

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

IN THE OREGON CONVENTION CENTER URBAN RENEWAL AREA

THE PORTLAND HOUSING BUREAU

and

HOME FORWARD

dated

November [DATE], 2017

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

This AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY (this “Agreement”) is made and entered this XXth day of November, 2017 (the “Effective Date”), by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND HOUSING BUREAU (“PHB”), and HOME FORWARD, a public body corporate and politic of the State of Oregon (“Developer”, “Developer’s Principal”). PHB and Developer may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

- A.** PHB is charged with developing and implementing housing policies for the City of Portland (the “City”) that increase the availability of housing affordable to low- and moderate- income households. PHB carries out this mission using a number of tools, including the disposition of real property and the financing of construction;
- B.** PHB owns certain real property located at 1010-1034 NE Grand Avenue in Portland, Oregon, and as further described in Section 2.2 herein (the “Property”);
- C.** Portland Development Commission (“PDC”) acquired the Property in furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland for the development and redevelopment of blighted areas within the Urban Renewal Plan for the Oregon Convention Center Urban Renewal Area (the “URA”), which was approved by the Portland City Council (“Council”) on May 18, 1989, by Ordinance No.161925 (as amended from time to time, the “Urban Renewal Plan”);
- D.** PDC acquired the Property for an aggregate purchase price of \$1,424,730, and subsequently transferred the Property to PHB in 2010, and as of the Effective Date, PHB has an adjusted basis in the Property of \$1,424,730.
- E.** PHB, finding it necessary and in the public interest to implement its housing policies in the URA in accordance with the Urban Renewal Plan, released a Notice of Funding Availability (the “2015 NOFA”) on October 27, 2015, for the redevelopment of the Property for mixed income, mixed-use or both housing development pursuant to which PHB has selected Home Forward as the sole developer;
- F.** In furtherance of the NOFA, PHB is transferring fee simple title to the Property to Developer on the terms set forth in this Agreement.
- G.** Developer has formed Lloyd Housing Limited Partnership, an Oregon limited partnership (the “Partnership”) of which it is the general partner. After Developer acquires the Property from PHB, Developer will lease the Property pursuant to a long-term ground lease (the “Lease”) to the Partnership. A memorandum of lease (“Memorandum of Lease”) will be recorded against the Property.

- H. The Partnership shall participate in the development, ownership (for federal tax purposes) and operation the Project as defined below. The rights, duties and obligations of the Developer herein will be assigned to and assumed by the Partnership.
- I. Developer will construct a twelve-story, mixed-use building that will have two-hundred and forty (240) affordable dwelling units on floors two to twelve, and commercial space occupying a portion of the ground floor (collectively, the “Project”). The Project is more specifically described in the Scope of Development (set forth on Exhibit E hereto);
- J. Developer’s completion of the Project according to the terms of this Agreement, including without limitation including the Scope of Development and the Schedule of Performance, and Developer’s commitment to the Project’s continued use as including Affordable Rental Units pursuant to the terms of the Regulatory Agreement between the Parties executed contemporaneously with this Agreement are material inducements to PHB’s willingness to enter into this Agreement; and
- K. PHB finds that the fulfillment, generally, of this Agreement, and the intentions set forth herein, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and are in accordance with the public purposes and provisions of applicable state and federal laws and requirements under which the Urban Renewal Plan was adopted.

AGREEMENT

NOW, THEREFORE, for the consideration described in Recital G above and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINED TERMS

Words that are capitalized, and that are not proper names or the first word of a sentence, are defined terms. A defined term has the meaning given it when defined in this Agreement. Some defined terms are defined in the text of this Agreement and some are defined in Exhibit A, which is a glossary of defined terms not defined in the text of this Agreement. 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 definition of a defined term in the text of this Agreement and a definition of that term in Exhibit A, the definition in the text controls. Defined terms may be used in the singular or the plural.

2. GENERAL TERMS OF CONVEYANCE

2.1. Agreement for Disposition and Development. PHB agrees to sell and convey the Property to Developer, and Developer agrees to purchase from PHB, and develop the Project on the Property upon the terms and conditions set forth in this Agreement.

2.2. Description of the Property. The Property that is the subject of this Agreement consists of the following: The land located at 1010-1034 NE Grand Avenue in Portland, Oregon,

as more particularly described in Exhibit B attached hereto (the “Land”), together with (i) all rights, privileges and easements appurtenant to the Land owned by PHB, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the Land, as well as development rights, air rights, water rights related to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land; and (ii) all improvements and fixtures located on the Land, including, without limitation, all buildings and structures presently located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the improvements and fixtures (which Land, together with the elements described above in (i) and (ii), is collectively referred to herein as the “Property”).

2.3. Purchase Price. The purchase price for the Property is Zero Dollars (\$0) (the “Purchase Price”).

2.4. AS IS Sale. Developer has examined and investigated the Property to its own satisfaction and has formed its own opinion as to the condition (including the environmental condition) and value thereof. Developer has not relied on any statements or representations from PHB or any person acting on behalf of PHB concerning any of the following: (i) the size or area of the Property; (ii) the location of corners or boundaries of the Property; (iii) the condition of the Property, including, but not limited to, physical or geotechnical properties above or below the surface of the Property or the Environmental Condition adjacent, above or below the surface of the Property (including without limitation releases or threatened releases of hazardous or regulated substances) or compliance with Environmental Laws and other governmental requirements; (iv) the availability of services to the Property; or (v) the ability of Developer to use the Property or any portion thereof for any intended purpose, including the Project. Developer is acquiring the Property in the condition existing at the time of Closing, AS IS, with all defects, if any. Developer waives, releases and forever discharges PHB and PHB’s successors and assigns, of and from all claims, actions, causes of action, fines, penalties, damages (including consequential, incidental and special damages), costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property. The provisions of this section will be included in the Deed, and will survive the Closing and are binding on the Developer and Developer’s successors and assigns.

2.5. Access, Inspection, Due Diligence and Title Matters

2.5.1. Access and Inspection. Before the Conveyance of the Property to Developer, and pursuant to a written permit of entry, PHB will allow Developer and Developer’s employees, agents and consultants to enter upon the Property, at all reasonable times whenever and to the extent necessary to carry out the purposes of this Agreement.

2.5.2. Due Diligence Materials. Developer acknowledges that PHB has provided Developer a Preliminary Title Report or Reports covering the Property, and exception documents referenced in the Preliminary Title Report or Reports

(collectively, the “Title Report”). PHB has previously provided Developer copies of all documents with respect to the Property that PHB has in its possession, including the Environmental Reports.

2.5.3. Due Diligence and Title Review. Developer has had the opportunity to review the Title Report and Environmental Reports and determined that Developer is satisfied with all aspects of the Property, including, without limitation, the Environmental Reports, a survey of the Property, the Title Report, and any other documents or information Developer required in order to evaluate the feasibility of the Project and its decision to accept a Conveyance of the Property. Encumbrances existing as of the Effective Date are considered “Final Permitted Exceptions.”

2.5.4. Title Insurance. Developer will pay all costs associated with issuance of a standard (or at Developer’s election, extended) coverage Owner’s Policy of Title Insurance, to be issued by Escrow Agent, covering the Property when conveyed, and insuring, free and clear of encumbrances, except Final Permitted Exceptions. PHB agrees to execute any affidavits or other documents reasonably required by the Escrow Agent to enable Developer to obtain such coverage.

3. REPRESENTATIONS AND WARRANTIES

3.1. PHB Representations and Warranties. PHB’s representations and warranties under this Agreement are limited to the following. PHB hereby warrants and represents to Developer as of the Effective Date and as of the Closing Date the following:

3.1.1. PHB has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite governmental or administrative action has been taken by PHB in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any judicial or administrative body, governmental authority, or other party is required.

3.1.2. This Agreement and all documents required to be executed by PHB are and shall be valid, legally binding obligations of and enforceable against PHB in accordance with their terms, except enforcement may be limited by bankruptcy, insolvency, other laws affecting the enforcement of creditor’s rights generally, the application of equitable principals or public policy.

3.1.3. Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which PHB is a party.

3.1.4. No representation, warranty or statement of PHB 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 representation, warranty or statement not misleading.

3.1.5. As of the Effective Date, PHB is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of PHB under this Agreement.

3.1.6. The persons executing this Agreement and the instruments referred to herein on behalf of PHB have the legal power, right and actual authority to bind PHB to the terms and conditions of this Agreement.

3.1.7. PHB is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

3.1.8. To PHB's Knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, or PHB's ability to perform its obligations under this Agreement.

3.1.9. To PHB's Knowledge, and except as otherwise disclosed in writing to Developer before the Effective Date, the Property has been operated in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements (collectively, “Laws”).

3.1.10. To PHB’s Knowledge, PHB has not received any notice stating that the Property is in violation of any applicable laws, rules, regulations, ordinances or other governmental requirements.

3.1.11. To PHB’s knowledge, as of the Closing Date, title to the shall be clear of all liens and encumbrances other than the Final Permitted Exceptions.

3.2. Developer Representations and Warranties. Developer’s representations and warranties under this Agreement are limited to the following. Developer hereby warrants and represents to PHB as of the Effective Date and as of the Closing Date the following:

3.2.1. Developer is a public body corporate and politic organized and existing under the laws of the State of Oregon.

3.2.2. Developer has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Developer in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.

3.2.3. This Agreement and all documents required to be executed by Developer are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms, except enforcement may be limited by bankruptcy,

insolvency, other laws affecting the enforcement of creditor's rights generally, the application of equitable principals or public policy.

