

Exhibit A

**AGREEMENT FOR DEVELOPMENT OF PROPERTY  
IN THE GATEWAY REGIONAL CENTER URBAN RENEWAL AREA**

**9929-9999 NE GLISAN ST.**

**AND**

**618 NE 99<sup>TH</sup> AVE.**

**BETWEEN**

**THE PORTLAND HOUSING BUREAU**

**AND**

**GLISAN COMMONS PHASE I LIMITED PARTNERSHIP**

**DATED**

**NOVEMBER \_\_, 2012**

This DEVELOPMENT AGREEMENT (this "Agreement") is made and entered this \_\_\_ day of November, 2012 (the "Effective Date"), by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon (the "City"), acting by and through the PORTLAND HOUSING BUREAU, the duly designated housing bureau of the City of Portland ("PHB") and GLISAN COMMONS PHASE I LIMITED PARTNERSHIP, an Oregon limited partnership ("Developer"). PHB and Developer are referred to jointly in this Agreement as the "Parties" and individually as a "Party."

### RECITALS

- A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, the Portland Development Commission ("PDC") has undertaken a program for the development and redevelopment of blighted areas within the city limits and in connection therewith prepared and approved an Urban Renewal Plan for the Gateway Regional Center Urban Renewal Area, which was approved by the City Council of the City on June 21, 2001 (as amended from time to time and as constituted on the date hereof, the "Urban Renewal Plan") by Ordinance No. 175669, recorded in the real property records of Multnomah County, Oregon;
- B. PDC, finding it necessary and in the public interest to implement the Urban Renewal Plan, acquired certain real property located at 9929-9999 NE Glisan St. and 618 NE 99th Ave. in the Gateway Regional Center Urban Renewal Area (the "Property") to serve as a catalyst for further redevelopment, consistent with Policy 9 regarding the expansions and improvement of housing in the Urban Renewal Plan.
- C. In July, 2010, in connection with a governmental reorganization, PDC transferred ownership of the Property and the responsibility for pursuing its redevelopment consistent with the Urban Renewal Plan to PHB pursuant to a set of related agreements between PDC and PHB (the "IGAs").
- D. In furtherance of the Urban Renewal Plan's housing goals and pursuant to the IGAs, PHB issued a Request for Proposals on December 7, 2010 for the development of the Property with affordable rental housing. As a result of a competitive process, PHB selected a proposal submitted by a team consisting of Human Solutions, Inc. ("Human Solutions"), the sole member of the general partner of the Developer, REACH Community Development, Inc. ("REACH"), and Ride Connection, Inc. ("Ride Connection") because the proposed project most closely aligned with the goals of the Request for Proposal, PHB, and the Urban Renewal Plan generally;
- E. Human Solutions is the holder of fee simple title to that certain real property located at 604 N.E. 99th Ave., which is adjacent to the Property (the "HSI Property"). As of the Effective Date, Human Solutions has deeded the HSI Property to PHB by warranty deed as part of a proposed common plan of development under the Request for Proposal. The HSI Property and the Property are referred to collectively as the Project Land.

- F. As of the Effective Date, the Parties, REACH and Ride Connection intend to develop the Project Land into a project consisting of: (i) sixty-seven units of workforce housing, (ii) sixty units of senior housing, (iii) approximately 16,000 square feet of commercial space, as well as other site improvements on the Project Land (such project, as further described in Section 1 of this Agreement, the "Project"). Developer, REACH, and Ride Connection have entered into an Owners' Development Agreement dated April 11, 2012 (such agreement, together with any ancillary documents and as may be amended from time to time, the "Owners' Development Agreement") to develop the Project on the Project Land. The Project will be completed in two separate phases and, as further described in the Scope of Development attached hereto as Exhibit A. The first phase of the project is referred to herein as Phase I. Phase I will consist of a two-unit condominium containing sixty-seven units of workforce housing to be owned and operated by Developer (the "Residential Unit") and approximately 16,000 square feet of commercial space to be owned and operated by Ride Connection (the "Commercial Unit"). The second phase of the Project is referred to herein as Phase II. Phase II is intended to consist of sixty units of senior housing to be owned and operated by REACH or an affiliate. Both phases together, comprising the entirety of the Project are referred to herein as the Combined Phase I and Phase II.
- G. The development of Phase I includes a requirement that all residential units in Phase I be affordable to households earning 60% or less of median family income for the statistical Portland metropolitan area ("MFI"). Prior to the completion of Phase I, the Developer will be required to enter into such documents as will ensure affordability of all units at 60% MFI for a period of sixty (60) years. Notwithstanding any tenant income restrictions set forth in such regulatory agreement, pursuant to Section 3 of the Addendum to the Ground Lease, in the event of a foreclosure or the execution of a new ground lease following a foreclosure all income restrictions applicable to Phase I pursuant to such regulatory agreement shall automatically increase to 80% of MFI as of the date that the foreclosure is completed or a new ground lease is executed.
- H. PHB will retain fee title to the Project Land. As of the Effective Date, PHB has entered into a ground lease (the "Phase I Lease") with Developer to provide the Developer the right to construct, occupy and use buildings and improvements on a portion of the Project Land (such real property is legally described on the attached Exhibit H and referred to herein as the "Phase I Project Land"). PHB intends to enter into a ground lease on the portion of the Project Land not subject to the Phase I Lease with REACH or an affiliate of REACH (or another developer of Phase II) to provide the same for Phase II (the "Phase II Lease").
- I. The completion of Phase I according to the terms of this Agreement, including the Scope of Development and the Schedule of Performance (Exhibit B), is a material inducement to PHB to enter into this Agreement; and
- J. PHB finds that the redevelopment of the Property pursuant to this Agreement will help achieve local and regional growth management and affordable housing development goals, and will help provide needed services in support of a vibrant, mixed-use

neighborhood surrounding the Property. PHB also finds that the fulfillment, generally, of this Agreement is in the vital and best interest of the City and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of the IGAs, the requirements under which the Urban Renewal Plan was adopted, and the applicable state laws and requirements under which the Property had been acquired.

## **AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

### **1. DEVELOPMENT**

**1.1 Phase I.** Developer will develop Phase I on the Phase I Project Land consistent with the Scope of Development, consisting the Residential Unit and the Commercial Unit, and a common area consisting of approximately 26 parking spaces. The Parties recognize that elements of the Phase I Project may evolve, change or be modified as more information about the Phase I Project Land, the area, and the market is developed and assessed. Such changes or modifications, to the extent that they materially alter the Affordable Housing Objectives set forth below or reduce the number of affordable housing units, are subject to approval in writing by PHB.

**1.2 Affordable Housing Objectives.** Developer shall develop the Residential Unit containing dwellings to be occupied by residents earning less than or equal to sixty percent (60%) of Median Family Income ("MFI") for a restricted use period lasting 60 years (collectively, the "Affordable Housing Objectives"). Developer agrees to execute a regulatory agreement which governs the Affordable Housing Objectives as a condition of receiving the Certificate of Completion described in Section 7. Notwithstanding any tenant income restrictions set forth in such regulatory agreement, pursuant to Section 3 of the Addendum to the Ground Lease, in the event of a foreclosure or the execution of a new ground lease following a foreclosure all income restrictions applicable to Phase I pursuant to such regulatory agreement shall automatically increase to 80% of MFI as of the date that the foreclosure is completed or a new ground lease is executed.

### **2. INFRASTRUCTURE, UTILITIES AND LAND CONDITION**

**2.1 Infrastructure Improvements.** As part of Phase I, Developer, at its own cost, will design, construct, fund and obtain permits for all infrastructure for Phase I, and any necessary infrastructure component of Phase II consistent with the Owners' Development Agreement, including, but not limited to, public streets, sidewalks, alleys, and driveway approaches, connections to garages, planting street trees and grass in planting strips, stormwater mitigation, street and parking lot lighting, construction and connection of the Combined Phase I and Phase II to abutting potable water and sewer and storm sewer mains, connecting the Combined Phase I and Phase II to gas and



electric and other necessary utility services, and all permitting for any of the above as further described in the Scope of Development set forth in Exhibit A, attached hereto and incorporated herein by this reference.

**2.2 Demolition.** As part of Phase I, Developer at its own cost, will abate, remediate and demolish as necessary all structures on the Project Land. Developer shall provide PHB sufficient evidence that any necessary abatement or remediation has been carried out by licensed and certified contractors. Developer shall further provide documentation from the City of Portland, State of Oregon or other governmental body, if any, certifying or confirming that such work has been carried out and completed in accordance with applicable law, rules, and regulations.

**2.3 Dedications.** As part of Phase I, Developer at its own cost will provide for the dedication of any property or right of way required by the City of Portland, State of Oregon or other governmental body. PHB shall cooperate with Developer in recording of such dedication and shall promptly provide such written consents or execute documents as are necessary to the accomplish such dedication.

**2.4 Site Preparation.** As part of the Project, Developer will at its own cost complete or cause completion of all necessary site preparation in accordance with the Schedule of Performance.

**2.5 Utility Service.** As part of the Project, Developer will at its own cost install, connect, and upgrade new and existing utilities necessary to serve the Project.

**2.6 Cooperation with REACH; Access to Phase II.** Developer will work with PHB and REACH (or another developer designated by PHB for development of Phase II) to develop the necessary infrastructures to serve Phase I and Phase II. Developer, and PHB will enter into a reciprocal easement agreement to create easements and rights of way as necessary to construct and operate the common facilities serving Phase I and Phase II, including, but not limited to, utility installations, access features, landscaping, pedestrian plaza and parking. PHB hereby acknowledges and agrees that prior to the commencement of construction of the Phase II Project, Developer may utilize the Phase II Project Land for construction staging, construction access and parking of 77 passenger vehicles.

### 3 PROJECT FINANCING

Developer shall develop Phase I consistent with the Project Budget, including sources and uses, which is attached to this Agreement as Exhibit C. Except as described in this Section, Developer will be responsible for obtaining from third parties all funds and financing necessary to construct and operate Phase I.

**3.1** Prior to the Effective Date, PHB has provided Human Solutions a loan of approximately \$995,967 for the purpose of undertaking pre-development activities, which loan shall be repaid in accordance with the documents governing its terms.

3.2 Subject to the approval of the City Council and PHB Director, as necessary, PHB may provide a portion of the construction and permanent financing for Phase I.

#### 4 PHB DESIGN REVIEW AND APPROVAL

##### 4.1 Definitions

**“City Design Review”** means review by the City of Portland, Bureau of Development Services in accordance with Title 33.825 of the Code of the City of Portland.

**“Construction Drawings and Technical Specifications”** means documents, based upon the Design Development Drawings, that set forth in detail the requirements for construction of the Project pursuant to the terms of this Agreement, approved by PHB and the appropriate City agencies. Construction Drawings and Technical Specifications shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project.

**“Design Development Drawings”** means the detailed plans submitted for City Design Review, including but not limited to:

- Architectural site plans showing all structures upon the site together with all connections to existing or proposed utilities, roads, sidewalks and alleys;
- A general landscaping concept plan;
- Elevations of the buildings to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials, of the building exteriors;
- A calculation of gross building areas, floor areas, height ratios and open spaces;
- A preliminary exterior finish schedule;
- Proposed layouts for exterior signage, graphics, and exterior lighting; and

A description of servicing requirements, trash collection locations, loading docks and related functional areas.

**“Design Team”** means Holst Architecture.

**“Preliminary Design Documents”** means the site drawings for the Project including schematic, massing, feasibility and preliminary cost estimates for the Project in the form approved by PHB and that were the basis for entering into this Agreement.

4.2 **General Cooperation.** PHB and Developer will work closely throughout the design and programming process to achieve the completion with a Phase I project that is high quality, functional, financially feasible and supported by market conditions applicable to each component. PHB and Developer will jointly address issues and concerns to achieve the most successful Project.

**4.3 PHB Design Review and Approval in General.** Consistent with the Scope of Development, Developer has prepared Preliminary Design Documents for Phase I. The Developer has also prepared a Master Plan for development of the Combined Phase I and Phase II, as described in below. These documents together are part of the basis for entering into this Agreement. Developer shall prepare Design Development Drawings and Construction Drawings and Technical Specifications for the Project. Developer shall also obtain all necessary Master Plan approvals. Developer shall submit project designs and the master plan to PHB in accordance with the Schedule of Performance. Review meetings with the Design Team and PHB representatives are encouraged to facilitate the review and approval process. Wherever practicable, Developer and PHB shall seek to collaborate on the review and modification of project designs and the Master Plan. PHB shall retain the right, which shall not be unreasonably withheld, to approve substantial changes in the project design and master plan. PHB approval of Design Development Drawings must be obtained prior to submission for City Design Review. All plans and specifications referred to in this Section 4.3 are referred to herein as the "Drawings."

**4.4 Limitations on Review of Design.** PHB's review and approval of Drawings will occur in stages and approvals will be progressive in nature, but limited to the following elements:

- (a) **Draft Design Development Drawings (50% DD).** Elements, draft Design Review Application and Narrative, draft Development Drawings (50%) material and color samples, and draft Design Development Drawings (50%) cost estimate, depicted in the draft Design Development Drawings (50%) that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Preliminary Design Documents;
- (b) **Final Design Development Drawings (90% DD).** Elements, Final Design Review Application and Narrative, final Design Development Drawings material and color samples, and final Design Development Drawings cost estimate, depicted in the final Design Development Drawings that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved draft Design Development Drawings (50%);
- (c) **Master Plan.** Elements, including the overall site layout, new or changed lot lines, ingress and egress, easements, building locations, common area lay out, parking locations, pedestrian improvements, and landscaping.
- (d) **Draft Construction Drawings and Technical Specifications (50% CD).** Elements, including Green Building elements, draft Construction Drawings and Technical Specifications (50%) cost estimate, and material and color samples, depicted in the draft Construction

Drawings and Technical Specifications (50%) that were not approved, that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Draft Design Drawings;

- (e) **Draft Construction Drawings and Technical Specifications (90% CD).** Elements, including Green Building elements, draft Construction Drawings and Technical Specifications (90%) cost estimate, and material and color samples, depicted in the draft Construction Drawings and Technical Specifications (90%) that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Draft Construction Drawings and Technical Specifications (50%);
- (f) **Final Construction Drawings and Technical Specifications.** When completed, Developer shall provide to PHB a copy of the Final Construction Drawings and Technical Specifications (100%).
- (g) **Final Master Plan.** When completed, Developer shall provide to PHB a copy of the final master plan and master plan approval from the City of Portland.
- (h) **Construction Shop Drawings and Product Submittals.** Elements including design build, shop drawings and product submittals that were not approved, that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved final Construction Drawings and Technical Specifications.

**4.5 Changes in Approved Drawings.** The Developer shall submit to PHB for review any substantial changes to the Drawings. A substantial change shall mean any change that would have a material impact on the function, and appearance of Phase I. A substantial change regarding cost shall be as defined in PHB's standard Notice to Proceed, a sample of which is attached as Exhibit D. Developer acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals shall be sought after PHB has reviewed the changes. PHB will assist Developer throughout any City or PHB design review and/or master plan process of the appropriate bureaus or agencies within the City, but PHB does not represent or warrant that its assistance will guarantee approval.

**4.6 Phase I Rendering.** Developer will provide PHB with at least one electronic and one hardcopy color rendering of Phase I at the time the Project is submitted for City Design Review.

**4.7 PHB Design Review Process.**

- (a) **PHB Staff Review of Design.** PHB and Developer acknowledge that



the Schedule of Performance for the Project requires expeditious review and response from PHB and responsiveness and cooperation from Developer and its Design Team in connection with the design review process. The Parties agree that efficient communication between all concerned is necessary to resolve design issues in a timely manner. PHB staff may attend regularly scheduled design meetings for the Project on a schedule mutually agreeable to PHB staff and Developer. The PHB Project Manager or designee will meet with Developer and its Design Team regularly as scheduled by the Parties, or upon the request of either Party to the other, to review progress on the resolution of design and related issues. The scope of PHB's review will be consistent with Sections 4.3 and 4.4 of this Agreement.

- (b) **PHB Design Advisor.** PHB may retain a design advisor for the Project. The role of the design advisor is to review the design of the Project, to present the design to PHB as needed, and to advise PHB as to design considerations consistent with this Agreement. These reviews will take into consideration building codes and other governmental regulations but will not include any analysis of compliance with same. PHB may designate additional or substitute PHB design advisors without amendment to this Agreement.
- (c) **PHB Access.** During the construction of the Project, and until the Certificate of Completion is issued for Phase I, Developer's work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of PHB. PHB agrees not to interfere with the work occurring on the Project Land.
- (d) **Community Input.** PHB and the Developer will cooperate on outreach efforts regarding the Project and its design. If Developer materially changes the design of the Project, Developer will present the revised Project design to the Gateway Regional Center Program Advisory Committee (PAC) and Hazelwood Neighborhood Association for their input and advice.

## 5 REPRESENTATIONS AND WARRANTIES

5.1 Developer hereby represents and warrants to PHB as of the Effective Date that:

- (a) This Agreement has been duly authorized, executed and delivered by Developer and all consents required under Developer's organizational documents or by law have been obtained, that Developer has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by Developer in connection with the execution of this Agreement and the transactions contemplated hereby. No further consent of any partner, shareholder,

creditor, investor, judicial or administrative body, governmental authority or other party is required.

- (b) The execution and delivery of this Agreement and documents referred to herein, the incurring of the obligations set forth herein, the consummation of the transactions herein contemplated, and compliance with the terms of this Agreement and the documents referred to herein do not conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Developer is a party.
- (c) Developer enters into this Agreement without reliance upon any verbal representation of any kind by PHB, its employees, agents or consultants regarding any aspect of the Property, the Project, its feasibility, financing or compliance with any governmental regulation.
- (d) No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

5.2 PHB hereby represents and warrants to PHB as of the Effective Date that PHB has the legal power, right, and authority to enter into this Agreement and that all requisite action has been taken by PHB in connection with entering into this Agreement.

## 6 DEVELOPER'S COVENANTS

6.1 **Diligent Completion.** Subject to the terms and conditions of this Agreement, Developer covenants to complete the development of Phase I in substantial conformance with the final Construction Drawings and Technical Specifications and in accordance with the Schedule of Performance. Developer agrees to keep PHB informed of its progress with respect to development of Phase I during construction, with periodic reports to be issued no less frequently than once a month until PHB issues the Certificate of Completion for Phase I. The Phase I development shall include:

- 6.1.1 Entering into all necessary architectural and construction contracts;
- 6.1.2 Securing all necessary public entitlements and building permits including Master Plan and Design Review;
- 6.1.3 Securing all financing necessary to complete the Project, consistent with the Sources and Uses.

**6.1.4** Compliance with Oregon Prevailing Wage Law, rules and regulations as applicable.

**6.2 Schedule of Performance.** Developer shall complete development of Phase I no later than the date for completion of construction set forth in the Schedule of Performance. PHB, acting by and through its Director or a designee, may at its sole discretion extend the Schedule of Performance by a maximum of 180 days.

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

**6.4 Safety Matters and Indemnification.** Developer shall:

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

**6.4.2 Indemnity from Liability Claims.** Indemnify, defend (at PHB’s request) and hold harmless PHB, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the property of any person as occurs in the process of the construction work or the performance of Developer’s other obligations under this Agreement, except to the extent caused by PHB. The indemnity set forth in this Section 6.4.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

**6.4.3 Indemnity from Liens.** Indemnify, defend (at PHB’s request) and hold harmless PHB, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics’, materialmen’s, laborers’ or other construction or statutory liens filed against any portion of the Project Land or the Project or arising from or related to construction on the Project Land or the Project performed by or at the request of Developer or Developer’s contractors or agents. The indemnity set forth in this Section 6.4.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

**6.5 Liens.** If any statutory lien shall be filed, prior to PHB's issuance of the Certificate of Completion, against any portion of the Project by reason of labor, services or materials supplied to or at the request of Developer or Developer's contractors or agents or in connection with any construction on the Project, Developer shall, within thirty (30) days after the filing thereof, take whatever action is necessary and proper (including posting a bond or a cash deposit and taking such further action as may be required by the Oregon Construction Lien Law), so that the Project shall thereafter be entirely free of the lien. Alternatively, Developer may elect to leave the lien of record and to contest its validity, amount or applicability by appropriate legal proceedings, but only if Developer shall, within the 30-day period following the filing of the lien, furnish an indemnity against such lien in an amount and form satisfactory to induce the title insurance company which insured title to the Project Land to insure over such lien or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such lien; provided, further, that in such event, (i) Developer shall indemnify and hold harmless PHB from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such lien, and (ii) in the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Developer, Developer shall within fifteen (15) days thereafter cause the lien to be discharged of record.

