

**MONTGOMERY PARK PUBLIC BENEFITS AGREEMENT BETWEEN
THE CITY OF PORTLAND, PORTLAND STREETCAR, INC, AND
1535-A1 LLC**

PUBLIC BENEFITS AGREEMENT

This PUBLIC BENEFITS AGREEMENT (this “Agreement”) is entered into as of this ___ day of November, 2024 (the “Effective Date”) by and among the CITY OF PORTLAND (the “City”), a municipal corporation of the State of Oregon Portland Streetcar Inc, [] and 1535-A1 LLC (“Property Owners”). The City and ___ shall be referred to individually as a “Party” and jointly as “Parties”.

RECITALS

- A. Pursuant to the Charter of the City of Portland and ORS Chapter 197 the Portland City Council (“Council”) adopted the Montgomery Park Area Plan (“The Plan”) on [DATE], 2024 by Ordinance No. _____. The Montgomery Park Area Plan is a land use and transportation plan to create a new mixed-use, mixed income district in Northwest Portland, focused on the area west of Highway 30 between NW Vaughn and NW Nicolai streets. The Plan changes current comprehensive plan designations and zoning to allow greater development intensities and a greater mix of uses on properties served by extension of an existing streetcar line.
- B. The Plan creates the opportunity for several thousand new housing units and hundreds of new regulated affordable units and thousands of new jobs including middle-wage jobs. The Plan anticipates a 1.3-mile extension of the Portland Streetcar (.65 miles each way) that would serve the new development.
- C. Under the terms of this Agreement, the City of Portland will work with partners at TriMet and Metro to adopt a federally required “Locally Preferred Alternative” for the streetcar alignment and related infrastructure projects and begin seeking formal partnership with the Federal Transit Administration (FTA) as soon as is feasible for all parties – as early as December 31, 2024, or as late as June 30, 2025. The parties will seek entry in the FTA’s “Project Development” process in a similar timeframe to ensure timely funding and construction of the streetcar and streets and procurement of streetcar vehicles required to serve the Montgomery Park Area Plan and future uses.
- D. Large opportunity sites within the broader plan area represent the greatest opportunities for future redevelopment that is facilitated by the Comprehensive Plan and zoning changes and planned transit investments. The properties that are subject to this public benefits agreement, the “Subject Properties” consist of the former ESCO Steel properties.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

SECTION 1:

The purpose of this Agreement is to memorialize the Parties’ understanding of their respective roles and commitments in the development of the Subject Properties. The Agreement runs with the land and all current and future owners, developers, or tenants of the Subject Properties or portions of the Subject Properties are subject to the terms of this Agreement.

The Subject Properties are legally described on Exhibit A.

SECTION 2: MIDDLE-WAGE JOBS

2.1 Purpose. Prior to closure of the ESCO foundry, the 16-acre campus had 800 jobs, approximately 1 industrial job per 871 building square feet. The US Energy Information Administration Survey of space utilization averages for specific building types which lists 1,500 square feet per industrial job and the landowner’s job density statistics for operating factories range from 890 square feet to 2,500 square feet per employee. The Middle-Wage Job Requirement is intended to help offset the loss of prime industrial land and support the creation of middle-wage jobs in the area. Prosper Portland has expressed commitment to marketing of the area; however, Prosper Portland’s marketing is limited to the five priority industry clusters (Athletic & Outdoor, Green Cities, Food and Beverage Manufacturing, Metals and Machinery, Software and Media and other traded sector industry).

2.2 Creation of Middle-Wage Jobs

2.2.1 Requirement. Property Owners must demonstrate that the total net new Middle-Wage Jobs created on the Subject Properties (the “Net Middle-Wage Job Quota”) are at the levels listed in Table 1 in each Reporting Year. If the number of net new Middle-Wage Jobs created at the time of each reporting year is less than the Middle-Wage Job Quota, the Property Owner must pay the corresponding fee for each job less than that year’s Middle-Wage Job Quota.

Table 1.		
Reporting Year (from Effective Date)	Net Middle-Wage Job Quota	Fee Per Job Under Quota
5	200 net new jobs	\$5,800
7	300* (net 100 new jobs between years 5 and 7)	\$6,150
12	400* (net new 100 jobs between years 7 and 12)	\$6,700
* Fee per Job Under Quota is paid one-time at the rate of the reporting year. The job quota deficit from the proceeding reporting period is deducted from any job quota deficit in the subsequent reporting period.		

2.2.1.1 Reduction for Small Business Job Creation. The Agreement permits Middle-Wage Job Quota reductions through small business job creation. The Middle Wage Job Quota may be reduced if non-residential space is sold at a cost that is 15% below market value or leased at a cost that is 20% below market rents to a corporation, partnership, sole proprietorship or other legal entity that is independently owned and operated from all other businesses and has 50 or fewer employees. The allowable reduction in middle wage jobs is one (1) employee for every 200 square feet of non-residential floor area sold or leased at below market value. For-rent, affordable non-residential spaces shall be leased at below market rates for a period of at least 10 years. A reduction in middle-wage jobs in exchange for the sale or lease of affordable non-residential space shall not exceed 20% of the required middle-wage jobs. The Property Owners shall make all reasonable effort to contact Qualified Culturally Specific Organizations, as defined by Oregon Housing and Community Services (OHCS) to identify eligible renters or buyers. The Property Owners must provide documentation to Prosper Portland that the rent or sale is below market rent or sale prices and that the space has been leased or sold to a qualifying business.

2.2.2 Middle-Wage Job Salary Requirements. Under this Agreement, a Middle-Wage Job must satisfy the following requirements:

2.2.2.1 A job where the starting annual salary is the greater of \$57,000 or 50% of area median income for a family of four, as published by the Federal Department of Housing and Urban Development, for the Reporting Year; and

2.2.2.2 Does not require a four-year college degree; and

2.2.2.3 Is within five priority industry clusters (Athletic & Outdoor, Green Cities, Food and Beverage Manufacturing, Metals and Machinery, Software and Media and other traded sector industry) or meets criteria 2.2.2.1 and 2.2.2.2

2.3 Measuring, Reporting, Monitoring, and Enforcement of Middle-Wage Job Requirement.

2.3.1 Measuring. The baseline number of Middle-Wage Jobs on the Subject Properties is 754 per the Quarterly Census of Employment and Wages of 2022. Net Middle-Wage Jobs are new jobs meeting the above criteria created on the Subject Properties over the baseline. For each reporting year (5, 7, 12), if there are fewer than 754, baseline jobs, than the net Middle-Wage Job Quota for that reporting year will increase by a corresponding amount.

2.3.1.1 Alternative Measurement. The Property Owners may conduct a survey of Middle-Wage Jobs on the Subject Properties as of January 1, 2025, the first calendar year after the effective date of this Agreement. The Property Owners must pay for an independent-third party to conduct a survey. The independent-third party must use generally accepted survey methods and produce a report. If the Property Owners elect to use the alternative measurement for establishing the baseline of Middle-Wage Jobs, the Property Owners will

provide the City with the report with the baseline.

2.3.2 Reporting. No later than April 1 of 5, 7, and 12 years after the effective date of this Agreement, Property Owners will provide Bureau of Planning and Sustainability (BPS) and Prosper Portland with a report identifying the total new jobs created and the total Middle-Wage Jobs on the Subject Properties since January 1, 2025. This report must include data demonstrating whether any jobs have been eliminated on the Subject Properties. The report must also include documentation and data supporting any reduction for Small Business Job Creation through lease or sale below market rates of non-residential square footage on the Subject Properties. For informational purposes, the report will include the following additional data: 1) the racial breakdown of employees holding the newly created middle-wage jobs in an anonymized manner and to the extent individual employees elect to disclose race or ethnicity or the employer otherwise has the information, and 2) information related to whether the businesses that created the new middle-wage jobs are new business to the city or have relocated from within the city, and if so, from where they relocated. This data may be collected through surveys or third-party sources as available.

2.3.3 Monitoring. Progress toward the Middle-Wage Job requirements will be measured at the three reporting intervals: 5, 7 and 12 years after the effective date of this agreement.

2.3.3.1 Property Owners will pay to Prosper Portland \$25,000 by April 1 of each reporting year.

2.3.3.1.1 Prosper Portland will use these funds to verify and enforce compliance with the Middle-Wage Job requirements, including any reduction allowed through the small business job creation. The funds will be used to contract with an independent third party that will be tasked with verifying compliance with Middle-Wage Job requirement performance. The funds may also be used for reimbursement of any costs associated with monitoring. The report produced by the third party will not be confidential, may be considered a public record, and may be used in any action to enforce the terms of this Agreement.

2.3.4 Location. The middle-wage jobs will be located within a parcel or site bounded by NW 26th Street to the west, NW Vaughn Street to the south, NW 24th Ave. to the east and NW York Steet Extension identified in the Recommended Master Street Plan (Exhibit []) to the north.

2.3.5 Enforcement. In any reporting year that Property Owners do not meet the Middle-Wage Job Quota, the Property Owners must make a liquidated damages payment as outlined in Table 1 to the Middle-Wage Jobs Fund (MWJF).

2.3.5.1 The MWJF will support business development and job training programs associated with the Oregon Manufacturing Extension Program (OMEP), Oregon Manufacturing Innovation Center (OMIC), or other similar programs authorized by the City.

2.3.5.2 The MWJF will be administered by Prosper Portland. Prosper Portland will use the 5-, 7- and 12-year performance reports and any other tools of Prosper Portland's choosing to assist in administration of the MWJF. Prosper Portland may use the MWJF to fund any of its jobs-related programs at its sole discretion. Prosper Portland may retain an administrative fee up to 10% of the value of MWJF.

SECTION 3: AFFORDABLE RENTAL HOUSING.

- 3.1 Purpose.** The Affordable Rental Housing benefits package is intended to address Portland's acute need for housing that is affordable to a range of incomes and create a mixed-income community with income restricted rental housing units in this high opportunity area (defined as an area where the median and per capita income is higher than the citywide average). Property Owners may elect to achieve these outcomes through construction of a building with 200 units of income-restricted rental housing, referred to as the "Consolidated Building", or through compliance with enhanced inclusionary housing requirements in the York Plan District. In the current economic climate where construction activity is at historic lows and the City's affordability crisis deepens, the City recognizes the value of having the affordable units constructed prior to the production of market-rate housing. The Consolidated Building, built to the standards described below, will satisfy the inclusionary housing requirement for the 2,000 units of housing that are subject to this Agreement.
- 3.2 Construction of Affordable Housing Consolidated Building.** Before beginning construction of any other residential units on the Subject Properties, Property Owners must begin construction of at least 200 units of housing on the Subject Properties that are affordable to households earning no more than 60 percent of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD) (such building will be the "Consolidated Building").
- 3.2.1 Unit Mix.** The Consolidated Building will adhere to one of the following options for unit mix:
- 3.2.1.1 Option 1:** The unit mix is one-third studio units, one-third one-bedroom units, and one-third two-bedroom units; or
- 3.2.1.2 Option 2:** No more than 20 percent of the units are studio units, or no less than 20 percent of the units are two-bedroom units.
- 3.2.2 Unit Size.** All two-bedroom units in the Consolidated Building will be at least 800 square feet. A bedroom is a habitable private room as defined by PCC 29.30.210 and is enclosed by a door that separates it from the rest of the unit or contain a bedroom that is located on a separate floor such that it cannot be viewed from other levels.
- 3.2.3 Building Quality.** Units in the Consolidated Building will have finishes with life expectancies and appliances with the same Energy Star rating as those typically included in market rate housing built in the City of Portland in the last three years, as reasonably certified by the Consolidated Building's architect upon construction completion.

