allow Cogswell to exercise the easements rights granted pursuant to this agreement and v) contain a requirement that the owners of property adjacent to the Cogswell property notify the superintendent of Hillcrest Orchard prior to spraying any chemicals within 100 feet of the Cogswell property.
- d) Additional restrictions and covenants. Upon receiving final plat approval Dubs shall forthwith place and record restrictive covenants against the entire Dubs property which provide for the acknowledgments and restrictions set forth in EXHIBIT "C" which is attached hereto.
- e) Utility system appurtenances. Cogswell acknowledges that the following above ground appurtenances to utility systems do not constitute structures and may be permitted within agricultural buffers: transformers, vaults, manholes and other vertical appurtenances associated with underground utilities. Cogswell acknowledges that the following are examples of non-habitable structures: covered, enclosed garages; workshops, storage sheds

provisions of this Agreement.

- f) Severability. If a court of competent jurisdiction or an arbitrator finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such findings shall not render that provision invalid or unenforceable as to any other persons or circumstances, and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- g) Interpretation and Construction. The provisions of this Agreement have been examined, negotiated, and revised by counsel for each Party, and no implication shall be drawn against any Party hereto by virtue of the drafting of this Agreement.
- h) Attorneys. Cogswell is represented by Kellington, Krack, Richmond, Blackhurst, Sutton & Glatt, LLP, Medford, Oregon. Dubs is represented by Frohnmayer, Deatherage, Pratt, Jamieson, Clarke & Moore PC, Medford, Oregon. Each of the parties is relying entirely upon the advice and counsel of their separate attorneys and acknowledge that they are voluntarily entering into this Agreement with the advice and consent of their own attorneys. Each party further acknowledges that they are not relying upon the attorney or attorneys of the other party for the preparation of this Agreement or for any matter whatsoever.

5. Binding Effect. This Agreement is binding on and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

6. Execution. This Agreement will be executed in duplicate originals. Each original may consist of multiple counterparty signature pages. Facsimile copies of signatures will be deemed as effective as original signatures, but will be replaced with original signatures as soon as possible.

7. Notice. Any notice or communication given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States mail, or United States Express Mail, or other established express delivery service, postage or delivery charges prepaid, return receipt requested, to the addresses listed below. All notices shall be deemed given upon "receipt", meaning the earliest of any of the following: (A) the date of delivery of the notice as shown on the return receipt; (B) the date of actual receipt; or (C) the date of attempted delivery, as evidenced by postmark on the return receipt or the date of receipt of notice of non-delivery.

If to Cogswell:

Carl R. Krack
Kellington, Krack, Richmond, Blackhurst and Sutton, LLP
P.O. Box 1583
Medford, OR 97501

If to Dubs:

Arthur R. Dubs
2249 Dellwood Ave.
Medford, OR. 97504

8. Attorney Fees. In the event of any suit, action or arbitration arising out of this Agreement, or in the further event suit or action is instituted to enforce any of the restrictions, covenants or agreements contained herein, the prevailing party shall be entitled to his or its reasonable attorneys fees in such suit, action or arbitration and shall be entitled to recover from the losing party such sums as the court may adjudge reasonable as attorney fees in such case, suit or action or in any appeal therefrom.

IN WITNESS WHEREOF, the Parties have hereto affixed their signatures.

Dated: June 29, 2004

COGSWELL LIMITED PARTNERSHIP

By Walter T. Bagnall
Walter T. Bagnall, President
and CEO of Hillcrest Corpora-
tion, its General Partner

Dated: 10/5, 2004

Arthur R. Dubs

By: Arthur R. Dubs
Arthur R. Dubs