- 3.2.4. Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Developer is a party.
- 3.2.5. No representation, warranty or statement of Developer 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 representation, warranty or statement not misleading.
- 3.2.6. Developer enters into this Agreement without reliance on verbal representations by PHB, its employees, agents or consultants, regarding any aspect of the Property, the Project, its feasibility, financing, or compliance with any governmental regulation.
- 3.2.7. As of the Effective Date, Developer is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of Developer under this Agreement.
- 3.2.8. The persons executing this Agreement and the instruments referred to herein on behalf of Developer have the legal power, right and actual authority to bind Developer to the terms and conditions of this Agreement.

4. CONDITIONS PRECEDENT TO CLOSING

4.1. Conditions. Developer and PHB are not obligated to proceed with the Conveyance of the Property unless the following conditions are satisfied prior to Closing. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied.

4.1.1. To the reasonable satisfaction of both PHB and Developer, which conditions must be waived in writing by both PHB and Developer if not satisfied:

- (i) The Drawings have been approved by all required governmental entities and/or agencies, including PHB pursuant to Section 7.2.
- (ii) All land use approvals and permits for the Project required by Title 33 of the Code of the City of Portland shall have been secured 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 was filed, it shall have been finally resolved.
- (iii) Confirmation that the City of Portland Bureau of Development Services shall have issued or is ready to issue the building permits

that are required to construct the Project, subject only to Developer's or its affiliate's ownership of the Property and payment of applicable permit fees.

- (iv) All financing necessary to construct the Project will close following recording of the Memorandum of Lease) and/or Developer has obtained non-contingent commitments for such financing.
- (v) The Parties have agreed to the final form of the Loan Documents and any other documents necessary to close the Conveyance of the Property to Developer and to finance the Project.
- (vi) No litigation is pending that prevents PHB or Developer from performing their respective obligations under this Agreement.

4.1.2. To Developer's reasonable satisfaction, which conditions may be waived in writing solely by Developer if not satisfied:

- (i) PHB is not in default under this Agreement and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of PHB under this Agreement.
- (ii) No material adverse change in the physical or legal condition of the Property has occurred.
- (iii) The Title Company shall be prepared to issue to Developer at Developer's sole cost and expense, the form of Title Insurance selected by Developer under Section 2.5.

4.1.3. To PHB's reasonable satisfaction, which conditions may be waived in writing solely by PHB if not satisfied:

- (i) Developer has provided to PHB documentation that:
 - (a) Developer is a public body corporate and politic of the State of Oregon;
 - (b) Developer has full power and authority to enter into and perform its obligations under this Agreement; and
 - (c) This Agreement has been executed and delivered, for and on behalf of Developer, by an authorized individual.
- (ii) Title Company shall have made a binding commitment, to issue a lender's extended title insurance policy satisfactory PHB, covering the Property in an amount equal to \$5,600,000.
- (iii) PHB has approved the Project Budget and Developer has demonstrated financial feasibility for the Project, consistent with the Project Budget, by providing to PHB:

(a) Evidence of the General Contractor's guaranteed maximum

price (GMP); and

- (b) The Project Budget and proforma, which shall describe all final sources of financing and all final construction and construction-related costs and a final projected 30-year cash flow statement, including projected operating expenses, operating income, debt payments and operating assumptions applicable thereto.
- (iv) Developer is not in default under this Agreement and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Developer under this Agreement.
- (v) Council has authorized PHB to provide financing to Developer for the Project in accordance with the Loan Documents.
- (vi) The Parties have entered into the Compliance Agreement concerning Oregon Prevailing Wage Law.
- (vii) Developer has provided evidence that the Project is able to provide the services contemplated in Developer's Proposal for the Project.

4.1.14 PHB acknowledge that it shall convey the Property to Home Forward and Home Forward and the Partnership shall enter into the Lease prior to the admission of the Limited Partner into the Partnership.

4.2. Elections upon Non-Satisfaction of Conditions. If any condition in this Section 4 is not fulfilled to the satisfaction of the benefited Party or Parties as of the Closing Date (or such later date, if any, designated pursuant to Section 4.2(c) below or determined in accordance with Section 4.3), then such benefited Party or Parties may elect as follows:

- (a) Terminate this Agreement by and effective upon written notice to the other Party; or
- (b) Waive in writing the benefit of that condition and proceed in accordance with the terms hereof; or
- (c) Designate in writing a later date for the Closing, to allow additional time for the condition to be satisfied, if the condition can be satisfied and the other Party agrees in writing to the later date.

4.3. Final Termination Date. If all of the conditions precedent to the Closing set forth in Section 4 have not been satisfied or waived by the later of (a) the Closing Date or (b) such later date, if any, designated pursuant to Section 4.2(c) or determined in accordance with Section 14.8.3, then this Agreement shall terminate sixty (60) days after written notice from the Party seeking termination unless the specified condition shall have been satisfied or waived and Closing shall have occurred within such 60-day period.

4.4. Effect of Termination for Non-Satisfaction of Conditions Precedent to Closing. If this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to

the Closing and neither Party is in default under this Agreement, then all rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Multnomah County. If a Party is in default under this Agreement on the date this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to Closing, then the rights and remedies accruing to the other Party under this Agreement as a result of such default shall survive termination of this Agreement.

5. CLOSING

5.1. Manner of Closing.

- 5.1.1.** The Closing of the purchase and sale of the Property will occur in an escrow to be administered by the Escrow Agent (“Escrow”).
- 5.1.2.** The Parties agree to provide the Escrow Agent with escrow instructions (the “Escrow Instructions”) consistent with the terms of this Agreement.
- 5.1.3.** On the Closing Date, the Escrow Agent shall deliver or cause to be delivered the sums and documents pursuant to the Escrow Instructions. In the event that the Escrow Agent cannot, or refuses to, handle this transaction, the Parties shall appoint an escrow company mutually satisfactory to the Parties, which is licensed in the state of Oregon.

5.2. Closing Date.

- 5.2.1.** Unless extended in accordance with Section 5.2.2, the Closing shall occur after satisfaction or waiver of the conditions set forth in Section 4.1, but in no event later than December 31, 2017 (the “Closing Date”).
- 5.2.2.** The Closing Date may not be extended without the consent of both Parties, unless extended pursuant to Section 14.1 or Section 14.8.3.

5.3. Conveyance by Deed. Subject to satisfaction of the Conditions Precedent to Closing set forth above, at the Closing PHB will convey the Property to Developer by a statutory Bargain and Sale Deed, substantially in the form attached hereto as Exhibit C (the “Deed”).

5.4. Documents to Be Deposited into Escrow by PHB. On or before the Closing Date, PHB shall deposit into Escrow all of the following:

- 5.4.1.** A duly executed and acknowledged Deed.
- 5.4.2.** An original certificate of non-foreign person duly executed by PHB and notarized.
- 5.4.3.** Such documents as the Escrow Agent may require that establish the authority of PHB to complete the sale of the Property as contemplated by this Agreement, and to issue title insurance in the form required by Developer.

5.4.4. Such documents as the Escrow Agent may require to complete the transfer of the Property as contemplated by this Agreement.

5.4.5. Duly executed Loan Documents.

5.5. Documents and Sums to Be Deposited into Escrow by Developer. On or before the Closing Date, Developer shall deposit into Escrow such funds (by wire transfer) as are necessary to pay Developer's portion of the Closing costs and prorations described in Section 5.6. Developer shall also deposit into Escrow the following:

5.5.1. Such documents as the Escrow Agent may require to complete the transfer of the Property as contemplated by this Agreement.

5.5.2. Duly executed Loan Documents.

5.6. Prorations and Costs.

5.6.1. Closing Costs. All closing costs and fees will be paid by Developer from loan proceeds, equity or such other funds as may be provided by Developer.

5.6.2. Prorations of Taxes. All property taxes attributable to the year in which the Closing occurs shall be prorated and adjusted as of the Closing Date as an adjustment at the Closing (regardless of whether such taxes and special assessments are then due and payable or delinquent). PHB agrees that any taxes, assessments and encumbrances that will be a lien against the Property at the Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied by PHB. If PHB shall fail to do so, Developer may pay any such tax, assessment, encumbrance or other charge and seek recovery directly from PHB. Regular real property taxes payable during the year in which the Closing occurs and any rents or income applicable to the Property shall be prorated as of the Closing Date. Developer shall pay any property taxes on the Property beginning on the day following the Closing.

5.6.3. Utilities. Developer is responsible for causing all meters for electricity, gas, water, sewer or other utility usage at the Property, if any to be read on the Closing Date, and PHB shall pay all charges for such utility charges that have accrued on or prior to the Closing Date. If the utility companies are unable or refuse to read the meters on the Closing Date, all charges for such utility charges to the extent unpaid shall be prorated and adjusted as of the Closing Date based on the most recent bills therefore.

5.6.4. Other Prorations and Costs. Except as otherwise provided herein, all other items to be prorated, including rents, operating expenses, revenues, and other income, if any, shall be prorated as of the Closing Date. For the purpose of calculating prorations, the Developer shall be deemed to be entitled to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date. PHB shall pay only the annual payments due through the Closing Date for the Property's pro rata share of any special assessments that have been paid in annual installments. Developer shall assume liability for payment of any annual payments due after the Closing Date for any special assessments that have been paid in annual installments. Developer and the PHB

shall each pay their own legal and professional fees of other consultants incurred by Developer and PHB, respectively.