- 3.2.4 Non-Residential Use.** The Consolidated Building, if located in Subdistricts B and C, is exempt from the non-residential use requirements pursuant to an exception in the zoning code for Property Owners signing this Agreement. In Subdistricts D, E and F, the Consolidated Building is exempt from the nonresidential use requirement because 100 percent of the dwelling units are affordable to those earning no more than 60 percent of the median family income.
- 3.2.5 City Subsidies and Incentives.** Except as authorized by this Section, the Consolidated Building may not receive any subsidies or incentives from programs administered by Portland Housing Bureau.
- 3.2.5.1** Upon satisfaction of the requirements of PCC 3.103.030, the entire residential and residential-related portions of the Consolidated Building will be eligible for a 10-year property tax exemption.
- 3.2.5.2** Upon satisfaction of the requirements of PCC 6.08.060(A)(2), the entire residential and residential-related portions of the Consolidated Building will be eligible for an exemption from Affordable Housing Construction Excise Taxes.
- 3.2.5.3** Upon satisfaction of the requirements of PCC 30.01.095, the entire residential and residential-related portions of the Consolidated Building will be eligible for an exemption from System Development Charges.
- 3.2.6 Transferring Buildings.** All buildings that utilize the Consolidated Building to fulfill its own Inclusionary Housing (IH) obligation are Transferring Buildings. Transferring Buildings will not be eligible for exemptions from property taxes, System Development Charges, and Affordable Housing Construction Excise Taxes, or for other City-controlled exemptions or subsidies.
- 3.2.7 Reasonable Equivalency.** Any Consolidated Building that complies with the requirements of this section and applicable IH code and rules will not be subject to any IH reasonable equivalency requirements that would compare the unit type, size, or types of finishes and appliances. This waiver of reasonable equivalency does not apply to the Transferring Building's IH Covenant and will only apply to the Transferring Building once units are transferred to the Consolidated Building in accordance with PCC 30.01.120 and the IH administrative rules.
- 3.2.8 Location.** The Consolidated Building will be located within a parcel or site bounded by NW 26th Avenue to the west, NW Vaughn Street to the south, NW 24th Ave. to the east and NW York Steet Extension identified in the Recommended Master Street Plan (Exhibit B) to the north. Transferring Buildings may be located anywhere within the boundaries of the Montgomery Park Area Plan.
- 3.2.9 Land Use Incentives.** The Consolidated Building and any Transferring Buildings will be entitled to the applicable bonuses and incentives of the York Plan District.
- 3.2.10 Other Public Subsidies.** Property Owners may not construct the Consolidated Building using any other PHB controlled public financing.

- 3.2.11 Other Residential Buildings.** Any buildings in the Montgomery Park Plan Area that comply with PCC 30.01.120 and the IH administrative rules instead of transferring units to the Consolidated Building will be eligible to receive all incentives associated with the IH program as long as the incentives are approved prior to issuance of its residential building permit.
- 3.2.12 Covenant.** The Owner of the Consolidated Building will enter into an Inclusionary Housing (“IH”) Covenant (substantially in the form of attached Exhibit []) with the Portland Housing Bureau that has priority over all other encumbrances on the Subject Property. Rents and other requirements will be regulated by the Portland Housing Bureau (or its successor) pursuant to the terms of the IH Covenant and will include annual reporting requirements consistent with IH regulations. The Owner of any Transferring Buildings must execute and record an IH Covenant that has priority over all other encumbrances on the Subject Property. Upon the Consolidated Building receiving a Certificate of Occupancy and in accordance with PCC 30.01.120 and the applicable administrative rules, the IH Covenants on the Consolidated Building and Transferring Building will be amended to reflect the transfer of any IH units from Transferring Buildings up to the total number of units in the Consolidated Building.
- 3.2.13 Effect on other IH Requirements.** The Consolidated Building option terms in this Agreement supersede conflicting Consolidated Building terms described in Portland City Code (PCC) 30.01.120 and applicable IH administrative rules. Where there is conflict between the terms, the terms of this Agreement control. Where there is no conflict, the terms of PCC 30.01.120 and applicable IH administrative rules apply.
- 3.2.14 Timing.** The Parties agree that Property Owner must begin construction on the Consolidated Building prior to beginning construction on the market rate buildings, however, the Parties acknowledge that due to the timing of construction, a market rate building(s) could receive Certificate of Occupancy prior to the Consolidated Building receiving Certificate of Occupancy. Property Owner must obtain a Certificate of Occupancy for the Consolidated Building from Portland Permitting & Development (PP&D) no later than three (3) years from the first Transferring Building receiving its Certificate of Occupancy and no later than seven (7) years from execution of this Agreement.
- 3.2.15 Transferring Building Additional Requirements.** Until the conditions to release the Transferring Building’s covenant are met and the affordable units are transferred to the Consolidated Building, each market rate residential building constructed on the Subject Properties up to 2000 total units will encumber the buildings to provide 15 percent of all units at 60 percent AMI to fulfill the Inclusionary Housing requirement. Unless otherwise stated in this Agreement, the timing requirements for leasing the IH units stated in PCC 30.01.120 and the applicable IH administrative rules apply. If the Transferring Building pays the fee-in-lieu and does not transfer IH units to the Consolidated Building, the fee-in-lieu amount will be set at \$28.00 per gross square footage.
- 3.2.16** If Property Owner fails to comply with any requirements of this Section 3, including but not limited to the timing, construction, or covenant requirements, the option to

fulfill IH obligations by constructing a Consolidated Building under the terms of this Agreement will terminate and Property Owner must fulfill its Inclusionary Housing obligations in accordance with Section 3.2.15, PCC 30.01.120 and the IH administrative rules. Notwithstanding the above enforcement options, the City may pursue any remedy or enforcement actions available at law.

SECTION 4: PARK

- 4.1 Purpose.** The Park benefits package is intended to provide at least one quality, publicly accessible park on the Subject Properties, that will serve the thousands of anticipated new employees and residents in the area.
- 4.2 Park Obligation.** The Property Owners must create a single, contiguous park on the Subject Properties. The Park must be a minimum of 40,000 square feet in size and have at least two public street or public easement frontages of a minimum of 100 linear feet per frontage for a total of 200 linear feet. The park design will be determined through a public process, working with Portland Parks & Recreation (PP&R), but generally should be oriented to passive recreational uses and be characterized by significant vegetation and tree canopy and include facilities for children and children's play. If the Property Owners fail to construct the Park as outlined in this Agreement, PP&R retains the right to design and construct the park without Property Owners objection or involvement on the site designated pursuant to Section 4.5.3.1. Property Owners shall submit a detailed site plan depicting park improvements to PP&D and PP&R that is consistent with this agreement and all applicable codes and policies prior to submitting an application for building permits for the park. PP&R and PP&D will inform Property Owners whether the site plan satisfies this agreement and applicable codes and policies before Property Owners submit the building permit application.
- 4.3 Ownership.** The Property Owners may retain ownership of the land. However, the Property Owners agree to maintain public access to the park in perpetuity. The Property Owners agree to record a restrictive covenant concurrent on the Subject Properties at the same time as recording this Agreement indicating that there will be Park to benefit the City of Portland by and through PP&R. PP&R must review and approve the restrictive covenant prior to recording. Upon completion of the Park, the restrictive covenant may be released and the Property Owners will record an easement or other legal document the City deems acceptable indicating that the public will maintain access to the park in perpetuity. The easement must be recorded upon submission of the site plan and must benefit the City of Portland by and through PP&R.
- 4.4 Maintenance.** PP&R will provide basic maintenance for the park in keeping with the current level of service as defined by PP&R. The Property Owners may exceed PP&R's maintenance level of service at their own expense. PP&R and the Property Owners agree to collaborate on creation of a park maintenance agreement detailing levels of service, roles and responsibilities, and payment of capital and ongoing costs. The park's operation and maintenance will be further detailed in coordination with PP&R. A finalized mutually agreed upon park maintenance agreement will be completed prior to completion of park construction.
- 4.5 Park Requirements and Elements.** Although the design will be determined through a public process, the Parties agree that the park must include the following requirements and elements:

4.5.1 Park Operation Requirements.

4.5.1.1 The Property Owners must provide public access and may not charge admission to the park. Except that the Property Owners may permit fee-for-entry events at the park up to a maximum of 12 days a year. During the fee-for-entry events, to the extent feasible, the Property Owners must provide a portion of the park accessible for free to the general public for the duration of the fee-for-entry events.

4.5.1.2 The Property Owners must provide public access during the park hours of operation. The hours of operation must be 5 a.m. to midnight every day of the year. The hours of operation may be modified by the director of PP&R to be consistent with typical hours of operation in the park system, per Portland City Code.

4.5.1.3 The Property Owners may not place any physical barriers to entry or surveillance equipment within the park unless authorized by PP&R or required by a City decision, including any land use or other review.

4.5.1.4 The Property Owners must ensure that the park complies with the Americans with Disabilities Act.

4.5.2 Park Elements. The Parties agree that Property Owners must include the following elements, at a minimum, in the park design:

4.5.2.1 Planted areas including single tree pits, continuous tree pits, planting beds, terraced planting areas, berms, lawns or landscape buffers;

4.5.2.2 Minimum of 20% canopy cover at the time of canopy maturity using a mix of tree species and sizes adapted to Portland's changing climate and urban context (favoring large form canopy trees);

4.5.2.3 Seating that shall include permanent seating such as benches, design feature seating, seating steps and may also include movable seating such as movable chairs or lounge chairs;

4.5.2.4 A circulation path, or paths, providing access to key park amenities;

4.5.2.5 Water feature, public art, architectural folly, or another distinguishing park feature; and

4.5.2.6 Lighting consistent with PP&R standards.

4.5.3 Location and Timing. The park shall be centrally located (between NW 24th and NW 26th Avenues and, between NW Vaughn Street and a future NW York Street) on the Subject Properties.

4.5.3.1 Prior to City issuance of a building permit for the first market rate residential project on the Subject Properties, the Property Owner shall provide a site plan

to BPS, PP&R and PP&D that identifies the location of the required 40,000-square-foot park. If the site plan is deemed acceptable, it shall be considered an addendum to this agreement and the full updated agreement with the addendum shall be recorded on the Subject Properties.

4.5.3.2 The Property Owners must build the 40,000-square-foot park on or before the completion of construction of the 1,000th dwelling unit on the Subject Properties or within ten years of the effective date of this agreement, whichever comes first.

