

EXHIBIT A

SAMPLE DO NOT EXECUTE

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF BLOCK 49

THIS AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY (this "Agreement") is made as of _____, 2010 (the "Effective Date"), by and between the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon ("CITY"), and **REACH COMMUNITY DEVELOPMENT, INC.**, an Oregon non-profit corporation ("REACH"). The CITY and REACH are referred to jointly in this Agreement as "Parties" and individually as a "Party."

RECITALS

1. Pursuant to the Charter of the City of Portland and ORS Chapter 457, the City adopted the North Macadam Urban Renewal Plan on August 11, 1999, by Ordinance No. 173651, (the "UR Plan"). The UR Plan establishes an urban renewal area ("URA") within which the CITY and its urban renewal agency, the Portland Development Commission ("PDC") will focus efforts to encourage private development, cure blight, and enhance economic development opportunities.
2. On November 13, 2002, by Ordinance No. 177082 and Resolution 36111, the City Council adopted the South Waterfront Plan as a subdistrict plan in the Central City ("South Waterfront Plan") superseding the North Macadam District Framework Plan, which the Council had accepted by Resolution 35815 in August 1999.
3. On behalf of the City of Portland, PDC negotiated the South Waterfront Central District Project Development Agreement ("Original DA") with North Macadam Investors, LLC ("NMI"), Oregon Health & Science University, River Campus Investors, LLC, an Oregon limited liability company, and Block 39, LLC, an Oregon limited liability company (collectively, the "DA Parties"). The DA (defined below) provides, among other things, for the development of improvements in a certain project area within the URA ("Project Area") subject to the South Waterfront Plan. The DA has facilitated and will continue to facilitate development of the Project Area as a mixed-use neighborhood, including commercial, retail, institutional and housing uses.
4. The Original DA was accepted by the Portland City Council on August 15, 2003, and signed by the DA Parties on August 22, 2003. The Original DA has been amended by the First Amendment to the South Waterfront Central District Project Development Agreement dated February 18, 2004, the Second Amendment to the South Waterfront Central District Project Development Agreement dated April 1, 2004, the Third

Amendment to South Waterfront Central District Project Development Agreement dated June 25, 2004, the Fourth Amendment to South Waterfront Central District Project Development Agreement dated October 29, 2004, the Fifth Amendment to South Waterfront Central District Project Development Agreement dated November 24, 2004, the Sixth Amendment to South Waterfront District Project Development Agreement dated December 17, 2004, the Seventh Amendment to South Waterfront Central District Project Development Agreement dated June 8, 2005 and the Eighth Amendment to South Waterfront Central District Project Development Agreement dated November 9, 2006 (the "Eighth Amendment"). The Original DA, as amended by the first, second, third, fourth, fifth, sixth, seventh and eighth amendments, is referred to herein as the "DA."

5. The Land (legally described on Exhibit A) and the Property (as hereinafter defined) that is the subject of this Agreement is located within the Project Area and subject to the DA.
6. Pursuant to the Eighth Amendment, PDC and NMI entered into that certain Purchase and Sale Agreement dated November 9, 2006 (the "Block 49 Purchase and Sale Agreement") whereby PDC acquired the Property from NMI in order to complete the environmental cleanup of the Property and to control development on the Property for affordable housing, subject to NMI's rights to reacquire a commercial condominium and PDC's right to pursue development of the Property with a third party in the event that NMI failed to enter into an agreement with PDC to do so (which rights of NMI have been terminated or will be terminated prior to Closing).
7. On April 13, 2009, PDC and William & Dame Development Inc (WDD), an affiliate of NMI, entered into a Second Amended and Restated Predevelopment Loan Agreement (the "Predevelopment Loan") that provided \$1,959,928 for design development, feasibility analysis and other predevelopment activities to further development of the Property.
8. On January 7, 2009, City Council passed Ordinance # 182465 which directed PDC and the Bureau of Housing and Community Development to transition designated housing functions and staff to a new Portland Housing Bureau (PHB).
9. To further the affordable housing goals of the CITY, PDC and the CITY entered into several Intergovernmental Agreements, accepted by the Portland City Council on XXXX including an Assignment and Assumption Agreement to transfer and assign PDC's rights, title and interest to certain real property, housing assets, loans and other agreements to CITY including its interest in the Land.
10. PHB and NMI have agreed that in order to meet the affordable housing goals of the CITY, it is in the best interest of the Project, as defined herein, that a non-profit organization sponsors the development, ownership and operation of the Project.
11. In 2010, PHB managed a public solicitation for a qualified developer for the Project and selected REACH to form a Limited Partnership to develop, own and operate the Project.

12. PHB believes that REACH's redevelopment of the Property, pursuant to this Agreement, will help achieve local and regional growth management and meet affordable housing development goals for the CITY and the URA. PHB also believes that the fulfillment of this Agreement, and the intentions set forth herein, are in the vital and best interests of the City and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of the applicable state laws and requirements under which the Property has been acquired, and the plan for financial assistance for the development of the Property.
13. The purpose of this Agreement is to memorialize the Parties' understanding of their respective rights, roles and commitments in the conveyance of the Property to REACH by the CITY and the development and operation of the Project.

NOW THEREFORE, in consideration of the mutual benefits to be realized, including the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Agreement. Some defined terms are first defined in the text of this Agreement and some are first defined in Exhibit B, attached hereto, which is a glossary of all defined terms. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. If there is any difference between the definitions of a defined term in the text of this Agreement and that term in Exhibit B, the definition in the text controls. Defined terms may be used in the singular or the plural. Each defined term used herein without definition shall have the meaning ascribed to such term in the DA.

2. GENERAL TERMS OF DISPOSITION

- 2.1 **Description of the Property.** The Property which is the subject of this Agreement consists of the following: a certain parcel of land owned and controlled by CITY generally bounded by SW Moody Ave., SW Lowell Street, SW Bond Ave., and SW Bancroft Street in the Project Area commonly known as Block 49, and more particularly described in Exhibit A attached hereto (collectively, the "Land") together with (i) all rights, privileges and easements appurtenant to the Land owned by CITY, including, all development rights relating to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and

enjoyment of the Land (collectively, the "Appurtenances"); and (ii) all improvements and fixtures located on the Land (collectively, the "Improvements"). The Land, together with the Appurtenances and Improvements, is collectively referred to herein as the "Property".

2.2 Purchase Price; Adjustments. The purchase price for the Property (the "Purchase Price") shall be one dollar (\$1.00). The Purchase Price does not represent the value of the Property which shall be established by the Parties by an appraiser approved by the Parties, paid from the project budget, and completed prior to the acquisition of the Property by REACH (the "Appraised Value").

2.2.1 Proration of Taxes. REACH's obligation to pay property taxes on the Property will be limited to the taxes imposed after the Closing Date.

2.2.2 Utilities. To the extent that there are existing utilities serving the Property that will be retained, CITY shall assign such utilities to REACH on the Closing Date.