6. INFRASTRUCTURE, UTILITIES AND LAND CONDITION

- 6.1. Infrastructure Improvements.** As part of the Project, Developer, at its own cost, will design, construct, fund and obtain permits for all Infrastructure.
- 6.2. Site Preparation.** As part of the Project, Developer will, at its own cost, complete all necessary site preparation generally in accordance with the Schedule of Performance.
- 6.3. Utility Service.** As part of the Project, Developer shall install, connect, and upgrade new and existing utilities necessary to serve the Project.
- 6.4. Subsurface and Surface Conditions.** Except as otherwise specifically set forth in this Agreement PHB makes no warranties or representations that the soil conditions, Environmental Conditions or any other conditions of the Property or structures thereon are suitable for any improvements, including the Project. Developer acknowledges that it has not relied upon any verbal representations made by the PHB as to the soil conditions, Environmental Conditions or any other conditions of the Property. Developer acknowledges that it has had free access to PHB's records with respect to the condition of the Property, specifically including the Environmental Reports.

7. DEVELOPMENT

7.1. Project Financing. Except as described in Section 7.1.1 below, Developer will be responsible for obtaining from third parties all funds and financing necessary to acquire the Property and construct and operate the Project. The Parties anticipate that the Project financing will be structured generally as shown in the Project Budget attached hereto as Exhibit D. The Parties acknowledge and agree that the Project Budget is only a projection and that a number of factors may change this projection, including interest rates, lender requirements, market shifts, and the soft and hard development costs.

7.1.1. PHB Financing. PHB will provide a portion of the construction and permanent financing for the Project in accordance with the Loan Documents.

7.2. PHB Review and Approval of Drawings.

7.2.1. Review and Approval. The Scope of Development is described in Exhibit E. Developer prepared Construction Documents and Technical Specifications for the Project (collectively, the "Drawings") and submitted them to PHB for review and approval.

7.2.2. Changes in Approved Drawings. Developer shall submit to PHB for review any Substantial Changes to any previously approved Drawings and PHB shall approve or disapprove such Substantial Change within ten (10) business days of receipt of such request. Failure by PHB to disapprove such Substantial Change within such time frame shall be deemed to be approval of such Substantial Change by PHB. A "Substantial Change" shall mean any change that would result in an increase or decrease in the aggregate contract price for construction of the Project in excess of

\$[_____] or when aggregated with other changes previously effected would result in an increase or decrease in the aggregate contract price for construction of the Project in excess of \$[_____] . Developer acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals shall be sought after PHB has approved the changes. PHB may assist Developer throughout any City design review process of the appropriate bureaus or agencies within the City, but PHB does not represent or warrant that its assistance will guarantee approval.

7.2.3. Project Rendering. Developer will provide PHB with at least one electronic and one hardcopy color rendering of the Project prior to Closing.

7.3. Diligent Completion. Subject to the terms and conditions of this Agreement (including any Unavoidable Delay as defined in Section 14.8), Developer covenants to complete the development of the Project in substantial conformance with the Drawings and in accordance with the Schedule of Performance attached hereto as Exhibit F (the “Schedule of Performance”). Subject to delays permitted in accordance with the terms of this Agreement, Developer shall complete development of the Project no later than the date for completion of construction set forth in the Schedule of Performance as may be amended; provided that the date for completion of construction shall be extended during the cure period provided to any Mortgagee or Limited Partner. Developer agrees to keep PHB 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 PHB issues the Certificate of Completion for the Project. Project development includes:

7.3.1. Entering into all necessary architectural and construction contracts;

7.3.2. Securing all necessary public entitlements and building permits;

7.3.3. Securing all financing necessary to complete the Project, consistent with the Project Budget.

7.4. Oregon Prevailing Wage Law. The Parties hereby acknowledge that the Project is a “public work” subject to ORS 279C.800 to 279C.870 and the administrative rules adopted thereunder (the “Oregon Prevailing Wage Law”). Accordingly, the Parties have entered into, and shall perform and discharge their obligations under that certain Compliance Agreement of even date herewith (the “Compliance Agreement”) to implement their compliance with the Oregon Prevailing Wage Law with respect to the Project.

7.5. Inspection and Property Access.

7.5.1. Before Closing. Before Closing, PHB will allow Developer and/or Developer’s employees, agents and consultants to enter upon the Property in reasonable furtherance of the transaction contemplated in this Agreement pursuant to a written permit of entry.

7.5.2. After Closing. After Closing, during construction of the Project, and until the Certificate of Completion is issued, Developer’s work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of PHB. PHB agrees not to interfere with the work occurring on the Property. In connection with

any entry onto the Property after Closing, PHB agrees to: (i) coordinate access with Developer or Developer's contractor to reduce the risk of injury; and (ii) follow all reasonable safety rules of Developer or Developer's contractor.

7.6. Safety Matters and Indemnification. Developer shall:

7.6.1. Safety. Comply with all safety laws and take all reasonable safety measures necessary to protect its employees and PHB's employees, agents, contractors, subcontractors, licensees and invitees, their personal property, and improvements of each, from injury or damage caused by or resulting from the performance of its construction.

7.6.2. Indemnity from Liability Claims. To the full extent permitted by law, indemnify, defend (at PHB's request) and hold harmless PHB, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the property of any person during the process of the construction work or the performance of Developer's other obligations under this Agreement, except to the extent: (a) caused by PHB or its employees, agents, contractors, subcontractors, licensees or invitees; or (b) caused by the gross negligence or willful misconduct of PHB or its employees, agents, contractors, subcontractors, licensees or invitees. The indemnity set forth in this Section 7.6.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

7.6.3. Indemnity from Liens. To the full extent permitted by law, indemnify, defend (at PHB's request) and hold harmless PHB, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics', materialmen's, laborers' or other construction or statutory liens filed against any portion of the Property or the Project or arising from or related to construction on the Property or the Project performed by or at the request of Developer or Developer's contractors or agents. The indemnity set forth in this Section 7.6.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

7.7. Liens. If any statutory lien shall be filed prior to PHB's issuance of the Certificate of Completion against any portion of the Project by reason of labor, services or materials supplied to or at the request of Developer or Developer's contractors or agents or in connection with any construction on the Project, Developer shall, within thirty (30) days after the filing thereof, take whatever action is necessary and proper (including posting a bond or a cash deposit and taking such further action as may be required by the Oregon Construction Lien Law), so that the Project shall thereafter be entirely free of the lien. Alternatively, Developer may elect to leave the lien of record and to contest its validity, amount or applicability by appropriate legal proceedings, but only if Developer shall, within the 30-day period following the filing of the lien, furnish an indemnity against such lien in an amount and form satisfactory to induce the title insurance company which insured title to the Property to insure over such lien or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such lien; provided, further, that in such event, (i) to the full extent permitted by law, Developer

shall indemnify and hold harmless PHB from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such lien, and (ii) in the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Developer, Developer shall within fifteen (15) days thereafter cause the lien to be discharged of record.

7.8. Compliance with Laws and Use Restrictions. Developer will comply with, or cause the Project to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Developer, the Project, or the operation thereof, including, without limitation:

7.8.1. All applicable health and safety, environmental, and zoning laws, and

7.8.2. All requirements or restrictions pertaining to the construction, use, occupancy or operation of the Project arising from the original source of any funds used by Developer to complete the Project.

7.9. Certificate of Completion.

7.9.1. When Developer is Entitled to Certificate of Completion. Upon substantial completion of the Project as described in this Section 7.9 on or before the date for completion of the construction set forth in the Schedule of Performance and provided Developer is not in default under this Agreement after the lapse of any applicable notice and cure period, PHB will furnish Developer with a Certificate of Completion for the Project. The Project will be deemed to be substantially complete when:

- i. PHB reasonably determines that the Project is complete according to the Drawings, except for punch-list items that do not materially affect the use of the Project for the purposes intended under this Agreement;
- ii. Developer has completed all environmental remediation and abatement on the Property, if any, required of Developer under Section 8; and
- iii. The City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project.

7.9.2. Form and Effect of the Certificate of Completion. A Certificate of Completion shall be substantially in the form of Exhibit G and in a form that can be recorded in the real property records of Multnomah County. The Certificate of Completion shall provide for termination of obligations under this Agreement, termination of all rights of reversion or reversion of the Property in PHB, and limitation of remedies of PHB as expressly provided for in the Certificate of Completion. At Developer's request, the Certificate of Completion shall state which terms and conditions of this Agreement are of no further force and effect.

7.9.3. Procedure Where PHB Refuses to Issue. If PHB refuses or fails to provide a Certificate of Completion in accordance with this Section 7.9, then PHB, within thirty (30) days after written request by Developer for such Certificate of Completion, shall provide Developer with a written statement indicating in detail in what respects Developer has failed to complete the Project in accordance with the

provisions of this Agreement or is otherwise in default and what measures or acts Developer must take or perform to obtain such Certificate of Completion. PHB's failure to furnish Developer with such detailed written statement within such thirty (30) day period shall be deemed PHB's approval of Developer's request for the Certificate of Completion and PHB shall deliver to Developer a Certificate of Completion for the Project within ten (10) business days thereafter.