4.5.3.3 The Property Owner will be eligible for a Parks Systems Development Charges (SDCs) reduction or credit equivalent to the value of the agreed upon, which will be determined in coordination with the PP&R. A parks SDC reduction or credit can be obtained by the process outlined in the PCC 17.13.070

4.5.3.3.1 It shall be the responsibility of the Property Owners/developers to initiate discussions with appropriate PP&R staff to arrive at the mutually agreed upon cost of construction for a park that meets all the required key park elements and locational and timing requirements, prior to seeking either reductions or credits as outlined above, in accordance with PCC 17.13.070 B.

4.5.3.4 The Property Owners will pay all SDCs due until such time as PP&R, or its successor, has issued a confirmation letter that a Park has been created that meets the requirement herein. Deferrals and installment plans may be requested, in accordance with PCC 17.13.090A.

4.5.4 The provision of the Park and the associated SDC credits do not preclude additional SDC credits in association with other park facility improvements by the Property Owners.

4.5.5 Commemoration of York is outlined in Section 5 below. The Property Owners and PP&R will consider whether to include such commemoration in the required park outlined above. Location within the required park is optional, not required.

SECTION 5: COMMEMORATION OF YORK.

5.1 Purpose. The Commemoration of York public benefit is intended to celebrate the contributions of York, an enslaved member of the Corps of Discovery Expedition (also known as the Lewis and Clark Expedition) and the first documented person of African descent to visit what would become Portland, Oregon, and for whom NW York Street, which exists in the area, is named.

5.2 Process. Portland Streetcar Inc. shall convene a process, with the York Collective (YC) and the Property Owners, to develop public art or commemorative feature(s) to commemorate York, in consultation with the City's Office of Arts and Culture.

- 5.2.1. If the YC does not respond to requests sent to 4815 NE 7th Avenue, Portland OR 97211 to convene within three months from initial outreach, Portland Streetcar Inc. shall assemble an alternative community advisory committee to participate in the process as appropriate.
- 5.2.2. The process will result in the design of one or more features memorializing York at a location or locations on or adjacent to NW York Street between NW 24th and NW 26th Avenues (as identified in the Recommended Master Street Plan Exhibit B) or in the park described above in Section 4.
- 5.2.3. As deemed appropriate by Portland Streetcar Inc., in consultation with the Bureau of Planning and Sustainability, the YC, or the alternative community advisory committee, may serve as a key community partner and advisor in determining how York will be commemorated in the area. YC may provide cultural, technical and community expertise on the public art or commemorative feature(s). The YC may also assist in organizing and facilitating public engagement with community members to inform the development of the public art or commemorative feature(s).

5.3 Funding. Funding for the commemoration of York may include but is not limited to the 2% for Art program, grants, contributions by the Property Owners and fundraising. If public art or commemorative feature can be constructed as part of the streetcar project or in the public right of way, the Property Owners will work with PBOT to coordinate the elements' construction. Alternatively, if the public art or commemorative feature is in the park described in Section 4, the Property Owners will work with PP&R to site and construct the commemorative feature.

5.4 Maintenance.

- 5.4.1 If the public art or commemorative feature is located in the public right-of-way, PBOT, or its designee, shall maintain the art or feature.
- 5.4.2 If the public art or commemorative feature is constructed in the park or on the Subject Properties, the Property Owners shall maintain the public art or commemorative feature.
- 5.4.3 If neither of the above maintenance arrangements are applicable, then the public art or commemorative feature shall become part of the City's public art portfolio administered by the City Office of Art & Culture.

SECTION 6: TRANSPORTATION.

6.1 Purpose. The transportation improvements in the area are intended to improve multimodal connectivity to and in the area and integrate new streets within the large parcels into the broader street grid.

6.2 Property Owners' Costs.

6.2.1 In association with private development projects, Property Owners must design, construct and pay for street connections at locations on or crossing the Subject Properties in accordance with City Code requirements or development review. These costs include but are not limited to the right-of-way dedications and associated infrastructure required by City Code or development review. Improvements shall comply with the Recommended Master Street Plan (Exhibit B) in the Plan, as well as City Design Standards for Public Streets and Title 11 requirements, unless otherwise required through development review. The following streets are anticipated, at minimum, as well as any necessary intersection improvements at adjacent intersections impacted by segment connection construction:

6.2.1.1 NW 25th Avenue between NW Roosevelt and NW Wilson streets

6.2.1.2 A north-south connection between NW 24th and NW 26th avenues and NW Nicolai and Roosevelt streets, to be determined through development review and in accordance with the Recommended Master Street Plan (to comply with Title 11 Street connectivity requirements)

6.2.1.3 An east-west connection between NW Nicolai and NW Roosevelt streets and NW 24th and NW 26th avenues, to be determined through development review and in accordance with the Recommended Master Street Plan (to comply with Title 11 Street connectivity requirements)

6.2.2 Property Owners must design, construct, and pay for any extensions of the street grid, including adjacent intersection improvements, required through development review. These costs include but are not limited to the right-of-way dedications and associated infrastructure required by City Code or through development review. Improvements shall comply with the Recommended Master Street Plan in the Plan, as well as City Design Standards for Public Streets and Title 11 requirements, unless otherwise required through development review.

6.2.3 The Properties Owners agree to dedicate right-of-way, and any easements necessary for construction, to the City where the extended street locations touch frontage along or cross through the Subject Properties.

6.3 Joint Transportation Costs. The City and Property Owners agree to share certain transportation costs as outlined herein. The precise proportion and contribution will be determined as part of the streetcar extension projects, including the LID, that will be developed as funding sources and amounts to support the local match share of the transportation project are better known.

6.3.1 Shared-cost transportation improvements will apply to the following streets, which will be part of the alignment of the planned streetcar extension:

6.3.1.1 NW Roosevelt Street between NW 23rd and NW 26th avenues.

6.3.1.2 NW Wilson Street between NW 23rd and NW 26th avenues.

6.3.1.3 NW 23rd Avenue between NW Lovejoy and NW Roosevelt streets.

6.3.1.4 NW 26th Avenue between NW Roosevelt and NW Wilson streets.

6.3.2 The shared costs of the streets identified in Section 6.3 may include the design, engineering, and construction of improvements including but not limited to street rehabilitation and new complete street construction, utility upgrades or relocation, trackwork, transit stations, sidewalks, curbs, street lighting, stormwater remediation elements as required by Stormwater Management Manual, street trees, bicycle facilities, intersection improvements, including any necessary signal upgrades or additions, and accessibility upgrades.

6.3.2.1 The Parties anticipate funding for design and improvements of shared-cost transportation improvements to come from:

6.3.2.1.1 Federal Transportation Administration (FTA), which the City commits to pursue.

6.3.2.1.2 City of Portland secured (including via external sources) funds to meet FTA match requirements.

6.3.2.1.3 A Local Improvement District (LID) in which the Property Owners will be significant contributors. The LID formation will require a separate public process in which the Property Owners will actively participate. Participation and contribution to the LID will be based upon formal assessment and legal requirements, and costs borne by Property Owners will be proportional to their assessed benefit resulting from the improvements. The Property Owners must sign waivers of remonstrance provided by PBOT.

6.3.2.1.4 Property owner contribution outside the LID, in the form of street construction and frontage improvements as required through the development review.

6.4 **Failure to obtain Federal or other funding for Streetcar Extension.** Notwithstanding any other provision of this Agreement, the future development of the Subject Property may occur with or without the streetcar extension project. In the event the City is unable to secure funding for the streetcar extension project, the costs for designing, constructing and paying for the streets listed in 6.3 which abut the frontage along or cross through the Subject Properties shall revert back to the Property Owners, as complete streets with all multimodal and streetscape features as identified in the recommended Master Street Plan (Volume 3 of the Plan), excluding the streetcar extension.

6.5 **Commitments Made by the City of Portland.**

6.5.1 The City intends to demonstrate significant progress toward the design, funding and

construction of the extension of Portland Streetcar within a reasonable time frame following adoption of the related land use plan and associated Comprehensive Plan and zone changes. Demonstration of progress may include but is not limited to seeking adoption of a Locally Preferred Alternative (LPA) from Portland City Council, TriMet and Metro before December 31, 2025; an application to enter project development with the Federal Transit Administration before June 30, 2025; and a commitment to form a local improvement district to assist in funding streets and streetcar related investments within ten years of the effective date of this agreement.

- 6.5.2 The City intends to make reasonable efforts to fund and build the extension of Portland Streetcar as agreed upon in this document and to do so in a timely and cost-effective manner; however, the land use decisions, zoning changes, and Public Benefits Agreement are not dependent upon the construction of streetcar.
- 6.5.3 The City and Portland Streetcar Inc. will design and contract for construction of all streetcar improvements in the public right-of-way specified in Section 6.3.

SECTION 7: INFRASTRUCTURE PLANNING.

- 7.1. **Infrastructure Plan.** Property Owners must provide an Infrastructure Plan to PP&D. The City must have reviewed and approved the Infrastructure Plan prior to issuance of a building permit for: (1) the Consolidated Building (described in Section 3.2); (2) 100 units of market rate housing; or (3) 50,000 square feet of non-residential use, whichever occurs first, or, in the alternative and at the city's sole discretion, in coordination with design and project development of the streetcar project, if the proposed development connects utilities to the new streets and associated infrastructure built as part of the streetcar project. The City review may occur through a formal review process that applies to development on the Subject Properties, including but not limited to a land division, planned development or public works permit. There may be an opportunity to phase the infrastructure plan on the Subject Properties, and Property Owners should work with the city to identify opportunities to coordinate the infrastructure plan with the timing of future development and the streetcar project.
- 7.2. **City Responsibilities.** As outlined below, the City bureaus will provide Property Owners with direction in an effort to simplify and coordinate future permit processes.
 - 7.2.1 BES will provide direction on provision of new sanitary or stormwater infrastructure, to include:
 - Preferred connections to existing sanitary, stormwater, or combined system pipes.
 - Location, sizing, and capacity to serve proposed development through build out.
 - Location and phasing of new sewer and storm infrastructure in relation to other public infrastructure.
 - How sewer and storm infrastructure will be phased to serve the site as it develops.
 - 7.2.2 PWB will provide direction on provision of new water infrastructure, to include:
 - Preferred connections to existing water system pipes.
 - Location, sizing, and capacity to serve proposed development through build out.
 - System looping requirements.

- Location of fire hydrants and services.
- Location and phasing of new water infrastructure in relation to other public infrastructure.
- How water infrastructure will be phased to serve the site as it develops.
- Potential water line relocations required in response to other changes, such as street cross sections.

7.2.3 PBOT will provide direction on provision of new transportation infrastructure in accordance with the recommended Master Street Plan in the Plan, to include:

- Street spacing and location of street connections to meet all applicable Title 17 requirements.
- Direction on design standards once triggered by Development Review (TRN-1.09).
- Any additional requirements triggered by development, including those for bicycle/pedestrian connections, as described in Title 17 and Title 33.
- Considerations regarding how any required or voluntary transportation investments might relate to project phasing.