2.2.3 Closing Costs. The costs for recording a Memorandum of this Agreement, the Deed and any other documents required by REACH to be recorded will be paid by REACH. Each Party shall pay one-half (1/2) of any escrow fees charged by the Escrow Agent. Any other Closing costs shall be allocated in accordance with the customary practice in Multnomah County.

2.3 Representations and Warranties.

2.3.1 CITY hereby makes the representations and warranties to REACH which are set forth below, as of the Effective Date and as of the Closing Date. REACH acknowledges (i) that REACH has entered into this Agreement with the intention of making and relying upon its own investigation of the physical, structural, environmental, economic and legal condition of the Property, and (ii) that, other than as specifically set forth below in this Section 2.3.1, CITY is not making and has not at any time made any representation or warranty of any kind or nature, either oral or written, directly or indirectly, expressed, implied, statutory or otherwise, with respect to the Property. Based on REACH's familiarity with the Property, REACH's due diligence relating to the Property and REACH's experience and knowledge as to the market in which the Property is situated and as to the investment in and operation of real estate in the nature of the Property and commercial real estate in general, REACH shall purchase the Property on the Closing Date in its "AS IS, WHERE IS AND WITH ALL FAULTS" condition, with existing streets and street improvements, and without any representation or warranty whatsoever, as aforesaid, except as set forth in this Section 2.3.1 and subject to CITY's performance of its obligations pursuant to this Agreement (including without

limitation the provisions of Section 2.5 below). REACH fully assumes the risk that adverse latent or patent physical, structural, environmental, economic, or legal conditions may not have been revealed by REACH's investigations. CITY and REACH acknowledge that the Purchase Price to be paid to CITY for the Property has taken into account that the Property is being sold subject to the provisions of this Section 2.3.1.

- (a) CITY has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by CITY in connection with the execution of this Agreement and the transactions contemplated hereby.
- (b) To the best of CITY's knowledge, other than stated herein, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, CITY's ability to perform its obligations under this Agreement, or REACH's ability to develop the Project.
- (c) Except as has been disclosed to REACH in the Environmental Reports and to the best of CITY's knowledge, there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, release or production of Hazardous Substances, or other dangerous or toxic substances or solid wastes on the Property, or underground storage tanks existing on the Property, except in compliance with Environmental Laws currently in effect, and CITY has not received notice of the release of any Hazardous Substances on the Property.
- (d) CITY is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.
- (e) To the best of CITY's knowledge, and except as disclosed in writing to REACH the Property is in compliance with all recorded covenants, restrictions and other agreements binding on the Property and with all applicable laws, rules, regulations, ordinances and other governmental requirements (collectively, "Laws").
- (f) CITY has not received or given any notice stating that the Property is in violation of any Laws; provided, however that CITY makes no representation as to the availability or suitability of utility connections to the Property.
- (g) No representation, warranty or statement of CITY in this Agreement or any of the exhibits attached hereto contains any untrue statement of a

material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

- (h) As of the Effective Date, there are no defaults by CITY under this Agreement or events that with the passage of time would constitute a default of CITY under this Agreement.
- (i) CITY enters into this Agreement without reliance upon any verbal representation of any kind by REACH, its employees, agents or consultants regarding any aspect of the Property, the Project, its feasibility, financing or compliance with any governmental regulation.

2.3.2 REACH hereby represents and warrants to CITY as of the Effective Date and the Closing Date that:

- (a) This Agreement has been duly authorized, executed and delivered by REACH and all consents required under REACH's organizational documents or by law have been obtained, that REACH has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by REACH in connection with the execution of this Agreement and the transactions contemplated hereby.
- (b) No representation, warranty or statement of REACH in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.
- (c) As of the date hereof there are no defaults by REACH under this Agreement or events that with the passage of time would constitute a default of REACH under this Agreement.
- (d) REACH enters into this Agreement without reliance upon any verbal representation of any kind by CITY, its employees, agents or consultants regarding any aspect of the Property, the Project, its feasibility, financing or compliance with any governmental regulation.

2.4 Access; Inspection; Diligence.

- 2.4.1 Access.** CITY agrees that REACH and its authorized agents or representatives, and its lenders and investment partners, and their authorized agents or representatives, shall be entitled to enter upon the Property during normal business hours upon twenty-four (24) hours advance written notice to

CITY, and pursuant to a written Permit of Entry, to make such investigations, studies, soil and groundwater tests as REACH deems necessary or advisable.

2.4.2 Due Diligence Materials. CITY also agrees to provide REACH with the information and materials listed on Schedule 2.4.3 attached hereto (the "Due Diligence Materials") within ten (10) Business Days of the Effective Date.

2.5 Environmental Reports and Remediation. CITY shall make the Environmental Reports available to REACH as part of the Due Diligence Materials. CITY will provide REACH with all information and reports relating to its environmental remediation of the Property and will obtain reliance letters from all consultants engaged by CITY. If, during the course of construction of the Project, any further Environmental Abatement is required in order for the Property to comply with all applicable Environmental Laws and environmental standards, as necessary for development of the Project, the cost thereof will be a Project cost and added to the Project Budget and funded by some source of Project financing, including, as required or needed, by financing provided by CITY as set forth herein.

2.6 Title, Survey, Property Taxes and Closing Costs.

Title and Survey Review. Within ten (10) Business Days after the Effective Date, CITY shall deliver to REACH, as part of the Due Diligence Materials, a preliminary title report and copies of all exception documents thereto (the "Title Report"). REACH shall review the Title Report and Due Diligence Materials relating to title and survey matters. REACH may cause to be prepared for its behalf title insurance commitments, including such affirmative insurance and endorsements as REACH may desire, and shall pay the cost and expense thereof in excess of the amount paid by CITY pursuant to Section 2.6.2 below. CITY agrees to execute any affidavits or other documents required by the Escrow Agent to enable REACH to obtain such coverage. CITY will provide REACH with all surveys procured by the CITY. REACH may, at its sole cost and expense, also cause to be prepared an ALTA/ACSM as built survey of the Property. The Title Report, the DA, the South Waterfront Community Association documentation, and survey shall be referred to herein as the "Title Evidence". Within thirty (30) Business Days of delivery of the available survey{ and title report to REACH, REACH will make such written objections ("Title Objections") to the form and/or contents of the Title Evidence as REACH may wish. REACH's failure to make Title Objections with respect to a particular matter within this time period shall constitute a waiver of Title Objections with respect to a particular matter. Any matter shown on the Title Evidence and not objected to by REACH shall be a "Permitted Exception" hereunder. CITY shall have the election of whether or not to attempt to cure Title Objections raised by REACH. CITY shall have ten (10) Business Days after receiving REACH's Title Objections (the "Notice Period") to notify REACH of its intent to cure or not cure such Title Objections. If CITY notifies REACH of its intention not to attempt to cure any of the Title Objections raised by REACH or fails to notify REACH of its intentions within the Notice Period, then REACH may,