8. ENVIRONMENTAL CONDITION OF THE PROPERTY AND PARTIES' RESPONSIBILITIES

8.1. Phase I Environmental Site Assessment. The Parties expressly acknowledge that the Property is conveyed by PHB "As-Is" pursuant to Section 2.4. Notwithstanding the foregoing sentence, PHB agrees that it shall grant Developer with access to the Property to conduct its due diligence activities including without limitation, and that Developer shall have a Phase I Environmental Site Assessment conducted on the Property in conformance with the ASTM E 1527-05 process in compliance with the United States Environmental Protection Agency All Appropriate Inquiries (40 CFR Part 312). This Phase I Site Assessment and any follow on report shall form the baseline environmental condition of the Property from which Developer's post-Closing obligations under Section 8.2 would be established. Developer shall provide to PHB a copy of such Phase I Environmental Site Assessment and any follow on results to PHB, within ten (10) business days following Developer's receipt thereof.

8.2. Indemnification. Developer shall be responsible for compliance with all Environmental Laws with respect to the Property, its business and the operation of the Project from and after Closing, including but not limited to compliance with all restrictions, limitations, conditions and obligations imposed by DEQ pursuant to a No Further Action Letter, Underground Storage Tank Closure letter or Easement and Equitable Servitude applicable to the Property, if any. In addition, Developer shall be responsible for all environmental remediation and abatement of Recognized Environmental Conditions and Unforeseen Environmental Conditions on the Property. Developer shall defend (at PHB's request), indemnify and hold harmless, to the full extent permitted by law, PHB, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by PHB, its successors or assigns, or asserted against PHB, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with any Environmental Conditions, Recognized Environmental Conditions or Unforeseen Environmental Conditions on the Property arising or accruing and after Closing.. The indemnity set forth in this Section 8.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

8.3. 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.

9. ASSIGNMENT AND TRANSFER PROVISIONS

9.1. Restrictions on Transfer of the Property and Assignment of the Agreement Prior to Issuance of Certificate of Completion. PHB is uniquely benefited by completion of the

Project according to the terms and conditions set forth in this Agreement and the Regulatory Agreement. Developer is uniquely qualified to construct the Project and to continue to manage and maintain the Affordable Housing Units in accordance with the terms of this Agreement and the Regulatory Agreement. The anti-assignment provisions of this Section 9.1 are reasonable and necessary to provide to each Party the benefit of the transaction implemented through this Agreement.

9.1.1. Except as provided in this Section 9.1.1 and as provided in 9.2, prior to the issuance of a Certificate of Completion, Developer shall not partially or wholly transfer or dispose of or agree to transfer or dispose of the Property, the Project, or Developer's interest in this Agreement without the prior written approval of the PHB, which may be withheld in PHB's sole discretion. Without limiting PHB's discretion to withhold its approval in any event, PHB is unlikely to approve a transfer or disposition if: (a) the transfer or disposition violates another provision of this Agreement, (b) the proposed transferee does not possess qualifications and financial capacity equal to or superior to that of Developer, (c) the transfer or disposition will cause a material delay in completion of the Project; or (d) the participation of Home Forward either in its individual capacity, as the general partner of the Partnership or the developer of the Project shall change as the result of transfer to a successor in interest to the Property or the Project.

9.2. Approved Transfers Prior to Issuance of Certificate of Completion. Notwithstanding Section 9.1 above, and provided, that Developer provides PHB with copies of all agreements and any other information reasonably necessary for PHB to determine whether such transfer complies with the requirements of this Agreement at least ten (10) Business Days prior to the effective date of the proposed transfer, PHB hereby consents to:

9.2.1. An assignment of Developer's rights in this Agreement and/or a transfer of the Developer's fee interest in the Property to the Partnership pursuant to the Lease (which interest will remain subject to the terms and conditions of this Agreement) . In furtherance and not in limitation of the foregoing, the lease by the Developer of the Property to the Partnership pursuant to the Lease will not be subject to the ten (10) Business Days prior notice required above. Notwithstanding an assignment or transfer under this Section 9.2.1, Developer shall remain fully responsible to PHB for the Partnership's performance of this Agreement.

9.2.2. Any i) Mortgage, including any assignment of rights under this Agreement to any Mortgagee or any limited partner or special limited partner of the Partnership; ii) any transfer of the Property pursuant to the terms of any such Mortgage including any foreclosure, deed – in lieu of foreclosure or other realization of the collateral under such Mortgage, iii) any residential leases, master lease, condominium formation ; iv) transfer, transfers of limited partner/special limited partner interests; v) removal of the general partner in accordance with the Partnership Agreement; vi) the admission of an affiliate of the limited partner or special limited partner as an interim general partner (so long as any replacement general partner is approved by PHB in its reasonable discretion); vii) granting a purchase option/right of first refusal to the General Partner or its affiliate.

9.2.3. Notwithstanding anything herein to the contrary, all transfer restrictions set forth in this Section 9 or elsewhere in this Agreement shall always be subordinate to, subject to and limited by, and shall not defeat, render invalid, or limit in any way, any Mortgage.

9.3 Transfers Subsequent to Certificate of Completion. There shall be no restrictions under this Agreement to the transfer, assignment or conveyance of the Property or any interest in the Property following issuance of the Certificate of Completion.

10. PHB Rights Related to Commercial Condominium

Pursuant to the Project Scope of Development, Developer intends to create a two-unit condominium with a residential condominium unit on the upper floors and a commercial condominium unit on the ground floor of the Project, in which PHB reserves certain contingent rights. The commercial condominium unit will be conveyed to Developer prior to conversion to permanent financing and the Mortgage encumbering the commercial condominium unit will be re-conveyed at, or prior to the time of the payment in full of the construction loan.

10.1. PHB Option to Purchase Commercial Condominium. PHB shall have the right to purchase the commercial condominium unit, for a total purchase price equal to the fair market value of the commercial condominium unit at the time of exercise of the option based on an appraisal performed by a mutually agreed upon appraiser experienced in conducting appraisals of similar assets in the Portland, Oregon market. In the event the appraised value is less than the cost to develop the commercial unit as evidenced by the commercial unit development costs including and cost as set forth the approved development budget and cost certification as well as carrying costs, brokers fees and other costs incurred relating to the marketing of the commercial unit, then Developer reserves the right to refuse such offer unless PHB agrees to pay, in addition to the appraised value, such substantiated development costs. The term of this option shall commence on the later of the execution of the Disposition and Development Agreement or the execution of the PHB loan documents and shall continue until three (3) months after the date on which the Developer submits all commercial condo documentation including without limitation, the condominium plat to the Oregon Real Estate Agency for approval, (“Option Term”). Closing shall occur pursuant to the terms and in substantially the form of the attached Option Agreement set forth in Exhibit H. The Option to purchase the commercial condominium unit may be assigned to Prosper Portland, or to another City of Portland agency or bureau, with Developer’s and Partner’s, Limited Partner’s consent, not to be unreasonably delayed or withheld. The purchase price shall be paid in cash upon closing of the sale of the commercial condominium unit to the Developer or its assigns.

10.2. PHB Right to Financial Participation in Proceeds of Sale of Commercial Condominium. In the even PHB does not exercise, or fails to timely exercise its option to purchase the commercial condominium unit and Developer or its successor sells the commercial condominium for an amount exceeding \$4,800,000, (the “Base Amount”), then Developer or its successor shall pay to PHB forty percent (40%) of the proceeds of the sale in excess of the Base Price at the closing of the sale of the commercial condominium unit. The Base Price shall increase annually by 3% beginning January 1, 2020. PHB’s right of participation in the proceeds of any sale of the Commercial Condo shall survive the Option Term and the Disposition and Development Agreement, until the Developer completes an initial sell of the Commercial Condo pursuant to the terms of the Option Agreement. Similarly, PHB shall have the right to consent to,

and share in 40% of the proceeds of any substantial refinance of the Project or the Property prior to Developer's sale of the Commercial Condo. PHB's consent to such refinance will not be unreasonably withheld).

10.3 Subordination to Mortgage. Notwithstanding anything herein to the contrary, all rights set forth in this Section 10 shall always be subordinate to, subject to and limited by, and shall not defeat, render invalid, or limit in any way, any Mortgage.

11. COMPLIANCE WITH CITY POLICIES

11.1. The City's Good Faith Effort Program ("GFE Program") and Workforce Training and Hiring Program ("WTH Program") ensure fair and equitable opportunities to Portland's diverse populations, promote prosperity in all segments of Portland's diverse communities, foster economic growth, and expand competition in the market. Within ten (10) days of the Effective Date, Developer shall contact the PHB Construction Coordinator to obtain the GFE Program Specifications and the WTH Program Specifications (each, the "Specifications") that outline the procedural requirements of the respective programs, including the reporting requirements to the City. The Project is subject to both the GFE Program and the WTH Program as follows:

11.1.1. GFE Program. The purpose of the GFE Program is to ensure that PHB provides professional, supplier and construction contracting opportunities to State certified minority-owned, women-owned and emerging small businesses (collectively, "Certified Firms") in connection with PHB projects. The utilization goal for Certified Firms in connection with the Project is twenty percent (20%) of the Project's hard construction costs. The Developer shall comply with the GFE Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the Specifications and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the Specifications in connection with the Project. Developer shall also comply with all portions of the GFE Program applicable directly to Developer. The failure of Developer or Developer's General Contractor, or the subcontractors thereof, to comply with the Specifications within the applicable notice and cure periods shall constitute a breach of a material provision of this Agreement. Provided that the Specifications are followed, failure to meet the specific utilization goal for Certified Firms shall not constitute a breach of a material provision of this Agreement.