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

**6.6.1** All applicable health and safety, environmental, and zoning laws, and

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

## **7 CERTIFICATE OF COMPLETION.**

**7.1 When Developer is Entitled to Certificate of Completion.** Upon substantial completion of Phase I as described in this Section, on or before the date for completion of the construction set forth in the Schedule of Performance and provided Developer is not in default under this Agreement, PHB will furnish Developer with a Certificate of Completion for Phase I. Phase I will be deemed to be substantially complete when:

- (a) PHB determines that the Phase I is complete according to the Final Construction Drawings and Technical Specifications, and Phase I portion of the Master Plan except for punch-list items that do not materially affect the use of the Phase I for the purposes intended under this Agreement. PHB acknowledges and agrees that the Commercial Unit of Phase I will be completed in a "shell and core" condition and



that completion of Phase I shall only require "shell and core" completion of the Commercial Unit;

- (b) Developer has completed all environmental remediation and abatement on the Project Land, if any, required of Developer under Section 9;
- (c) The City has issued a temporary Certificate(s) of Occupancy with respect to the Residential Unit; and
- (d) PHB determines that any other improvements required by this Agreement are completed in all material respects.

**7.2 Form and Effect of the Certificate of Completion.** A Certificate of Completion shall be substantially in the form of Exhibit G and in a form that can be recorded in the real property records of Multnomah County. The Certificate of Completion shall provide for termination of obligations under this Agreement and limitation of remedies of PHB as expressly provided for in the Certificate of Completion.

**7.3 Surviving Sections.** The following Sections of this Agreement shall survive and remain in effect notwithstanding the issuance of the Certificate of Completion: Section 6.4.2 (Indemnity From Liability Claims), Section 6.4.3 (Indemnity From Liens), and Section 9.4 (Environmental Indemnification).

## **8 COVENANTS RUNNING WITH THE LAND**

**8.1** Developer covenants and agrees that it will use the Phase I Project Land only for purposes substantially consistent with this Agreement, including the Scope of Development and Final Construction Plans and Specifications.

**8.2** Developer covenants and agrees that prior to the issuance of the Certificate of Completion, the Design Review provisions contained in Section 4 of this Agreement shall survive any foreclosure or transfer of any leasehold mortgage encumbering the Phase I Project Land by a deed in lieu of foreclosure or any other transfer of the Phase I Project Land, provided, however, in the event of a foreclosure or deed in lieu of foreclosure PHB will reasonably consider extensions of time periods and modifications of the Design Development Drawings, Construction Drawings and Technical Specifications in order to render the completion and operation of the Project economically and practically feasible.

**8.3** Subject to Section 13.6 and prior to the issuance of the Certificate of Completion, Developer and PHB hereby declare and agree that the covenants set forth in this Section 8 shall be deemed covenants running with the land and shall pass to and be binding upon the Developer's successors in title, including, without limitation, purchaser, grantee, or lessee of any portion of the Phase I Project Land and any other person or entity having any right, title, or interest in the Phase I Project Land and upon the respective heirs, executors, administrators, devisees, designees, successors, and

assigns of any purchaser, grantee, or lessee of any portion of the Phase I Project Land and any other person or entity having any right, title, or interest in the Phase I Project Land. Developer and PHB agree and acknowledge that upon issuance of the Certificate of Completion, the covenants set forth in this Article 8 shall be of no further force and effect and shall not longer be deemed covenants running with the land.

## **9 ENVIRONMENTAL CONDITIONS AND DEVELOPER INDEMNITY**

- 9.1 Environmental Due Diligence Reports.** Developer acknowledges receipt of copies of the Environmental Due Diligence Reports, as set forth in Exhibit G, other than the Phase I Environmental Site Assessment described in Section 9.2 below.
- 9.2 Phase I Environmental Site Assessment.** Within 180 days the Effective Date, Developer shall cause completion of a Phase I Environmental Site Assessment of the Project Land in conformance with the ASTM E 1527-05 process in compliance with the United States Environmental Protection Agency All Appropriate Inquiries (40 CFR Part 312). PHB shall provide a copy of Phase I Environmental Site Assessment to Developer, promptly after PHB's receipt thereof.
- 9.3 Environmental Cleanup; Unforeseen Environmental Conditions.** If Developer encounters, after the Effective Date and prior to issuance of the Certificate of Completion, an Unforeseen Environmental Condition on the Project Land that was not otherwise identified as a Recognized Environmental Condition in the Environmental Due Diligence Reports, substantially differs as to nature and extent from a Recognized Environmental Condition in the Environmental Due Diligence Reports, or that was not caused directly or indirectly by Developer, Developer shall suspend all related construction activities pending PHB's investigations under this Section, Developer shall also, promptly thereafter, notify DEQ (to the extent required by applicable law) and PHB of the Unforeseen Environmental Condition and provide PHB with any documentation regarding the circumstances of the discovery of the Unforeseen Environmental Condition, including but not limited to any documentation on the release of a Hazardous Substance on the Project Land. After discovery of an Unforeseen Environmental Condition on the Project Land, Developer shall allow PHB access to the Project Land to make such surveys and conduct such tests and investigations as PHB deems reasonably necessary or desirable to determine the nature and extent of the Unforeseen Environmental Condition. Developer hereby grants a license to PHB for PHB to enter on the Phase I Project Land to perform the foregoing surveys, tests and investigations which PHB shall conduct in accordance with applicable Environmental Laws. PHB will provide Developer with copies of any reports arising from such surveys, tests and investigations. Promptly after PHB's completion of the surveys, tests and investigations, the Parties shall meet to

agree upon a source and method for funding the remediation or abatement, as applicable, of the Unforeseen Environmental Condition, which Developer shall then complete as part of the Project, as a condition to issuance of the Certificate of Completion and in a manner necessary to obtain any approval required by DEQ. Developer shall comply with all restrictions, limitations, conditions and obligations set forth in any approval once issued by DEQ. If the Parties are unable to agree on a source and method for funding the remediation or abatement, then PHB shall have the right, but not the obligation, in its sole discretion, to pursue other responsible parties of the Unforeseen Environmental Condition or perform remediation or abatement of the Unforeseen Environmental Condition itself, as it determines necessary or appropriate in its sole discretion as a matter of right but not obligation, and Developer shall permit PHB access to the Phase I Project Land to do so.

- 9.4 Environmental Indemnification.** Developer shall be responsible for compliance with all Environmental Laws with respect to the Phase I Project Land, its business and the operation of Phase I from and after Closing, including but not limited to compliance with all restrictions, limitations, conditions and obligations imposed by DEQ pursuant to a No Further Action Letter, Underground Storage Tank Closure letter or Easement and Equitable Servitude applicable to the Project Land, if any. In addition Developer shall be responsible for all environmental remediation and abatement of Recognized Environmental Conditions and Unforeseen Environmental Conditions on the Phase I Project Land to the extent such obligations are imposed on Developer under Sections 9.2 and 9.3 above. Developer shall defend (at PHB's request), indemnify and hold harmless PHB, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by PHB, its successors or assigns, or asserted against PHB, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer, Developer's failure to comply with a restriction, limitation, condition or obligation imposed by DEQ pursuant to a No Further Action Letter, Underground Storage Tank Closure Letter or Easement and Equitable Servitude applicable to the Project Land, if any, or Developer's failure to complete any environmental remediation or abatement of Recognized Environmental Conditions or Unforeseen Environmental Conditions on the Phase I Project Land required of Developer by Sections 9.2 and 9.3 above. The indemnity set forth in this Section 9.4 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.
- 9.5 Contribution.** The foregoing indemnity does not limit any rights of contribution that the Parties may have against others under applicable law or agreement. The indemnity is intended only as an allocation of responsibility between the Parties.

**9.6 Definitions.** As used in this Section,

- a) **“Environmental Conditions”** means the physical condition of the Property as measured by the standards of the Environmental Laws. Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.
- b) **“Environmental Laws”** means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Property or the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (as defined in the definition of Hazardous Substances, below), CERCLA (defined in the definition of Hazardous Substances, below), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
- c) **“Environmental Due Diligence Reports”** means reports of investigations performed as part of environmental due diligence, which may include Phase I, Phase II and Hazardous Building Site Assessments and reports, documents or documentation of Recognized Environmental Conditions that PHB has completed or PHB has in its possession, completed by others. A complete list of the Environmental Due Diligence Reports is attached as Exhibit G and incorporated herein by reference.
- d) **“Hazardous Substances”** means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. (“CERCLA”), or any other Environmental Law.
- e) **“Phase I Environmental Assessment”** has the meaning set forth in Section 9.2.
- f) **“Recognized Environmental Conditions”** means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Property or into the ground, ground water, or surface water of the Property, whether or not the Release is in compliance with applicable law. Recognized Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally



would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

- g) **“Release”** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
- h) **“Unforeseen Environmental Conditions”** means the presence of a Hazardous Substance on the Property that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by the Oregon Department of Environmental Quality.

**10 COMPLIANCE WITH CONSTRUCTION WAGE POLICY, BUSINESS AND WORKFORCE EQUITY POLICY, GREEN BUILDING POLICY AND EEO CERTIFICATION PROGRAM**

**10.1 Business and Workforce Equity Policy.** PHB is subject to the requirement of the Business and Workforce Equity Policy of the City of Portland which seeks to ensure fair and equitable opportunities to Portland’s diverse populations, promote prosperity in all segments of Portland’s diverse communities, foster economic growth, and expand competition in the market.

**10.2 EEO Certification.** Developer shall comply with the City’s EEO Certification Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the EEO Certification Program and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the EEO Certification Program. Developer shall also comply with all portions of the EEO Certification Program applicable directly to Developer and with all applicable provisions of Federal or state statutes and regulations and City ordinances concerning equal employment opportunities for persons engaged in the Project. The failure of Developer or Developer’s General Contractor, or the subcontractors thereof, to comply with the EEO Certification Program or other applicable equal employment opportunity law shall constitute a breach of a material provision of this Agreement.

**10.3 Green Building Policy.** Phase I is exempt from PHB’s Green Building Policy. Notwithstanding the preceding sentence, the Developer shall obtain third party certification for the Project through either the Earth Advantage Institute or the United States Green Building Council.

**11 RELEASE OF COMMERCIAL UNIT**

Upon creation of the condominium and conveyance of the Commercial Unit to Ride Connection or an affiliate, PHB shall execute such documents and consents as necessary to partially releases its Regulatory Agreement and this Agreement from the Commercial Unit.

## 12 DEFAULT AND REMEDIES

### 12.1 Default and Cure.

#### 12.1.1 Default by Developer.

- (a) Developer shall be in default under this Agreement if Developer breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from PHB specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Developer shall be in default under this Agreement if Developer does not commence the cure of the breach within thirty (30) days after Developer receives written notice from PHB and thereafter diligently prosecute to completion such cure within sixty (60) days after the written notice from PHB.
- (b) Developer shall also be in default under this Agreement if Developer makes an assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment.
- (c) Developer shall also be in default under this Agreement and PHB shall be irreparably harmed by such default, if Developer constructs or operates any portion of the Residential Unit in a manner materially inconsistent with Final Construction Drawings and Technical Specifications.

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

**12.2 PHB's Remedies.** If a Developer default occurs, PHB may, at its option: (i) terminate this Agreement by written notice to Developer, (ii) seek monetary damages against Developer, or (iii) specifically enforce the obligations of Developer under this Agreement. If PHB terminates this Agreement as provided in this Section 12.2, then Developer shall deliver to PHB within thirty (30) days copies of all Phase I market

research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties, and which Developer is authorized to release. PHB may use any of the foregoing documents in any manner that PHB deems appropriate with the consent of any party having approval rights thereunder. PHB shall pay no compensation to Developer for the foregoing Phase I documents. Termination of this Agreement shall not prejudice REACH's rights to develop Phase II. No default by REACH or any other person or entity with respect to Phase II shall adversely affect, in any way, the rights of the Developer hereunder.

**12.3 Developer's Remedies.** If a PHB default occurs, Developer may specifically enforce the obligations of PHB under this Agreement, or seek monetary damages against PHB. Notwithstanding the preceding sentence, Developer shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from PHB in connection with PHB's default.

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

**12.5 Unavoidable Delay.**

**12.5.1** Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation ("Unavoidable Delay") is a result of conditions unforeseeable, beyond the Party's 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, labor dispute, strike, malicious mischief, or explosion.

**12.5.2** A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party's obligation must, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and estimated time of correction. The Party must thereafter do everything in its power to resume performance of the delayed obligation.

**12.5.3** Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay. In no event

will the time or times for performance of an obligation be extended for more than 180 days in the aggregate.

## **12.6 Mortgagee and Tax Credit Investor Protection Provisions**

**12.6.1 Definitions.** "Mortgagee" means the holder of any mortgage affecting or encumbering Developer's leasehold interest in the Phase I Project Land or any portion thereof, together with any successor or assignee of such holder. The term "Mortgagee" shall include any Mortgagee as owner of the property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a mortgage but shall not include (a) any other party who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee. "Tax Credit Investor" means Bank of America, N.A. in its capacity as limited partner of Developer. The initial Phase I leasehold Mortgagee is Bank of America, N.A.

**12.6.2 Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of the Agreement, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete Phase I or to guarantee such construction or completion, provided, however that nothing in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote Phase I or any part thereof to any uses, or to construct any improvements thereon other than those uses or improvements provided or permitted in the Urban Renewal Plan.

**12.6.3 Copy of Notice of Default to Mortgagee.** If PHB delivers any notice or demand to Developer with respect to any breach of or default by Developer in its obligations or covenants under this Agreement, PHB shall at the same time send a copy of such notice or demand to each Mortgagee approved by PHB at the last address of such holder shown in this Agreement or in the records of PHB and the Tax Credit Investor. The Parties agree and acknowledge that Network for Oregon Affordable Housing (NOAH) is hereby "approved" by PHB for all purposes under this Section and under this Agreement.

**12.6.4 Mortgagee's and Tax Credit Investor's Options to Cure Defaults.** After any default in or breach of this Agreement by Developer where Developer fails to cure or remedy said default or breach, then Tax Credit Investor or each Mortgagee may, at its option, cure or remedy such breach or default within thirty (30) days after passage of the latest date for Developer's cure of the default, and if permitted by its loan documents, to add the cost thereof to the Mortgage debt and the lien of its Mortgage. If the Tax Credit Investor or any Mortgagee makes any such payment or otherwise offers cure of a default, PHB will accept such action as curing such default on the same basis as if such cure were made directly by Developer. The Tax Credit Investor or a Mortgagee shall not be required to cure (A) defaults on obligations of Developer



under any indemnity provision in this Agreement; or (B) any default in any obligation to pay money, of which PHB did not provide the Tax Credit Investor and Mortgagee with written notice within thirty (30) days after the date of the default; or (C) other past monetary obligations then in default and not reasonably susceptible of being cured by such Tax Credit Investor and Mortgagee; or (D) any default resulting from the acts or omissions of PHB. If the breach or default is with respect to construction of the improvements, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements, provided that the Mortgagee notifies PHB in writing of its intention to complete Phase I according to the approved Final Construction Plans and Specifications. The Tax Credit Investor or any Mortgagee who properly completes Phase I shall be entitled to issuance of a Certificate of Completion, upon written request made to PHB following the procedures set forth in Article .

- 12.6.5 Right to New Agreement.** If the Agreement terminates for any reason, including the rejection of the Agreement in a bankruptcy proceeding, then PHB shall give written notice of such fact to each Mortgagee and Tax Credit Investor, and if one or more Mortgagees and Tax Credit Investor gives written notice to PHB within thirty (30) days following delivery of such notice of termination by PHB, PHB agrees in such case to enter into a new development agreement for the Phase I Project Land (a "**New Agreement**") with the most senior Mortgagee or its affiliated designee providing such notice for the remainder of the term of the Agreement effective as of the date of such termination, or if no Mortgagee gives such notice, then with the Tax Credit Investor or its designee if it timely gives such notice, at the rent and additional rent and upon the other terms, conditions, covenants and agreements contained in the Agreement and with equal priority thereto.

The Developer under the New Agreement shall have the same rights and obligations as Developer had under the terminated Agreement and the PHB and the new Developer shall execute and deliver any deed or other instrument and take such other action as may be reasonably necessary to confirm or assure such right, title, interest or obligations.

Nothing in this Subsection or the Agreement shall be construed to imply that the Agreement may be terminated by reason of rejection in any bankruptcy proceeding of the Developer. The parties intend, for the protection of Mortgagees, that any such rejection shall not cause a termination of the Agreement.

Nothing herein contained shall require any Mortgagee or the Tax Credit Investor to accept a New Agreement.

## **13 MISCELLANEOUS PROVISIONS**

**13.1 Discrimination.** Developer, for itself and its successor and assigns, agrees that, during the construction of the Project, Developer will not discriminate against any

employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.

**13.2 Notice.** Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail, postage prepaid, return receipt requested, (b) when received if personally delivered, or (c) if sent by e-mail or other form of electronic transmission, with receipt of confirmation that such transmission has been received, and:

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

Glisan Commons Phase I Limited Partnership  
c/o Human Solutions, Inc.  
12350 SE Powell Blvd.  
Portland, OR 97236  
Attention: Executive Director

with a copy to:

Kantor Taylor Nelson Evatt & Decina PC  
901 Fifth Avenue, Suite 4000  
Seattle, WA 98164  
Attn: Mark B. Kantor

For so long as the Tax Credit Investor is a limited partner of Developer, a copy of all notices to the Developer shall also be delivered to the Tax Credit Investor at the following address:

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

with a copy to:

Sidley Austin, LLP  
One South Dearborn Street  
Chicago, IL 60603  
Attention: David R. Hill, Esq.  
Facsimile: 312/853-7036

For so long as Bank of America, N.A. is the beneficiary of a deed of trust secured by the Project, a copy of all notices to the Developer shall also be delivered to the Bank of America, N.A. at the following address:

Bank of America, N.A.  
2001 Clayton Road, 2<sup>nd</sup> Floor  
CA4-702-02-29  
Concord, CA 94520  
Attention: Loan Administration

with a copy to:

Paul Hastings LLP  
515 South Flower Street, Twenty-Fifth Floor  
Los Angeles, CA 90071  
Attn: Ken Krug

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

Portland Housing Bureau  
Attn: Karl Dinkelspiel  
421 SW 6<sup>th</sup> Ave., Suite 500  
Portland, OR 97204

with a copy to:

Trinh C. Tran  
City Attorney's Office  
1221 SW 4<sup>th</sup> Avenue, suite 430  
Portland, OR 97201

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

11.1.1 If any Party's notice contact person or address changes, that Party shall provide the other Parties with the updated contact information.

**13.3 [Reserved].**

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

**13.5 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.

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

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

**13.8 Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.

**13.9 Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.

**13.10 Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

**13.11 Legal Purpose.** Developer agrees to use the Project solely for lawful purposes.

**13.12 Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the



remaining portions will remain in full force and effect to the fullest extent permitted by law.

**13.13 Entire Agreement.** This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Project Land. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.

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

**13.15 Successors and Assigns.** Subject to the provisions of Section 10, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.

**13.16 No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties other than that of independent contracting parties.

**13.17 Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, PHB is specifically not obligating itself, the City, or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Project Land, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.

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

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

**13.20 Time of Essence.** Time is of the essence of this Agreement.

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

**13.22 Recording of Memorandum of Agreement.** PHB shall record a memorandum of this Agreement ("Memorandum of Agreement") within ten (10) days after the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit F to this Agreement. When PHB issues to Developer a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record an amended Memorandum of Agreement to reflect the surviving covenants of this Agreement.

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

Executed in multiple counterparts as of the day and year first above written.

**CITY OF PORTLAND**, a municipal corporation in the State of Oregon, acting by and through the Portland Housing Bureau as the duly designated housing agency of the City of Portland.

By:

\_\_\_\_\_  
Traci Manning, Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Trinh C. Tran, Attorney  
City Attorney's Office

**DEVELOPER**

GLISAN COMMONS PHASE I LIMITED PARTNERSHIP

An Oregon limited partnership

By: HSI-Glisan Commons LLC

Its: General Partner

By: Human Solutions, Inc.