7.2.4 PP&D will provide direction and may assign one Process Manager from the Major Projects Group to the Property Owners to assist with and coordinate infrastructure planning and construction, land use reviews, and construction on the Property Owners' properties.

SECTION 8. PROVISIONS OF GENERAL APPLICATION

8.1 Term. This Agreement is effective when executed by the Parties and approved by the Portland City Council. This Agreement terminates: upon issuance of a Temporary Certificate of Occupancy for a residential unit total of 2,000 or more and there are no additional unmet obligations.

8.2 Covenants Run with Land. The Agreement is legally binding and runs with the land. The Property Owners intend, declare, and covenant, on behalf of Property Owners and all future owners of the Subject Properties during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy, and transfer of the Subject Properties (1) shall be and are covenants running with the Subject Properties, encumbering the Subject Properties for the term of this Agreement, binding upon the Property Owner's successors in title and all subsequent owners of the Subject Properties, (2) are not merely covenants of the Property Owners, and (3) shall bind the Property Owners (and the benefits shall inure to the City and Property Owners' respective successors and assigns during the term of this Agreement. The Property Owners hereby agree that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Subject

Properties. For the term of this Agreement, the initial conveyance of the Subject Properties or any portion thereof by the Property Owners through contract, deed or other instrument hereafter executed expressly provide that such conveyance is subject to this Agreement. Failure to conform with this initial conveyance notice requirement shall not be deemed a default of the Property Owner's obligation under this Agreement. The covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Subject Properties or portion thereof provides that such conveyance is subject to this Agreement.

The Subject Properties described herein are under ownership by multiple parties, who are signatories to this Agreement. All future owners of the Subject Properties or portions of the Subject Properties are subject to the terms of this Agreement, including all provisions related to reporting, monitoring and enforcing this Agreement. All Parties to the Agreement must agree to any proposed future amendments.

If the Property Owners transfers title to all or a portion of the Properties during the term of this Agreement, the Property Owners will, at the time of such transfer, assign its rights and obligations under this Agreement that are applicable to the portion of the Properties that is transferred, and the transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, will upon closing of such transfer, expressly assume all of the obligations of the Property Owners under this Agreement applicable to the portion of the Property transferred and agree to be subject to all the conditions and restrictions to which the Property Owners are subject with respect to the portion of the Property transferred. It is the intent of this provision that no transfer of, or change in ownership in, the Property or any portion thereof, however consummated or occurring, and whether voluntary or involuntary, shall operate to deprive the City of or limit any of its rights or remedies or controls provided in this Agreement, with respect to the Subject Properties and the construction of the improvements thereon, that the City would have had had there been no such transfer or change, except that, upon and following any the transferring Property Owner(s) shall be released from of any of the obligations or liabilities under this Agreement pertaining to the portion of the Subject Properties transferred and that the transferee shall be released from any of the obligations or liabilities under this Agreement not applicable to the portion of the Property transferred to transferee. Should the Subject Properties be subdivided or sold the future owners of the Subject Properties or portions of the Subject Properties are subject to the terms of this Agreement. All such parties are referred to as the "Property Owners" in this Agreement.

8.3 Public Successors. If any public body referenced in this Agreement, including any City Bureau, Prosper Portland, or Portland Streetcar Inc, is reorganized, dissolved or otherwise replaced, the roles and responsibilities assigned to that public body under this Agreement shall automatically transfer to its successor entity or entities. The successor entity shall assume all obligations, duties, and responsibilities as outlined in this Agreement without interruption.

8.4 Interagency Agreements. City Bureaus shall enter into interagency agreements with Prosper Portland and Portland Streetcar, Inc., as necessary and appropriate to further define

the compliance, monitoring, or other tasks set forth in this Agreement. The interagency agreements may detail the roles and responsibilities of the City Bureaus, Prosper Portland, and Portland Streetcar, Inc. Any interagency agreement must remain consistent with the terms of this Agreement and only serves to implement the provisions established here.

- 8.5 Dispute among Property Owners.** The Property Owners are together assumed responsible for compliance with all provisions of this Agreement. Any disputes arising between Property Owners is considered a civil matter to be resolved solely between the Property Owners. The City shall bear no responsibility or liability for resolving such disputes.
- 8.6 Environmental.** The Property Owners must clean up and remediate the Subject Properties, including the Park and public rights-of-way, to the applicable standards for the proposed uses to the written satisfaction of the appropriate City bureau. The Subject Properties shall be deemed in compliance with this Section 8.6 upon the receipt from the Department of Environmental Quality of a No Further Action (“NFA”) letter and receipt of the NFA determination by the City of Portland.
- 8.7 City Permit and Land Use Requirements.** Property Owners shall comply with all applicable laws and regulations relating to the development of the Subject Properties, including the terms and conditions of any land use approvals and permits issued by the City or other regulatory agencies. If any specific provision herein is contrary to a general regulation or condition of any City land use approval or permit, the specific provision shall not constitute a City waiver of or exemption from the general regulation or condition, except where the Zoning Code expressly authorized the Agreement to satisfy the Zoning Code.
- 8.8 Remedies.** If the Property Owners default under the terms of this Agreement, the City may, in addition to any other remedies at law or in equity:
1. Recovery of Damages. Recover from the Property Owners any monetary damage to the City resulting from the default; and
 2. Initiate Legislative Project. Initiate a legislative land use process evaluating the appropriate zoning.
- 8.9 Unavoidable Delay.** 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 is a result of conditions unforeseeable, beyond the Party’s control, and without the Party’s fault or negligence, such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, supply chain disruptions, or strike, (each, an “Unavoidable Delay”), provided that the Party claiming such Unavoidable Delay has used and is using commercially reasonable efforts to pursue all actions needed to achieve compliance in a timely manner and within thirty (30) days after the Party becomes aware of an unavoidable delay, have first notified the other Party thereof in writing of the cause or causes thereof and the estimated time of correction

1221 SW 4th Ave.
Ste. 430
Portland, OR 97204

Property Owners :

1535-A1 LLC: c/o WJR II LLC
PO Box 10067
Portland, OR 97296-0067
Attn: Warren Rosenfeld
Email: warren@calbag.com

With a Copy to: Radler White Parks & Alexander LLC
Attn: Christe White
111 SW Columbia Street, Suite 700
Portland, OR 97201
Email: cwhite@radlerwhite.com

Notices shall be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

8.14 Governing Law, Venue, and Jurisdiction. This Agreement shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. Any action or suit to enforce or construe any provision of this Agreement by either party shall be brought in the Circuit Court of the State of Oregon for Multnomah County or the Federal District Court located in Multnomah County, Oregon. The Circuit Court of the State of Oregon for Multnomah County or the Federal District Court located in Multnomah County shall have exclusive jurisdiction over all lawsuits brought by any Party against any other Party with respect to the subject matter of this Agreement, and each Party hereby irrevocably consents to such exclusive jurisdiction and waives any and all objections it might otherwise have with respect thereto.

8.15 No Third-Party Beneficiaries. The City, Portland Streetcar, Inc, and 1535-A1 LLC are the only Parties to this Agreement and are the only Parties who are entitled to enforce or who are bound by its terms, except as otherwise specifically provided in this Agreement. There are no third-party beneficiaries to this Agreement nor does this Agreement bind any third parties, except as explicitly provided. Despite identification in this Agreement, York Collective is not considered a beneficiary and is not entitled to enforce any terms of this Agreement.

8.16 Time is of the Essence. Time is of the essence in the performance of and adherence to each and every provision of this Agreement.

- 8.17 Non-waiver.** Waiver by any Party of strict performance of any provision of this Agreement shall not be deemed a waiver of or prejudice a Party's right to require strict performance of the same or any other provision in the future. A claimed waiver must be in writing and signed by the Party granting a waiver. A waiver of one provision of this Agreement shall be a waiver of only that provision. A waiver of a provision in one instance shall be a waiver only for that instance, unless the waiver explicitly waives that provision for all instances.
- 8.18 Non-waiver of Government Rights.** By making this Agreement, the City is specifically not obligating itself, or any other agency with respect to any police power or regulatory actions relating to development or operation of the Projects, Infrastructure Projects, and other improvements to be constructed on the Subject Properties, including, but not limited to, rezoning, variances, environmental clearances, or any other governmental approvals which are or may be required.
- 8.19 Partial Invalidity.** If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If a material provision of this Agreement is held invalid or unenforceable such that a Party does not receive the benefit of its bargain, then the other Parties shall renegotiate in good faith terms and provisions that will effectuate the spirit and intent of the Parties' agreement herein.
- 8.20 Calculation of Time.** Unless referred to as Business Days, all periods of time shall include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or legal holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday, or Legal Holiday. "Business Days" shall mean Monday through Friday, and "Legal Holiday" shall mean any holiday observed by the State of Oregon.
- 8.21 Headings, Table of Contents.** The section headings in this Agreement are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.
- 8.22 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.
- 8.23 Amendments.** This Agreement may be amended only by a writing executed by the Parties. If the intended amendment alters the rights or responsibilities of a City of Portland bureau, then notice of such intended amendment shall be provided to the appropriate bureau or bureaus for purposes of review, comments, and assessment of the appropriate authority required to approve such intended amendment. The City Administrator is authorized to approve amendments. If appropriation is required, the City Administrator must seek Council approval of such appropriation.

- 8.24 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties as to the subject matter covered by this Agreement.
- 8.25 Successors and Assigns.** Subject to #8.2 above, rights, obligations, liabilities, and remedies provided in this Agreement shall extend to the successors-in-interest of the Parties and to the transferees and assignees of the Parties. Tenants and developers are not successors-in-interest, transferees, or assignees of the Parties.
- 8.26 Interpretation of Agreement and Status of Parties.** This Agreement is the result of arm's-length negotiations between the Parties and shall not be construed against any Party by reason of its preparation of this Agreement. Nothing contained in this Agreement shall be construed as creating the relationship of principal and agent, partners, joint ventures, or any other similar relationship between the Parties.
- 8.27 Capacity to Execute.** The Parties each warrant and represent to the other that this Agreement constitutes a legal, valid, and binding obligation of that Party. Without limiting the generality of the foregoing, each Party represents that it's governing authority and has authorized the execution, delivery, and performance of this Agreement by it. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting. Each Party represents to the others that neither the execution and delivery of the Agreement, nor the consummation of the transactions contemplated hereby will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, government agency, or court to which it is subject or any provision of its charter or bylaws; or conflict with, result in a breach of, or constitute a default under any other agreement to which it is a party or by which it is bound. No Party needs to give any notice to, make any filing with, or obtain the consent of any other entity or person to consummate the transactions contemplated by this Agreement other than recording of instruments as contemplated by this Agreement or any agreements ancillary thereto.
- 8.28 Exhibits.** The Exhibits attached to this Agreement are an integral part of this Agreement and are fully incorporated into this Agreement where they are referenced in the text of this Agreement.
- 8.29 Recording of Agreement.** The Property Owners will record this Agreement with the County Recorder's Office and all Exhibits within ten (10) days after the Effective Date.