11.1.2. WTH Program. The purpose of the WTH Program is to maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and women and encourage the employment of people with disabilities and veterans in connection with PHB projects. In connection with the Project, Developer shall comply with the WTH Program by: (i) including provisions in its contract with its General Contractor that require the General Contractor to comply with the Specifications and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the WTH Program in connection with the Project; and (ii) complying with all portions of the WTH Program applicable directly to Developer. Projects subject to the WTH Program require contractors to ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the General Contractor and subcontractors are worked by state-registered apprentices.

The failure of Developer or Developer's General Contractor, or the subcontractors thereof, to comply with the Specifications or to meet the required percentage of apprentice hours (not the specific goals for participation by People of Color or women on the Project) of the Workforce Equity Program within the applicable notice and cure period shall not constitute a breach of a material provision of this Agreement.

11.2. EEO Certification. Developer shall comply with the City's EEO Certification Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the EEO Certification Program and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the EEO Certification Program. Developer shall also comply with all portions of the EEO Certification Program applicable directly to Developer and with all applicable provisions of Federal or state statutes and regulations and City ordinances concerning equal employment opportunities for persons engaged in the Project. The failure of Developer or Developer's General Contractor, or the subcontractors thereof, to comply with the EEO Certification Program or other applicable equal employment opportunity law shall not constitute a breach of a material provision of this Agreement.

11.3. COMPLIANCE WITH OTHER PHB POLICIES

11.3.1. Funding Acknowledgement / Signage. Developer shall display a sign, provided by PHB, near the Project, readily visible to the public, specifying that the Project is being done "*in partnership with the Portland Housing Bureau*". The sign shall remain in place until PHB issues the Certificate of Completion.

12. CONTINUING COVENANTS SURVIVING TERMINATION OF AGREEMENT OR COMPLETION OF CONSTRUCTION

12.1. Surviving Sections. The following Sections of this Agreement shall survive and remain in effect for the periods identified herein, notwithstanding issuance of the Certificate of Completion: Section 2.4 (AS IS), Section 7.6.2 (INDEMNITY FROM LIABILITY CLAIMS), Section 7.6.3 (INDEMNITY FROM LIENS), Section 8.2 (INDEMNIFICATION), and Section 10 (PHB RIGHTS RELATED TO SALE OF COMMERCIAL CONDOMINIUM). For the avoidance of any doubt, all rights of reversion or revesting of the Property in PHB shall automatically terminate upon Developer's recording of the Certificate of Completion of Construction.

13. MORTGAGEE PROTECTION PROVISIONS

13.1. Effect of Revesting on Mortgages. Any reversion and revesting of the Property or any portion thereof in PHB pursuant to this Agreement shall always be subordinate to, subject to and limited by, and shall not defeat, render invalid, or limit in any way, any Mortgage.

13.2. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of the Agreement, except those that are covenants running with the Property, if any, 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 this Agreement. In the event that a Mortgagee elects to construct or complete the improvements in the Property following a default by Developer or foreclosure by Mortgagee, such Mortgagee shall not be bound by the Schedule of Performance attached hereto as Exhibit F and shall be entitled to make reasonable changes to the Final Construction Plans and Specifications necessary to make the Project feasible but subject to the Property's and Project's continuing use for Dwelling Units as that term is defined in the Regulatory Agreement.

13.3. Copy of Notice of Default to Mortgagee and Limited Partner. If PHB delivers a notice or demand to Developer with respect to Developer's breach of this Agreement, PHB shall at the same time send a copy of such notice or demand to each Mortgagee approved by PHB and each Limited Partner, at the last address of such entity and as set forth in Section 15.3 below or any change of address provided by written notice to PHB. . If PHB delivers to Developer any notice of Developer's breach which has resulted in an event of default or delivers to Developer a notice of termination of this Agreement pursuant to 13.4 below, PHB shall, at the same time provide a copy of such notice to each Mortgagee and Limited Partner. No such notice by PHB to Developer shall be deemed to have been duly given unless and until a copy thereof has been so provided to each Mortgagee and Limited Partner. Each Mortgagee and Limited Partner shall have the same period, for remedying any default or causing the same to be remedied, as is given Developer after the giving of such notice to Developer, plus in each instance, the additional periods of time specified in Sections 13.4 of this Agreement, to remedy, commence remedying, or cause to be remedied the defaults as specified in any such notice. PHB shall accept such performance by or at the instigation of any Mortgagee and/or Limited Partner as if the same had been performed by Developer. Developer authorizes each Mortgagee and Limited Partner to take any such action at Mortgagee's or the Limited Partner's option and does hereby authorize entry upon the Property by the Mortgagee and Limited Partner for such purpose.

13.4. Mortgagee's and Limited Partner Options to Cure Defaults. Anything contained in this Agreement to the contrary notwithstanding, if any default shall occur which entitles PHB to terminate this Agreement, PHB shall have no right to terminate this Agreement unless, following the expiration of the period of time given Developer to cure such default, PHB shall notify ("Termination Notice") each Mortgagee and Limited Partner of PHB's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination if the nature of such default is the failure to pay a sum of money, and at least sixty (60) days in advance of the proposed effective date of such termination if such default is not the failure to pay a sum of money. If a Mortgagee does cure or remedy the default within such thirty (30) day period, the Mortgagee may add the cost thereof to the Mortgage debt and the lien of its Mortgage, if permitted by its loan documents. If the default is with respect to construction of the Project, 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 PHB in writing of its intention to complete the Project according to the approved Drawings. Any Mortgagee who properly completes the Project shall be entitled to issuance of a

Certificate of Completion, upon written request made to PHB following the procedures set forth in Section 7.9 above. The provisions of Section 12.4 of this Agreement shall apply if, during such 30 day or 60-day Termination Notice period, Mortgagee shall:

13.4.1. Procedure on Default. If PHB shall elect to terminate this Agreement by reason of any default of Developer, and Mortgagee or the Limited Partners shall have proceeded in the manner provided for by Section 13.4 of this Agreement, the specified date for the termination of this Agreement as fixed by PHB in its Termination Notice shall be extended for a period of six (6) months, provided that Mortgagee and/or the Limited Partners shall, during such six-month period, pay or cause to be paid all monetary obligations of Developer under this Agreement as the same become due, and continue its good faith efforts to perform all of Developer's other obligations under this Agreement.

13.4.2. Mortgagee Need Not Cure Specified Defaults. Nothing herein contained shall require any Mortgagee, Limited Partner Mortgagee or their respective designees as a condition to its exercise of right hereunder to cure any default of Developer (i) not reasonably capable of being cured by Mortgagee or the Limited or its designee in order to comply with the provisions of Section 13.4 of this Agreement or (ii) which shall constitute indemnifications or damages for actions or inactions of Developer. The financial condition of any Mortgagee, Limited Partner or successor to Developer's interest under this Agreement shall not constitute a reason that Mortgagee or Limited Partner cannot reasonably cure a Developer default hereunder. No default, the cure of which, and no obligation of Developer, the performance of which, requires possession of the Property shall be deemed reasonably capable of cure or performance by any Mortgagee or any Limited Partner, provided such holder is complying with the requirements described in Section 13.4.1(2) above, nor shall Mortgagee or Limited Partner be required to cure the bankruptcy, insolvency, or any related or similar condition of Developer.

13.5. Amendments Requested by Mortgagee. PHB shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to Developer secured by a security interest in all or any part of the Property or the Project, or by a Limited Partner making an investment in the Partnership provided that such proposed amendments or other agreements do not materially and adversely affect the rights of PHB or its interest in the Property.

14. DEFAULT AND REMEDIES

14.1. Default and Cure.

14.1.1. Default by Developer.

- (a) Developer shall be in default under this Agreement if Developer breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within one-hundred and eighty (180) days after Developer receives written notice from PHB specifying the breach or such longer period of time necessary to effect a cure if the breach cannot reasonably be cured within such 180 day period, so long as cure has commenced within such original cure period and is diligently pursued to completion. The Limited

Partner has the opportunity, but not the obligation, to cure any default in accordance with this Section 14.1.1

- (b) Developer shall also be in default under this Agreement if Developer makes an assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment.

14.1.2. Default by PHB. PHB shall be in default under this Agreement if PHB breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after PHB receives written notice from Developer specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, PHB shall be in default under this Agreement if PHB does not commence the cure of the breach within thirty (30) days after PHB receives written notice from Developer and thereafter diligently prosecute to completion such cure within sixty (60) days after the written notice from Developer.

14.2. PHB's Pre-Conveyance Remedies. If a Developer default (as described in Section 14.1.1) occurs before the Property is conveyed to Developer, PHB may, at its option: (i) terminate this Agreement by written notice to Developer and any Mortgagee; (ii) seek monetary damages against Developer; or (iii) specifically enforce the obligations of Developer under this Agreement.