within three (3) Business Days after the Notice Period expires, terminate this Agreement by written notice to CITY. Notwithstanding the foregoing, with respect to voluntary liens securing payment of an ascertainable amount ("Monetary Liens"), CITY shall remove or cure by payment of funds from Closing. The Closing shall be extended for a period of up to fifteen (15) days to permit CITY to cure any Title Objections which it elects to attempt to cure (the "Cure Period"). CITY shall remove any encumbrances or exceptions to title which are created by, through, or under CITY or any other party after the date of the Title Evidence and which are not consented to by REACH under the terms hereof and REACH shall be entitled to terminate this Agreement. REACH shall have the right to a dollar-for-dollar adjustment to the Purchase Price in favor of REACH in the amount of any Monetary Liens which are unsatisfied on the Closing Date. If the Title Objections are not cured prior to Closing, REACH will have the option as its sole and exclusive remedies to (i) terminate this Agreement; or (ii) proceed to Closing without any reduction in the Purchase Price. If REACH elects the latter, any uncured Title Objections shall be deemed Permitted Exceptions.

2.6.1 Title Insurance. CITY, at its expense, shall provide REACH with a standard coverage Owner's Policy of Title Insurance issued by Chicago Title Insurance Company (the "Escrow Agent"), covering the Property insuring REACH in the amount of the appraised value, all free and clear of encumbrances except the Permitted Exceptions.

2.6.2 Required State of Title. On the Closing Date, CITY shall convey the Property by statutory warranty deed substantially in the form attached hereto as Exhibit C (the "Deed") to REACH.

2.6.3 Old Spaghetti Factory Parking Agreement. The Parties acknowledge that the Property is encumbered by a parking agreement in favor of the Old Spaghetti Factory (the "Parking Encumbrance"). The Parking Encumbrance shall be a Permitted Exception to the Title Evidence. A copy of the Parking Encumbrance is attached hereto as Exhibit D.

2.7 Conditions Precedent to CITY's and REACH's Performance.

2.7.1 Conditions Precedent to CITY's Performance. The obligations of CITY to close the transaction contemplated by this Agreement are, in addition to the other terms and conditions of this Agreement, subject to the CITY's satisfaction with the following (any one or more of which may be waived in whole or in part by CITY at its discretion):

- (a) Evidence that REACH is a corporation existing and in good standing in the State of Oregon and a certificate from an officer of REACH that REACH has full authority to enter into and perform its obligations under this Agreement.

- (b) The final construction budget for the Project submitted by REACH for CITY review;
- (c) REACH shall not be in default under any material term or condition of this Agreement. As of Closing, REACH shall represent to CITY that there are no material defaults by REACH under this Agreement and that REACH has no knowledge of events which with the passage of time would constitute a material default by REACH under this Agreement.
- (d) REACH's representations and warranties stated in Section 2.3.2 herein are true and correct as of the Closing Date.
- (e) REACH shall have determined and demonstrated financial feasibility for the Project by providing to CITY: (a) copies of commitment letters from private lender(s) and equity investors; and (b) commitments from public funding sources, including CITY, subject to standard underwriting practices, all consistent with the Project Budget, and all subject to phased financing requirements of the Project, and the CITY shall have approved the demonstration of financial feasibility.
- (f) REACH shall have confirmed the approval of all Design Drawings and specifications relating to the Project as required by governmental entities and/or agencies, including CITY's Project Manager pursuant to Section 4.5 herein.
- (g) REACH shall have obtained all land use approvals for the Project required by Title 33 of the Code of the City of Portland, if any, including Conditional Use Permit(s), Adjustments and Modifications and no appeal of any required approval or permit shall have been filed, and the time for any such appeal shall have expired. If an appeal has been filed, it shall have been finally resolved.
- (h) The Parties shall have agreed to the final form of the Deed, and any documents necessary for the Closing, including the financing described in Section 7.
- (i) There shall be no litigation pending that prevents CITY or REACH from performing their respective obligations under this Agreement;
- (j) REACH shall not be in default under any material term or condition of this Agreement, including the completion of each task within

REACH's control shown on the Schedule of Performance to be completed as of the Closing.

- (k)
- (l) REACH shall have determined to its satisfaction that the CITY is not be in default under any material term or condition of this Agreement, including the completion of each task shown on the Schedule of Performance to be completed as of the Closing; and
- (m)
- (n) The Parties agree that satisfactory agreements have been reached with WDD and NMI which (i) assign the Predevelopment Loan to REACH, (ii) terminate any rights and responsibilities of NMI to develop the Property under the DA, (iii) eliminate residual rights of NMI, if any exist, to develop the Property under the Block 49 Purchase and Sale Agreement, and (iv) allow for all Project related work product that resulted from the Predevelopment Loan and the efforts of NMI to benefit REACH in its development of the Project.

2.7.2 Conditions Precedent to REACH's Performance. The obligations of REACH to close the transaction contemplated by this Agreement are, in addition to the other terms and conditions of this Agreement, subject to the following (any one or more of which may be waived in whole or in part by REACH at its discretion):

- (a) REACH shall have determined that CITY has title to the Property subject only to the Permitted Exceptions.
- (b) Escrow Agent shall have issued to REACH a binding commitment satisfactory to REACH (i) to issue to REACH an Owner's Extended Title Insurance Policy covering the Property in an amount not less than the Appraised Value subject only to the Permitted Exceptions; and (ii) satisfactory to REACH and any lender identified by REACH to issue a Lender's Extended Title Insurance Policy covering its interests in all or part of the Property in the amount of the funding to be provided to REACH.
- (c) REACH shall have determined financial feasibility for the Project by receiving (i) commitment letters from private lender(s) and equity investors; and (ii) commitments from public funding sources, including CITY, subject to standard underwriting practices, all consistent with the Project Budget, and all subject to phased financing requirements of the Project.

- (d) REACH shall have determined to its satisfaction that the Design Review Drawings relating to the Project have been approved by all required governmental entities and/or agencies.
- (e) (c) REACH shall have confirmed that all land use approvals for the Project required by Title 33 of the Code of the City of Portland, if any, including Conditional Use Permit(s), Adjustments and Modifications have been obtained and the time for any appeal shall have expired
- (f)
- (g) CITY's representations and warranties stated in Section 2.3.1 herein are true and correct as of the Closing Date.
- (h)
- (i) The Parties shall have agreed to the final form of the Deed, and any documents necessary for the Closing, including the financing described in Section 7.
- (j) REACH shall have determined to its satisfaction that there is no litigation pending that prevents CITY or REACH from performing their respective obligations under this Agreement;
- (k) REACH shall have determined to its satisfaction that the CITY is not be in default under any material term or condition of this Agreement, including the completion of each task shown on the Schedule of Performance to be completed as of the Closing; and
- (l)
- (m) The Parties agree that satisfactory agreements have been reached with WDD and NMI which (i) assign the Predevelopment Loan to REACH, (ii) terminate any rights and responsibilities of NMI to develop the Property under the DA, (iii) eliminate residual rights of NMI, if any exist, to develop the Property under the Block 49 Purchase and Sale Agreement, and (iv) allow for all Project related work product that resulted from the Predevelopment Loan and the efforts of NMI to benefit REACH in its development of the Project.