Its: Sole Member

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Jean DeMaster, Executive Director

**EXHIBITS**

- Exhibit A**     Scope of Development, Phase I Project Land and Legal Description
- Exhibit B**     Schedule of Performance
- Exhibit C**     Project Budget
- Exhibit D**     Notice to Proceed
- Exhibit E**     Form of Certificate of Completion
- Exhibit F**     Form of Memorandum of Agreement
- Exhibit G**     Environmental Due Diligence Reports



## EXHIBIT A

### SCOPE OF DEVELOPMENT

#### General

The Project consists of two phases. The Project is defined as both Phases 1 and Phase 2. A portion of site improvements constructed during Phase 1 will provide access and beneficial use for Phase 2. The subject of this Agreement is Phase I. The obligations to complete construction of the improvements pursuant to this Agreement are limited to the Phase I improvements.

#### Phase 1

##### Mixed use:

- An approximately 73,235 square foot “4 over 1” building containing 67 residential units and approximately 15,695 square feet of commercial/office/retail space. As of the effective date of this Agreement, the commercial/office/retail space is intended as the Resource and Operations Center for Ride Connection. The 67 residential units comprise the following:
  - 4 studio units
  - 63 one bedroom units
- Residential unit affordability: all Phase 1 residential units will be subject to a city regulatory agreement requiring affordability for a period of not less than sixty years.
- Residential common areas comprise approximately 6,133 square feet, which includes a manager’s office, a community room, a resident service office, laundry facilities, bike storage and utility rooms.
- 26 surface parking spaces.

#### Phase 2

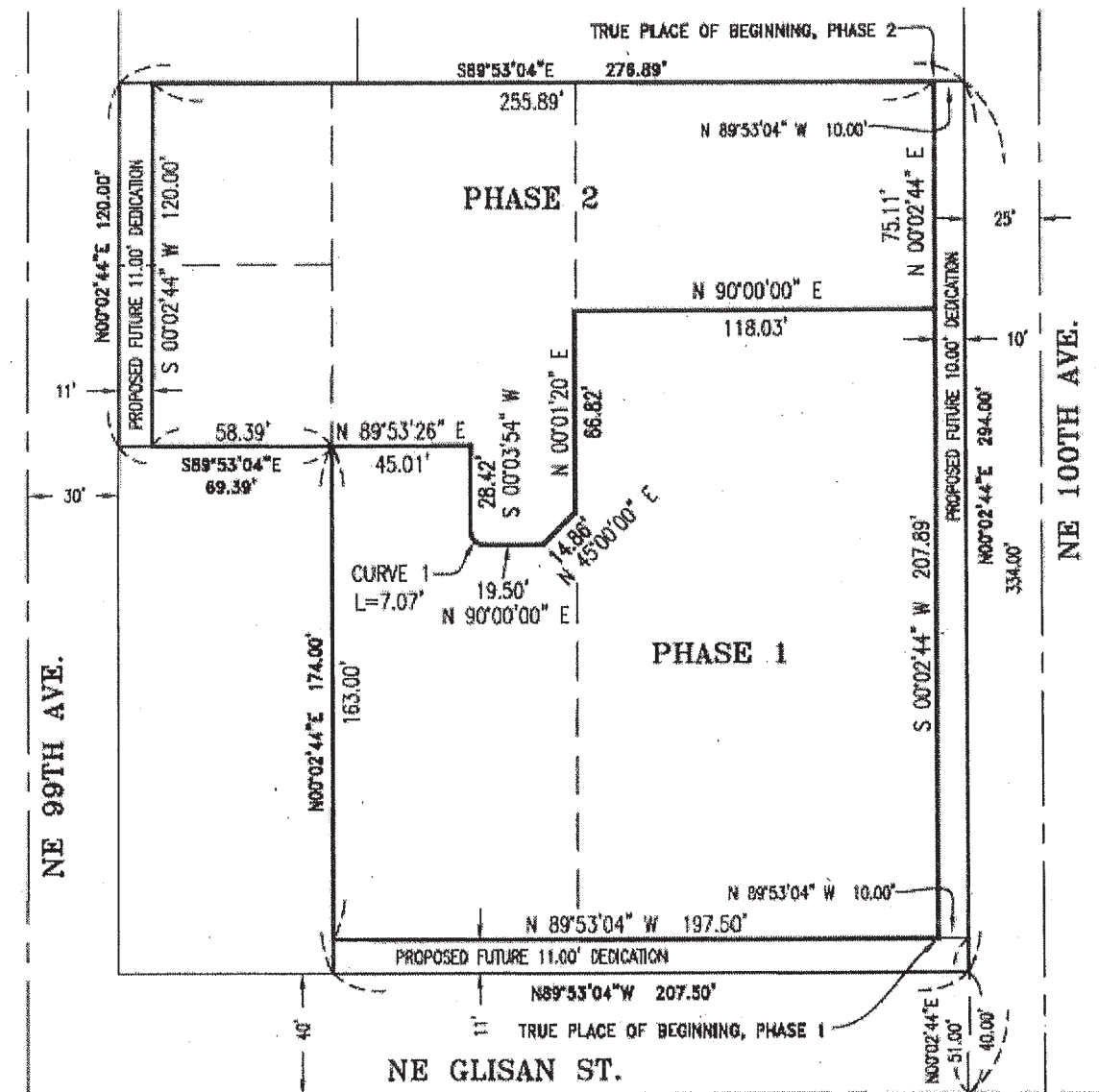
##### Residential:

- An approximately 55,580 square foot “5 over 1” building containing 60 residential. The 60 residential units comprise the following:
  - 60 one bedroom units
- Residential unit affordability: all phase 2 residential units will be marketed to senior citizens and subject to a city regulatory agreement requiring affordability for a period of not less than sixty years.
- 77 surface parking spaces to be shared between Ride Connection, Phase II residents and Phase I residents.

#### Design/site plan

The site plans, legal description, and architectural renderings that follow are hereby incorporated as part of this Exhibit A, and constitute part of the Scope of Development. To the extent that such plans and renderings show Phase 1 and Phase 2, only those portions showing Phase 1 apply.

Consolidated Site Map



POINT OF COMMENCEMENT, THE SOUTHWEST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 33

## Phase 1 Legal Description

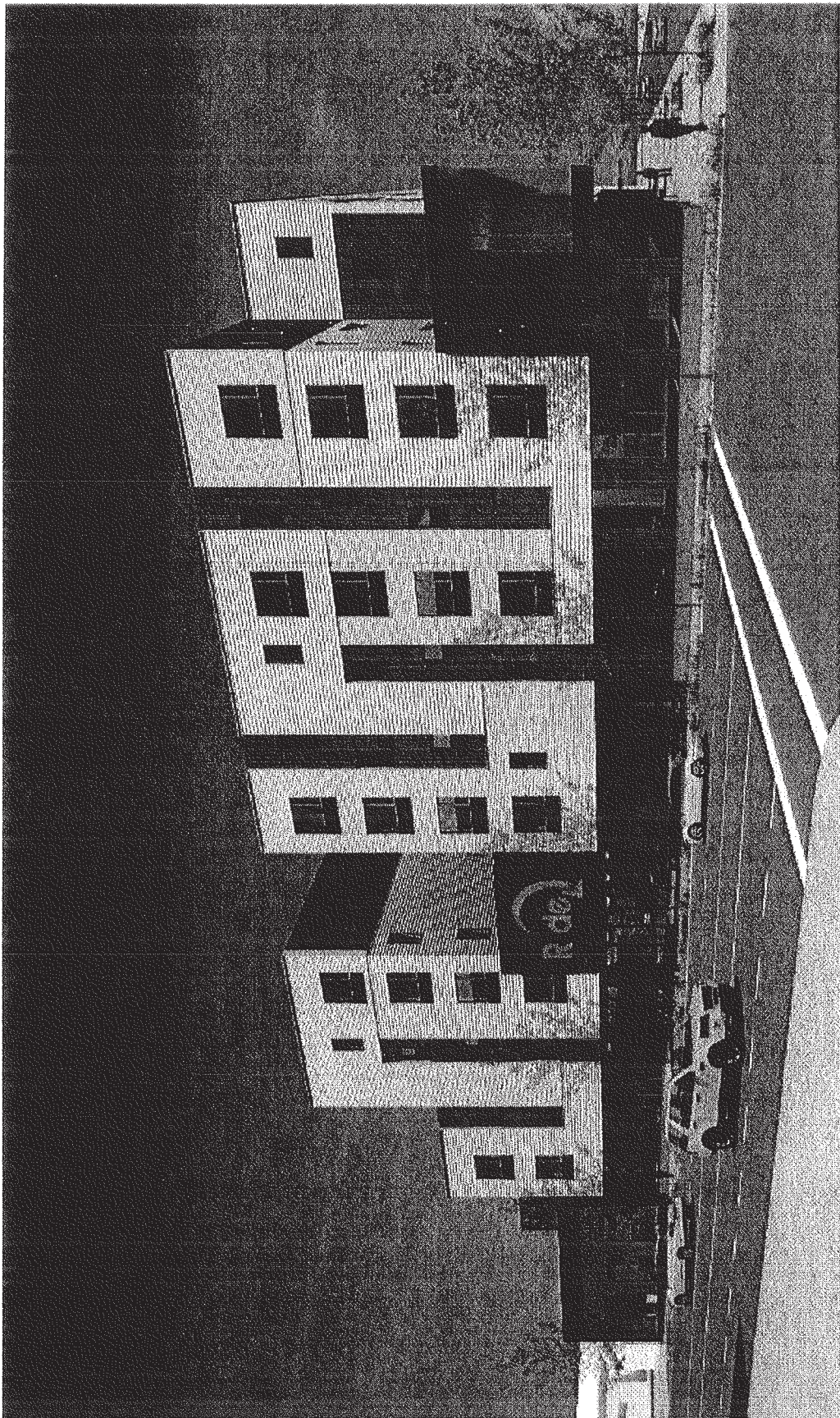
LEGAL DESCRIPTION, PHASE 1

A portion of that tract of land conveyed to the City of Portland, by Deed recorded Document No. 2010-129014, Multnomah County Deed Records, situated in the Northeast one-quarter of Section 33, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, being more particularly described as follows:

Commencing at the Southeast corner of the Southwest one-quarter of the Southeast one-quarter of the Northeast one-quarter of said Section 33, being a point on the centerline of NE Glisan Street; thence North 00°02'44" East, along the Westerly right-of way line of NE 100<sup>th</sup> Avenue as presently located (being 25 feet West of centerline when measured at right angles) and its Southerly extension, a distance of 51.00 feet; thence North 89°53'04" West, parallel with and 51.00 feet North of centerline of said NE Glisan Street, a distance of 10.00 feet to the True Place of Beginning; thence North 89°53'04" West, parallel with and 51.00 feet North of centerline of said NE Glisan Street, a distance of 197.50 feet; thence North 00°02'44" East, a distance of 163.00 feet; thence North 89°53'26" East a distance of 45.01 feet; thence South 00°03'54" West, a distance of 28.42 feet to a point of curve; thence along a 4.50 foot radius curve concave to the Northeast, through a central angle of 90°03'54" (chord bears South 44°58'03" East, a distance of 6.37 feet) an arch distance of 7.07 feet to a point of tangency; thence North 90°00'00" East, a distance of 19.50 feet; thence North 45°00'00" East, a distance of 14.86 feet; thence North 00°01'20" East, a distance of 66.82 feet; thence North 90°00'00" East, a distance of 118.03 feet to a point that is 35.00 feet West of centerline of said 100<sup>th</sup> Avenue; thence South 00°02'44" West, parallel with and 35.00 feet West of centerline of said 100<sup>th</sup> Avenue, a distance of 207.89 feet to the true place of beginning.

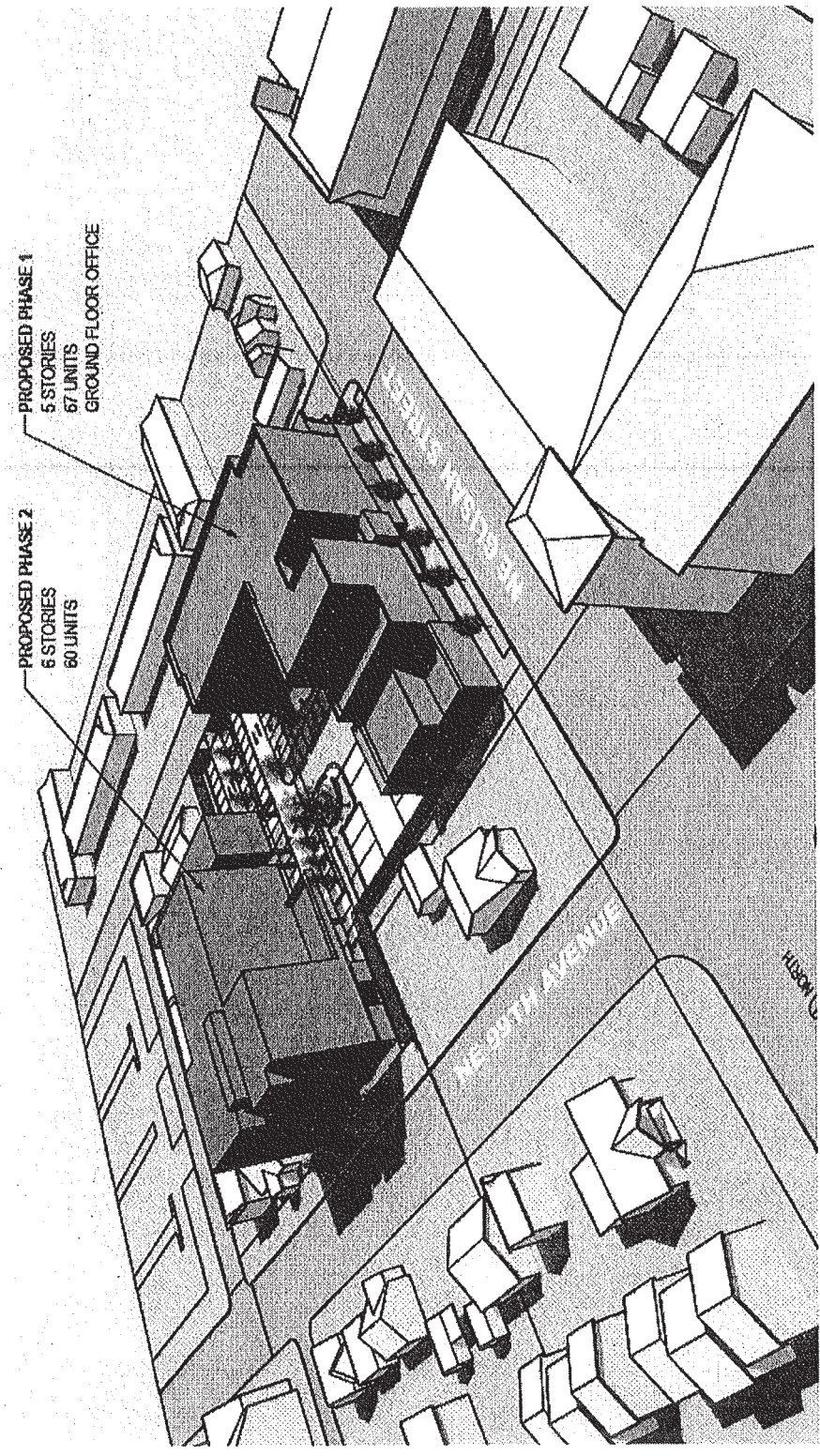


Phase 1 rendering





Phase 1 gram



Phase 1 Ma Site Plan

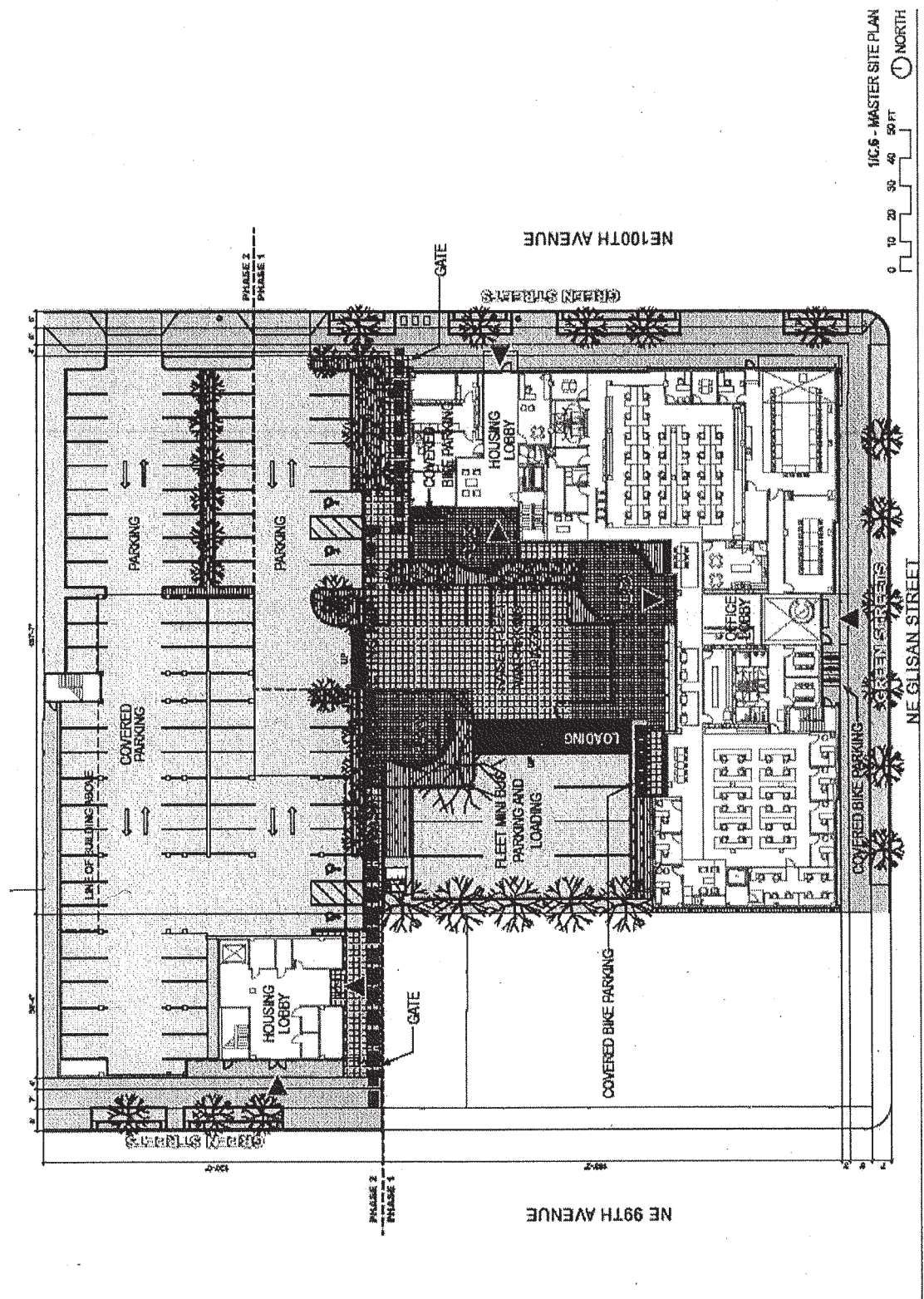




EXHIBIT B  
SCHEDULE OF PERFORMANCE

TASK	DUE DATE
1. Developer to submit to the City of Portland Bureau of Development Services, a Design Advice Request (DAR)	Complete
2. Developer to submit to the City of Portland Bureau of Development Services, an application for Design Review Approval and an application for Master Plan approval.	Complete
3. Developer to provide 50% Design Development Drawings & Project Budget	Complete
4. PHB to complete review of 50% Design Development Drawings & Project Budget	Complete
5. Developer to provide final Design Development Drawings & Project Budget	Complete
6. PHB to complete review of final Design Development Drawings & Project Budget	Complete
7. Developer to provide 50% Construction Drawings and Technical Specifications & Project Budget	Complete
8. PHB to complete review of 50% Construction Drawings and Technical Specifications & Project Budget	Complete
9. Developer to provide to provide 90% Construction Drawings and Technical Specifications & Project Budget	Complete
10. PHB to complete review of 90% Construction Drawings and Technical Specifications & Project Budget	Complete
11. Developer to provide Final Construction Drawings and Technical Specifications & Project Budget	Complete
12. PHB to complete review of Final Construction Drawings and Technical Specifications & Project Budget	Complete
13. Developer to secure land use approvals and permits	November 1, 2012
14. Developer to secure building permits from BDS	November 1, 2012
15. Developer to provide documentation of required financing	December 1, 2012
16. Developer to submit Final Project Budget	October 10, 2012

EXHIBIT B  
SCHEDULE OF PERFORMANCE

<b>TASK</b>	<b>DUE DATE</b>
17. PHB to complete review of Final Budget	November 9, 2012
18. Developer to begin construction	December 1, 2012
19. Developer to complete construction and secure Certificate of Occupancy for the Project	February 1, 2014
20. Developer to request Certificate of Completion from PHB	February 1, 2014
21. PHB to issue Certificate of Completion	February 28, 2014



EXHIBIT C  
PROJECT BUDGET

USES	Permanent	Construction
Acquisition Costs	1,010,247	1,010,247
Construction Costs	9,562,667	9,562,667
Development Costs	4,373,289	4,373,289
<b>TOTAL USES</b>	<b>14,946,203</b>	<b>14,946,203</b>

SOURCES	Permanent	Construction
Bank of America Construction Loan		6,075,638
NOAH- Permanent Loan	1,885,052	
LIHTC Equity OHCS/Bank of America	8,281,172	4,090,586
PHB Cash Flow Dependent Note	2,713,791	2,713,791
PHB Land Donation as a Lease	893,374	893,374
Deferred Developer Fee	150,000	150,000
OHCS GHAP	178,000	178,000
City SDC Exemptions	716,304	716,304
Enterprise Green Streets Grant	128,510	128,510
<b>TOTAL SOURCES</b>	<b>14,946,203</b>	<b>14,946,203</b>
<b>SURPLUS/(GAP)</b>	<b>0</b>	<b>0</b>

EXHIBIT D  
NOTICE TO PROCEED

Date:

**Development Team:**

**Borrower** – ««AddressBlock»»

**Limited Partner** –List if applicable:

**Re: Project Name, Project Type  
Address**

**Authorization Notice to Proceed**

Dear,

The purpose of this letter is to memorialize the fact that you have fulfilled all requirements of the PHB loan commitment relating to the start of construction and to provide PHB authorization for the start of construction at the above-referenced property. The letter will also outline the procedures we have discussed relating to the disbursement of funds.