14.3. PHB's Post-Conveyance Remedies. If a Developer (as described and subject to the notice and cure periods set forth in Section 14.1 and 13.4) occurs after the Property is conveyed to Developer, including but not limited to Developer's failure to complete the Project as required by Section 7.3, then PHB shall have the following remedies:

14.3.1. Prior to the issuance of a Certificate of Completion and subject to the rights or any Mortgagee and the Limited Partner specified in Section 13, PHB shall have the right to re-enter and take possession of the Property and to terminate (and revest in PHB) the Property conveyed by the Deed, terminate Developer's right to develop the Project, and resell the Property provided that the Property shall remain subject to any Mortgages following such sale. The Conveyance of the Property to Developer shall be made upon, and the Deed shall provide for, a condition subsequent to the effect that, in the event of a Developer default (as described in Section 14.1.1), PHB, at its option, may, upon sixty (60) days written notice of termination to Developer and the Escrow Agent (which notice and cure period is in addition to the notice and cure period under Section 14.1.1), declare a termination of Developer's rights, title, and interest in the Property. After delivery of such notice of termination, and in the event Developer fails to remedy, end or abrogate such default within the sixty (60) day period in the manner stated in the notice of termination all the title and rights and interest in the Property conveyed to Developer by the Deed, or to any successors or permitted assigns of Developer, shall be reconveyed to PHB by quitclaim deed and pursuant to the escrow instructions, each as set forth in Exhibit I. No delay by PHB in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 14.3 shall operate as a waiver of such rights or deprive it of, or limit

such rights in any way (it being the intent of this provision that PHB should not be constrained because of concepts of waiver, laches or estoppel so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this section or otherwise to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver made by PHB with respect to any specific default by the Developer be considered or treated as a waiver of the rights of PHB with respect to any other defaults by the Developer or with respect to any particular default except to the extent specifically waived.

14.4. Project Documents. In the event PHB terminates this Agreement either Pre- or Post- Conveyance of the Property, then within thirty (30) days after termination of this Agreement, Developer shall deliver to PHB copies of all Project market research, design documents, engineering documents, proformas and financial projections prepared for or by Developer with respect to the Project or the Property. PHB may use any of the foregoing documents in any manner that PHB deems appropriate with the consent of any party having approval rights thereunder. PHB shall pay no compensation to Developer for the foregoing Project documents.

14.5. Developer's Pre-Conveyance Remedies. If a PHB default (as described in Section 14.1.2) occurs before PHB conveys the Property to Developer, Developer may, at its option: (i) terminate this Agreement by written notice to PHB without waiving any cause of action Developer may have against PHB, (ii) specifically enforce the obligations of PHB under this Agreement, or (iii) seek monetary damages against PHB. Notwithstanding the preceding sentence, Developer shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from PHB in connection with PHB's default.

14.6. Developer's Post-Conveyance Remedies. If a PHB default (as described in Section 13.1.2) occurs after PHB conveys the Property to Developer, Developer may specifically enforce the obligations of PHB under this Agreement, or seek monetary damages against PHB. Notwithstanding the preceding sentence, Developer shall have no right to, nor shall seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from PHB in connection with PHB's default.

14.7. 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 and remedies 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 shall not limit or affect the obligations of a Party under any contractual indemnities set forth herein.

14.8. Unavoidable Delay.

14.8.1. Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation ("Unavoidable Delay") is a result of conditions unforeseeable, beyond the Party's reasonable control, and without the Party's fault

or negligence, including, events such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, strike, malicious mischief, or explosion.

14.8.2. A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party's obligation must, 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 estimated time of correction. The Party must thereafter do everything in its power to resume performance of the delayed obligation.

14.8.3. Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay. In no event will the time or times for performance of an obligation be extended for more than 180 days in the aggregate.

15. MISCELLANEOUS PROVISIONS

15.1. PHB Project Manager. For the purposes of managing the implementation of the provisions of this Agreement on behalf of PHB, PHB shall designate a Project Manager. At the Effective Date, the Project Manager is Jill Chen.

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

15.3. Notice. 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, (b) when received if personally delivered, or (c) if sent by e-mail or other form of electronic transmission, with receipt of confirmation that such transmission has been received, and:

In the case of a notice or communication to Developer, addressed as follows:

Home Forward

With a copy to:

With a copy to:

With a copy to Limited Partner and Special Limited Partner:

Bank of America, N.A.
Mail Code: WA1-501-37-67
Fifth Avenue Plaza
Floor 37
800 5th Avenue
Seattle, WA 98104-3176
Attention: Todd McCain, Senior Vice President
Facsimile: 206/585-8404

Banc of America CDC Special Holding Company, Inc.
Tax Credit Equity Investment Asset Management
NC1-007-11-25
100 North Tryon Street
Charlotte, NC 2820
Attention: Nicole Baldon
Facsimile: 980/386-6662

With a copy to:

Bank of America, N.A.
Mail Code # CA4-704-06-06
2000 Clayton Road, Building D, 6th Floor
Concord, CA 94520
Attention: Loan Administration Manager

In the case of a notice or communication to PHB, addressed as follows:

Portland Housing Bureau
Attn: Jill Chen
421 SW 6th Ave., Suite 500
Portland, OR 97204

with a copy to:

Office of the City Attorney
Attn: Wendy Hain
1221 SW 4th Ave., Room 430
Portland, OR 97204

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.

15.3.1. If either Party's notice contact person or address changes, then that Party shall provide the other Party with the updated contact information.

- 15.4. 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 PHB to Developer 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.
- 15.5. 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.
- 15.6. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 15.7. 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 PHB or Developer 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.
- 15.8. Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the *in personam* jurisdiction of said courts.
- 15.9. 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.
- 15.10. 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.
- 15.11. Legal Purpose.** Developer agrees to use the Project solely for lawful purposes.
- 15.12. 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.
- 15.13. Entire Agreement.** This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.

15.14. Amendments and Modifications. Any modifications to this Agreement must be made in writing and executed by all Parties, with the approval of Council, if required. Notwithstanding this general requirement, the PHB Director may approve minor modifications to this Agreement without Council approval. Any modifications to this Agreement made without the approval of Council must include an acknowledgement by PHB's legal counsel that such approval is not necessary.

15.15. Successors and Assigns. Subject to the provisions of Sections 9.1 and 9.2, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.

15.16. 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 other than that of independent contracting parties.

15.17. Non-waiver of Government Rights. Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, PHB 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.

15.18. Approvals. Where this Agreement requires the approval of PHB, PHB will approve or disapprove in writing within thirty (30) days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary, and further excepting construction change orders, to the extent governed by applicable loan documents, which will be processed according to the applicable loan documents. Failure by PHB to approve or disapprove within said period of time shall be deemed an approval. Any disapproval shall state the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to PHB's sole discretion in this Agreement. Developer, 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 PHB within forty-five (45) days after receipt of the notice of disapproval.

15.19. Approval by PHB Director. Except as provided for elsewhere in this Agreement, whenever consent or approval by PHB is required under the terms of this Agreement, all such consents or approvals shall be given in writing from the Director of PHB or his or her designee.

15.20. Time of Essence. Time is of the essence of this Agreement.

15.21. No Third-Party Beneficiary Rights. No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

15.22. Recording of Memorandum of Agreement. PHB will record a memorandum of this Agreement ("Memorandum of Agreement") within ten (10) days after the Effective

Date. The form of the Memorandum of Agreement is attached as Exhibit J to this Agreement. When PHB issues to Developer a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record an Amended Memorandum of Agreement to reflect the surviving covenants of this Agreement.

15.23. Incorporation. The exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

15.24. STATUTORY WARNING. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Executed in multiple counterparts as of the Effective Date.

PHB:

CITY OF PORTLAND, a municipal corporation in the State of Oregon, acting by and through the Portland Housing Bureau

By: _____
Kurt Creager, Director

APPROVED AS TO FORM:

Wendy Hain, Senior Deputy City Attorney

DEVELOPER:

Home Forward, a public body corporate and politic of the state of Oregon

By: _____
Michael Buonocore, Executive Director

EXHIBITS

- | | |
|-------------------|---|
| Exhibit A. | Glossary |
| Exhibit B. | Description of the Property |
| Exhibit C. | Form of Deed |
| Exhibit D. | Project Budget |
| Exhibit E. | Scope of Development |
| Exhibit F. | Schedule of Performance |
| Exhibit G. | Form of Certificate of Completion |
| Exhibit H. | Form of Option and Participation Agreement |
| Exhibit I. | Form of Quitclaim Deeds and Escrow Instructions |
| Exhibit J. | Form of Memorandum of Agreement |

EXHIBIT A

GLOSSARY

The following words and phrases have the designated meanings in this Agreement:

1. **“City”** means the municipal corporation of the City of Portland, Oregon and its constituent bureaus and agencies, except PHB.
2. **“City Design Review”** means review by the City of Portland, Bureau of Development Services in accordance with Title 33.825 of the Code of the City of Portland.
3. **“Closing”** means the transfer of any portion of the Property to Developer by PHB by recording of the Deed and handling of all other necessary documentation by the Escrow Agent.
4. **“Construction Drawings and Technical Specifications”** means documents, based upon the Design Development Drawings, that set forth in detail the requirements for construction of the Project pursuant to the terms of this Agreement, approved by the appropriate City agencies. Construction Drawings and Technical Specifications shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project.
5. **“Conveyance”** means the transfer of fee simple title to any portion of the Property by PHB to Developer.
6. **“Design Development Drawings”** means the detailed plans submitted for City Design Review, including but not limited to:
 - Architectural site plans showing all structures upon the site together with all connections to existing or proposed utilities, roads, sidewalks and alleys;
 - A general landscaping concept plan;
 - Elevations of the buildings to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials, of the building exteriors;
 - A calculation of gross building areas, floor areas, height ratios and open spaces; and
 - A preliminary exterior finish schedule.
7. **“DEQ”** means the Oregon Department of Environmental Quality.
8. **“Developer’s Proposal”** means that certain proposal made by Home Forward
9. **“EEO Certification Program”** means the program run by the City requiring contractors to certify that they do not discriminate against any employee or applicant on the basis of race, religion, color, sex, marital status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, and that they take steps to ensure equal opportunity in all aspects of employment aspects including, but not limited to, hiring, promotion, transfer, advertising, layoff, termination, rates of pay, training (including apprenticeship), and terms and conditions of employment.