Signatures on Next Page

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

City of Portland

By: _____
Its: _____

By: _____
[Title]

Portland Streetcar, Inc.

By: _____
Its: _____

By: _____
[Title]

1535-A1 LLC, an Oregon limited liability company

By: 1535 LLC, an Oregon limited liability company
Its: Member

By: _____
Warren Rosenfeld, Manager

Exhibit A

Legal Description

PARCEL V:

Lots 11, 12, 13, 14 and the South one-half of lot 16, Block 6, WILSON'S ADDITION TO THE CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH that portion or NW 25th Street (now NW 25th Avenue) West of and adjoining said Lots 11 and 14, which inured thereto by Vacation Ordinance No. 16089, dated January 11, 1907.

PARCEL VI:

TRACT A:

A tract of land situated in the Southwest one-quarter of Section 28, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the intersection of the center line of 25th Street with the North line of NORTH PORTLAND; thence North 1°27' West 539.28 feet along the centerline of 25th Street extended in a Northerly direction to the North line of a tract of land conveyed by deed recorded April 16, 1884 in Book 73, page 221, Multnomah County Deed Records; thence North 80°3'45" East, along the North boundary of said tract, 352.41 feet to the Northeast corner of said tract, said Northeast corner being the Northwest corner of Block 13 of DOSCHER'S SECOND ADDITION TO THE CITY OF PORTLAND; thence South 0°34'15" West 604.28 feet to the Southeast corner of said tract, said Southeast corner being the Southwest corner of Block 5 of said DOSCHER'S SECOND ADDITION TO PORTLAND; thence North 85°15' West 327.49 feet to the point of beginning.

TRACT B:

A tract of land situated in the Southeast one-quarter of Section 29, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Intersection of the center line of 25th Street with the North line of NORTH PORTLAND; thence North 1°27' West 348.88 feet along the centerline of 25th Street extended in a Northerly direction; thence Southwesterly 189.15 feet on the arc of a curve to the left having a radius of 349.26 feet and a chord bearing South 48°6' West; thence South 32°35' West 261.33 feet to said Northerly line of NORTH PORTLAND; thence South 89°15' East, along said Northerly line of NORTH PORTLAND, 288.65 feet to the point of beginning.

TRACT C:

Lots 3 through 11, inclusive, Block 1 and Lots 1 through 12, inclusive, Block 2, VERSTEEG'S ADDITION, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH that portion of vacated NW 24th Place which inured thereto by Ordinance No. 149287, recorded October 25, 1982 in Book 1624, page 2014.

ALSO TOGETHER WITH that portion of vacated NW 25th Street which inured thereto by Ordinance No. 127031, recorded July 30, 1968 in Book 632, page 972.

TRACT D:

Lots 1 through 9, inclusive, Block 13, Lots 1 through 6, inclusive, Block 6, and Lots 1 and 2, Block 5, DOSCHER'S SECOND ADDITION, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH that portion of vacated NW York Street which inured thereto by Ordinance No. 76884, recorded March 30, 1942 in Book 672, page 118.

ALSO TOGETHER WITH that portion of vacated NW Roosevelt Street which inured thereto by Ordinance No. 52489.

TRACT E:

Lots 1 through 18, inclusive, Block 8, Lots 1 through 16, inclusive, Block 9 and Lots 1 through 8 and Lots 13 through 18, Block 10, NORTH PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM those portions of Lots 7 and 13 lying Northwesterly of the Southeasterly line of the Portland Terminal Railway Company's right of way.

TOGETHER WITH that portion of vacated 25th Street which inured thereto by Ordinance No. 118015, recorded May 6, 1964 in Book 36, page 84.

ALSO TOGETHER WITH that portion of vacated NW Wilson Street which inured thereto by Ordinance No. 118764, recorded August 18, 1964 in Book 109, page 205.

PARCEL VII:

TRACT A:

A tract of land in the William Blackistone Donation Land Claim No. 53 situated in Sections 28 and 29, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

A tract of land 20 feet in width, being 10 feet on each side of the centerline of the railroad track as located and staked out upon the ground, said centerline being more particularly described as follows:

Beginning at the intersection of the terminus of York Street with the centerline of said existing railroad track and running thence Westerly on a curve along the existing railroad track and springing therefrom on a curve to the left and South, to the North line of Lot 13, Block 10, NORTH PORTLAND, in the City of Portland, County of Multnomah and State of Oregon and the termination of said easement.

EXCEPT THEREFROM that portion thereof lying within the following described tract:

A tract of land situated in the William Blackistone Donation Land Claim No. 53 situated In Sections 28 and 29, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at the intersection of the centerline of 25th Street with the North line of North Portland in said City of Portland and running thence North 1°27' West 539.28 feet along the centerline of said 25th Street extended in a Northerly direction to the North line of a tract of land described in Deed to William S. Ladd et al recorded in Book 73, page 221, Records of Multnomah County, and running thence North 80°3'45" East along the North boundary of said tract 352.41 feet to the Northeast corner thereof (said Northeast corner being the Northwest corner of Block 13 of DOSCHER'S SECOND ADDITION TO THE CITY OF PORTLAND) and running thence

South 0°34'15" West 504.28 feet to the Southeast corner of said tract (said Southeast corner being the Southwest corner of Block 5 of said DOSCHER'S SECOND ADDITION), and running thence North 89°15' West 327.49 feet to the point of beginning.

TRACT B:

A tract of land situated in the William Blackistone Donation Land Claim No. 53 situated In Sections 28 and 29, Township 1 North, Range 1 East of the Willamette Meridian, In the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

A tract of land 20 feet in width, being 10 feet on each side of the centerline of the railroad track as located and staked out upon the ground, said centerline being more particularly described as follows:

Beginning at the intersection of the terminus of York Street with the centerline of said existing railroad track and running thence on a curve to the North to a point that is approximately opposite of and 30 feet distant from the Southwest corner of Lot 6, Block 3, VERSTEEG'S ADDITION, in the City of Portland, County of Multnomah and State of Oregon; thence continuing in a Westerly direction along the existing railroad centerline to the East boundary line of 26th Street and the termination of said easement.

EXCEPT THEREFROM that portion thereof lying within the following described tract: A tract of land situated in the William Blackistone Donation Land Claim No. 53 situated in Sections 28 and 29, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at the intersection of the centerline of 25th Street with the North line of North Portland in said City of Portland and running thence North 1°27' West 539.28 feet along the centerline of said 25th Street extended in a Northerly direction to the North line of a tract of land described in Deed to William S. Ladd et al recorded in Book 73, page 221, Records of Multnomah County, and running thence North 80°3'45" East along the North boundary of said tract 352.41 feet to the Northeast corner thereof (said Northeast corner being the Northwest corner of Block 13 of DOSCHER'S SECOND ADDITION TO THE CITY OF PORTLAND) and running thence South 0°34'15" West 504.28 feet to the Southeast corner of said tract (said Southeast corner being the Southwest corner of Block 5 of said DOSCHER'S SECOND ADDITION), and running thence North 89°15' West 327.49 feet to the point of beginning.

TRACT C:

A tract of land in the William Blackistone Donation Land Claim No. 53 situated in Sections 28 and 29. Township 1 North, Range 1 East of the Willamette Meridian, In the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

A tract of land more particularly described as follows:

Beginning at a point 100 feet Easterly at right angles from the East boundary of NW 26th Street and 20 feet Southerly at right angles from the Southerly boundary of said VERSTEEG'S ADDITION, in the City of Portland, County of Multnomah and State of Oregon; thence South 76°42' West 55.00 feet; thence South 70°32' West 16.0 feet; thence on a curve to the left of 221.5 feet radius 52.4 feet, more or less, to a point in the Easterly boundary of NW 26th Street; thence North 1°27' West along the Easterly boundary of said street 6.4 feet; thence continuing along the Easterly boundary of said NW 26th Street North 9°56' West 7.16 feet to a point 20 feet distant at right angles from the Southerly boundary of said VERSTEEG'S ADDITION; thence North 80°04' East 100.0 feet to point of beginning.

TRACT D:

A tract of land in the William Blackistone Donation Land Claim No. 53 situated in Sections 28 and 29, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

A tract of land 20 feet in width, being 10 feet on each side of the railroad track as now located and staked out upon the ground extending from a point in the North boundary line of Lot 13, Block 10, NORTH PORTLAND, in the City of Portland, County of Multnomah and State of Oregon; thence on a curve through said Lot 13 and Lots 12, 7, 8 and 9 in said Block 10 and the termination of said easement.

TRACT E:

A tract of land in the William Blackistone Donation Land Claim No. 53 situated in Sections 28 and 29, Township 1 North, Range 1 East of the Willamette Meridian, City of Portland, County of Multnomah, State of Oregon, more particularly described as follows:

A tract of land more particularly described as follows:

Beginning at a point in the West line of Block 10, NORTH PORTLAND, North 1°27' West 26.72 feet from the Southwest corner thereof; running thence Northeasterly 69.66 feet on a curve to the left having a radius of 230.49 feet, an initial tangent bearing North 73°50' East; thence North 56°31' East 14.95 feet; thence Northeasterly 65.26 feet on a curve to the left having a radius of 208.31 feet to a point in the Northerly line of that tract of land 20.00 feet wide described in Book 805, Page 190; thence Southwesterly following said Northerly line to a point in the West line of said Block 10; thence North 1°27' West to the point of beginning.

PARCEL VIII:

Lots 1, 2 and 12, Block 1, VERSTEEG'S ADDITION TO EAST PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH that portion of vacated NW 24th Place which inured to said Lot 12 by Ordinance No. 149287, a copy of which was recorded October 25, 1982 in Book 1624, page 2014.

PARCEL IX:

Lots 3, 4, 5, 8, 9, 12, 13 and 18, Block 7, DOSCHER'S SECOND ADDITION, in the City of Portland, County of Multnomah and State of Oregon.

PARCEL X:

A portion of that tract of land described in Book 2204, Page 2471, being Lots 1, 2, 6, and a portion of Lot 7, Block 4, DOSCHER'S SECOND ADDITION situated in the Northwest quarter of the Southwest quarter of Section 28, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, and being more particularly described as follows:

Beginning at a 1.17" copper disk stamped "Summit 59999LS" on the North line of said Lot 7, which bears South 89°55'02" East 38.67 feet from a 5/8" iron rod with yellow plastic cap inscribed "Summit 59999LS" marking the northwest corner of said Lot 7; thence along the North line of said Lot 7, and continuing along the North line of said Lots 6 and 1, South 89°55'02" East, 161.33 feet to a 5/8" iron rod with yellow plastic cap inscribed "Summit 59999LS" at the Northeast corner of said Lot 1; thence along the East line of said Lot 1 and continuing along the

East line of said Lot 2, South 00°02'48" West, 87.80 feet to a 5/8" iron rod with yellow plastic cap inscribed "Summit 59999LS" at the Southeast corner of said Lot 2; thence along the South line of said Lot 2, and continuing along the South line of said Lots 6 and 7, North 87°30'55" West, 163.09 feet to a 5/8" iron rod with yellow plastic cap inscribed "Summit 59999LS" which bears South 87°30'55" East, 37 .09 feet from a 5/8" iron rod with yellow plastic cap inscribed "Summit 59999LS" marking the Southwest corner of said Lot 7; thence leaving said South line of Lot 7, North 01°11'18" East, 80.98 feet to the point of beginning.