All work should be done under required permits issued by the Bureau of Buildings. Upon completion of the work, the property shall be inspected and certified in compliance with all applicable City codes, ordinances, and construction proposals submitted to PHB. All contractors are to be registered with the State of Oregon and licensed by the City of Portland to perform construction work.

**DISBURSEMENT PROCEDURES**

**Inspections:** Progress inspections should be scheduled monthly and will include representatives of the borrower, contractor, architect, participating lender and PHB. Meetings are to begin with a pre-construction meeting which incorporates orientation of project team, scheduling of construction meetings and agreement for calendar of construction and completion. Construction draw meetings should be scheduled on a weekday during the last week of each month.

**Documentation:** Disbursement documents will be Portland Housing Bureau's (PHB) standard forms, completed and executed by the contractor, borrower and architect and approved by the participating lender. Construction billings for materials installed and labor will be verified by inspection. Non-construction amounts requested must be substantiated with bills or receipts. The borrower's cash investment will be expended before any PHB loan funds are released. Construction meetings shall be documented and include information reflected on enclosed sample meeting minutes document.

**Change Orders:** Change orders resulting in an added cost in excess of over \$5,000 in any one instance or \$25,000 in aggregate costs that impacts the quality or the nature of the Project over the entire Construction Period must be authorized by the borrower, architect, contractor, participating lender and PHB before the expenditure is approved. In case of emergency, authorization may be given verbally and immediately, prior to written approval. Change orders should include documentation indicating the conditions which required the change. All other

EXHIBIT D  
NOTICE TO PROCEED

change orders must be submitted as a course of monthly draw requests for review and approval of development team, including PHB Construction Coordinator.

**Lien Waivers:** A Conditional Lien Release from the General Contractor should be submitted with each draw to PHB. An Unconditional Lien Release should be submitted for the previous months draw at the same time. Unconditional Lien Releases must be submitted by all contractors and suppliers if the final disbursement is made prior to the seventy-five (75) day lien period.

**Davis Bacon:** If program is applicable, submit all materials required to be in compliance with all Davis Bacon Federal labor requirements including the Davis-Bacon Act.

**Workforce Training:** If program is applicable, submit proof of registration as a Training Agent, submit all forms and maintain documentation required to be in compliance with the Workforce hiring program. Notify the appropriate City Workforce staff throughout the duration of the project as spelled out in Attachment A of the Workforce Training & Hiring Program.

**Emerging Small Business/Minority Owned Business/Women Owned Business Enterprise:** Any changes to the contractors listed on the Projected ESB/MBE/WBE usage report submitted to PHB must be approved during construction. Final ESB/MBE/WBE Utilization Summary Reports must be submitted upon completion. Please note that all compiled data and reporting discussed at the pre-construction meeting must be completed prior to commencement of construction and release of PHB funds.

**Contractor/Sub-Contractor Utilization:** Contractor/Sub-Contractor Utilization Reports listing all contractors participating on the project should be submitted as soon as possible and must be completed prior to final disbursement. This information is required by the Federal Government. The forms and application format are available through the Portland's Office of Management & Finance. They should be made available at a pre-construction meeting or prior to the orientation meeting. Additional information will be made available as necessary through the Office of Management & Finance.

**Monthly Reporting :** All Sub-Contractors must on site each month must file hourly reporting and compliance reporting on the forms provided by PDC Davis – Bacon Compliance Officer (if applicable) and Workforce Training Coordinator to the General Contractor and submitted at the time of each construction draw. Forms are to be filed separately to the PHB and Workforce Officers. Construction Draws will be processed within 10 days of receipt and approval of all financial documents and contractor compliance documents.

**Disbursement:** PHB will process disbursement requests as described in the Loan Agreement executed between PHB and Borrower. Final disbursement will not be authorized until the actions and items listed on the attached Exhibit \_\_\_ Documents Required For Final Disbursement have been submitted and approved by PHB staff.

**Processing:** The disbursement check will be prepared within ten (10) working days after PHB receives a properly documented disbursement request. This disbursement request is provided in hard copy format and usually made available at the pre-construction or orientation meeting. An

EXHIBIT D  
NOTICE TO PROCEED

electronic format will be forwarded to your office.

**Project Schedule:** Statements submitted by your contractor indicate that the construction will be completed by: *December 31, 2013*

Please request any extension of the construction period in writing sixty days prior to the expected completion date. Additionally, coordination for grand-opening ceremonies may be assisted through PHB Public Affairs. Please provide sixty days notice for assistance.

Thanks for all your help and congratulations on the start of your project, you have done a great job getting to this point! We look forward to its successful completion. Please do not hesitate to call if I can be of any assistance.

**Cost Savings Calculation Form:** For your reference, funds not utilized are applied to the PHB financing. Cost savings are first returned to the State of Oregon Housing and Community Services department (up to \$178,000) and then any remaining cost savings will be split between Developer and PHB. A form outlining this process is attached with this notice.

Sincerely,

Construction Coordinator Name  
Construction Coordinator  
Housing Development Finance  
Portland Housing Bureau  
421 SW 6<sup>th</sup> Avenue, Suite 500  
Portland, Oregon 97204  
Phone Number  
Fax Number  
E-mail address



EXHIBIT E  
FORM OF CERTIFICATE OF COMPLETION

After recording return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF COMPLETION**

The CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the PORTLAND HOUSING BUREAU, the duly designated housing agency of the City of Portland ("PHB") hereby determines that GLISAN COMMONS PHASE I LIMITED PARTNERSHIP, an Oregon limited partnership ("Developer"), has substantially completed construction of Phase I as described in the Agreement for Development of Property In The Gateway Regional Center Urban Renewal Area (9929-9999 NE Glisan St., 618 NE 99<sup>TH</sup> Ave. and 604 NE 99<sup>th</sup> Ave.)

dated \_\_\_\_\_, 2012 (the "Development Agreement"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. \_\_\_\_\_ on \_\_\_\_\_, 2012. Capitalized terms used herein without definition shall have the meaning ascribed to them in the Development Agreement.

Pursuant to Section 7.1 of the Development Agreement, PHB hereby determines that:

- (i) The Residential Unit is complete according to the Final Construction Drawings and Technical Specifications, except for punch-list items that do not materially affect the use of Phase I for the purposes intended under the Development Agreement;
- (ii) Developer has completed all environmental remediation and abatement on the Project Land, if any, required of Developer under Section 9 of the Phase I Project Budget; and
- (iii) the City of Portland has issued a temporary Certificate of Occupancy with respect to Residential Unit.

This Certificate of Completion constitutes a conclusive determination of the satisfaction of all of the agreements, covenants and conditions contained in the Development Agreement with respect to the obligations of Developer, its successors and assigns, as to the construction of Phase I, and such obligations shall automatically cease and become of no further effect, except as otherwise provided in this Certificate of Completion. This Certificate of Completion represents and determines the completion of Developer's construction obligations described herein as to PHB only.

Further,



EXHIBIT F  
FORM OF MEMORANDUM OF AGREEMENT

After recording return to:

Portland Housing Bureau  
Attn: \_\_\_\_\_  
421 SW 6<sup>th</sup> Avenue, Suite 500  
Portland, OR 97204

**Memorandum of Agreement for Development of Property**  
[Project Name]

THIS MEMORANDUM OF AGREEMENT FOR DEVELOPMENT OF PROPERTY ("Memorandum") shall serve as notice to all persons that the CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the PORTLAND HOUSING BUREAU, ("PHB"), with an address of Portland Housing Bureau, 421 SW 6<sup>th</sup> Avenue, Suite 500, Portland, Oregon 97204 and GLISAN COMMONS PHASE I LIMITED PARTNERSHIP, an Oregon limited partnership ("Developer"), with an address of 12350 SE Powell Blvd., Portland, OR 97236 entered into an Agreement for Development of Property between PHB and Developer dated as of November \_\_\_\_, 2012 ("Agreement") relating to the real property located in Multnomah County, Oregon, as more particularly described in Exhibit "A" attached hereto (the "Property").

Among other things, the Agreement requires PHB enter into a Ground Lease of the Property with the to convey the Property to Developer. ~~[put in any project specific details regarding conveying of property and construction/completion of property]~~ Developer to construct and complete certain infrastructure and project improvements on the Property, all as more particularly set forth in the Agreement. ~~Other property or value was part of the whole consideration given for the Property conveyances referenced herein.~~

As a condition subsequent to the conveyance of the Property from PHB to Developer, in the event of a material default by Developer (beyond an applicable cure period) before PHB issues a Certificate of Completion, PHB shall have the option, upon 60 days written notice ("Notice of Termination") to Developer and Escrow Agent, to declare a termination in favor of the PHB of all the title, rights and interests of Developer in the Property, as applicable, all in accordance with Section \_\_\_ of the Agreement. After delivery of such Notice of Termination and in the event Developer fails to remedy, end or abrogate such default within the 60 day period in the manner state d in the Notice of Termination, Developer shall reconvey the Property, as applicable, to PHB by quitclaim deed, pursuant to the Escrow Instruction in Exhibit E attached to the Agreement. After a Certificate of Completion is recorded as to the Project, or as a result of a default in or breach of any provisions of the Agreement by Developer, or by any successors in interest or assigns of Developer, except for those surviving sections described in the Certificate of Completion, PHB shall thereafter have no further right or re-entry to the Property or reversion as described above.

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





EXHIBIT G  
ENVIRONMENTAL DUE DILIGENCE REPORTS

Report	Contractor	Date
Level I Environmental Site Assessment	Advanced EnviroTech, Inc	March 20, 2007
Phase I Environmental Site Assessment Update @ 9929-9999 NE Glisan Street, 604 and 618 NE 99 <sup>th</sup> Ave.	EvrenNorthwest	February 9, 2011
Phase II Environmental Site Assessment at 9929-9999 NE Glisan Street and 618 NE 99 <sup>th</sup> Ave.	EvrenNorthwest	May 27-28, 2008
Limited Hazardous Materials Survey	PSI	June 12, 2009
Phase I Environmental Site Assessment	Shaw Environmental Inc.	June 2, 2009
Additional Assessment at 9929-9999 NE Glisan Street, 604 and 618 NE 99 <sup>th</sup> Ave.	EvrenNorthwest	September 2011
Heating Oil Tank Voluntary Commissioning Report, 9929 NE Glisan Street	EvrenNorthwest	August 3, 2012
Underground Injection Control Decommissioning	EvrenNorthwest	August 8, 2012
Asbestos Abatement, 604 and 618 NE 99 <sup>th</sup> Ave.	EvrenNorthwest	August 2012

## EXHIBIT B

## PHB LOAN STRUCTURE:

<b>Borrower:</b>	REACH Gateway Senior Housing Limited Partnership (or other designated REACH CDC affiliate)
<b>Source:</b>	\$880,000 HOME \$3,165,295 Gateway URA
<b>Type and Amount:</b>	Cash Flow Share \$4,045,295
<b>Interest Rate:</b>	0% Construction and Permanent periods
<b>Term:</b>	Construction – 20 mos with one 4 month extension upon request Permanent – 55 years
<b>Repayment:</b>	Cash Flow Dependent
<b>Collateral:</b>	Subordinate trust deed
<b>Cash Flow Sharing:</b>	50% after priority payments <sup>1</sup>
	<ul style="list-style-type: none"> <li>• Investor services fee</li> <li>• Deferred developer fee</li> <li>• Cushion of \$250 per unit or 15% debt svc, whichever is greater</li> </ul>
<b>Cost Savings<sup>2</sup>:</b>	75% hard cost savings PHB, 25% Borrower 100% soft cost savings PHB
<b>Disbursements:</b>	PHB's funding is accelerated, coming in with approximately \$2.2 million in the first three months, then decreased amounts as other funders pick up the pace. Due to the accelerated pay in, PHB will

<sup>1</sup> In addition to the priority payments set forth, many investors require that the following be listed as priority payments, unpaid credit adjusters, repayment of any partner loan made for excess project development costs, operating deficit guaranty, tax credit guaranty, and replenishment of operating reserves. These items typically arise in the partnership agreement review much closer to closing and are considered customary, though investors differ in their requirements staff chooses to disclose them here and if required they are included in the approval.

<sup>2</sup> OHCS reserves the right to reduce its grant funding by reunderwriting the project if an increase tax credit pricing reduces the pre-closing funding gap, which is customary. In the event OHCS cannot accomplish reunderwriting in time for the financial closing, PHB will accommodate a priority cost savings carve out to allow OHCS to reduce the Housing Trust Fund amount at the time cost savings is determined if required.

	hold a 10% retainage of the TIF funding amount (\$316k) until after construction completion but no later than conversion to permanent financing, subject to lien releases and reporting requirements. Holdback for each disbursement is 5%.
<b>Developer Fee:</b>	\$1,050,000, of which \$550,000 is deferred, and \$257,000 in construction project management costs <sup>3</sup> paid to a third party, which PHB considers developer fee and OHCS does not \$59,000 in tax credit consulting fees
<b>Sponsor Equity:</b>	\$757,729 of which \$550,000 is a deferred portion of the developer fee
<b>Replacement Reserves:</b>	\$300 pupa, escalating 3% annually, plus \$100,000 capitalized replacement reserve
<b>Recourse</b>	With recourse during construction, thereafter without recourse
<b>Change Orders</b>	\$5,000 per occurrence, \$25,000 cumulatively

<sup>3</sup> The construction project manager is HDC a local non-profit consultant to affordable housing and asset management that has worked on both phases of the Glisan Commons project development.

Exhibit C

**AGREEMENT FOR DEVELOPMENT OF PROPERTY**  
**IN THE GATEWAY REGIONAL CENTER URBAN RENEWAL AREA**  
**9929-9999 NE GLISAN ST., 604 NE 99<sup>th</sup> AVE.,**  
**AND 618 NE 99<sup>th</sup> AVE.**

**BETWEEN**

**THE PORTLAND HOUSING BUREAU**

**AND**

**REACH GATEWAY SENIOR HOUSING LIMITED PARTNERSHIP**

**DATED**

**MARCH \_\_, 2014**



This DEVELOPMENT AGREEMENT (this "Agreement") is made and entered this \_\_\_ day of March, 2014 (the "Effective Date"), by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon (the "City"), acting by and through the PORTLAND HOUSING BUREAU ("PHB") and REACH GATEWAY SENIOR HOUSING LIMITED PARTNERSHIP, an Oregon limited partnership ("Developer" or "Phase 2 Developer"). PHB and Developer are referred to jointly in this Agreement as the "Parties" and individually as a "Party."

### RECITALS

- A. In furtherance of the objectives of Oregon Revised Statutes Chapter 457, and Chapter XV of the Charter of the City of Portland, the Portland Development Commission ("PDC"), the City's urban renewal agency, undertook a program for the development and redevelopment of blighted areas within the city limits and prepared and approved an Urban Renewal Plan for the Gateway Regional Center Urban Renewal Area, which was approved by the Portland City Council on June 21, 2001 (the "Urban Renewal Plan") through Ordinance No. 175669 and recorded in the real property records of Multnomah County, Oregon.
- B. PDC acquired the real properties located at 9929-9999 NE Glisan Street and 618 NE 99<sup>th</sup> Avenue in the Gateway Regional Center Urban Renewal Area (collectively the "Property") to serve as a catalyst for further redevelopment, consistent with Subordinate Principle No. 9 regarding the expansions and improvement of housing in the Urban Renewal Plan.
- C. In July 2010, in connection with a governmental reorganization, PDC transferred ownership of the Property and the responsibility for pursuing its housing redevelopment to the City pursuant to a set of related agreements between PDC and PHB (the "IGAs").
- D. The City Council approved acquisition of additional real property located at 604 NE 99<sup>th</sup> Avenue (which will also be included as the "Property") on October 24, 2012, under Ordinance No. 185697.
- E. On December 7, 2010, the City issued a Request for Proposals for the development of the Property with affordable rental housing. As a result of a competitive process, PHB selected a proposal submitted by a team consisting of Human Solutions, Inc. ("Human Solutions"), REACH Community Development, Inc. ("REACH") and Ride Connection, Inc. ("Ride Connection") because their proposed project most closely aligned with the goals of the Request for Proposal, PHB and the Urban Renewal Plan generally.
- F. REACH, HSI and Ride Connection entered into an Owners' Development Agreement dated April 11, 2012 ("Owners' Development Agreement") to develop the Property.

The project for redevelopment of the Property is known as Glisan Commons (the "Project") and was divided into two phases.

- G.** Phase 1 of the Project was outlined under a Development Agreement dated November 13, 2012 between the City and Human Solutions through their affiliate, Glisan Commons Phase 1 Limited Partnership (referenced as "Phase 1 Developer" for the purposes of Project). Phase 1 consisted of a two-unit condominium containing sixty-seven (67) units of workforce housing to be owned and operated by the Phase 1 Developer and approximately 16,000 square feet of commercial space to be owned and operated by Ride Connection. Phase 2 of the Project is intended to consist of sixty (60) units of senior housing to be owned and operated by Developer.
- H.** This Agreement describes the rights and obligations of the City and Developer for Phase 2 of the Project. REACH Gateway LLC is the general partner of Phase 2 Developer, and REACH is the manager and sole member to REACH Gateway LLC. Developer acknowledges, affirms and commits to fulfilling the representations that REACH made to the City and PHB in the developers' proposal and application seeking City financing.
- I.** Developer will develop the remaining portion of the Property reserved for Phase 2 of the Project ("Phase 2 Land") into an improvement consisting of sixty (60) units of senior housing, as well as other site improvements on the Property. Fifty-five (55) residential units of Phase 2 will be affordable to households for seniors earning 60% or less of median family income for the statistical Portland metropolitan area ("MFI"). Four (4) residential units of Phase 2 will be affordable to households for seniors earning approximately 30% or less of MFI. One (1) unit will be unregulated and will serve as the manager's unit for the Phase 2 senior housing, although Developer may choose to add this unit into either of the affordable housing restricted groups of dwelling units. Prior to the close of construction financing for Phase 2 and contemporaneous to execution of this Agreement, the Developer will enter into a regulatory agreement with PHB to ensure affordability of all applicable units at the required MFI for a period of sixty (60) years. Notwithstanding any tenant income restrictions set for the in such regulatory agreement, pursuant to Seciton 3 of that certain Addendum to Ground lease (as the term "Ground Lease" is defined below), in the event of a foreclosure or the execution of a new ground lease following a foreclosure, all income restrictions applicable to Phase 2 pursuant to such regulatory agreement shall automatically increase to 80% of MFI as of the date that the foreclosure is completed or a new ground lease is executed.
- J.** Because the City will retain ownership of the Property, Developer will enter into a ground lease with the City ("Ground Lease" or "Phase 2 Lease") to provide for rights to occupy and use the Property for construction and operation of the Phase 2 development. The Phase 2 Lease will terminate at the same time as the ground lease between the City and the Phase 1 Developer, on or about December 31, 2111.