10. **“Environmental Conditions”** means the physical condition of the Property as measured by the standards of the Environmental Laws. Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.
11. **“Environmental Reports”** means reports of investigations performed as part of environmental due diligence, which may include Phase I, Phase 2 and Hazardous Building Site Assessments and reports, documents or documentation of Recognized Environmental Conditions that PHB has completed or PHB has in its possession, completed by others.
12. **“Environmental Laws”** means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Property or the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (as defined in the definition of Hazardous Substances, below), CERCLA (defined in the definition of Hazardous Substances, below), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
13. **“Escrow Agent”** means Fidelity National Title Company of Oregon with offices located at 900 SW 5th Avenue, Portland, Oregon 97204.
14. **“General Contractor”** means Colas Construction or any other contractor as Developer may elect consistent with this Agreement.
15. **“Hazardous Substances”** means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. (“CERCLA”), or any other Environmental Law.
16. **“Infrastructure”** means public streets, sidewalks, alleys, and driveway approaches, connections to garages, planting street trees and grass in planting strips, stormwater mitigation, street and parking lot lighting, construction and connection of the Project to abutting potable water and sewer and storm sewer mains, connecting the Project to gas and electric and other necessary utility services, and all permitting for any of the above as further described in the Scope of Development.
17. **“Investor Limited Partner”** means Bank of America, N.A., and/or its affiliates or any assignee which has acquired a limited partnership interest in the Partnership.
18. **“Loan Documents”** include the Loan Agreement, Promissory Note, Trust Deed and any other agreement in connection with PHB’s portion of the construction and permanent financing for the Project.
19. **“Limited Partner”** means collectively the Investor Limited Partner and the Special Limited Partner.

20. **“Mortgage”** means a mortgage, deed of trust or master lease against the Property (or any portion thereof) to finance the Project and recorded in the real property records of Multnomah County, Oregon, including without limitation, the deed of trust recorded in favor of Bank of America, N.A. its successors and assigns, in connection with the construction and permanent loan made to Lloyd Housing Limited Partnership.
21. **“Mortgagee”** means the holder of any Mortgage, including a master lease and trust deed, 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 person or entity who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale.
22. **“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, PHB, or other federal, state or local authority or any other government having jurisdiction with respect to the Property.
23. **“PHB’s Knowledge”** means the actual current knowledge of the PHB Project Manager, without any duty of inquiry or investigation.
24. **“Preliminary Design Documents”** means the site drawings for the Project including schematic, massing, feasibility and preliminary cost estimates for the Project in the form approved by PHB and that were the basis for entering into this Agreement.
25. **“Project Budget”** means the updated and revised estimated sources and uses of funds, cash flow submitted by Developer to PHB prior to Closing as further described in this Agreement and set forth in Exhibit D.
26. **“Recognized Environmental Conditions”** means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Property or into the ground, ground water, or surface water of the Property, whether or not the Release is in compliance with applicable law. Recognized Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.
27. **“Release”** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
28. **“Schedule of Performance”** means the document describing the schedule by which construction and development of the Project will occur, attached hereto as Exhibit F.

29. **“Scope of Development”** means the description of the improvements to be built comprising the Project, attached hereto as Exhibit E.
30. **“Special Limited Partner”** means Banc of America CDC Special Holding Company, Inc. and/or its affiliates or any assignee which has acquired a special limited partnership interest in the Partnership.
31. **“Title Company”** means Fidelity National Title Company of Oregon with offices located at 900 SW 5th Avenue, Portland, Oregon 97204.
32. **“Unforeseen Environmental Conditions”** means the presence of a Hazardous Substance on the Property that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by the Oregon Department of Environmental Quality.

EXHIBIT B

DESCRIPTION OF PROPERTY

EXHIBIT C

FORM OF BARGAIN AND SALE DEED

**After Recording Return to and
Tax Statements to be Sent to:**

Home Forward

BARGAIN AND SALE DEED

KNOW ALL PERSONS BY THESE PRESENT, that the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND HOUSING BUREAU** (which, together with any successor public agency designated by or pursuant to law, "PHB"), does hereby grant, bargain, sell and convey to **HOME FORWARD**, a public body corporate and politic of the State of Oregon (the "Developer"), and unto its successors and assigns, all the real property, with the tenements, hereditaments and appurtenances (the "Property"), situated in the County of Multnomah and State of Oregon, legally described on the attached Schedule 1.

The conveyance is made pursuant to that certain Agreement for Disposition and Development of Property between Developer and PHB, dated November____, 2017, a Memorandum of which was recorded on _____, 20__ as Document No. _____, Records of Multnomah County, Oregon (the "DDA"). Capitalized terms used in this Deed without definition have the meaning ascribed to them in the DDA. The Developer has given other value as a portion of the consideration for this conveyance.

The conveyance is subject to the following:

(1) All easements, covenants, restrictions, conditions and encumbrances of record, as set out in Schedule "2" attached hereto and incorporated herein; and

(2) A condition subsequent to this conveyance, in the event of an default including any applicable cure period by Developer before PHB issues a Certificate of Completion, then PHB shall have the option, upon sixty (60) days written notice (hereinafter "Notice of Termination") to said Developer and the Escrow Agent, to declare a termination in favor of PHB of the title, and of all the rights and interest of Developer in the Property. After delivery of such Notice of Termination, and in the event Developer fails to remedy, end or abrogate such default within the 60-day period in the manner stated in the Notice of Termination, Developer shall reconvey the Property to PHB by quitclaim deed, pursuant to the Escrow Instructions in Exhibit K to the DDA.

(3) After the Certificate of Completion is recorded for the Property, PHB shall thereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the DDA with respect to the construction of such phase of the Project, including but not limited to the right of re-entry to the Property and reversion in PHB described in subparagraph 2 immediately above. FOR THE AVOIDANCE OF ANY DOUBT, ALL RIGHTS OF REVERSION OR REVESTING OF THE PROPERTY IN PHB SHALL AUTOMATICALLY AND PERMANENTLY TERMINATE UPON RECORDING OF THE CERTIFICATE OF COMPLETION.

(4) Developer is acquiring the Property, in the condition existing at the time of Closing, AS IS, with all defects, if any. Developer waives, releases and forever discharges PHB and PHB's successors and assigns, of and from all claims, actions, causes of action, fines, penalties, damages (including consequential, incidental and special damages), costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property.

This Deed is made by PHB pursuant to powers exercised by it under Oregon Revised Statutes Chapter 457, and Chapter XV of the Charter of the City of Portland, and for the purpose of carrying out an urban renewal plan for the OREGON CONVENTION CENTER Urban Renewal Area approved by the City Council of the City on May 18, 1989 by Ordinance No. 161925.

It is intended that the delivery of this Deed shall not effect a merger of those provisions of the DDA that are intended by the terms of the DDA to continue after the delivery of this Deed.

TO HAVE AND TO HOLD the same unto the said Developer and unto its successors and assigns forever.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Disposition And Development Agreement

IN WITNESS WHEREOF, the City of Portland a municipal corporation of the State of Oregon acting by and through the PORTLAND HOUSING BUREAU, has caused this Deed to be executed this ____ day of November _____, 2017.

CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND HOUSING BUREAU

By: _____
Kurt Creager, Director

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this ____ day of November _____, 2017 by Kurt Creager as Interim Director of the City of PORTLAND HOUSING BUREAU, on its behalf.

Notary Public for Oregon
My commission expires: _____

SCHEDULE 1

HOLLADAYS ADD, BLOCK 45, LOT 1-3 EXC PT IN ST, LOT 4 EXC PT IN STS
, in the City of Portland,
Multnomah County, Oregon.

Preliminary Title

SCHEDULE 2
Permitted Exceptions

[Should list Schedule B Items from updated title commitment]

EXHIBIT D
PROJECT BUDGET

EXHIBIT E

SCOPE OF DEVELOPMENT

The Project, as initially referenced in Recital H, shall mean the development of a mixed-use project, including the following improvements:

EXHIBIT F

SCHEDULE OF PERFORMANCE

To Be Provided by Home Forward

EXHIBIT G

FORM OF CERTIFICATE OF COMPLETION

After recording return to:

CERTIFICATE OF COMPLETION

CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the **PORTLAND HOUSING BUREAU**, ("PHB"), hereby certifies that _____, an Oregon _____, () has satisfactorily completed construction of the _____ Project as described in the Disposition and Development Agreement, dated _____, 20__, including subsequent amendments, of which a memorandum was recorded in the Records of Multnomah County, Oregon as Document No. _____, on _____, 20__, (which together are herein called the "_____"), encompassing the property legally described in Exhibit A.

Capitalized terms used herein without definition shall have the meaning ascribed to them in the Amended and Restated DDA.

Pursuant to Section ___ of the DDA, PHB hereby certifies that, without limitation:

- (i) the construction of all buildings in the Project are completed to the extent set forth in the Final Construction Plans and Specifications previously approved by PHB;
- (ii) the City of Portland has issued its Certificate of Occupancy with respect to the all such buildings in the Project; and
- (iii) any other improvements required by the terms of the DDA to have been completed at the time of the Project is complete have been completed in all material respects.