2.7.3 Elections upon Non-Occurrence of Condition. Except as provided below, if any condition in Section 2.7 is not fulfilled to the satisfaction of the benefited Party or Parties (i) at the time designated for satisfaction of the same, or (ii) if no deadline is specified for satisfaction of such condition, then on the date scheduled for Closing, subject to any extension that may granted, then such benefited Party or Parties may elect to:

- (a) Terminate this Agreement, by written notice to the other Party which termination shall become effective thirty (30) days after the notice of

termination is sent ("Termination Date") unless, before the thirty (30) day period ends, the other Party fulfills such condition or conditions to the reasonable satisfaction of the benefited Party or Parties; or

- (b) Waive in writing the benefit of that condition precedent to its obligation to perform under this Agreement, and proceed in accordance with the terms hereof; or
- (c) Extend the Termination Date by which the other Party must satisfy the applicable condition, if the condition can be satisfied by the other Party and if the other Party agrees in writing to the extension.

2.7.4 Final Termination Date. If all of the conditions precedent under Section 2.7 have not been satisfied, waived or otherwise resolved pursuant to this Agreement by the Closing Date then this written Agreement shall automatically terminate unless the Closing Date is extended by agreement of the Parties prior to the Closing Date, or unless the failure of satisfaction of the conditions precedent is the result of an Unavoidable Delay, as described in Section 9.9 below (Force Majeure). If the Final Termination Date is extended for a period of unavoidable delay, the maximum period of unavoidable delay shall be no longer than one hundred and eighty (180) days. If this Agreement is terminated for failure of satisfaction of the conditions precedent, and such failure is not the result of a breach of this Agreement by either Party, then the obligations of the Parties to each other under this Agreement shall terminate.

2.8 Closing.

2.8.1 Escrow Closing. Except as otherwise provided in this Agreement, the consummation of the transaction contemplated by this Agreement (the "Closing") shall occur through an escrow closing arrangement pursuant to the Closing Escrow Instructions by April 8, 2011 (the "Closing Date"). It is agreed that time is of the essence in this Agreement.

2.8.2 CITY's Closing Deliveries. On the Closing Date, CITY shall deliver or cause to be delivered at its expense each of the following items to REACH:

- (a) Deed;
- (b) FIRPTA; and
- (c) Such other documents as are reasonably required by the Escrow Agent.

2.8.3 REACH's Closing Deliveries. On the Closing Date, REACH shall deliver or cause to be delivered at its expense each of the following items to CITY:

- (a) Purchase Price; and
- (b) Such other documents as are reasonably required by the Escrow Agent.

2.9 Repurchase Rights. If the Property is conveyed from CITY to REACH and REACH does not begin construction of the Project in accordance with this Agreement within thirty (30) days of Closing, then CITY shall have the right to: (i) buy back the Property from REACH for the Purchase Price paid by REACH to CITY.

3. DEVELOPMENT

3.1 Project. The project to be developed by REACH on the Property shall consist of two hundred nine (209) affordable rental units with parking (the "Residential Component"), an office and retail component on the ground floor, residential community space, and the fifty (50) parking spaces required pursuant to the Parking Encumbrance, collectively referred to herein as the "Project". REACH will determine the organizational structure of the development and Project which may include one or more condominium units and that organizational structure shall be approved by the CITY. The parties acknowledge that immediately subsequent to recording the Deed, REACH may transfer some or all of its interest in the Property to an entity controlled by REACH in order to facilitate the financing for the Project which will include federal low-income housing tax credit equity ("LIHTCs"), among other sources.

3.2 Affordable Housing Objectives. REACH shall develop the Residential Component of the Project for residents earning less than or equal to sixty percent (60%) of Median Family Income ("MFI") and, if financially feasible at least twenty percent (20%) of the Project units shall be for residents earning less than or equal to thirty percent (30%) of MFI for a restricted use period lasting 60 years (collectively, the "Affordable Housing Objectives"). The Parties acknowledge that the twenty percent of the project reserved for residents earning less than or equal to thirty percent of MFI shall be targeted to US Veterans so long as allowed under HUD, LIHTC, and fair housing guidelines. The Parties further acknowledge that the financial feasibility of renting units to tenants with incomes less than or equal to 30% of MFI is dependent on availability of project-based rent subsidies for those residents, and that if rent subsidies expire or become unavailable, it will be necessary for REACH to raise rents on those units to maintain the Residential Component's cash flow.

The Parties acknowledge that the Project will become a part of the South Waterfront Community Association and shall be operated in accordance therewith, with the goal also of assuring the provision of resident services commensurate to the needs of the tenants of the Residential Component and as specified as part of determining the Financial Feasibility of the Project. The Residential Component owner and manager shall work with area stakeholders to: (a) maintain the livability and safety of the

businesses, property owners, property managers, residents and visitors in the area; (b) minimize and seek to eliminate nuisance, criminal, and unwanted activities in and around the area; and (c) develop and maintain clear communication channels between all stakeholders.

- 3.3 Project Financing.** REACH shall be responsible for obtaining legally binding commitments for any combination of taxable and tax-exempt bonds, bond credit enhancement (loan guarantees), a property tax exemption, other loans and/or grants and investor equity as defined in Exhibit E (collectively, "Project Financing") (to be updated as determined by the Parties).
- 3.4 Project Management.** REACH agrees to designate a Project Manager to provide biweekly schedule updates regarding the progress of the Project. REACH, with assistance of CITY as appropriate, agrees to generate a clear delineation of roles of the various development team members. Development team members shall include a Housing Development Director, Project Manager, Architect, Construction Manager, General Contractor, Legal Counsel, and Property Manager.

3.5 Design of the Project.

3.5.1 General Cooperation. CITY and REACH will work closely throughout the final design and programming processes to achieve a Project that is high quality, functional, financially feasible and supported by market conditions applicable to each component. CITY and REACH will jointly address issues and concerns to achieve the most successful project.

3.5.2 Design Plans and Drawings. REACH shall work with the development team to refine and develop Final Construction Documents and Specifications for the Project. All plans and specifications identified in this Section 4.5 are referred to herein as the "Drawings." Drawings and renderings shall include adjacent improvements to fully show the Project's relationship to its context.

Design Standards. CITY will not unreasonably withhold, condition or delay its approval of any Drawings which meet the following standards.

- (a)
- (b) **Final Construction Documents and Specifications.** The Final Construction Documents and Specifications shall be submitted to the Project Manager by REACH 30 days prior to the Closing Date.
- (c) **OHCS Standards.** All Drawings must meet the standards and approval of the Oregon Housing and Community Services Department.
- (d) **South Waterfront Community Association.** All Drawings must meet the standards and approval of the South Waterfront Community Association.