- K.** R&H Colas Construction, Inc, which had served as the general contractor in Phase 1, will serve as the general contractor for Phase 2, and is anticipated to be ready with its subcontractors to proceed with construction at execution of this Agreement and upon Developer and the City executing all necessary Phase 2 documents. Developer will ensure that the construction of Phase 2 complies with BOLI and prevailing wage requirements.
- L.** As a requirement of the City providing support and financing for Phase 2, Developer is obligated to obtain financial participation from other public and private sources. Developer will seek funding from Bank of America and its affiliated equity investors for a senior construction loan in an estimated amount of \$7 million and tax credit equity of approximately \$8.9 million, and from Network for Oregon Affordable Housing (“NOAH”) for a permanent loan in the expected amount of \$1.34 million.
- M.** The completion of Phase 2 according to the terms of this Agreement, including the Scope of Development and the Schedule of Performance attached hereto as Exhibit B, and reliance on Developer’s promises to comply with all covenants in the regulatory agreement and Ground Lease are material inducements to PHB to enter into this Agreement.
- N.** The redevelopment of the Property pursuant to this Agreement will help achieve local and regional growth management and affordable housing development goals and will help provide needed services in support of a vibrant, mixed-use neighborhood surrounding the Property. The fulfillment of this Agreement is in the vital and best interest of the City and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of the IGAs, the requirements under which the Urban Renewal Plan was adopted, and the applicable state laws and requirements under which the Property had been acquired.

## AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and the conditions, covenants and agreements set forth below, the Parties hereby incorporate the above recitals into this Agreement and agree as follows:

### **1. DEVELOPMENT**

**1.1 Phase 2.** Developer will develop Phase 2 on the Phase 2 Land consistent with the Scope of Development consistent with the design and planning that was undertaken for the Project and for Phase 1.

**1.2 Changes to Phase 2.** Prior to undertaking changes or modifications that materially alter Phase 2, Developer must obtain approval in writing from PHB.

**1.3 Affordable Housing Objectives.** Developer shall develop fifty-five (55) of the residential units to be occupied by residents who are seniors (age 55 or above) earning

less than or equal to sixty percent (60%) of Median Family Income (“MFI”) and four (4) of the residential units to be occupied by residents who are seniors earning less than or equal to thirty percent (30%) of MFI for a restricted use period lasting 60 years (collectively, the “Affordable Housing Objectives”). One (1) of the residential units may be unrestricted and exempt from the affordable housing requirements; provided, however, that notwithstanding the exemption, Developer may choose to add this one (1) unit into either of the affordable housing restricted groups of dwelling units. Developer shall execute a regulatory agreement which governs the Affordable Housing Objectives as a condition of receiving the Certificate of Completion described in Section 6. Notwithstanding any tenant income restrictions set forth in such regulatory agreement, pursuant to Section 3 of the Addendum to Ground lease, in the event of a foreclosure or the execution of a new ground lease following a foreclosure, all income restrictions applicable to Phase 2 pursuant to such regulatory agreement shall automatically increase to 80% of MFI as of the date that the foreclosure is completed or a new ground lease is executed.

## 2 PROJECT FINANCING

Developer shall develop Phase 2 consistent with the Project Budget, including sources and uses, which is attached to this Agreement as **Exhibit C**. Except as described in this Section, Developer will be responsible for obtaining from third parties all funds and financing necessary to construct and operate Phase 2.

**2.1** Prior to the Effective Date, PHB has provided REACH CDC two (2) predevelopment loans in the combined amount of approximately \$924,296 for the purpose of undertaking pre-development activities related to Phase 2, which loans shall be repaid at the close of construction financing for Phase 2 in accordance with the documents governing their terms.

**2.2** Subject to the approval of the City Council and PHB Director, as necessary, PHB may provide a portion of the construction and permanent financing for Phase 2, under the following terms and conditions:

<b>Borrower:</b>	REACH Gateway Senior Housing Limited Partnership (or other REACH CDC affiliate)
<b>Source:</b>	\$880,000 HOME \$3,165,295 Gateway URA
<b>Type and Amount:</b>	Cash Flow Share \$4,045,295
<b>Interest Rate:</b>	0% Construction and Permanent periods
<b>Term:</b>	Construction – 20 mos. with one 4 month extension upon request Permanent – 55 years
<b>Repayment:</b>	Cash Flow Dependent



<b>Collateral:</b>	Subordinate trust deed
<b>Cash Flow Sharing:</b>	50% after priority payments <sup>1</sup> <ul style="list-style-type: none"> <li>• Deferred developer fee</li> <li>• Investor services fee</li> <li>• Cushion of \$250 per unit or 15% debt svc, whichever is greater, in this case 15% of debt service</li> </ul>
<b>Cost Savings:</b>	75% hard cost savings PHB, 25% Borrower 100% soft cost savings PHB, % Borrower
<b>Disbursements:</b>	PHB's funding is accelerated, coming in with approximately \$2.2 million in the first three months, then decreased amounts as other funders pick up the pace. Due to the accelerated pay in, PHB will hold a 10% retainage of the TIF funding amount (\$316k) until after construction completion but no later than conversion to permanent financing, subject to lien releases and reporting requirements. Holdback for each disbursement is 5%.
<b>Developer Fee:</b>	\$1,050,000, of which \$550,000 is deferred, and \$257,000 in construction project management costs <sup>2</sup> paid to a third party, which PHB considers developer fee and OHCS does not \$59,000 in tax credit consulting fees
<b>Sponsor Equity:</b>	\$757,729 of which \$550,000 is a deferred portion of the developer fee <sup>3</sup>
<b>Replacement Reserves:</b>	\$300 pupa, escalating 3% annually, plus \$100,000 capitalized replacement reserve
<b>Recourse</b>	With recourse during construction, thereafter without recourse
<b>Change Orders</b>	\$10,000 per occurrence, \$50,000 cumulatively

#### Conditions of Closing:

- Borrower provides copy of executed GMP contract
- Borrower provides executed reciprocal easements between Glisan Commons Phase I and Phase II clarifying parking and common area rights.
- Borrower provides evidence of commitments from non-PHB project funding sources.

<sup>1</sup> In addition to the priority payments set forth, many investors require that the following be listed as priority payments, unpaid credit adjusters, repayment of any partner loan made for excess project development costs, operating deficit guaranty, tax credit guaranty, and replenishment of operating reserves. These items typically arise in the partnership agreement review much closer to closing and are considered customary, though investors differ in their requirements staff chooses to disclose them here and if required they are included in the approval.

<sup>2</sup> The construction project manager is HDC a local non-profit consultant to affordable housing and asset management that has worked on both phases of the Glisan Commons project development.

<sup>3</sup> See Exhibit E Development Budget Pro Forma for detail – items included in equity are identified with a small “e” to the right

- All conditions for the issuance of required permits are met prior to closing.
- Receipt of any outstanding due diligence items required by PHB.
- City Council and City Attorney approval of ground lease and Development Agreement between Borrower and City

**Condition of Loan:**

Borrower will complete a land partition of the property so as to split the land into two separate parcels coinciding with Phase 1 and Phase 2 development prior to the final disbursement of City financing for Phase 2.

**3 PHB DESIGN REVIEW AND APPROVAL**

**3.1 Definitions**

**“City Design Review”** means review by the City of Portland, Bureau of Development Services in accordance with Title 33.825 of the Code of the City of Portland.

**“Construction Drawings and Technical Specifications”** means documents, based upon the Design Development Drawings, that set forth in detail the requirements for construction of the Project pursuant to the terms of this Agreement, approved by PHB and the appropriate City agencies. Construction Drawings and Technical Specifications shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project.

**“Design Development Drawings”** means the detailed plans submitted for City Design Review, including but not limited to:

- Architectural site plans showing all structures upon the site together with all connections to existing or proposed utilities, roads, sidewalks and alleys;
- A general landscaping concept plan;
- Elevations of the buildings to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials, of the building exteriors;
- A calculation of gross building areas, floor areas, height ratios and open spaces;
- A preliminary exterior finish schedule;
- Proposed layouts for exterior signage, graphics; and exterior lighting; and

A description of servicing requirements, trash collection locations, loading docks and related functional areas.

**“Design Team”** means Carleton Hart Architects.

**“Preliminary Design Documents”** means the site drawings for the Project including schematic, massing, feasibility and preliminary cost estimates for the Project in the form approved by PHB and that were the basis for entering into this Agreement.

**3.2 General Cooperation.** PHB and Developer will work closely throughout the design and programming process to achieve the completion with a Phase 2 project that is high quality, functional, financially feasible and supported by market conditions applicable to each component, and in a manner consistent with the planning and design of the overall Project and Phase 1. PHB and Developer will jointly address issues and concerns to achieve the most successful Project.

**3.3 PHB Design Review and Approval in General.** Consistent with the Scope of Development, Developer has prepared Preliminary Design Documents for Phase 2. PHB approval of Design Development Drawings must be obtained prior to submission for City Design Review. All plans and specifications referred to in this Section 3.3 are referred to herein as the "Drawings."

**3.4 Limitations on Review of Design.** PHB's review and approval of Drawings will occur in stages and approvals will be progressive in nature, but limited to the following elements:

- (a) **Final Construction Drawings and Technical Specifications.** When completed, Developer shall provide to PHB a copy of the Final Construction Drawings and Technical Specifications (100%).
- (b) **Construction Shop Drawings and Product Submittals.** Elements including design build, shop drawings and product submittals that were not approved, that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved final Construction Drawings and Technical Specifications.

**3.5 Changes in Approved Drawings.** The Developer shall submit to PHB for review any substantial changes to the Drawings. A substantial change shall mean any change that would have a material impact on the function, and appearance of Phase 2. A substantial change regarding cost shall be as defined in PHB's standard Notice to Proceed, a sample of which is attached as **Exhibit D**. Developer acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals shall be sought after PHB has reviewed the changes. PHB will assist Developer throughout any City or PHB design review process of the appropriate bureaus or agencies within the City, but PHB does not represent or warrant that its assistance will guarantee approval.

**3.6 PHB Access.** During the construction of Phase 2, and until the Certificate of Completion is issued for Phase 2, Developer's work shall, upon reasonable notice, be

accessible at all reasonable times for inspection by representatives of PHB. PHB agrees not to interfere with the work occurring on the Phase 2 Land.

#### 4 REPRESENTATIONS AND WARRANTIES

4.1 Developer hereby represents and warrants to PHB as of the Effective Date that:

- (a) This Agreement has been duly authorized, executed and delivered by Developer and all consents required under Developer's organizational documents or by law have been obtained, that Developer has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by Developer in connection with the execution of this Agreement and the transactions contemplated hereby. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.
- (b) The execution and delivery of this Agreement and documents referred to herein, the incurring of the obligations set forth herein, the consummation of the transactions herein contemplated, and compliance with the terms of this Agreement and the documents referred to herein do not conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Developer is a party.
- (c) Developer enters into this Agreement without reliance upon any verbal representation of any kind by PHB, its employees, agents or consultants regarding any aspect of the Property, the Project, its feasibility, financing or compliance with any governmental regulation.
- (d) No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

4.2 PHB hereby represents and warrants to PHB as of the Effective Date that PHB has the legal power, right, and authority to enter into and perform its obligations under this Agreement and that all requisite action has been taken by PHB in connection with entering into this Agreement.

#### 5 DEVELOPER'S COVENANTS



**5.1 Diligent Completion.** Subject to the terms and conditions of this Agreement, Developer covenants to complete the development of Phase 2 in substantial conformance with the final Construction Drawings and Technical Specifications and in accordance with the Schedule of Performance. Developer agrees to keep PHB informed of its progress with respect to development of Phase 2 during construction, with periodic reports to be issued no less frequently than once a month until PHB issues the Certificate of Completion for Phase 2. The Phase 2 development shall include:

- 5.1.1 Entering into all necessary architectural and construction contracts;
- 5.1.2 Securing all necessary public entitlements and building permits including Design Review;
- 5.1.3 Securing all financing necessary to complete Phase 2, consistent with the Sources and Uses.
- 5.1.4 Compliance with Oregon Prevailing Wage Law, rules and regulations as applicable.

**5.2 Schedule of Performance.** Developer shall complete development of Phase 2 no later than the date for completion of construction set forth in the Schedule of Performance. PHB, acting by and through its Director or a designee, may at its sole discretion extend the Schedule of Performance by a maximum of 180 days.

**5.3 Oregon Prevailing Wage Law.** The Parties hereby acknowledge that Phase 2 is a "public work" subject to ORS 279C.800 to 279C.870 and the administrative rules adopted thereunder (the "Oregon Prevailing Wage Law"). Accordingly, the Parties have entered into, and shall perform and discharge their obligations under, that certain Compliance Agreement of even date herewith, which is hereby incorporated into this Agreement by this reference, to implement their compliance with the Oregon Prevailing Wage Law with respect to Phase 2.

**5.4 Safety Matters and Indemnification.** Developer shall:

- 5.4.1 **Safety.** Comply with all safety laws and take all safety measures necessary to protect its employees, and PHB's employees, agents, contractors, subcontractors, licensees and invitees, their personal property, and improvements of each, from injury or damage caused by or resulting from the performance of its construction.
- 5.4.2 **Indemnity from Liability Claims.** Indemnify, defend (at PHB's request) and hold harmless PHB, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the property of

any person as occurs in the process of the construction work or the performance of Developer's other obligations under this Agreement, except to the extent caused by PHB. The indemnity set forth in this Section 6.4.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

**5.4.3 Indemnity from Liens.** Indemnify, defend (at PHB's request) and hold harmless PHB, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics', materialmen's, laborers' or other construction or statutory liens filed against any portion of the Phase 2 Land or arising from or related to construction on the Phase 2 Land performed by or at the request of Developer or Developer's contractors or agents. The indemnity set forth in this Section 5.4.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

**5.5 Liens.** If any statutory lien shall be filed, prior to PHB's issuance of the Certificate of Completion, against any portion of the Phase 2 Land by reason of labor, services or materials supplied to or at the request of Developer or Developer's contractors or agents or in connection with any construction on the Phase 2 Land, Developer shall, within thirty (30) days after the filing thereof, take whatever action is necessary and proper (including posting a bond or a cash deposit and taking such further action as may be required by the Oregon Construction Lien Law), so that the Phase 2 Land shall thereafter be entirely free of the lien. Alternatively, Developer may elect to leave the lien of record and to contest its validity, amount or applicability by appropriate legal proceedings, but only if Developer shall, within the 30-day period following the filing of the lien, furnish an indemnity against such lien in an amount and form satisfactory to induce the title insurance company which insured title to the Phase 2 Land to insure over such lien or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such lien; provided, further, that in such event, (i) Developer shall indemnify and hold harmless PHB from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such lien, and (ii) in the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Developer, Developer shall within fifteen (15) days thereafter cause the lien to be discharged of record.

**5.6 Compliance with Laws and Use Restrictions.** Developer will comply with, or cause the Phase 2 Land to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Developer, the Phase 2 Land, or the operation thereof, including, without limitation:

**5.6.1** All applicable health and safety, environmental, and zoning laws, and

- 5.6.2 All requirements or restrictions pertaining to the construction, use, occupancy or operation of the Phase 2 Land arising from the original source of any funds used by Developer to complete Phase 2.

## 6 CERTIFICATE OF COMPLETION.

**6.1 When Developer is Entitled to Certificate of Completion.** Upon substantial completion of Phase 2 as described in this Section on or before the date for completion of the construction set forth in the Schedule of Performance (as the same may be extended pursuant to the terms of this Agreement), and provided Developer is not in default under this Agreement, PHB will furnish Developer with a Certificate of Completion for Phase 2. Phase 2 will be deemed to be substantially complete when:

- (a) PHB determines that Phase 2 is substantially complete according to the Final Construction Drawings and Technical Specifications, except for punch-list items that do not materially affect the use of Phase 2 for the purposes intended under this Agreement;
- (b) Developer has completed all environmental remediation and abatement on the Phase 2 Land, if any, required of Developer under Section 8;
- (c) The City has issued a temporary Certificate(s) of Occupancy with respect to Phase 2; and
- (d) PHB determines that any other improvements required by this Agreement are completed in all material respects.

**6.2 Form and Effect of the Certificate of Completion.** A Certificate of Completion shall be substantially in the form of Exhibit G and in a form that can be recorded in the real property records of Multnomah County. The Certificate of Completion shall provide for termination of obligations under this Agreement and limitation of remedies of PHB as expressly provided for in the Certificate of Completion.

**6.3 Surviving Sections.** The following Sections of this Agreement shall survive and remain in effect notwithstanding the issuance of the Certificate of Completion: Section 5.4.2 (Indemnity From Liability Claims), Section 5.4.3 (Indemnity From Liens), and Section 8.4 (Environmental Indemnification).

## 7 COVENANTS RUNNING WITH THE LAND

**7.1** Developer covenants and agrees that it will use the Phase 2 Land only for purposes substantially consistent with this Agreement, including the Scope of Development and Final Construction Plans and Specifications.

7.2 Developer covenants and agrees that prior to the issuance of the Certificate of Completion, the Design Review provisions contained in Section 3 of this Agreement shall survive any foreclosure or transfer of any leasehold mortgage encumbering the Phase 2 Land by a deed in lieu of foreclosure or any other transfer of the Phase 2 Land; provided, however, in the event of a foreclosure or deed in lieu of foreclosure PHB will reasonably consider extensions of time periods and modifications of the Design Development Drawings, Construction Drawings and Technical Specifications in order to render the completion and operation of Phase 2 economically and practically feasible.

7.3 Subject to Section 11.6 and prior to the issuance of the Certificate of Completion, Developer and PHB hereby declare and agree that the covenants set forth in this Section 7 shall be deemed covenants running with the land and shall pass to and be binding upon Developer's successors in title, including, without limitation, purchaser, grantee, or lessee of any portion of the Phase 2 Land and any other person or entity having any right, title, or interest in the Phase 2 Land and upon the respective heirs, executors, administrators, devisees, designees, successors, and assigns of any purchaser, grantee, or lessee of any portion of the Phase 2 Land and any other person or entity having any right, title, or interest in the Phase 2 Land. Developer and PHB agree and acknowledge that upon issuance of the Certificate of Completion, the covenants set forth in this Article 7 shall be of no further force and effect and shall not longer be deemed covenants running with the land.

## 8 ENVIRONMENTAL CONDITIONS AND DEVELOPER INDEMNITY

8.1 **Environmental Due Diligence Reports.** Developer acknowledges receipt of copies of the Environmental Due Diligence Reports, as set forth in attached Exhibit G.

8.2 **Environmental Cleanup; Unforeseen Environmental Conditions.** If Developer encounters, after the Effective Date and prior to issuance of the Certificate of Completion, an Unforeseen Environmental Condition on the Phase 2 Land that was not otherwise identified as a Recognized Environmental Condition in the Environmental Due Diligence Reports and that substantially differs as to nature and extent from a Recognized Environmental Condition in the Environmental Due Diligence Reports, Developer shall suspend all related construction activities pending PHB's investigations under this Section, Developer shall also, promptly thereafter, notify DEQ (to the extent required by applicable law) and PHB of the Unforeseen Environmental Condition and provide PHB with any documentation regarding the circumstances of the discovery of the Unforeseen Environmental Condition, including but not limited to any documentation on the release of a Hazardous Substance on the Phase 2 Land. After discovery of an Unforeseen Environmental Condition on the Phase 2 Land, Developer shall allow PHB access to the Phase 2 Land to make such surveys and conduct such tests and investigations as PHB deems



reasonably necessary or desirable to determine the nature and extent of the Unforeseen Environmental Condition. Developer hereby grants a license to PHB for PHB to enter on the Phase 2 Land to perform the foregoing surveys, tests and investigations which PHB shall conduct in accordance with applicable Environmental Laws. PHB will provide Developer with copies of any reports arising from such surveys, tests and investigations. Promptly after PHB's completion of the surveys, tests and investigations, the Parties shall meet to agree upon a source and method for funding the remediation or abatement, as applicable, of the Unforeseen Environmental Condition, which Developer shall then complete as part of Phase 2, as a condition to issuance of the Certificate of Completion and in a manner necessary to obtain any approval required by DEQ. Developer shall comply with all restrictions, limitations, conditions and obligations set forth in any approval once issued by DEQ. If the Parties are unable to agree on a source and method for funding the remediation or abatement, then PHB shall have the right, but not the obligation, in its sole discretion, to pursue other responsible parties of the Unforeseen Environmental Condition or perform remediation or abatement of the Unforeseen Environmental Condition itself, as it determines necessary or appropriate in its sole discretion as a matter of right but not obligation, and Developer shall permit PHB access to the Phase 2 Land to do so.