PARCEL XI:

TRACT A:

A tract of land in Wm. Blackistone Donation Land Claim and in Section 29, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of Block 10, NORTH PORTLAND; thence North 1°27' West along the East line of N.W. 26th Avenue, 221.38 feet to the Northwest corner of the tract conveyed to Frank A. Bitar and Robert A. Bitar by deed recorded July 29, 1953 in Ps Deed Book 1613, page 409 and the true point of beginning of the tract to be described; thence along the Northerly line of said Bitar tract, North 88°033' East 322 feet to the Westerly right of way line of the Northern Pacific Terminal Company; thence along said Westerly right of way line on an arc of a curve to the right, having a radius of 369.26 feet, 201.80 feet, more or less, to the center line of N.W. 25th Avenue in NORTH PORTLAND, extended Northerly; thence North 1°27' West along said center line of N.W. 25th Avenue extended, 132.30 feet, more or less, to the Southerly right of way line of the Northern Pacific Terminal company; thence along the Southerly line of said right of way, Westerly 113.29 feet on the arc of a curve to the left having a radius of 400.28 feet and chord bearing South 88°07' West; thence South 88°01' West 272.2 feet; thence South 76°42' West 55 feet; thence South 70°32' West 16 feet; and thence Westerly on the arc of a curve to the left having a radius of 221.5 feet and tangent to the last mentioned course 32.4 feet, more or less, to the Easterly line of N.W. 26th Avenue; thence South 1°27' East along said Easterly line of N.W. 26th Avenue, 193.82 feet to the true point of beginning.

TRACT B:

A tract of land in Wm. Blackistone Donation Land Claim and In Section 29, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

That portion lying Southerly of Lot 6, Block 3, VERSTEEG'S ADDITION, Westerly of the center line of NW 25th Street, extended, and Northerly of the North line of the Northern Pacific Terminal Company railroad tract.

PARCEL XII:

Lots 1, 2, 3, 4, 5, 15, 16, 17 and 18, Block 11, NORTH PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

Exhibit B

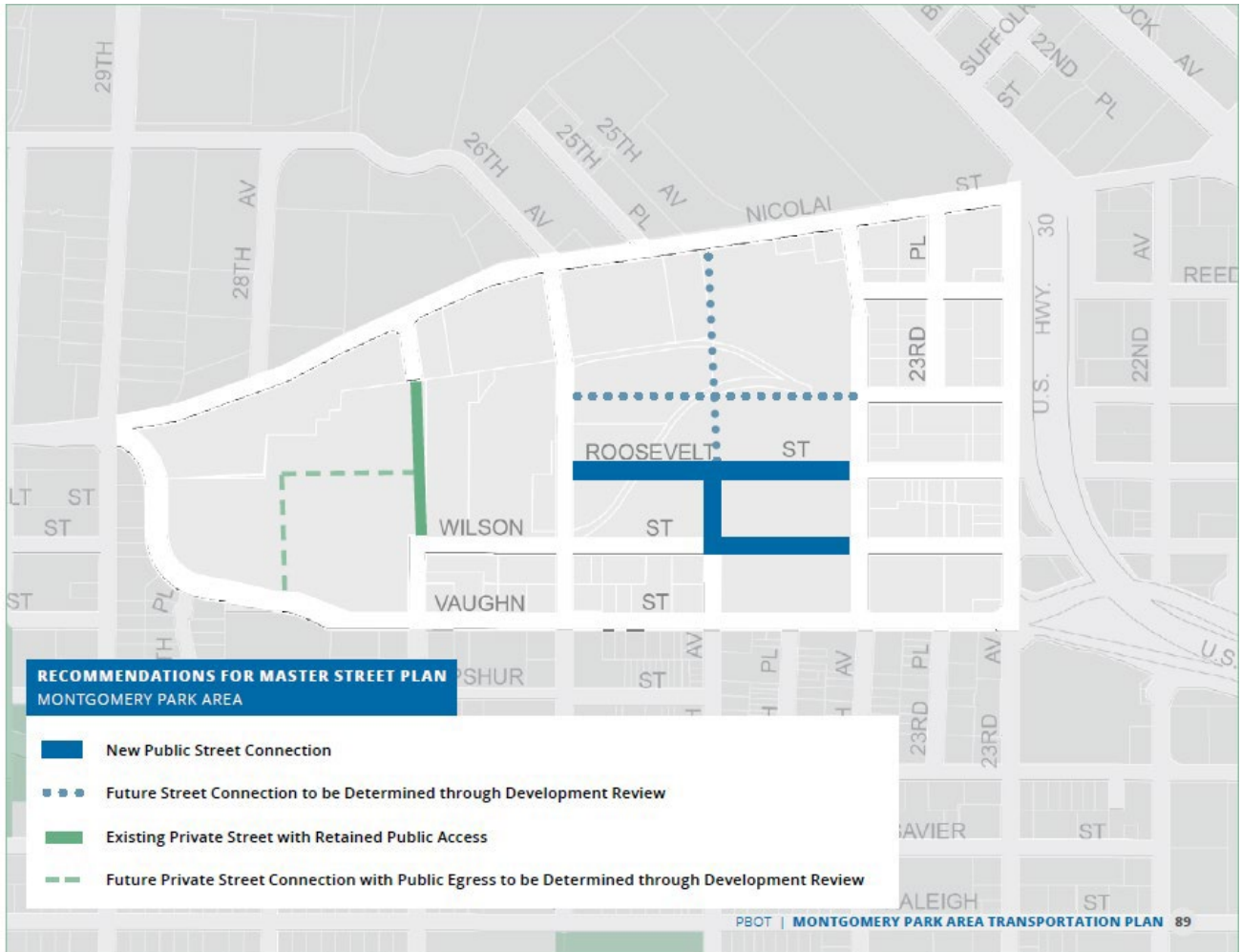


Exhibit C

When Recorded Return to:
Portland Housing Bureau
1900 SW 4th Avenue, Suite 7007
Portland, OR 97201
Attn: [Brett Eisenbrown/Chris Flanary]

INCLUSIONARY HOUSING COVENANT MONTGOMERY PARK PUBLIC BENEFITS AGREEMENT CONSOLIDATED BUILDING

This **INCLUSIONARY HOUSING COVENANT** (this "Agreement") is entered into as of the _____ day of _____, 20____, (the "Effective Date") between the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND HOUSING BUREAU** ("PHB") with offices located at 1900 SW 4th Avenue, Suite 7007, Portland, OR 97201, and [**OWNERSHIP ENTITY**], a[n] [State] [entity type], ("Owner") with offices located at [Address, City, State Zip] [and [LAND LESSOR ENTITY], a[n] [State] [entity type], ("Land Lessor") with offices located at [Address, City, State Zip]].

RECITALS

A. Owner [holds title to/leases from Land Lessor] certain real property located at [property address], Portland, Oregon, as more particularly described in the legal description attached hereto as **Exhibit A** (the "Property"), upon which the Project (as defined herein) will be constructed. [Under the terms of the lease, between Land Lessor and Owner, Owner may use and occupy the Property for the construction, development and operation of the below defined Project.] The Owner is sometimes referred to herein as the "Consolidated Building Owner" (defined in Section 1 below) with respect to ownership of the Consolidated Building (defined in Section 1 below). The Property includes the Project and all buildings, structures, fixtures, equipment and other improvements now or hereafter constructed or located upon the Property.

[B.] [A [second] building ("[Building Name]") will also be constructed on the Property, and will be located at [Address], Portland, Oregon. [Building Name] is not encumbered by or subject to the obligations, restrictions and conditions imposed by this Agreement.]

[B/C.] Owner has applied for building permits to construct a multifamily building (the "Project") comprised of [two-hundred] ([200]) units of Inclusionary Housing (the "IH Units") in accordance with the Portland City Code 30.01.120 and Section 3 of the Montgomery Park Public Benefits Agreement, in effect on the Vesting Date (as defined herein) and as clarified by the

[Interim] Inclusionary Housing Program Administrative Rules adopted [adoption date] (the “IH Program”).

[C./D./E.] A condition of the IH Program and the Montgomery Park Public Benefits Agreement is that Owner [and the Land Lessor] enter[s] into this Agreement and agree to the restrictions, covenants and obligations set forth herein.

[E./F./G.] The Owner intends to construct the Project as part of ongoing development on the same Site [approved under [building permit [###-##### CO]/[LU [###-#####]]]. The [building permit application /discretionary land-use application], inclusive of the Project, was filed [date] (the “Vesting Date”).

[F./G./H.] The Owner intends that the Project will serve as a Consolidated Building for eligible buildings on the Site, each a Transferring Building (as defined herein), thereby absorbing the IH requirements for the Transferring Buildings through On-Site Consolidation (as defined herein). Owner anticipates constructing 2,000 Units of Market Rate Housing on the Site and 200 IH Units in the Consolidated Building.

[G./H./I.] Owner intends to subsequently amend this Agreement by entering into a Consolidated Building IH Covenant Amendment that includes the restrictions, covenants and obligations for all Consolidated IH Units transferred to the Consolidated Building from each Transferring Building on the Site.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency for which are hereby acknowledged, and in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

Section 1. Definitions

In addition to other defined terms in this Agreement, the following terms have the meanings set forth below.

“Certificate of Occupancy” means the Certificate of Occupancy issued for the Project by the City of Portland Permitting & Development (PP&D).

“Compliance Period” means the ninety-nine (99) year time period during which the Affordability Requirements in Section 2, the reporting requirements in Section 3 of this Agreement and all related terms and conditions apply to the Project. The Compliance Period begins on the date that the final certificate of occupancy (“Certificate of Occupancy”) for the Consolidated Building is issued by the PP&D and terminates ninety-nine (99) years from commencement.

“Consolidated Building” means the Project, which is absorbing the IH requirements of one or more Transferring Buildings in the Montgomery Park Plan Area through “On-Site Consolidation.”

“Consolidated Building IH Covenant Amendment” means a type of recorded regulatory agreement between the Owner of the Consolidated Building and PHB that sets forth the approval and compliance criteria of the IH Units transferred from each Transferring Building and is recorded on the title to the Property.

“Consolidated Building Owner” means the owner of the Consolidated Building containing the required IH Units for the Property and Transferring Buildings.

“Consolidated IH Units” means the IH Units transferred from the Transferring Building.

“Median Family Income for the Area” or “(MFI)” means the median gross income for the Portland, Oregon metropolitan statistical area as calculated in a manner consistent with the determination of median gross income for such area under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, under such program as is in effect immediately before such termination).