- (e) **City of Portland Design Commission.** All Drawings must conform to approvals and requirements of the City of Portland Design Commission.

3.5.3 Green Building Program Guidelines. The CITY and REACH agree that the Project shall be designed, constructed and commissioned to achieve U.S. Green Building Council ("USGBC") Leadership in Energy and Environmental Design ("LEED") Silver certification, subject to Financial Feasibility of the same.

3.5.4 Changes in Approved Drawings. If REACH wants to substantially change any drawings or plans after approval by CITY, REACH shall submit the proposed changes to the CITY's Project Manager. The CITY Project Manager may approve the changes. A substantial change shall mean any change that would have a material impact on the function, appearance or cost (increase or reduction) of the Project. REACH acknowledges that it may be required to secure separate Bureau of Development Services approval of such changes. If the CITY Project Manager approves the changes, CITY will support REACH through any Design Review and conditional use process of the appropriate bureaus or agencies within the City, but CITY does not represent or warrant that its support will guarantee approval.

3.5.5 Project Name. The Parties agree that the Project name will be agreed upon by Parties prior to 50% construction completion.

3.5.6 CITY Design Review.

- (a) **CITY Design Advisor(s).** CITY, at its sole discretion, may designate a design/development advisor(s) to assist in the review of the Project. The role of the advisor is to review the design, development, and construction of the Project for the benefit of the CITY as lender and to be paid from the project budget. Cost of the advisor to be agreed upon by Parties.
- (b) **CITY Staff Review of Design.** CITY and REACH acknowledge that the Schedule of Performance for the Project requires expeditious review and response from CITY and responsiveness and cooperation from REACH and its design team. Accordingly, CITY staff shall have fifteen (15) business days to respond to review items submitted by REACH and its design team. The Parties agree that efficient communication between all concerned is necessary to resolve design issues in a timely manner. CITY staff shall be invited to attend regularly scheduled design meetings for the Project on a schedule mutually agreeable to CITY staff and REACH. REACH and its design team shall meet with the CITY Project Manager at least once every

two weeks to review progress on the resolution of design and related issues.

3.6 Diligent Completion.

3.6.1 Subject to the terms and conditions of this Agreement, REACH covenants to complete the development of the Project in substantial conformance with the Final Construction Plans and Specifications and to comply with the Schedule of Performance, subject to force majeure as provided in Section 9.9. REACH agrees to keep CITY informed of its progress with respect to development of the Project during construction, with periodic reports to be issued no less frequently than once a month until CITY issues a Certificate of Completion for the Project.

3.6.2 Project development shall include:

- (a) Entering into all necessary architectural and construction contracts;
- (b) Securing all necessary public entitlements, if any are outstanding as of Effective Date, and building permits;
- (c) Securing all financing necessary to complete the Project, consistent with the Project Budget.

3.7 Inspection and Property Access by CITY. After the Closing Date, during construction of the Project, and until a Certificate of Completion is issued, the Property shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of CITY. CITY agrees not to interfere with the work occurring on the Property.

3.8 Certificate of Completion.

3.8.1 When REACH is Entitled to Certificate of Completion. Upon substantial completion (as defined below) of the Project, CITY will furnish REACH with a Certificate of Completion for the Project, substantially in the form attached hereto as Exhibit F. The Project will be deemed to be substantially complete when (i) the Project is completed according to the Final Construction Plans and Specifications, except for punchlist items which do not materially affect the use of the Project for the purposes intended under this Agreement, (ii) the City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project, and (iii) any other improvements required by the terms of this Agreement to have been completed at the time the Project is complete are complete in all material respects.

3.8.2 Meaning and Effect of the Certificate of Completion. The Certificate of Completion shall provide for termination of obligations under this Agreement and limitation of remedies of CITY as expressly provided for therein.

3.8.3 Form of Certificate of Completion; Procedure Where CITY Refuses to Issue. A Certificate of Completion shall be in a form that can be recorded in the real property records of Multnomah County. The Certificate of Completion for the Project shall state that the construction obligations are complete. If CITY refuses or fails to provide a Certificate of Completion in accordance with this Section, then CITY, within fifteen (15) business days after written request by REACH for such Certificate of Completion, shall provide REACH with a written statement indicating in detail in what respects REACH has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts REACH must take or perform to obtain such Certificate of Completion. Upon receipt of such detailed statement from CITY, REACH shall either (a) complete the improvements and/or cure the alleged default in a manner responsive to the stated reasons for disapproval or (b) submit to arbitration, pursuant to Section 9.10, the issue of whether CITY has unreasonably refused to issue the requested Certificate of Completion. CITY's failure to furnish REACH with such detailed written statement within such fifteen (15) day period shall be deemed CITY's approval of REACH's request for the Certificate of Completion.

4. ENVIRONMENTAL MATTERS

4.1 Indemnification. Subject to complete performance by CITY of its obligations pursuant to Sections 2.5 and 3.2 above, REACH shall be responsible for compliance with all Environmental Laws with respect to its business and the operation of the Project from and after the Closing Date. REACH shall defend, indemnify and hold harmless CITY, its successors and assigns, against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by CITY, its successors or assigns, or asserted against CITY, its successors or assigns, by any other party or parties, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by REACH. The indemnities set forth in this Section 5.1 shall survive the issuance of the Certificate of Completion.

4.2 Contribution. The foregoing indemnity does not limit any rights of contribution that the Parties may have against others under applicable law or agreement. The indemnity is intended only as an allocation of responsibility between the Parties to this Agreement.

5. ASSIGNMENT

5.1 No Assignment. Because it is a municipal entity, CITY is uniquely benefited by completion of the Project. REACH is uniquely qualified to construct and manage the Project. Except as provided in Section 5.2 and Section 6.3, REACH shall not partially or wholly dispose of or agree to dispose of REACH's interest in this Agreement without the prior written approval of the CITY. CITY may require as conditions to such approval that:

5.1.1 The transfer is not in violation of other provisions of this Agreement; and

5.1.2 Any proposed transferee shall have qualifications and financial responsibility equal to or superior to REACH; and

5.1.3 The transfer will not cause a material delay in the completion of the Project.

5.2 Approved Pre-Completion Transfers. Notwithstanding Section 5.1 above, and provided that REACH provides CITY with copies of all agreements related to the transfer at least five (5) days prior to the effective date of the proposed transfer, and any other information reasonably necessary for CITY to determine whether such transfer complies with the requirements of this Agreement, CITY hereby consents to:

5.2.1 Any Mortgage(s) which REACH may cause to attach to the Property provided that CITY has approved the terms of the Mortgage;

5.2.2 Any transfer of all or a part of the Project or other rights in the Project to any Affiliate of REACH; provided that no provisions of the transfer are in violation of the terms of this Agreement; and

5.2.3 Transfer to a limited partnership or limited liability company ("Project Assignee"). In the event of such transfer, REACH shall remain fully responsible to the CITY for the performance of this Agreement through CITY's issuance of the final Certificate of Completion.