- 8.3 Environmental Indemnification.** Developer shall be responsible for compliance with all Environmental Laws with respect to the Phase 2 Land and its business and the operation of Phase 2 from and after Closing, including but not limited to compliance with all restrictions, limitations, conditions and obligations imposed by DEQ pursuant to a No Further Action Letter, Underground Storage Tank Closure letter or Easement and Equitable Servitude applicable to the Phase 2 Land (to the extent such matter appears on attached **Exhibit G**). In addition Developer shall be responsible for all environmental remediation and abatement of Recognized Environmental Conditions and Unforeseen Environmental Conditions on the Phase 2 Land to the extent such obligations are imposed on Developer under Sections 8.2 and above. Developer shall defend (at PHB's request), indemnify and hold harmless PHB, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by PHB, its successors or assigns, or asserted against PHB, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer, Developer's failure to comply with a restriction, limitation, condition or obligation imposed by DEQ pursuant to a No Further Action Letter, Underground Storage Tank Closure Letter or Easement and Equitable Servitude applicable to the Phase 2 Land (to the extent such matter appears on attached **Exhibit G**), or Developer's failure to complete any environmental remediation or abatement of Recognized Environmental

Conditions or Unforeseen Environmental Conditions on the Phase 2 Land required of Developer by Sections 8.2 and above. The indemnity set forth in this Section 8.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

- 8.4 Contribution.** The foregoing indemnity does not limit any rights of contribution that the Parties may have against others under applicable law or agreement. The indemnity is intended only as an allocation of responsibility between the Parties.
- 8.5 Definitions.** As used in this Section,
- a) **“DEQ”** means the Oregon Department of Environmental Quality.
  - b) **“Environmental Conditions”** means the physical condition of the Property as measured by the standards of the Environmental Laws. Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.
  - c) **“Environmental Laws”** means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Property or the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (as defined in the definition of Hazardous Substances, below), CERCLA (defined in the definition of Hazardous Substances, below), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
  - d) **“Environmental Due Diligence Reports”** means reports of investigations performed as part of environmental due diligence, which may include Phase 1, Phase 2 and Hazardous Building Site Assessments and reports, documents or documentation of Recognized Environmental Conditions that PHB has completed or PHB has in its possession, completed by others. A complete list of the Environmental Due Diligence Reports is attached as Exhibit G and incorporated herein by reference.
  - e) **“Hazardous Substances”** means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act,

as amended, 42 USC Section 9601, et seq. (“CERCLA”), or any other Environmental Law.

- f) **“Recognized Environmental Conditions”** means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Property or into the ground, ground water, or surface water of the Property, whether or not the Release is in compliance with applicable law. Recognized Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.
- g) **“Release”** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
- h) **“Unforeseen Environmental Conditions”** means the presence of a Hazardous Substance on the Property that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by the Oregon Department of Environmental Quality.

9 **COMPLIANCE WITH CONSTRUCTION WAGE POLICY, BUSINESS AND WORKFORCE EQUITY POLICY, GREEN BUILDING POLICY AND EEO CERTIFICATION PROGRAM**

**9.1 Business and Workforce Equity Policy.** PHB is subject to the requirement of the Business and Workforce Equity Policy of the City of Portland which seeks to ensure fair and equitable opportunities to Portland’s diverse populations, promote prosperity in all segments of Portland’s diverse communities, foster economic growth, and expand competition in the market.

**9.2 EEO Certification.** Developer shall comply with the City’s EEO Certification Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the EEO Certification Program and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the EEO Certification Program. Developer shall also comply with all portions of the EEO Certification Program applicable directly to Developer and with all applicable provisions of Federal or state statutes and regulations and City ordinances concerning equal employment opportunities for persons engaged in Phase 2. The failure of Developer or Developer’s General Contractor, or the subcontractors thereof, to comply with the EEO Certification Program or other applicable equal employment opportunity law shall constitute a breach of a material provision of this Agreement.

**9.3 Green Building Policy.** Phase 2 is exempt from PHB's Green Building Policy. Notwithstanding the preceding sentence, the Developer shall obtain and provide a copy to PHB of third party certification for Phase 2 through either the Earth Advantage Institute or the United States Green Building Council.

## **10 DEFAULT AND REMEDIES**

### **10.1 Default and Cure.**

#### **10.1.1 Default by Developer.**

- (a) Developer shall be in default under this Agreement if Developer breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from PHB specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Developer shall be in default under this Agreement if Developer does not commence the cure of the breach within thirty (30) days after Developer receives written notice from PHB and thereafter diligently prosecute to completion such cure within sixty (60) days after the written notice from PHB.
- (b) Developer shall also be in default under this Agreement if Developer makes an assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment.
- (c) Developer shall also be in default under this Agreement and PHB shall be irreparably harmed by such default, if Developer constructs or operates any portion of Phase 2 in a manner materially inconsistent with Final Construction Drawings and Technical Specifications.

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



Developer and thereafter diligently prosecute to completion such cure within sixty (60) days after the written notice from Developer.

**10.2 PHB's Remedies.** If a Developer default occurs, PHB may, at its option: (i) terminate this Agreement by written notice to Developer, (ii) seek monetary damages against Developer, or (iii) specifically enforce the obligations of Developer under this Agreement. If PHB terminates this Agreement as provided in this Section 13.2, then Developer shall deliver to PHB without representations or warranties of any kind or nature within thirty (30) days copies of all Phase 2 market research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties, and which Developer is authorized to release. PHB may use any of the foregoing documents in any manner that PHB deems appropriate with the consent of any party having approval rights thereunder. PHB shall pay no compensation to Developer for the foregoing Phase 2 documents. Termination of this Agreement shall not prejudice REACH's rights to develop Phase 2. No default by REACH or any other person or entity with respect to Phase 2 shall adversely affect, in any way, the rights of the Developer hereunder. Notwithstanding anything in this Agreement to the contrary, PHB shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from Developer in connection with Developer's default

**10.3 Developer's Remedies.** If a PHB default occurs, Developer may specifically enforce the obligations of PHB under this Agreement, or seek monetary damages against PHB. Notwithstanding the preceding sentence, Developer shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from PHB in connection with PHB's default.

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

**10.5 Unavoidable Delay.**

**10.5.1** Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation ("Unavoidable Delay") is a result of conditions reasonably unforeseeable, beyond the Party's reasonable 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, labor dispute, strike, malicious mischief, or explosion.

**10.5.2** A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party's obligation must, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and estimated time of correction. The Party must thereafter make commercially reasonable efforts to resume performance of the delayed obligation.

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

## **10.6 Mortgagee and Tax Credit Investor Protection Provisions**

**10.6.1 Definitions.** "Mortgagee" means the holder of any mortgage affecting or encumbering Developer's leasehold interest in the Phase 2 Land or any portion thereof, together with any successor or assignee of such holder. The term "Mortgagee" shall include any Mortgagee as owner of the property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a mortgage but shall not include (a) any other party who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee. "Tax Credit Investor" means Bank of America, N.A. in its capacity as limited partner of Developer. The initial Phase 2 leasehold Mortgagee is Bank of America, N.A.

**10.6.2 Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of the Agreement, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete Phase 2 or to guarantee such construction or completion; provided, however that nothing in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote Phase 2 or any part thereof to any uses, or to construct any improvements thereon other than those uses or improvements provided or permitted in the Urban Renewal Plan.

**10.6.3 Copy of Notice of Default to Mortgagee.** If PHB delivers any notice or demand to Developer with respect to any breach of or default by Developer in its obligations or covenants under this Agreement, PHB shall at the **same time send a copy of such notice** or demand to each Mortgagee approved by PHB at

the last address of such holder shown in this Agreement or in the records of PHB and the Tax Credit Investor. The Parties agree and acknowledge that Network for Oregon Affordable Housing (NOAH) is hereby "approved" by PHB for all purposes under this Section and under this Agreement.

**10.6.4 Mortgagee's and Tax Credit Investor's Options to Cure Defaults.** After any default in or breach of this Agreement by Developer where Developer fails to cure or remedy said default or breach, then Tax Credit Investor or each Mortgagee may, at its option, cure or remedy such breach or default within thirty (30) days after passage of the latest date for Developer's cure of the default, and if permitted by its loan documents, to add the cost thereof to the Mortgage debt and the lien of its Mortgage. If the Tax Credit Investor or any Mortgagee makes any such payment or otherwise offers cure of a default, PHB will accept such action as curing such default on the same basis as if such cure were made directly by Developer. The Tax Credit Investor or a Mortgagee shall not be required to cure (A) defaults on obligations of Developer under any indemnity provision in this Agreement; or (B) any default in any obligation to pay money, of which PHB did not provide the Tax Credit Investor and Mortgagee with written notice within thirty (30) days after the date of the default; or (C) other past monetary obligations then in default and not reasonably susceptible of being cured by such Tax Credit Investor and Mortgagee; or (D) any default resulting from the acts or omissions of PHB. If the breach or default is with respect to construction of the improvements, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements, provided that the Mortgagee notifies PHB in writing of its intention to complete Phase 2 according to the approved Final Construction Plans and Specifications. The Tax Credit Investor or any Mortgagee who properly completes Phase 2 shall be entitled to issuance of a Certificate of Completion, upon written request made to PHB following the procedures set forth in Article

**10.6.5 Right to New Agreement.** If the Agreement terminates for any reason, including the rejection of the Agreement in a bankruptcy proceeding, then PHB shall give written notice of such fact to each Mortgagee and Tax Credit Investor, and if one or more Mortgagees and Tax Credit Investor gives written notice to PHB within thirty (30) days following delivery of such notice of termination by PHB, PHB agrees in such case to enter into a new development agreement for the Phase 2 Land (a "**New Agreement**") with the most senior Mortgagee or its affiliated designee providing such notice for the remainder of the term of the Agreement effective as of the date of such termination, or if no Mortgagee gives such notice, then with the Tax Credit Investor or its designee if it timely gives such notice, at the rent and additional rent and upon the other

terms, conditions, covenants and agreements contained in the Agreement and with equal priority thereto.

The developer under the New Agreement shall have the same rights and obligations as Developer had under the terminated Agreement and the PHB and the new developer shall execute and deliver any deed or other instrument and take such other action as may be reasonably necessary to confirm or assure such right, title, interest or obligations.

Nothing in this Subsection or the Agreement shall be construed to imply that the Agreement may be terminated by reason of rejection in any bankruptcy proceeding of the Developer. The parties intend, for the protection of Mortgagees, that any such rejection shall not cause a termination of the Agreement.

Nothing herein contained shall require any Mortgagee or the Tax Credit Investor to accept a New Agreement.

## 11 MISCELLANEOUS PROVISIONS

**11.1 Discrimination.** Developer, for itself and its successor and assigns, agrees that, during the construction of Phase 2, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.

**11.2 Notice.** Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail, postage prepaid, return receipt requested, (b) when received if personally delivered, or (c) if sent by e-mail or other form of electronic transmission, with receipt of confirmation that such transmission has been received, and:

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

Reach Gateway Senior Housing Limited Partnership  
c/o REACH CDC  
4150 SW Moody Ave  
Portland, OR 97239  
Attention: Housing Development Director

with a copy to:

Schwabe, Williamson & Wyatt, PC  
Attention: Dan Eller  
1211 SW Fifth Avenue, Suite 1900  
Portland, OR 97204



For so long as the Tax Credit Investor is a limited partner of Developer, a copy of all notices to the Developer shall also be delivered to the Tax Credit Investor at the following address:

with a copy to:

For so long as Bank of America N.A. is the beneficiary of a deed of trust secured by the Phase 2 Land or Phase 2, a copy of all notices to the Developer shall also be delivered to the at the following address:

with a copy to:

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

City of Portland  
Portland Housing Bureau  
Attn: Siobain Beddow  
421 SW 6<sup>th</sup> Avenue, Suite 500  
Portland, OR 97204

with a copy to:

City of Portland - City Attorney's Office  
Attn: Deputy City Attorney Linda Law and/or Trinh Tran  
1221 SW 4<sup>th</sup> Avenue, Suite 430  
Portland, OR 97201

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

11.1.1 If any Party's notice contact person or address changes, that Party shall provide the other Parties with the updated contact information in writing.

**11.3 [Reserved].**

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

**11.5 Counterparts/Electronic Transaction.** 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. The Parties agree that they may conduct this transaction, including any amendments or extension, by electronic means including the use of electronic signatures, facsimiles and PDFs.

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

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

**11.8 Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.

**11.9 Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.

**11.10 Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

**11.11 Legal Purpose.** Developer agrees to use the Phase 2 Land and Phase 2 solely for lawful purposes.

**11.12 Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

**11.13 Entire Agreement.** The Ground Lease and this Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Phase 2 Land. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.

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

**11.15 Successors and Assigns.** Subject to the provisions of Section 10, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.

**11.16 No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties other than that of independent contracting parties.

**11.17 Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, PHB is specifically not obligating itself, the City, or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Phase 2 Land, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.

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

approval are expressly reserved to PHB's sole discretion in this Agreement. Developer, upon receipt of such disapproval, shall revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to PHB within forty-five (45) days after receipt of the notice of disapproval.

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

**11.20 Time of Essence.** Time is of the essence of this Agreement.

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

**11.22 Recording of Memorandum of Agreement.** PHB shall record a memorandum of this Agreement ("Memorandum of Agreement") within ten (10) days after the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit F to this Agreement. When PHB issues to Developer a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record an amended Memorandum of Agreement to reflect the surviving covenants of this Agreement.

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

Executed in multiple counterparts as of the day and year first above written.

**CITY OF PORTLAND**, a municipal corporation in the State of Oregon, acting by and through the Portland Housing Bureau as the duly designated housing agency of the City of Portland.

By: \_\_\_\_\_  
Traci Manning, Director

APPROVED AS TO FORM:

\_\_\_\_\_



Linda Law, Attorney  
City Attorney's Office

**DEVELOPER**

**REACH GATEWAY SENIOR HOUSING LIMITED PARTNERSHIP**, an Oregon  
limited partnership

By: REACH GATEWAY LLC  
Its: General Partner

By: REACH Community Development, Inc.  
Its: Manager and Sole Member

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Dan Valliere, Executive Director

**EXHIBITS**

- Exhibit A**      Scope of Development, Phase 2 Land and Legal Description
- Exhibit B**      Schedule of Performance
- Exhibit C**      Phase 2 Budget
- Exhibit D**      Notice to Proceed
- Exhibit E**      Form of Certificate of Completion
- Exhibit F**      Form of Memorandum of Agreement
- Exhibit G**      Environmental Due Diligence Reports

**EXHIBIT A**  
**SCOPE OF DEVELOPMENT**

General

The Project consists of two phases. Phase 1 is reaching or has reached completion at the time of execution of this Agreement. A portion of site improvements constructed during Phase 1 will provide access and beneficial use for Phase 2. The subject of this Agreement is Phase 2. The obligations to complete construction of the improvements pursuant to this Agreement are limited to the Phase 2 improvements.

Phase 2

Residential Unit:

- An approximately 55,580 square foot "5 over 1" building containing 60 residential. The 60 residential units comprised of the following:

Unit type	Count	MFI	Maximum monthly gross rents (including an allowance for utilities)
One BR	4	30%	
One BR	55	60%	
One BR	1	Mgr's unit	60% if occupied by tenant, unregulated if occupied by property manager <sup>4</sup>
<b>Total Units</b>	<b>60</b>		

- Residential unit affordability: 60 Phase 2 residential units will be marketed to senior citizens and subject to a city regulatory agreement requiring affordability for a period of not less than sixty years. If the designated manager's unit is occupied by an onsite property manager, that unit is not income restricted.

Parking Spaces:

- 76 parking spaces.

Overall construction:

- Must be Consistent in development to Phase 1 appearance.
- Must attain LEED Gold certification

<sup>4</sup> A resident property manager may occupy this unit at some point, in which case it will not have an MFI requirement. Unless a property manager occupies the unit, the unit is regulated at 60% MFI.

Design/site plan

The site plans, legal description, and architectural renderings that follow are hereby incorporated as part of this Exhibit A, and constitute part of the Scope of Development. To the extent that such plans and renderings show Phase 1 and Phase 2, only those portions showing Phase 2 apply. Substantive changes to Phase 2 plans must be provided to PHB in writing.





LEGAL DESCRIPTION, PHASE 2

A PORTION OF THAT TRACT OF LAND CONVEYED TO THE CITY OF PORTLAND BY DEED RECORDED IN DOCUMENT NO. 2010-129014, MULTNOMAH COUNTY DEED RECORDS, AND A PORTION OF THAT TRACT OF LAND CONVEYED TO NECULAI AND LUCRETIA PANAITI BY DEED RECORDED IN DOCUMENT NO. 95-108275, MULTNOMAH COUNTY DEED RECORDS, SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH, AND STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 33, BEING A POINT ON THE CENTERLINE OF NE GLISAN ST; THENCE NORTH 00°02'44" EAST, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF NE 100TH AVENUE AS PRESENTLY LOCATED (BEING 25 FEET WEST OF CENTERLINE WHEN MEASURED AT RIGHT ANGLES) AND ITS SOUTHERLY EXTENSION, A DISTANCE OF 334.00 FEET; THENCE NORTH 89°53'04" WEST, A DISTANCE OF 10.00' TO THE **TRUE PLACE OF BEGINNING**;

THENCE CONTINUING NORTH 89°53'04" WEST, A DISTANCE OF 255.89 FEET TO A POINT THAT IS 41.00 FEET EAST OF CENTERLINE OF NE 99TH AVENUE;

THENCE SOUTH 00°02'44" WEST, PARALLEL WITH AND 41.00 FEET EAST OF SAID CENTERLINE OF NE 99TH AVENUE, A DISTANCE OF 120.00 FEET;

THENCE SOUTH 89°53'04" EAST, A DISTANCE OF 58.39 FEET;

THENCE NORTH 89°53'26" EAST A DISTANCE OF 45.01 FEET;

THENCE SOUTH 00°03'54" WEST, A DISTANCE OF 28.42 FEET TO A POINT OF CURVE;

THENCE ALONG A 4.50 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, THROUGH A CENTRAL ANGLE OF 90°03'54" (CHORD BEARS SOUTH 44°58'03" EAST, A DISTANCE OF 6.37 FEET) AN ARC DISTANCE OF 7.07 FEET TO A POINT OF TANGENCY;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 19.50 FEET;

THENCE NORTH 45°00'00" EAST, A DISTANCE OF 14.86 FEET;

THENCE NORTH 00°01'20" EAST, A DISTANCE OF 66.82 FEET;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 118.03 FEET TO A POINT THAT IS 35.00 FEET WEST OF CENTERLINE OF SAID 100TH AVENUE;

THENCE NORTH 00°02'44" EAST, PARALLEL WITH AND 35.00 FEET WEST OF CENTERLINE OF SAID 100TH AVENUE, A DISTANCE OF 75.11 FEET TO THE **TRUE PLACE OF BEGINNING**;

CONTAINING 26,487 SQUARE FEET;