“On-Site Consolidation” for the purpose of this Agreement refers to Buildings within the Montgomery Park Plan Area that satisfy the conditions of the Montgomery Park Public Benefits Agreement, this Agreement, and all applicable IH Program obligations and Inclusionary Housing Program Administrative Rules.

“Qualified Tenant” means any tenant that meets the MFI requirements of the IH Units at any affordability level.

“Restriction Period” means the time period between the Effective Date of this Agreement and the date that the final Certificate of Occupancy for the Project is issued by PP&D. On the date that the Certificate of Occupancy is issued, the Restriction Period ends, and the Compliance Period begins.

“Site” for the purpose of this Agreement refers to the Subject Area legally described in Exhibit A to the Montgomery Park Public Benefits Agreement and Exhibit A to this Agreement.

“Term” means the period beginning on the Effective Date of this Agreement and ending on the date that is ninety-nine (99) years after the date on which the final Certificate of Occupancy was issued. The Term is inclusive of the Restriction Period and Compliance Period.

“Transferring Building” means a building in the Montgomery Park Plan Area which utilizes On-Site Consolidation to transfer its own IH obligation to another Building in the Montgomery Park Plan Area, known as the Consolidated Building.

“Transferring Building Owner” means the Owner of a Building that transfers its IH obligations to a Consolidated Building.

Section 2. Affordability Requirements

2.1 At all times during the Compliance Period, Owner will provide the following IH Units for the Project:

Unit type	# of Units	Minimum Square Feet	MFI
Studio	—	—	—%
[Windowed/Windowless/Lofted][One]-Bedroom	—	—	—%
[Windowed/Windowless/Lofted][Two]-Bedroom	—	—	—%
[Windowed/Windowless/Lofted][Three]-Bedroom	—	—	—%
Total IH Units	—	—	—

The restricted Units above constitute Owner’s IH Program obligations for the Project and must be met regardless of whether any Transferring Building is constructed on the Site.

2.2 During the Compliance Period, each IH Unit will be rented or available for rental on a continuous basis to members of the general public, subject only to temporary vacancies or unavailability during cleaning or rehabilitation. Owner shall not give, or allow to be given, any preference to any group or class in renting the IH Units, except to Qualified Tenants. Notwithstanding the foregoing, Owner may establish preferences consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development, 24 CFR subtitle A and chapters I through XX, HUD Handbook 4350.3. Owner shall not discriminate, or allow discrimination, in the provision of housing on the basis of race, creed, gender, national origin, religion, marital status, sexual orientation, family status, age, disability, or the receipt of public assistance, nor against any tenant who is a parent or legal guardian with whom a child resides or is expected to reside except in the event that the Project (i) is designated exclusively for households, the heads of which are over 62 years of age, or (ii) is designated for households, the heads of which are 55 years of age or older, if the Project meets the requirements of applicable federal law. The Project will conform with Section 807(b) of the Fair Housing Act, Title VIII of the Civil Rights Act as amended by the Fair Housing Amendments Act of 1988, the Housing for Older Persons Act of 1995, and HUD regulations implementing the same.

2.3 PHB and its agents and representatives, upon reasonable notice and subject to applicable landlord tenant law, may, for the purpose of inspection, enter upon the Project at least once every three (3) years to audit compliance with the terms of this Agreement. Inspections may include an audit of IH Program related files such as TICs and other information submitted through the Web Compliance Monitoring System (“WCMS”). Projects that are determined to be in Default may be inspected more frequently until the Project either cures the Default or is released from its IH Program obligations after payment of all applicable penalties, fees, costs, and interest.

2.4 At any time upon request, PHB shall have the right to access and inspect, examine, and make copies of all the books and records of the Owner relevant to the Property's compliance with the IH Program.

Section 3. Reporting /Qualified Tenants

3.1 Owner must, prior to engaging in any leasing activities in the Project, submit to PHB-Risk Analysis & Compliance, the unit composition and rent schedule for the Project that shows for each unit: the unit number, bedroom count, square footage, the Qualified Tenants' initial rent, MFI level, utility allowance, and maximum allowable rent to Qualified Tenant. The rent schedule is subject to the approval of PHB, which approval will not be unreasonably withheld.

3.2 Owner or Owner's agent will obtain, complete, and maintain on file income certifications for each Qualified Tenant, dated immediately prior to the initial occupancy of such Qualified Tenant in the Project, using a Tenant Income Certification ("TIC") form and various accompanying documentation required as set forth in **Exhibit B** hereto. Owner will make a good faith effort to verify that the income stated by an applicant is accurate by obtaining at least one of the following: (1) a pay stub for the most recent pay period; (2) an income tax return for the most recent tax year; (3) an income verification form from the applicant's current employer; (4) an income verification from the Social Security Administration or other agency providing pension or assistance payments; or (5) if the applicant is unemployed and receives no assistance or pension income, another form of independent verification or an executed written declaration of the prospective tenant.

3.3 After the initial submission of the unit composition, rent schedule and the TIC, required in Section 3.1 and 3.2 above, the unit composition, Rent and Utility Schedule and the TIC are required to be submitted electronically on April 1st of each year during the Compliance Period.

Section 4. Covenants Run with the Land

Owner [and Land Lessor]hereby declare[s] [its/their] express intent [and Land Lessor consents] to encumbering the Property such that during the Restriction Period and Compliance Period, the covenants, restrictions, charges and easements set forth herein will be deemed covenants running with the land and will pass to and be binding upon Owner's [and Land Lessor's] successors in title including any purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest therein. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property or any portion thereof or interest therein (other than a rental agreement or lease for an IH Unit) must contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not

such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

Section 5. Sale or Disposition of the Property or the Project

Upon execution of this Agreement, and through the duration of the Term, any sale or transfer of all or any part of, or the interest in the Project, shall require prior notice to PHB and shall require the new owner to enter into an Assignment and Assumption Agreement upon the sale or transfer, in which the new Owner assumes this Agreement in its entirety. Any amendments to the terms of this Agreement are subject to Section 19 below. As used herein, the term “sale or transfer” is used in its broadest sense, and includes, with respect to the Project, the execution or termination of a ground lease, master lease or other lease not in the ordinary course of business, land sale contract, foreclosure, deed in lieu of foreclosure, or transfer (by operation of law or otherwise) pursuant to any dissolution, liquidation, merger, reorganization or consolidation, however, the term “sale or transfer” does not include, with respect to a beneficial interest in Owner [or Land Lessor], a sale, gift or other transfer of any partnership, stock, membership or other ownership interest in Owner [or Land Lessor], or foreclosure by a lender whose trust deed is senior in priority to this Agreement or deed in lieu of foreclosure and any subsequent transfer following any such foreclosure or deed in lieu of foreclosure.

Section 6. Compliance; Owner’s Obligation

Owner shall comply with the requirements of this Agreement and shall correct any noncompliance within the earlier of: (i) thirty (30) days after such noncompliance is first discovered by Owner, or would have been discovered by Owner if not for Owner’s negligence or malfeasance; or (ii) within thirty (30) days after Owner receives the initial Annual Compliance Test (“ACT”) results identifying non-compliance and actions items needed to resolve such non-compliance from PHB or its successors or assigns. If the noncompliance cannot be cured within the 30-day period, PHB may issue a Notice of Non-Compliance with a finalized ACT Workbook. Owner shall not be deemed in default so long as Owner commences to cure within the 30-day period and thereafter diligently pursues such cure to completion, in which case such cure shall occur no later than ninety (90) days after receipt of the Notice of Non-Compliance unless another date is agreed upon or a stated in the Notice of Non-Compliance. In the event that Owner cannot cure the non-compliance within ninety (90) days due to the timeline to comply with applicable legal requirements, Owner shall seek approval from PHB for an extension, which will not be unreasonably withheld.

Upon failure to timely cure any non-compliance set forth in the Notice of Non-Compliance, PHB may issue a Notice of Default and assess a Default Notice Fee of \$1,000. PHB may also assess a Default Daily Penalty, which will begin accruing the day the Notice of Default and Demand Statement is sent and continue at a rate of \$50 per day until all Events of Default have been cured and all penalties have been paid.

Section 7. On-Site Consolidation Requirements

The following requirements apply to the Consolidated Building:

7.1 The Consolidated Building remains subject to all applicable IH Program requirements and the Montgomery Park Public Benefits Agreement and must first show how it will satisfy all applicable requirements before PHB Staff will review the building as a proposed Consolidated Building for Consolidated IH Units. The Consolidated Building option terms in this Agreement supersede conflicting Consolidated Building terms described in Portland City Code 30.01.120 and applicable IH administrative rules. Where there is conflict between the terms, the terms of this Agreement control. Where there is no conflict, the terms of PCC 30.01.120 and applicable IH Program requirements apply.

7.2 The Consolidated Building Owner must execute and record a Consolidated Building IH Covenant Amendment on the Consolidated Building outlining the IH Program requirements the Consolidated Building will perform for each Transferring Building. Each Transferring Building will execute its own IH Covenant, subject to release when all required conditions are fulfilled.

7.3 The Consolidated Building as constructed must satisfy all applicable requirements of the IH Program and the Montgomery Park Public Benefits Agreement, including the following requirements:

7.3.1 Unit Mix. The Consolidated Building will adhere to one of the following options for unit mix as reflected in the table contained in Section 2.1:

7.3.1.1 Option 1: The unit mix is one-third studio units, one-third one-bedroom units, and one-third two-bedroom units; or

7.3.1.2 Option 2: No more than 20 percent of the units are studio units, or no fewer than 20 percent of the units are two-bedroom units.

7.3.2 Building Quality. All Units in the Consolidated Building must have finishes with life expectancies and appliances with the same Energy Star rating as those typically included in market rate housing built in the City of Portland in the last three years, as reasonably certified by the Consolidated Building's architect upon construction completion.

7.3.3 Unit Size. All two-bedroom units in the Consolidated Building will be at least 800 square feet. A bedroom is a habitable private room as defined by PCC 29.30.210 and is enclosed by a door that separates it from the rest of the unit or contains a bedroom that is located on a separate floor such that it cannot be viewed from other levels.

7.4 Transferring Buildings.

7.4.1 Upon construction of the Consolidated Building in compliance with the terms of this Agreement, the Montgomery Park Public Benefits Agreement, and applicable IH Program requirements, Transferring Buildings will not be subject to any IH reasonable equivalency requirements that would compare the unit type, size,

or types of finishes and appliances. Any waiver of reasonable equivalency does not apply to the Transferring Building's IH Covenant and will only apply to the Transferring Building once units are transferred to the Consolidated Building in accordance with PCC 30.01.120 and the IH administrative rules.

7.4.2 Transferring Buildings may not receive any exemptions from property taxes, System Development Charges, Affordable Housing Construction Excise Taxes, or any other City-controlled exemptions or subsidies.

7.5 The Consolidated Building must receive a Certificate of Occupancy from the PP&D no later than three (3) years after the first Transferring Building receives its Certificate of Occupancy and no later than seven (7) years after the execution of the Montgomery Park Public Benefits Agreement.