5.3 Transfers After Completion. After CITY's issuance of a Certificate of Completion for the Project, REACH, and any permitted transferee under Section 5.2 may transfer their interests, or portions of their interests in the Project or this Agreement, without restriction, consent or approval by the CITY.

6. FINANCIAL PARTICIPATION AND ASSISTANCE BY CITY

At the time of the execution of this Agreement, although CITY has funded the Predevelopment Loan, the financial, construction cost and market feasibility of the Project is of a sufficiently preliminary nature that the amount, terms and conditions for private funding and total CITY financial assistance cannot be determined with specificity. It is, however, understood by

REACH and CITY that the Project will be financially structured such that: (a) the Residential Component of the Project will be financed with non-competitive, 4% LIHTCs and tax-exempt debt and (b) subject to CITY underwriting, loan review committee approval and/or approval by CITY's Board of Commissioners, CITY will provide the following financing for the Project ("CITY Project Financing"):

1. The Predevelopment Loan, which has been funded will be assigned to REACH by WDD, assumed by REACH, and will have terms and conditions addressed in the City's loan documents for the Project; and
2. A construction gap loan and a permanent gap loan, which, in conjunction with other financing, will be sufficient to fund the total development costs of the Project and which, in conjunction with other financing, will be sufficient to fund the total permanent financing costs of the Project.

As a result of the foregoing, CITY's Project Financing during the construction period will be the amount that, when added to other available sources of funding, is necessary to acquire the Property and pay all costs to develop and construct the Project.

As a condition precedent to the Closing of the sale of the Property by CITY to REACH, the parties shall agree upon a funding package for the Residential Component of the Project that meets the Affordable Housing Objectives. REACH and CITY further acknowledge that some portion of the set-aside of 20% of the total units for residents earning less than thirty percent (30%) of MFI in the Project may be considered for Permanent Supportive Housing or Veterans Housing (for a period not exceeding the 60-year restricted use period) and will be contingent on, among other things, (i) REACH receiving for the 30% MFI units a project-based rent subsidy contract that is sufficient to pay the difference between the rent affordable to the residents (assuming each resident pays no more than 30% of income for rent) and the pro forma rent for the unit (ii) an agreement with a service provider, acceptable to REACH and approved by CITY, as to the precise array of comprehensive services that will be provided to the Permanent Supportive Housing or Veterans Housing tenants, and how such services will be rendered and funded. If Permanent Supportive Housing or Veterans Housing is included in the Project, it will be extended only as long as (x) the services and rent subsidy contract continue to be available, (y) the program is not disruptive of the operations or financial stability of the remainder of the Project or to the occupancy and quiet enjoyment of the premises by other tenants or residents in the Project Area, and (z) the program and clients comply with the rules, regulations and requirements of the South Waterfront Community Association including maintaining the livability and safety of the businesses, property owners, property managers, residents and visitors in the area.

7. PERMITTED MORTGAGES

7.1 Mortgagee and Investment Limited Partner Protection Provisions.

- 7.1.1 Effect of Revesting on Mortgages.** Any reversion and revesting of the Property or any portion thereof in CITY pursuant to this Agreement shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way any lien, Mortgage, or security interest approved by CITY and authorized by this Agreement.
- 7.1.2 Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of the Agreement, except those which are covenants running with the Property, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements in the Property or to guarantee such construction or completion, provided, however that nothing in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the Property or any part thereof to any uses, or to construct any improvements thereon other than those uses or improvements provided or permitted in the UR Plan.
- 7.1.3 Copy of Notice of Default to Mortgagee.** If CITY delivers any notice or demand to REACH with respect to any breach of or default by REACH in its obligations or covenants under this Agreement, CITY shall at the same time send a copy of such notice or demand to each Mortgagee approved by CITY at the last address of such holder shown in the records of CITY.
- 7.1.4 Mortgagee's Options to Cure Defaults.** After any default in or breach of this Agreement by REACH where REACH fails to cure or remedy said default or breach, then each Mortgagee may, at its option, cure or remedy such breach or default within thirty (30) days after passage of the latest date for REACH's cure of the default, and if permitted by its loan documents, to add the cost thereof to the Mortgage debt and the lien of its Mortgage. If the breach or default is with respect to construction of the improvements, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements, provided that the Mortgagee notifies CITY in writing of its intention to complete the Project according to the approved Final Construction Plans and Specifications. Any Mortgagee who properly completes the Project shall be entitled to issuance of a Certificate of Completion, upon written request made to CITY following the procedures set forth in Section 4.8 above.
- 7.1.5 Amendments Requested by Mortgagee or Investment Limited Partner.** CITY shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to REACH secured by a security interest in all or any part of the Property and/or the Project, or by a tax credit investment limited partner or member investing capital in the limited partnership or limited liability company formed by

REACH for purposes of developing the Project, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of CITY or its interest in the Property.

8. DEFAULT; REMEDIES

8.1 Default and Cure.

8.1.1 Default by REACH. A default shall occur if, after all conditions precedent to Closing have been met or waived, REACH breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after REACH receives written notice from CITY specifying the breach. Failure of conditions precedent shall not constitute a default but any such failure shall be subject to Section 8.2. In the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, a default shall occur if REACH does not commence the cure of the breach within sixty (60) days after REACH receives written notice from CITY and thereafter diligently prosecute to completion such cure. A default also shall occur if REACH makes any assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it which is not removed within one hundred eighty (180) days after appointment. A default shall occur, and CITY shall be irreparably harmed by such default, if REACH or its assignee constructs or operates any portion of the Project in a manner materially inconsistent with CITY-approved Development Program and Construction Plans and Specifications. REACH shall not be in default hereunder for failure to pay any tax, assessment, lien or other charge if REACH in good faith is contesting the same and, if necessary to avoid foreclosure, has furnished an appropriate bond or other undertaking to assure payment in the event REACH's contest is unsuccessful.

8.1.2 Default by CITY. A default shall occur if CITY breaches any material provision of this Agreement including, without limitation, CITY's failure to adhere to the Schedule of Performance for any element of the Schedule of Performance which is in the control of CITY, whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after CITY receives written notice from REACH specifying the breach or, in the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, if CITY shall not within such sixty (60) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure.

8.2 CITY's Pre-Conveyance Remedies. If REACH defaults in any material term of this Agreement before any of the Property is conveyed to REACH, CITY may, as its sole and exclusive pre-conveyance remedy, terminate this Agreement by written notice to REACH. If CITY terminates this Agreement as provided in this Section 9.2, then

REACH shall deliver to CITY within thirty (30) days after such termination, copies of all Property market research, design documents, engineering documents, proformas and financial projections prepared for REACH by unrelated third parties and paid for by the City pre-development loan, and which REACH is authorized to release. To the extent that design and construction contracts have been funded by the City through its pre-development loan, such contracts may be used by CITY in any manner that CITY deems appropriate with the consent of any party having approval rights thereunder.