CARLTON HART ARCHITECTS  
300 NE 9TH AVENUE, PORTLAND, OREGON 97232  
503.255.1111 | WWW.CARLTONHART.COM

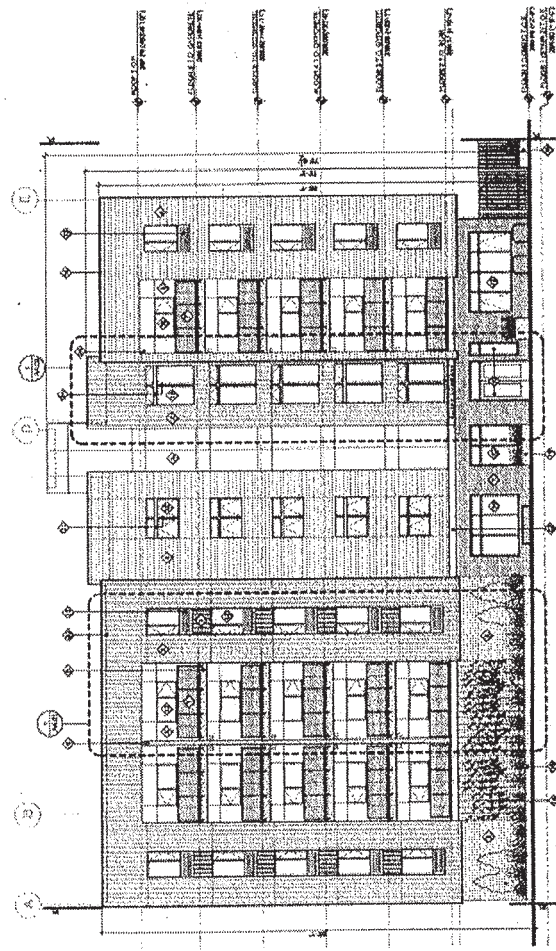


QUISAN COMMONS PHASE II  
REACH COMMUNITY DEVELOPMENT  
604 NE 98TH AVENUE | PORTLAND, OREGON  
PROJECT 327

EXTERIOR ELEVATION  
PROJECT NO.  
21177-01  
11.08.2017

A3.01

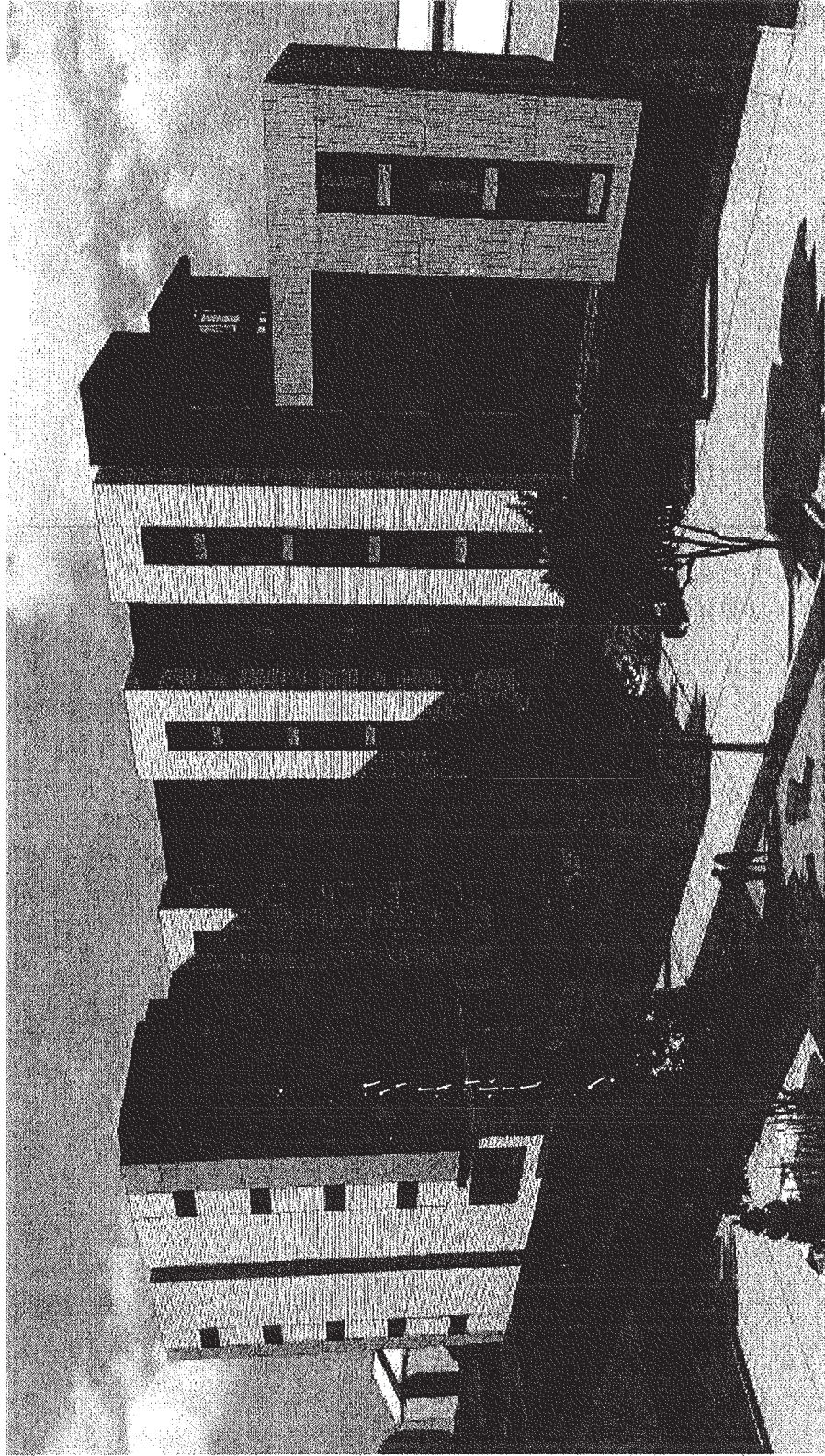
- GENERAL NOTES**
1. VERIFY ALL DIMENSIONS AND CONDITIONS ON SITE PRIOR TO CONSTRUCTION.
  2. INITIAL ALL NOTES RELATED TO THIS ELEVATION.
  3. VERIFY ALL MATERIALS AND FINISHES WITH THE ARCHITECT.
  4. VERIFY ALL MATERIALS AND FINISHES WITH THE ARCHITECT.
- KEY NOTES**
- 1. WINDOW SILL: 1/2" ALUMINUM ANGLE WITH 1/4" GASKET.
  - 2. WINDOW CASE: 1/2" ALUMINUM ANGLE WITH 1/4" GASKET.
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  - 99. WINDOW FRAME: 1/2" ALUMINUM ANGLE WITH 1/4" GASKET.
  - 100. WINDOW FINISH: 1/2" ALUMINUM ANGLE WITH 1/4" GASKET.



1 WEST ELEVATION  
SCALE: 1/8" = 1'-0"

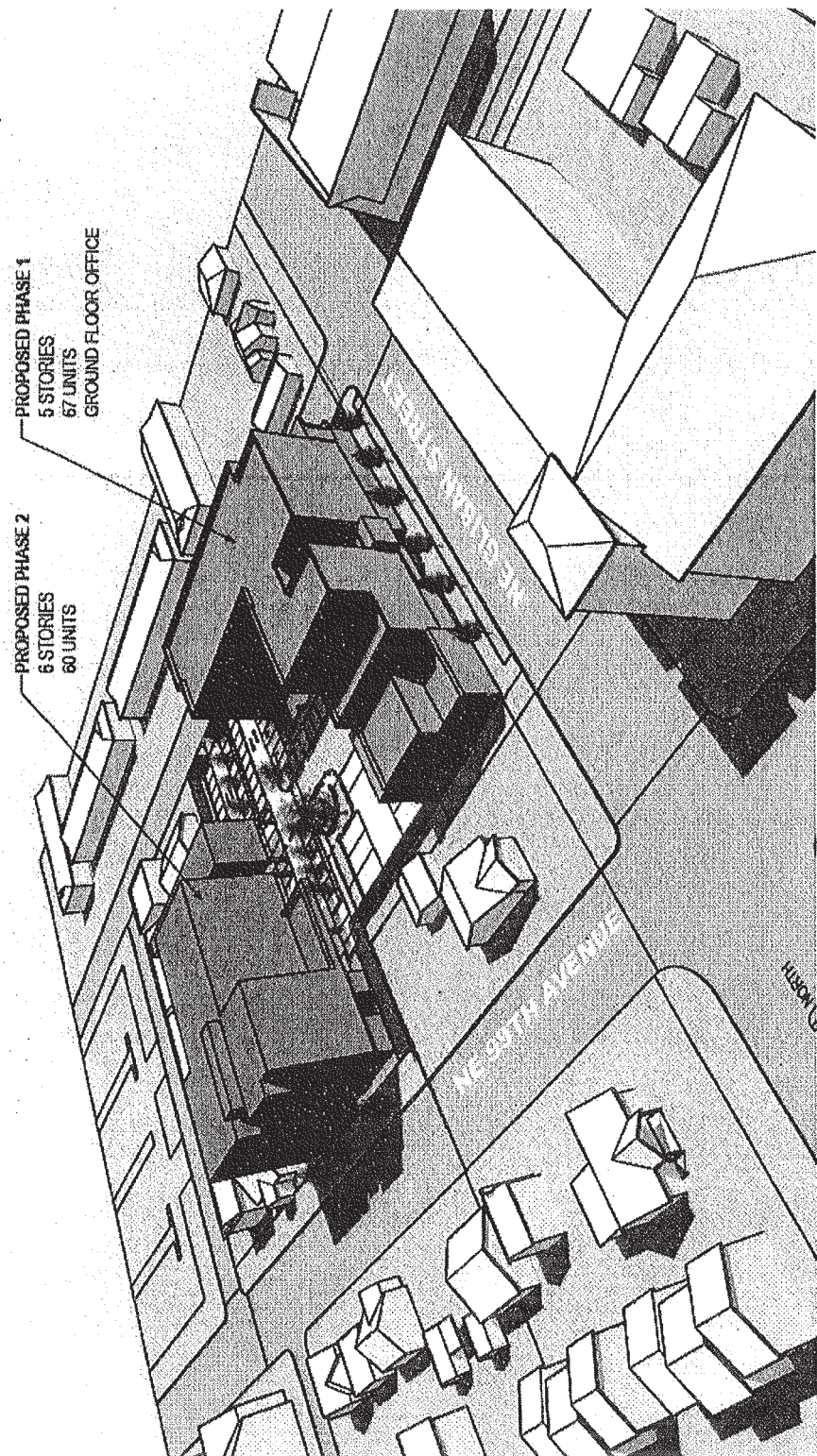
NOTE: DRAWINGS ARE HALF SCALE UNLESS OTHERWISE NOTED AT 1/16"





Glisan Commons, Phase II





Master Site Plan

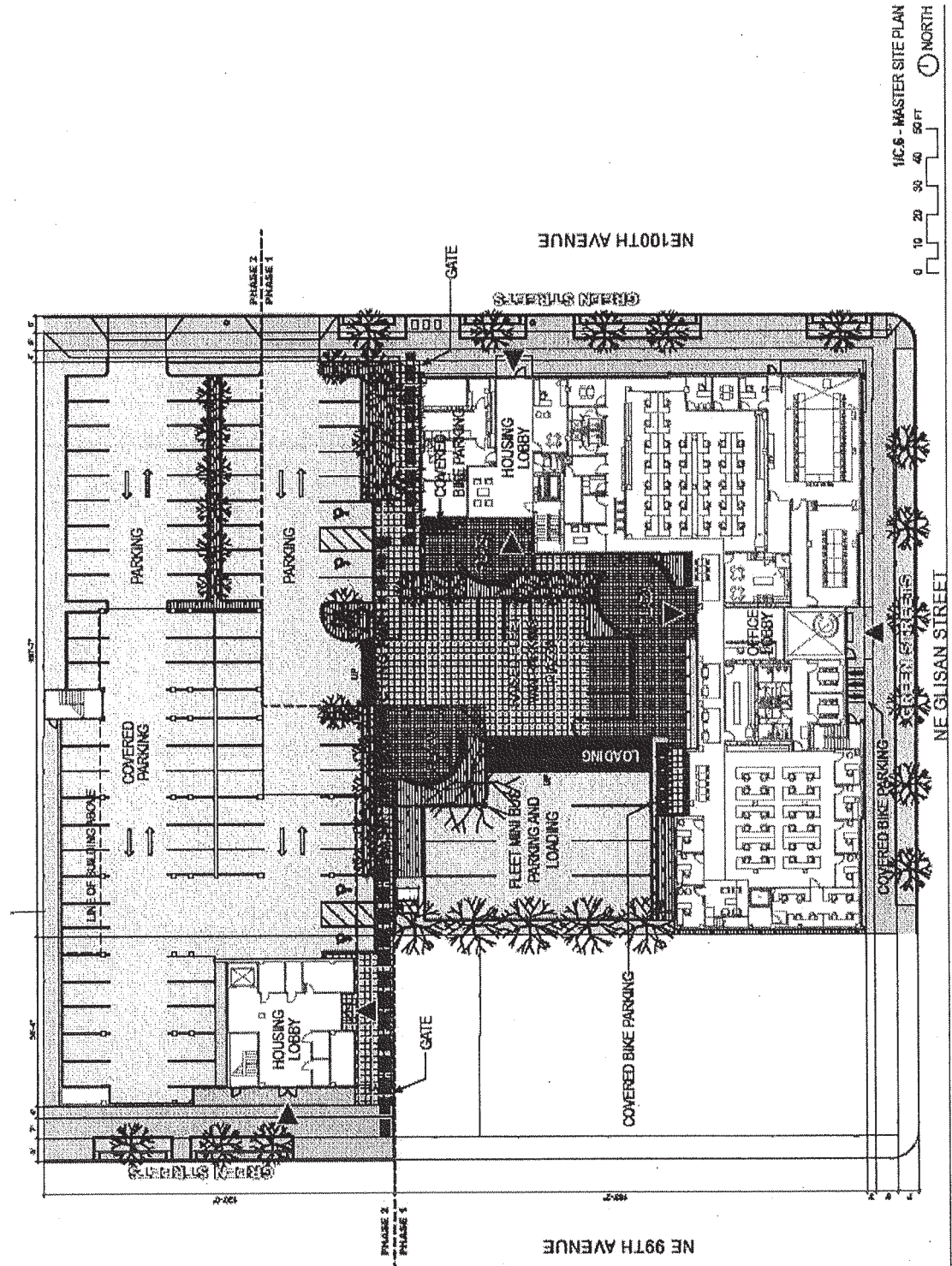




EXHIBIT B  
SCHEDULE OF PERFORMANCE

186489

TASK/PRODUCT	BENCHMARK	DUE DATE
Complete DA & Ground Lease with PHB	Complete Negotiations – based on Phase II	2/15/14
Secure Commitments from all funders and co-developer	Funding amounts and terms shall be acceptable to PHB	3/1/14
Competitive Bidding	Competitive bids will be obtained from subcontractors for review with general contractor, architect, and PHB	3/13/14
100% Construction Documents	Final construction documents issued, GMP contract negotiated	3/13/14
Closing of construction financing	Close on construction financing and public financing and execute DDA to transfer PHB's land.	3/13/14
Developer to begin construction		3/30/14
Developer to complete construction	Developer secures Certificate of Occupancy and requests Certificate of Completion from PHB	3/15/16
Construction complete	PHB to issue Certificate of Completion	4/15/16



EXHIBIT C  
PHASE 2 BUDGET

**Sources and Uses (Permanent): [UPDATE PRIOR TO EXECUTION]**

	\$	Per housing unit 60	Per person (90)	Per sq. ft (57,406) <sup>5</sup>
<b>USES:</b>				
Acquisition Costs	121,809	2,030	1,353	2
Construction Costs	10,938,304	182,306	121,537	191
Development Costs	3,197,015	53,284	35,522	55
Developer and Consulting Fees	1,366,000	22,766	15,178	24
<b>Total Uses:</b>	<b>15,623,128</b>	<b>260,386</b>	<b>173,590</b>	<b>272</b>
<b>SOURCES:</b>				
PHB TIF/HOME	4,045,295	67,421	44,948	70
LIHTC equity	8,960,104	149,335	999,557	156
Enterprise Grant	34,700			
weatherization	84,000			
NOAH OAHTC Perm (30/20/2%)	1,000,000			
Energy Trust	2,500			
1% for Green (Green Streets)	31,490			
Ride Connection Site work	55,039			
NOAH Perm (30/20/6%)	200,000			
Deferred developer fee	550,000			
SDC Waivers	660,000	11,000	7,333	11
<b>Total Sources:</b>	<b>15,623,128</b>	<b>260,386</b>	<b>173,590</b>	<b>272</b>

<sup>5</sup> Total square footage is 70,396; including 12,990 in parking, 18,706 in common area and 38,700 in net rentable area. Per square foot costs are calculated on common and net rentable area total of 57,406

Date:

**Development Team:**

**Borrower –**

**Limited Partner –**List if applicable:

**Re: Project Name, Project Type  
Address**

**Authorization Notice to Proceed**

Dear,

The purpose of this letter is to memorialize the fact that you have fulfilled all requirements of the PHB loan commitment relating to the start of construction and to provide PHB authorization for the start of construction at the above-referenced property. The letter will also outline the procedures we have discussed relating to the disbursement of funds.

All work should be done under required permits issued by the Bureau of Buildings. Upon completion of the work, the property shall be inspected and certified in compliance with all applicable City codes, ordinances, and construction proposals submitted to PHB. All contractors are to be registered with the State of Oregon and licensed by the City of Portland to perform construction work.

**DISBURSEMENT PROCEDURES**

**Inspections:** Progress inspections should be scheduled monthly and will include representatives of the borrower, contractor, architect, participating lender and PHB. Meetings are to begin with a pre-construction meeting which incorporates orientation of project team, scheduling of construction meetings and agreement for calendar of construction and completion. Construction draw meetings should be scheduled on a weekday during the last week of each month.

**Documentation:** Disbursement documents will be Portland Housing Bureau's (PHB) standard forms, completed and executed by the contractor, borrower and architect and approved by the participating lender. Construction billings for materials installed and labor will be verified by inspection. Non-construction amounts requested must be substantiated with bills or receipts. The borrower's cash investment will be expended before any PHB loan funds are released. Construction meetings shall be documented and include information reflected on enclosed sample meeting minutes document.

**Change Orders:** Change orders resulting in an added cost in excess of over \$10,000 in any one instance or \$50,000 in aggregate costs that impacts the quality or the nature of Phase 2 over the entire Construction Period must be authorized by the borrower, architect, contractor, participating lender and PHB before the expenditure is approved. In case of emergency, authorization may be given verbally and immediately, prior to written approval. Change orders should include documentation indicating the conditions which required the change. All other

EXHIBIT D  
NOTICE TO PROCEED

change orders must be submitted as a course of monthly draw requests for review and approval of development team, including PHB Construction Coordinator.

**Lien Waivers:** A Conditional Lien Release from the General Contractor should be submitted with each draw to PHB. An Unconditional Lien Release should be submitted for the previous months draw at the same time. Unconditional Lien Releases must be submitted by all contractors and suppliers if the final disbursement is made prior to the seventy-five (75) day lien period.

**Davis Bacon:** If program is applicable, submit all materials required to be in compliance with all Davis Bacon Federal labor requirements including the Davis-Bacon Act.

**Workforce Training:** If program is applicable, submit proof of registration as a Training Agent, submit all forms and maintain documentation required to be in compliance with the Workforce hiring program. Notify the appropriate City Workforce staff throughout the duration of the project as spelled out in Attachment A of the Workforce Training & Hiring Program.

**Emerging Small Business/Minority Owned Business/Women Owned Business Enterprise:** Any changes to the contractors listed on the Projected ESB/MBE/WBE usage report submitted to PHB must be approved during construction. Final ESB/MBE/WBE Utilization Summary Reports must be submitted upon completion. Please note that all compiled data and reporting discussed at the pre-construction meeting must be completed prior to commencement of construction and release of PHB funds.

**Contractor/Sub-Contractor Utilization:** Contractor/Sub-Contractor Utilization Reports listing all contractors participating on the project should be submitted as soon as possible and must be completed prior to final disbursement. This information is required by the Federal Government. The forms and application format are available through the Portland's Office of Management & Finance. They should be made available at a pre-construction meeting or prior to the orientation meeting. Additional information will be made available as necessary through the Office of Management & Finance.

**Monthly Reporting :** All Sub-Contractors must on site each month must file hourly reporting and compliance reporting on the forms provided by PDC Davis – Bacon Compliance Officer (if applicable) and Workforce Training Coordinator to the General Contractor and submitted at the time of each construction draw. Forms are to be filed separately to the PHB and Workforce Officers. Construction Draws will be processed within 10 days of receipt and approval of all financial documents and contractor compliance documents.