This Certificate of Completion is and shall be a conclusive determination of the satisfaction of all of the agreements, covenants and conditions contained in the DDA with respect to the obligations of _____, its successors and assigns, as to the construction of the Project, and such obligations are hereby terminated, except PHB shall retain all its rights and appropriate remedies (excluding reversion) for violation or default by _____ or successor(s) in interest or assigns of any of the provisions identified in Section 12.1 of the DDA, which rights and remedies shall attach to the Land. This Certificate represents and certifies the completion of _____'s construction obligations described herein as to PHB only.

FOR THE AVOIDANCE OF ANY DOUBT, ALL RIGHTS OF REVERSION OR REVESTING OF THE PROPERTY IN PHB SHALL AUTOMATICALLY AND

PERMANENTLY TERMINATE UPON RECORDING OF THIS CERTIFICATE OF COMPLETION.

Any party acquiring or leasing any portion of the Project shall not (because of such purchase or lease) have any obligation under the DDA with respect to the construction of the Project, except PHB shall retain all its rights and appropriate remedies (excluding reversion) for violation or default by _____ or successor(s) in interest or assigns of _____ of any of the provisions of Section ____ (use) of the DDA, which rights and remedies shall attach to the Land.

IN WITNESS WHEREOF, PHB has caused this instrument to be executed this ____ day of _____, 20____.

PORTLAND HOUSING BUREAU

By: ____ DO NOT EXECUTE _____
Kurt Creager, Director

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this ____ day of _____, 20__, by Kurt Creager, Director of the Portland Housing Bureau.

Dated this _____ day of _____, 20__.

DO NOT EXECUTE
NOTARY PUBLIC FOR OREGON
My commission Expires: _____

EXHIBIT A

EXHIBIT I

FORM OF QUITCLAIM DEED AND ESCROW INSTRUCTIONS

After recording return to
and send tax statements to:

Portland Housing Bureau
421 SW 6th Avenue, Suite 500
Portland, OR 97204
Attn: Loan Servicing

For a valuable consideration, receipt of which is hereby acknowledged by Home Forward, a public body corporate and politic of the State of Oregon (“Grantor”), does hereby demise, release and quitclaim to CITY OF PORTLAND acting by and through the PORTLAND HOUSING BUREAU, (“Grantee”), all right, title and interest in and to the following described real property, with the tenements, hereditaments and appurtenances, situated in the County of Multnomah and State of Oregon, to wit:

SEE ATTACHED EXHIBIT A

To have and to hold the same unto the said Grantee and Grantee’s successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$0.00.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, Grantor has executed this instrument this ___ day of November, 2017.

Home Forward

By: Home Forward, a public body corporate and politic of the State of Oregon

By: ___ DO NOT EXECUTE _____

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this ___ day of November, 2017 by _____ as the _____ of Home Forward, a public body corporate and politic of the State of Oregon..

___ DO NOT EXECUTE _____
Notary Public for Oregon
My commission expires: _____

Accepted this ___ day of November, 2017.

CITY OF PORTLAND;
acting by and through the PORTLAND HOUSING BUREAU

By: ___ DO NOT EXECUTE _____
Kurt Creager, Director

FORM OF ESCROW INSTRUCTIONS FOR QUITCLAIM DEED

Fidelity

PARTNERSHIP NAME an Oregon limited partnership (“Developer”), has entered into that certain Agreement for Disposition and Development of Property (1010-1034 NE Grand Avenue, Portland OR) (“DDA”) with the City of Portland, Oregon acting by and through the Portland Housing Bureau (“PHB”) dated as of November ____, 2017, a Memorandum of which was recorded _____, 20__ as Document No. _____, Records of Multnomah County, Oregon, whereby PHB will convey to the Developer or its assignees certain real property (the “Property”) in the Oregon Convention Center Urban Renewal Area. The Property is the subject of this escrow and is described in the accompanying quitclaim deed (“Quitclaim Deed”).

Section 13.3.1 of the DDA provides that, under certain circumstances, PHB is entitled to reconveyance of the Property pursuant to a Quitclaim Deed and Escrow Instructions. This document constitutes those escrow instructions and is for the purpose of irrevocably instructing you as to the disposition of the accompanying Quitclaim Deed.

In the event that you receive from PHB a notice signed by the PHB's Director certifying that a copy of said notice has been delivered concurrently to Developer and certifying that a termination in favor of PHB of the title, and of all of the rights and interest of Developer in the Property has occurred, and that rights to the Property described in the Quitclaim Deed have reverted in PHB pursuant to the DDA (“Notice of Termination”), you shall at the end of thirty (30) days after receipt of said instructions record the subject Quitclaim Deed unless within said thirty (30) day period, you are notified by PHB that PHB has withdrawn the Notice of Termination, or unless you are prohibited from recording the Quitclaim Deed(s) by temporary restraining order, preliminary injunction, or other court order.

In the event that you receive a copy of a Certificate of Completion issued by PHB with respect to the Project (either an original or one certified by Developer as being a duplicate of the original), you will forthwith return the Quitclaim Deed to Developer. In the event that there still remains in your possession an undisposed Quitclaim Deed by [insert date eighteen (18) months after DDA scheduled date for completion of improvements] you shall contact PHB and Developer as to its disposition.

These instructions may not be withdrawn or in any way amended, modified or waived without the prior written consent of both of the parties hereto.

Please indicate your acceptance of and agreement to carry out these instructions as indicated below.

Very truly yours,

Home Forward, a public body corporate and politic of the State of Oregon

By: _____

Very truly yours,

CITY OF PORTLAND, acting by and through the
PORTLAND HOUSING BUREAU

By: _____
Kurt Creager, Director

Accepted and agreed to this
___ day of May, 2017

FIDELITY

By ___ DO NOT EXECUTE _____

EXHIBIT J

FORM OF MEMORANDUM OF AGREEMENT

After recording return to:

Portland Housing Bureau
421 SW 6th Avenue, Suite 500
Portland, OR 97204
Attn: _____

Memorandum of Agreement

THIS MEMORANDUM OF AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY (“Memorandum”) shall serve as notice to all persons that the CITY OF PORTLAND (the “City”), a municipal corporation of the State of Oregon, acting by and through the PORTLAND HOUSING BUREAU (“PHB”), with an address of 421 SW 6th Avenue, Suite 500 and Home Forward (“Developer”) an Oregon public corporation (“Developer”), with an address of _____, entered into an Agreement for Disposition and Development of Property in the OREGON CONVENTION CENTER Urban Renewal Area, dated as of November __, 2017 (“Agreement”) relating to the real property located in Multnomah County, Oregon, as more particularly described in Exhibit A attached hereto (the “Property”).

Among other things, the Agreement requires PHB to convey the Property to Developer upon the satisfaction of certain conditions precedent, and requires Developer to construct and complete certain infrastructure and project improvements on the Property, all as more particularly set forth in the Agreement.

The Agreement also imposes several covenants running with the land. Developer covenants and agrees to use the Property only for purposes substantially consistent with this Agreement, including the Scope of Development and Final Construction Plans and Specifications and that prior to the issuance of the PHB Certificate of Completion, the Design Review provisions of Section 7 of the Agreement will survive any foreclosure of transfer of the Property by a deed in lieu of foreclosure or any other transfer of the Property. PHB and Developer also declare and agree that these covenants described in this paragraph are covenants running with the land and shall pass to and be binding on Developer’s successors in title, including, without limitation, any Mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property and upon the respective heirs, executors, administrators, devisees, designees, successors, and assigns of any Mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property, provided, however, that any reversion and re-vesting of the Property to PHB pursuant to the Agreement shall be subordinate to, subject to and limited by, and shall not defeat, render invalid, or limit in any way, any Mortgage.

As a condition subsequent to the Property conveyance, in the event of a default by Developer before PHB issues a PHB Certificate of Completion, PHB shall have the option, upon 30 days written notice (“Notice of Termination”) to Developer and Escrow Agent to declare a termination in favor of the PHB of all the title, rights and interests of Developer in the Property. After delivery of such Notice of

Termination and in the event Developer fails to remedy, end or abrogate such default within the 60-day period in the manner stated in the Notice of Termination and subject to the rights of any Mortgagee and Limited Partner as described in the Agreement, Developer shall reconvey the Property to PHB by quitclaim deed, pursuant to the escrow instructions in Exhibit I attached to the Agreement.

After a PHB Certificate of Completion is recorded as to the Project, PHB shall thereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the Agreement with respect to the construction of the Project, or as a result of a default in or breach of any provisions of the Agreement by Developer, or by any successors in interest or assigns of Developer, except for those surviving sections described in section 12.1 of the Agreement. PHB shall thereafter have no further right of entry to the Property or power to terminate the title, rights and interests of Developer in the Property as described above.

PHB and Developer execute this Memorandum to acknowledge being bound by the Agreement and to give notice of the Agreement to third parties.

Home Forward, an Oregon public corporation

By: DO NOT EXECUTE
Michael Buonocore, Executive Director

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this ____ day of May, 2017 by Michael Buonocore as the Executive Director of Home Forward, an Oregon public corporation, the sole member of XXX, an Oregon limited liability company.

DO NOT EXECUTE
Notary Public for Oregon
My commission expires: _____

PORTLAND HOUSING BUREAU

By: DO NOT EXECUTE
Kurt Creager, Director

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this ____ day of _____, 20 __, by Kurt Creager, as the Director of the Portland Housing Bureau.

DO NOT EXECUTE
NOTARY PUBLIC FOR OREGON
My commission Expires: _____

EXHIBIT I

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EXHIBIT A TO MEMORANDUM OF AGREEMENT

Description of Property

Disposition and Development Agreement

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