- 8.3 Restoration.** If, prior to acquiring the Property, REACH performs any construction activities on the Property and REACH fails to acquire the Property, REACH agrees to restore the Property to substantially the condition that existed prior to the time that REACH performed any activities thereon.

(a)

- 8.4 REACH's Pre-Conveyance Remedies.** If CITY fails to perform any obligation under this Agreement, REACH may, at its option: (i) terminate this Agreement by written notice to CITY, without waiving any cause of action REACH may have against CITY, including seeking monetary damages against CITY; or (ii) specifically enforce the obligations of CITY under this Agreement.

- 8.5 REACH's Post-Conveyance Remedies.** In the event of CITY's material default after CITY conveys the Property to REACH, REACH may specifically enforce the obligations of CITY under this Agreement, or seek monetary damages against CITY.

- 8.6 Nonexclusive Remedies.** The rights and remedies provided by this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to any and all rights otherwise available at law or in equity. The exercise by either Party of one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default by the other Party, including, without limitation, the right to compel specific performance. Any limitation of remedies set forth herein should not limit or affect the obligations of a Party under any contractual indemnities set forth herein.

8.7 Force Majeure

- 8.7.1** Neither a Party nor Party's successor in interest shall be considered in breach of or in default with respect to any obligation created hereunder or progress in respect thereto if the delay in performance of such obligations (the "Unavoidable Delay") is due to causes that are unforeseeable, beyond its control, and without its fault or negligence, including but not limited to acts of God, acts of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or general

sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, delay in the issuance of necessary permits for the Project, malicious mischief, condemnation action delays of litigation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar events and/or occurrences beyond the control of such Party.

- 8.7.2 It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of CITY or REACH, as the case may be, shall be extended for the period of the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section shall, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and the estimated time of correction.

8.8 Arbitration.

- 8.8.1 Except for those disputes listed in this Section, all disputes arising pursuant to this Agreement or any additional documents contemplated by this Agreement shall be settled by binding arbitration in the City of Portland, Oregon, in accordance with the then current commercial arbitration rules of the Arbitration Service of Portland, or its successor, by one (1) neutral arbitrator appointed in the manner provided for in said rules. The arbitrator shall have experience in the development and operation of mixed-use projects. The arbitrator shall not have the power to amend this Agreement or to substitute his/her judgment for the judgment of a Party, but may determine whether a Party is acting reasonably if a Party is bound to act reasonably by this Agreement. The arbitrator shall be directed to complete the arbitration within thirty (30) days after the request for arbitration.

- 8.8.2 The Parties agree that the following matters will not be settled by arbitration, but rather by court action, unless the Parties agree in writing to arbitration when the dispute arises:

- (a) CITY's means and methods of Environmental Abatement, if any, prior to Closing.

9. MISCELLANEOUS PROVISIONS

- 9.1 **CITY Project Manager.** For the purposes of making determinations on or revising, where permitted, provisions of this Agreement on behalf of CITY, the CITY shall

designate a Project Manager. Upon the initial execution of this Agreement, the CITY's Project Manager shall be John Warner.

- 9.2 Discrimination.** REACH, for itself and its successor and assigns, agrees that during the construction of the Property REACH will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.

9.3 Notice.

- 9.3.1** Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail; postage prepaid, return receipt requested, or (b) when received if personally delivered, and:

- 9.3.2** In the case of a notice or communication to REACH, addressed as follows:

Michelle Haynes
REACH Community Development, Inc.
1135 SE Salmon Street
Portland, OR 97214

with copies to:
Mike Decina
Kantor Taylor Nelson Boyd & Evatt PC
1501 Fourth Avenue, Suite 1610
Seattle, WA 98101-3613

- 9.3.3** In the case of a notice or communication to CITY, addressed as follows:

John Warner, Project Manager
Portland Housing Bureau
421 SW Sixth, #500
Portland, OR 97204

with a copy to:

or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing dispatched as provided in this Section. Notice given in any other manner shall be effective upon receipt by the Party for whom the same is intended.

9.4 Participation in Contracting Requirements specific to the South Waterfront:

9.4.1 Contracting Requirements. The Project is subject to the Special Contracting Requirements set forth in Section 9.11 of the DA, including that certain Project Apprenticeship Agreement dated December 13, 2005 entered into by certain DA Parties to satisfy the obligations of Section 9.11.5 of the DA. Schedule 10.4.1 attached hereto is a list of such Special Contracting Requirements that the Parties have agreed will apply to the Project.

9.4.2 Equal Employment Opportunity. REACH must comply with all applicable provisions of Federal or state statutes and regulations and City ordinances concerning equal employment opportunities for persons engaged in the Project.

9.5 Merger. None of the provisions of this Agreement are intended to or shall be merged by reason of any Deed transferring title to the Property from CITY to REACH or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

9.6 Headings. Titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.7 Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by CITY or REACH of any provision of this Agreement or any breach thereof, shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

9.8 Attorneys' Fees. If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings

in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

- 9.9 Choice of Law.** This Agreement shall be governed by Oregon law.
- 9.10 Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.
- 9.11 Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.
- 9.12 Legal Purpose.** REACH agrees that it shall use the Property solely for lawful purposes.
- 9.13 Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- 9.14 Entire Agreement.** This Agreement and the attachments hereto are the entire agreement between the Parties. The recitals are incorporated into the agreement of the Parties as if a part thereof. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations made by either Party, implied or express, other than those contained in this Agreement.
- 9.15 Amendments and Modifications.** Any modifications to this Agreement shall be made in writing and executed by the Parties, and approved by the CITY. Notwithstanding this general requirement, the CITY may approve minor modifications to this Agreement without City Council approval through approval by the Director of the Portland Housing Bureau. "Minor modifications" include:
- 9.15.1** Modifications to the Scope of Development that do not increase or decrease the proposed amount of square footage for any one Component or number of units in a Component by more than ten percent (10%);
- 9.15.2** Changes in the Schedule of Performance which do not exceed one hundred twenty (120) days; and
- 9.15.3** Corrections of errors, clarifications, or minor modifications that do not change the substantive content of the Agreement.