7.6 The Consolidated Building and Transferring Building must meet the following conditions before PHB will authorize the release of the Transferring Building IH Covenant from a Transferring Building:

7.6.1 PP&D must have issued the Certificate of Occupancy to both the Transferring Building and the Consolidated Building.

7.6.2 The Owner of the Consolidated Building must have executed and recorded a Consolidated Building IH Covenant Amendment on title of the Consolidated Building.

7.6.3 PHB has confirmed that the Transferring Building has met all requirements of the IH Program as contained in its Transferring Building IH Covenant and the Montgomery Park Public Benefits Agreement.

7.7 A Transferring Building may receive credit for years of compliance for IH Units made available in a Consolidated Building prior to its own receipt of a final Certificate of Occupancy, if the IH Units held for the Transferring Building's IH obligations have remained in compliance under another PHB compliance restriction that otherwise fulfill the affordability requirements of this Agreement, until such time as the Transferring Building receives its final Certificate of Occupancy, and the Transferring Building and Consolidated Building have met all conditions of their respective covenants, and all applicable rules and laws.

7.8 A Transferring Building that receives its Certificate of Occupancy before the Consolidated Building receives its Certificate of Occupancy may defer its IH obligations until units in the Consolidated Building are available for transfer or the option to construct a Consolidated Building within the terms of the Montgomery Park Public Benefits Agreement expires. Upon the occurrence of either event, the IH Units satisfying the Transferring Building's IH obligations must be made available for rental in compliance with Section 2 of this Agreement and will be restricted for ninety-nine (99) years.

7.9 Owner intends to subsequently amend this Agreement and enter into a Consolidated Building IH Covenant Amendment that outlines the restrictions, covenants and

obligations for all Consolidated IH Units transferred to the Consolidated Building from each Transferring Building within the Property.

Section 8. Reserved

Section 9. Events of Default

An Event of Default (each, an “Event of Default”) occurs in cases of non-compliance in accordance with Section 6 and includes, but is not limited to, the following:

- a.** One or more IH Units have been determined to be out of compliance with this Agreement for ninety (90) or more consecutive days;
- b.** No tenant income screening is performed;
- c.** Current Qualified Tenants are not income qualified in accordance with Section G.1.(3)(d) “Incomes rising in place” of the Administrative Rules;
- d.** The Consolidated Building has uncorrected health or safety citations; or
- e.** Non-compliance with fair housing laws;

Section 10. Rights and Remedies of PHB

Upon issuance of a of a Notice of Default that remains uncured for a period of thirty (30) days, and at any time thereafter, PHB may, at its option, exercise any one or more of the following rights and remedies.

10.1 IH Covenant Release Penalty. After issuing a Notice of Default and Demand Statement, which is not timely cured, PHB may assess and require payment of the following penalty. Upon payment of the Release Penalty and other assessed penalties, costs, and fees, PHB will release this Agreement from the Property and this Agreement will be terminated and of no further effect.

(1) IH Covenant Release Penalty calculation. PHB will calculate the IH Covenant Release Penalty as follows:

(a) Replacement Value. The 200 Consolidated Building IH Units will be multiplied by \$450,000 to determine the replacement value for the IH Units (Replacement Value);

(b) Appreciation. A three percent (3%) simple appreciation per year will be applied to the Replacement Value, rather than a compounded appreciated value, computed from the date of the Notice of Default; and

(c) **Years of compliance discount.** The appreciated Replacement Value will be divided by the 99-year Compliance Period. The result will be multiplied by the years remaining in the Compliance Period.

10.2 Performance of Obligations. PHB may by mandamus or other suit, action or proceeding at law or in equity, require the Owner to perform its covenants, conditions, agreements, and obligations in this Agreement, or to abate, prevent, or enjoin any acts or things which may be unlawful or in violation of the owner rights of PHB in this Agreement, provided that upon full payment of the IH Covenant Release Penalty and associated fees pursuant to Section 10.1 above, such remedy shall not include specific performance.

10.3 Money Damages. Take such other action available at law, in equity, or otherwise as may appear necessary to enforce the covenants, conditions, agreements, and/or obligations of the Owner in this Agreement, in such order and manner as it may select, to recover monetary damages caused by such violation or attempted violation of any covenant, condition, agreement, and/or obligation. Such damages to include but are not limited to all costs, fees, and expenses, including but not limited to staff and administrative expense, fees including but not limited to all reasonable attorneys' fees which may be incurred by the PHB or any other party in enforcing or attempting to enforce this Agreement following any Event of Default on the part of the Owner or its successors, whether the same shall be enforced by suit or otherwise; together with all such costs, fees and expenses which may be incurred in connection with any amendment to this Agreement or otherwise at the request of the Owner.

10.4 IH Program Penalties, Fees, and Administrative Costs. PHB may assess any penalties, fees, or administrative costs that are authorized by IH Program requirements in a manner consistent with those requirements.

10.5 General. Each of the remedies provided herein is cumulative and not exclusive. PHB may exercise from time to time any rights and remedies available to it under applicable law or equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement. Any failure or delay by PHB in asserting any of its rights or remedies, including specific performance, as to any Event of Default shall not operate as a waiver of any default or of any such rights or remedies or deprive PHB of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 11. Severability

The invalidity of any clause, part or provision of this Agreement will not affect the validity of the remaining clauses, parts, or portions hereof.

Section 12. Notices

Any notice required or permitted under this Agreement will be in writing and will be deemed effective; (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, (3) two business days after having been

deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile (answer back or receipt confirmed), addressed to the parties as follows:

Owner: _____

with a courtesy notice to: _____

PHB: Portland Housing Bureau
Attn: Compliance
1900 SW 4th Avenue, Suite 7007
Portland, OR 97201
Phone: (503) 823-3377
Facsimile: 503-865-2387

with a copy to: City Attorney's Office
1221 SW 4th Avenue, Suite 430
Portland, OR 97204

Section 13. No Third-Party Beneficiaries.

This Agreement is not intended to confer upon any person other than the parties to this Agreement any rights or remedies under this Agreement.

Section 14. Governing Law, Venue

This Agreement will be governed by the laws of the State of Oregon. Venue will be in the Circuit Court of Multnomah County, Oregon.

Section 15. Waiver.

The failure of PHB to enforce any provisions of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance does not constitute a waiver by PHB of that or any other provisions nor is it a waiver of any subsequent violation or

nonperformance. Such failure to enforce waiver, if made, is effective only in the specific instance and for the specific purpose given.

Section 16. Survival

Provisions of this Agreement which by their nature are intended to survive termination of this Agreement (including, but not limited to remedies and recordkeeping) will survive.

Section 17. Estoppel Certificate

Within thirty (30) days after written request is delivered to either party by the other party hereto, the requested party shall issue an estoppel certificate certifying, as of the date thereof: (i) whether any known default exists under this Agreement and, if there are known defaults, specifying the nature thereof; (ii) whether, to its knowledge, the Project continues meet the affordability requirements set forth in Section 2 above; (iii) whether, to its knowledge, any Fee-in-Lieu Amount is then owed by Owner pursuant to Section 10.1 above; (iv) whether, to its knowledge, this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and (v) that, to its knowledge, this Agreement is in full force and effect. Any purchaser from or lender for Owner, or from anyone deriving any interest in the Project through the Owner, shall be entitled to rely on said certificate from PHB with respect to the matters therein set forth, such matters being conclusive as among PHB, Owner and such persons deriving any interest through them.

Section 18. Recitals

The Recitals set forth at the beginning of this Agreement are hereby incorporated into this Agreement by this reference as if set forth in their entirety herein.

Section 19. Merger Clause

This Agreement and any exhibits, schedules, appendices and attachments hereto (which are by this reference incorporated herein), constitutes the entire agreement between the parties on the subject matter hereof. No modification or amendment of this Agreement will bind either party unless in writing and signed by both parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS, WHEREOF, the parties have caused this Agreement to be signed by their respective, duly authorized representatives, as of the Effective Date.

PHB:

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

By: _____
Helmi A. Hisserich, Director

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this ____ day of _____, 20__, by Helmi A. Hisserich, Director of the PORTLAND HOUSING BUREAU.

Notary Public of Oregon
My Commission Expires: _____

LAND LESSOR:

[LAND LESSOR ENTITY],
an [State] [entity type]

By:
[Signatory Name], [Title]

STATE OF _____)
County of _____) ss.

This instrument was acknowledged before me this ____ day of _____, 20____,
by [Signatory Name], as [relationship] of [LAND LESSOR ENTITY], a[n] [State] [entity type].

My Commission Expires: _____ Notary Public of _____

EXAMPLE TEMPLATE

**EXHIBIT A
LEGAL DESCRIPTION**

EXAMPLE TEMPLATE

Effective Date of Income Certification: _____ Household Size at Certification: _____
 (YYYY-MM-DD)

PART V. DETERMINATION OF INCOME ELIGIBILITY

<p>TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1</p> <p style="text-align: right;">\$ _____</p> <p>Current Income Limit per Family Size: \$ _____</p> <p>Household Income at Move-in: \$ _____</p>	<p>Household Meets Income Restriction at: _____ % MFI</p> <p>Income Table: Must Use HUD</p> <p>Year: _____</p> <p>Household Size at Move-in: _____</p>	<p>RECERTIFICATION ONLY:</p> <p>Current 80% MFI Income Limit (per family size)</p> <p style="text-align: right;">\$ _____</p> <p>Household Income exceeds 80% at recertification:</p> <p style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
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PART VI. RENT

<p>A) Tenant Paid Rent (TP) \$ _____</p> <p>B) Utility Allowance (UA) \$ _____</p> <p>C) Rent Assistance * (RA) \$ _____</p> <p>D) Any Non-Optional Charges \$ _____</p>	<p><input type="checkbox"/> TBA <input type="checkbox"/> PBA <input type="checkbox"/> Other: _____</p>	<p>Unit Meets Rent Restriction at:</p> <p>Target MFI Restriction (Regulatory): _____ %</p> <p><input type="checkbox"/> Non-HOME *</p>
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GROSS RENT FOR UNIT:

1. Add A, B and D if no rental assistance
 2. Add A, B, C and D if there is a rental assistance paid to the tenant or project based on the household's income. [See NOTE below]

*Either Tenant-based or Project-based rent subsidy may be accepted and rent may exceed Maximum Allowable Rent set by HUD.

Maximum Gross Rent Limit for this unit: (High or Low HOME Published Rent) \$ _____

Compare the above figure to the published HUD maximum rents for the unit based on MFI rent restriction.

SIGNATURE OF OWNER/REPRESENTATIVE

Printed Name of Owner/Representative _____ Signature of Owner/Representative _____ DATE _____

[NOTE: Calculation of Gross Rent with rental assistance does add the Utility Allowance. The subsidy payment received by the owner has reduced the tenant's portion of rent by the allowance, but the total amount of rent established for a unit is included in the subsidy payment. There is no additional reduction of rent paid to the owner by the housing authority for utility allowances.]