- 9.16 **Successors and Assigns.** Subject to the provisions of Section 6, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.
- 9.17 **Place of Enforcement.** Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Multnomah County, or the United States District Court for the District of Oregon in Portland, Oregon.
- 9.18 **No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties.
- 9.19 **Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, CITY is specifically not obligating itself, the City, or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Property, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.
- 9.20 **Approvals.** Where approvals of CITY are required, CITY will approve or disapprove within ten (10) business days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary. Failure by CITY to approve or disapprove within said period of time shall be deemed an approval. Any disapproval shall state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to CITY's sole discretion in this Agreement. REACH, upon receipt of such disapproval, shall revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to CITY within forty-five (45) days after receipt of the notice of disapproval or, unless such disapproval is within the sole discretion of CITY, submit the matter to arbitration pursuant to Section 9.10.
- 9.21 **Execution of Other Agreements.** The CITY may execute such agreements, easements, and leases as may be necessary to carry out the development of the Project.
- 9.22 **Recording of Memorandum of Agreement.** CITY shall provide for recording a Memorandum of this Agreement within ten (10) days of the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit I to this Agreement. When CITY issues to REACH a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record an Amended Memorandum

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of Agreement to reflect the surviving covenants of this Agreement. The form of Amended Memorandum of Agreement is attached as Exhibit J to this Agreement.



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective
Date.

CITY:

By: _____

APPROVED AS TO FORM:

Legal Counsel

REACH:

**REACH Community Development, INC.
an Oregon non-profit corporation**

By: _____

By: _____

EXHIBITS AND SCHEDULES

| | |
|------------------------|----------------------------------|
| Exhibit A | Property Description |
| Exhibit B | Glossary of Defined Terms |
| Exhibit C | Form of Deed |
| Exhibit D | Parking Encumbrance |
| Exhibit E | Project Financing |
| Exhibit F | Certificate of Completion |
| Exhibit G | Escrow Instructions |
| Exhibit H | Green Building Standards |
| Exhibit I | Memorandum of DDA |
| Exhibit J | Amended Memorandum of DDA |
| Exhibit K | Project Budget |
| Exhibit L | Schedule of Performance |
| Exhibit M | Scope of Development |
| Schedule 2.4.3 | Due Diligence Materials |
| Schedule 10.4.1 | Special Contracting Requirements |

{PLEASE PROVIDE ALL EXHIBITS AND SCHEDULES FOR REVIEW}

Exhibit A

Property Description

(See attached)

Exhibit B**Glossary of Defined Terms**

1. **"Affiliate"** means when used with reference to a specific person: (a) the principal(s) (officers, directors, managers, shareholders, members or persons serving in a similar capacity) of the person; (b) any person directly or indirectly controlling, controlled by or under common control with such person; and (c) any person (or combination of persons) owning or controlling ten percent (10%) or more of the outstanding voting interests of such person. For this purpose, "control" will exist where any person or entity, directly or indirectly, has the power to direct the management of a specified entity or person, whether by contract or otherwise.
2. **"Agreement"** shall have the meaning set forth on page 1.
3. **"Business Day"** means any day other than a Saturday, Sunday or legal holiday on which banks in Portland, Oregon are closed.
4. **"Certificate of Completion"** means a certificate to be issued by PHB to REACH pursuant to Section 4.8 of this Agreement.
5. **"City"** means the City of Portland, Oregon and its constituent bureaus and agencies, except PDC.
6. **"Deed"** means the form of Statutory Warranty Deed conveying fee simple title to the Property attached to this Agreement as Exhibit C.
7. **"Effective Date"** shall have the meaning set forth on Page 1.
8. **"Environmental Abatement"** means the lawful disposition of all Hazardous Substances present on the Property (including asbestos, lead paint, and PCBs, if any) as of the Effective Date.
9. **"Environmental Laws"** means all federal, state and local laws, ordinances, rules and regulations pertaining to the protection or regulation of the environment that apply to the Property, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Federal Water Pollution Control Act, U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1471 *et seq.*; Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; Refuse Act, 33 U.S.C. §§ 407 *et seq.*; Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001 *et seq.*; Occupational Safety and Health Act, 29 U.S.C. §§ 65 *et seq.*, to the extent it includes the emission of any Hazardous Material and includes any Hazardous Material for which hazard communication standards have been established; Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. §§ 136 *et seq.*; Federal Safe Drinking Water Act, 42 U.S.C. §§ 300(f) *et seq.*; or any similar or analogous state or local statute or ordinance, or any regulation, order, rule, or requirement adopted thereunder, as well as any formaldehyde, urea, polychlorinated biphenyls, petroleum, petroleum product or by-product, crude oil, natural

gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 *et seq.*

10. **"Environmental Reports"** means: (a); _____ and (b)_____.
11. **"Escrow Agent"** means Chicago Title Insurance Company.
12. **"Final Construction Plans and Specifications"** means the documents that set forth in detail the requirements for the construction of the Project and shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project, approved by PHB and the appropriate City agencies.
13. **"Hazardous Substances"** means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substances as defined in or regulated by the Environmental Laws.
14. **"MFI"** means median family income as annually defined by the United States Department of Housing and Urban Development for the Portland, Oregon metropolitan area
15. **"Mortgage"** means a mortgage or deed of trust against the Property, or any portion thereof, recorded in the real property records of Multnomah County, Oregon.
16. **"Mortgagee"** means the holder of any Mortgage affecting or encumbering the Property or any portion thereof, together with any successor or assignee of such holder. The term "Mortgagee" shall include any Mortgagee as owner of the property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a mortgage but shall not include (a) any other party who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee.
17. **"Notice"** means any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by the Oregon Department of Environmental Quality ("DEQ"), the United States Environmental Protection Agency, PDC, and other federal, state or local authority or any other government having jurisdiction with respect to the Property.
18. **"Permanent Supportive Housing"** means housing units intended for persons or families experiencing long term homelessness and may include a flexible array of comprehensive services including eviction prevention, case management, and treatment, where the use of such services is not a condition of ongoing tenancy.
19. **"PHB's knowledge"** shall mean the actual knowledge of the managerial and supervisory personnel of PHB having responsibility for the supervision of the Property, without any duty of inquiry or investigation.
20. **"Predevelopment Loan"** means that certain Predevelopment Loan Agreement by and between PDC and NMI dated February __, 2007 and the ancillary documents thereto as assigned by PDC and assumed by PHB under the Interagency IGA dated _____.

21. **"Project"** means the development project to be constructed on the Property as described in Section 4.1
 22. **"Project Budget"** means the chart of sources and uses of funds for the Project and detailed listing of project costs, a preliminary version of which is attached hereto as Exhibit K, **"Property"** shall have the meaning set forth in the Recitals to this Agreement.
 23. **"Purchase Price"** means the purchase price for the Property determined as provided in Section 2.2.
 24. **"Release"** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
- "Schedule of Performance"** means the document describing the schedule by which construction and development will be finished prepared by REACH, a preliminary version of which is attached hereto as Exhibit L,
25. **"Scope of Development"** means the detailed description of the improvements to be built comprising the Project, a preliminary version of which is attached hereto and incorporated herein as Exhibit M, and which will be updated consistent with determinations that the Project is Financially Feasible.
 26. **"Veterans Housing"** means housing targeting veterans and provided in conjunction with services provided by or in concert with programs of the Veterans Administration and supported by rent subsidy made available through the Housing Authority of Portland.