**Disbursement:** PHB will process disbursement requests as described in the Loan Agreement executed between PHB and Borrower. Final disbursement will not be authorized until the actions and items listed on the attached Exhibit \_\_\_ Documents Required For Final Disbursement have been submitted and approved by PHB staff.

**Processing:** The disbursement check will be prepared within ten (10) working days after PHB receives a properly documented disbursement request. This disbursement request is provided in hard copy format and usually made available at the pre-construction or orientation meeting. An

EXHIBIT D  
NOTICE TO PROCEED

electronic format will be forwarded to your office.

**Project Schedule:** Statements submitted by your contractor indicate that the construction will be completed by: *March 15, 2016*.

Please request any extension of the construction period in writing sixty days prior to the expected completion date. Additionally, coordination for grand-opening ceremonies may be assisted through PHB Public Affairs. Please provide sixty days notice for assistance.

Thanks for all your help and congratulations on the start of your project, you have done a great job getting to this point! We look forward to its successful completion. Please do not hesitate to call if I can be of any assistance.

**Cost Savings Calculation Form:** For your reference, funds not utilized are applied to the PHB financing. A form outlining this process is attached with this notice.

Sincerely,

Construction Coordinator Name  
Construction Coordinator  
Housing Development Finance  
Portland Housing Bureau  
421 SW 6<sup>th</sup> Avenue, Suite 500  
Portland, Oregon 97204  
Phone Number  
Fax Number  
E-mail address



EXHIBIT E  
FORM OF CERTIFICATE OF COMPLETION

After recording return to:

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**CERTIFICATE OF COMPLETION**

The CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the PORTLAND HOUSING BUREAU, the duly designated housing agency of the City of Portland ("PHB") hereby determines that **REACH GATEWAY SENIOR HOUSING LIMITED PARTNERSHIP**, an Oregon limited partnership ("Developer"), has substantially completed construction of Phase 2 as described in the Agreement for Development of Property In The Gateway Regional Center Urban Renewal Area (9929-9999 NE Glisan St., 618 NE 99<sup>TH</sup> Ave. and 604 NE 99<sup>th</sup> Ave.) dated \_\_\_\_\_, 2014 (the "Development Agreement"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. \_\_\_\_\_ on \_\_\_\_\_, 2014. Capitalized terms used herein without definition shall have the meaning ascribed to them in the Development Agreement.

Pursuant to Section 6.1 of the Development Agreement, PHB hereby determines that:

- (i) The Residential Unit is complete according to the Final Construction Drawings and Technical Specifications, except for punch-list items that do not materially affect the use of Phase 2 for the purposes intended under the Development Agreement;
- (ii) Developer has completed all environmental remediation and abatement on the Phase 2 Land, if any, required of Developer under Section 9 of the Phase 2 Project Budget; and
- (iii) the City of Portland has issued a temporary Certificate of Occupancy with respect to Residential Unit.

This Certificate of Completion constitutes a conclusive determination of the satisfaction of all of the agreements, covenants and conditions contained in the Development Agreement with respect to the obligations of Developer, its successors and assigns, as to the construction of Phase 2, and such obligations shall automatically cease and become of no further effect, except as otherwise provided in this Certificate of Completion. This Certificate of Completion represents and determines the completion of Developer's construction obligations described herein as to PHB only.

Further,



EXHIBIT F  
FORM OF MEMORANDUM OF AGREEMENT FOR DEVELOPMENT OF PROPERTY

After recording return to:

Portland Housing Bureau  
Attn: \_\_\_\_\_  
421 SW 6<sup>th</sup> Avenue, Suite 500  
Portland, OR 97204

**Memorandum of Agreement for Development of Property**  
Glisan Commons – Phase 2

THIS MEMORANDUM OF AGREEMENT FOR DEVELOPMENT OF PROPERTY ("Memorandum") shall serve as notice to all persons that the CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the PORTLAND HOUSING BUREAU, ("PHB"), with an address of Portland Housing Bureau, 421 SW 6<sup>th</sup> Avenue, Suite 500, Portland, Oregon 97204 and **REACH GATEWAY SENIOR HOUSING LIMITED PARTNERSHIP**, an Oregon limited partnership ("Developer"), with an address of 4150 SW Moody Ave., Portland, OR 97239 entered into an Agreement for Development of Property between PHB and Developer dated as of March \_\_\_\_, 2014 ("Agreement") relating to the real property located in Multnomah County, Oregon, as more particularly described in Exhibit "A" attached hereto (the "Property").

Among other things, the Agreement requires PHB enter into a Ground Lease of the Property with the Developer. Developer to construct and complete certain infrastructure and project improvements on the Property, all as more particularly set forth in the Agreement.

As a condition subsequent to the conveyance of the Property from PHB to Developer, in the event of a material default by Developer (beyond an applicable cure period) before PHB issues a Certificate of Completion, PHB shall have the option, upon 60 days written notice ("Notice of Termination") to Developer and Escrow Agent, to declare a termination in favor of the PHB of all the title, rights and interests of Developer in the Property, as applicable, all in accordance with Section \_\_\_\_ of the Agreement. After delivery of such Notice of Termination and in the event Developer fails to remedy, end or abrogate such default within the 60 day period in the manner stated in the Notice of Termination, Developer shall reconvey the Property, as applicable, to PHB by quitclaim deed, pursuant to the Escrow Instruction in Exhibit E attached to the Agreement. After a Certificate of Completion is recorded as to the Project, or as a result of a default in or breach of any provisions of the Agreement by Developer, or by any successors in interest or assigns of Developer, except for those surviving sections described in the Certificate of Completion, PHB shall thereafter have no further right or re-entry to the Property or reversion as described above.

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

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

By: \_\_\_\_\_  
Traci Manning, Director





EXHIBIT F  
FORM OF MEMORANDUM OF AGREEMENT FOR DEVELOPMENT OF PROPERTY

EXTENSION, A DISTANCE OF 334.00 FEET; THENCE NORTH 89°53'04" WEST, A DISTANCE OF 10.00' TO THE **TRUE PLACE OF BEGINNING**;

THENCE CONTINUING NORTH 89°53'04" WEST, A DISTANCE OF 255.89 FEET TO A POINT THAT IS 41.00 FEET EAST OF CENTERLINE OF NE 99TH AVENUE;

THENCE SOUTH 00°02'44" WEST, PARALLEL WITH AND 41.00 FEET EAST OF SAID CENTERLINE OF NE 99TH AVENUE, A DISTANCE OF 120.00 FEET;

THENCE SOUTH 89°53'04" EAST, A DISTANCE OF 58.39 FEET;

THENCE NORTH 89°53'26" EAST A DISTANCE OF 45.01 FEET;

THENCE SOUTH 00°03'54" WEST, A DISTANCE OF 28.42 FEET TO A POINT OF CURVE;

THENCE ALONG A 4.50 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, THROUGH A CENTRAL ANGLE OF 90°03'54" (CHORD BEARS SOUTH 44°58'03" EAST, A DISTANCE OF 6.37 FEET) AN ARC DISTANCE OF 7.07 FEET TO A POINT OF TANGENCY;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 19.50 FEET;

THENCE NORTH 45°00'00" EAST, A DISTANCE OF 14.86 FEET;

THENCE NORTH 00°01'20" EAST, A DISTANCE OF 66.82 FEET;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 118.03 FEET TO A POINT THAT IS 35.00 FEET WEST OF CENTERLINE OF SAID 100TH AVENUE;

THENCE NORTH 00°02'44" EAST, PARALLEL WITH AND 35.00 FEET WEST OF CENTERLINE OF SAID 100TH AVENUE, A DISTANCE OF 75.11 FEET TO THE **TRUE PLACE OF BEGINNING**;

CONTAINING 26,487 SQUARE FEET;

Memorandum of Agreement for Development of Property ]  
.....

## EXHIBIT G

Report	Contractor	Date
Phase 1 Environmental Site Assessment	Evren Northwest	November 8,2013

Exhibit D

GROUND LEASE

BETWEEN

CITY OF PORTLAND, acting by and through the Portland Housing Bureau  
(Landlord)

and

REACH GATEWAY SENIOR HOUSING LIMITED PARTNERSHIP  
(Tenant)

GROUND LEASE

This GROUND LEASE ("Lease") dated as of the \_\_\_\_ day of \_\_\_\_\_, 2014, is by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the Portland Housing Bureau ("Landlord") and REACH GATEWAY SENIOR HOUSING LIMITED PARTNERSHIP, an Oregon limited partnership ("Tenant" or "Borrower").

P R E A M B L E:

- A. The project named Glisan Commons proposed to develop 127 units of affordable residential housing units and approximately 16,000 square feet of commercial space in two phases.
- B. Landlord owns the land beneath Phase 1, which is legally described on Exhibit A (the "Phase 1 Premises"), and has leased the Phase 1 Premises to Glisan Commons Phase 1 Limited Partnership (the "GCP1LP"), an entity composed of Human Solutions, Inc. and its subordinate entity HSI-Glisan Commons LLC, for construction of Phase 1, consisting of a 5-story mixed-use building containing 67 residential dwelling units (collectively, the "Residential Unit") and approximately 16,000 square feet of commercial space (the "Commercial Unit") and related improvements (collectively, the "Phase 1 Improvements" or "Phase 1"). Pursuant to Council delegated authority, the Commissioner in Charge approved the financing for Phase 1 between the City of Portland and GCP1LP.
- C. Phase 1 of the Glisan Commons development commenced on or about November 23, 2012 and is substantially complete. GCP1LP submitted its leasehold interest in the Phase 1 Premises and the Phase 1 Improvements to the Oregon Condominium Act (being ORS Chapter 100) to create a 2-unit condominium project known as Glisan Commons Condominium, consisting of the Commercial Unit, the Residential Unit and related common areas. GCP1LP retains ownership of the Commercial Unit but sold the Residential Unit to Ride Connection, Inc. ("Ride Connection").
- D. Phase 2 of the Glisan Commons development referenced in Ordinance No. 185697 is ready to proceed. REACH Community Development, Inc. ("REACH") will develop Phase 2 through Tenant, its subordinate entity. Phase 2 will consist of the remaining 60 affordable residential housing units of the Glisan Commons project. The majority of the units will serve as affordable housing for seniors. 55 units will be leased to occupants earning approximately 60% or less of area median family income ("MFI") and 4 units will be leased to occupants earning approximately 30% or less of MFI. One unit will be unregulated and will serve as the manager's unit for Phase 2. Notwithstanding the foregoing, pursuant to Section 3 of the Addendum to Ground Lease attached hereto, in the event of a foreclosure or the execution of a new ground lease following a foreclosure, all income restrictions applicable to Phase 2 pursuant to such regulatory agreement shall automatically increase to 80% of MFI as of the date that the foreclosure is completed or a new ground lease is executed.
- E. Landlord owns the land beneath Phase 2, which is legally described on attached Exhibit B (the "Premises").
- F. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Premises for a period of ninety-seven (97) years pursuant to the terms of this Lease so that Tenant can construct, develop and operate on the Premises a 60 unit affordable housing project for seniors (the "Project").



NOW, THEREFORE, for and in consideration of the mutual promises and agreements of Landlord and Tenant set forth in the Lease, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

ARTICLE 1  
THE LEASE

Section 1.1 Leased Premises. Subject to the terms and conditions hereof, Landlord hereby leases to Tenant the Premises.

Section 1.2 Term. The term of this Lease shall commence as of \_\_\_\_\_, 2014 (the "Commencement Date"), and unless sooner terminated pursuant to the provisions hereof, this Lease shall continue in full force and effect for a term ("Term") expiring on December 31, 2111.

Section 1.3 Use. Tenant shall use the Premises solely for the development, construction and operation of the Project. The obligations of Tenant to develop and operate the Project are set forth in that certain Development Agreement dated \_\_\_\_\_, 2014 by and between Landlord and Tenant (the "Development Agreement") until such time as a Certificate of Completion is recorded with respect to the Development Agreement, after which recordation the Development Agreement shall no longer affect the Project (except for the following indemnity obligations that the parties agree are applicable solely to Tenant: Section 6.4.2 (Indemnity From Liability Claims, Section 6.4.3 (Indemnity From Liens), and Section 8.4 (Environmental Indemnification)). If there is a conflict between the terms of the Development Agreement and the terms of this Lease, the terms of the Development Agreement shall control for so long as the Development Agreement affects the Project.

Section 1.4 Fixed Rent. Tenant covenants to pay to Landlord, at 421 SW 6<sup>th</sup> Ave., Suite 500, Portland, OR 97204, or at such other address as Landlord shall specify from time to time, rent in the amount of \$1 per year, payable on or before January 1 of each year during the term of this Lease, commencing January 1, 2015 (the "Rent"). Landlord and Tenant hereby acknowledge that the Rent for the entire Term of this Lease has been prepaid as of the date hereof.

Section 1.5 Tenant Taking Premises "As-Is-Where-Is". Tenant acknowledges (i) that Tenant has entered into this Lease with the intention of making and relying upon its own investigation of the physical, structural and environmental condition of the Premises, and (ii) that Landlord is not making and has not at any time made any representation or warranty of any kind or nature, either oral or written, directly or indirectly, expressed, implied, statutory or otherwise, with respect to the Premises. Based on Tenant's familiarity with the Premises, Tenant's due diligence relating to the Premises and Tenant's experience and knowledge as to the market in which the Premises are situated and as to the investment in and operation of real estate in the nature of the Premises and commercial real estate in general, Tenant will take the Premises on the Commencement Date in its "AS IS, WHERE IS AND WITH ALL FAULTS" condition, with existing streets and street improvements, and without any representation or warranty whatsoever. Tenant fully assumes the risk that adverse latent or patent physical, structural, or environmental conditions may not have been revealed by Tenant's investigations. Landlord and Tenant acknowledge that the Rent has taken into account the provisions of this Section 1.5.

Section 1.6 Regulatory Authority. Nothing in this Lease shall obligate the City of Portland or any of its agencies with respect to any discretionary or regulatory action relating to development or operation of the Project, including, but not limited to, rezoning, variances, environmental clearances, regulatory plan reviews, code compliance or any other governmental agency approvals or regulatory actions which are or may be required or authorized.

ARTICLE 2  
THE IMPROVEMENTS

Section 2.1 Construction. Subject to the terms of this Lease, Tenant shall have the right to construct such improvements on the Premises as Tenant shall determine necessary for the proper and efficient operation of the Project (the "Improvements"). If this Lease is terminated prior to the completion of the Improvements, or if construction of the Improvements is abandoned for any reason, and a Leasehold Mortgagee (as such term is defined in Section 7.1 below) does not exercise the rights pursuant to Article 7 or Section 11.5, Tenant shall be responsible for and shall bear all costs of removing all structures and debris from the Premises and then surrendering possession of the Premises to Landlord.

Section 2.2 Permits, Licenses and Easements.

2.2.1 All building permits and other permits, licenses, permissions, consents, and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements and any subsequent improvements, repairs, replacements, or renewals to the Improvements shall be acquired as required by applicable laws, ordinances, or regulations by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Premises during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and representatives of such agencies having jurisdiction.

2.2.2 Landlord agrees, at no expense to Landlord and solely to the extent of its powers and authority as the Portland Housing Bureau, to use Landlord's reasonable efforts to assist Tenant in obtaining any and all permits, licenses, easements and other authorizations required by any governmental authority having jurisdiction over the Premises, with respect to any construction or other work to be performed on the Premises.

2.2.3 Landlord agrees, at no expense to Landlord, to grant to Tenant easements on, over and through the Phase 1 Premises to construct, maintain and use certain common facilities, including, but not limited to, utility installations, access features, landscaping and pedestrian plaza. Tenant agrees to grant the lessee of the Phase 1 Premises reasonable use of any common facilities on the Premises necessary for the operation of the Phase 1 Improvements, including, but not limited to, utility installations, access features, parking, landscaping and pedestrian plaza. A condition to effectiveness of any grant by the Tenant to the lessee of the Phase 1 Premises of reasonable use of any common facilities on the Premises is the lessee of the Phase 1 Premises and the Landlord granting a reciprocal right to use the common facilities to Tenant and its sublessees and invitees. Such easements shall be documented in a reciprocal easement agreement by and between Landlord, Tenant, GCPILP, Ride Connection and the Glisan Commons Condominium Association.

2.2.4 During the term of the construction and development of the Project, but in no event longer than 24 months from the Commencement Date, Tenant shall have the right to enter onto the Phase 1 Premises for purposes of ingress, egress and staging to facilitate the development of the Improvements, provided that Tenant shall repair any damage to the Phase 1 Premises as a direct result of such access.

Section 2.3 Ownership of Improvements. Landlord acknowledges and agrees that from the date of this Lease until the expiration of the Term, (i) the Improvements, including all additions, alterations and improvements thereto or replacements thereof and all appurtenants thereto, fixtures, machinery and equipment installed on the Premises shall be owned solely by Tenant; and (ii) Tenant shall be entitled to any and all tax attributes of ownership of the Improvements including, without limitation, the right to claim depreciation or cost recovery deductions, the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and the right to amortize all capital costs and to claim any and all other federal or state tax benefits attributable to the Improvements. At the expiration or earlier termination of this Lease, the Improvements, additions, alterations, and improvements thereon and thereto or replacements thereof, and all

appurtenant fixtures, machinery, and equipment installed therein, shall, at the option of Landlord, be either (i) removed by Tenant (1) with the prior approval of State of Oregon, acting by and through its Housing and Community Services Department ("OHCS"), and (2) within a reasonable time determined by Landlord pursuant to written notice to Tenant, but in no event to exceed 180 days from the date of such notice, or (ii) remain and become the property of Landlord.

### ARTICLE 3 LIENS

Section 3.1 Liens Against Landlord's Fee Interest. Except as otherwise provided herein, Tenant shall not have any right, authority or power to bind Landlord, Landlord's estate or other assets or any interest of Landlord in the Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Premises, Project and Improvements or any change, alteration or addition thereto.

3.1.1 Landlord expressly acknowledges that Tenant's development of the Premises may require the recording of utility easements and other customary easements necessary and incidental to the development, construction and operation of the Improvements. Subject to Landlord's prior review and written approval, which shall not be unreasonably withheld or delayed, Landlord hereby agrees to the recording of such easements on the Premises, at the sole expense of Tenant, as are required for the development and operation of the Improvements and shall provide such written consents as are necessary to the recording of such easements, provided that such easements are in locations on the Premises reasonably satisfactory to Landlord.

3.1.2 Landlord expressly acknowledges that Tenant will be obtaining financing for the development and operation of the Premises from a variety of private and governmental funding sources and that such financing may require restrictive covenants or regulatory agreements (collectively, "Restrictive Covenant") to be recorded not only against Tenant's leasehold interest, but also against Landlord's fee interest. Subject to Landlord's prior review and written approval, which shall not be unreasonably withheld or delayed, Landlord hereby agrees to the recording, at Tenant's sole expense, of any Restrictive Covenant as is required for the development and operation of the Improvements including, but not limited to, covenants and regulatory agreements required by OHCS, at Tenant's sole expense, and shall provide such written consents as are necessary to the recording of any Restrictive Covenant.

3.1.3 Landlord expressly acknowledges that Tenant will be entering into leases with low income households for rental of the Improvements on the Premises.

Section 3.2 Liens Against Tenant's Leasehold Interest. Landlord acknowledges that Tenant will be obtaining financing for the development and operation of the Project from a variety of private and governmental funding sources, that such financing shall require Tenant to provide security interests in its leasehold interest in the Premises and the Improvements, and that such financing sources will further require Tenant to enter into various regulatory and other agreements restricting the use of the Premises to the uses set forth in Section 1.3. Tenant may encumber its leasehold interest in the Premises and the Improvements for the purposes of such financing and Landlord hereby expressly agrees and consents to Tenant entering into such financing arrangements and the resulting encumbrances of Tenant's leasehold interests in the Premises and the Improvements, provided that such financing arrangements and resulting encumbrances shall be subject to the terms of this Lease and shall not affect Landlord's rights or increase Landlord's duties or obligations under this Lease. Tenant may, after the initial development of the Project, obtain additional financing (or refinancing) provided that such financing complies with the provisions of this Section 3.2.

Section 3.3 Mechanics' Liens. Tenant agrees that it will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against Landlord's fee simple interest in the Premises for



work or materials furnished to Tenant in connection with any construction, improvements, maintenance, or repair thereof made by Tenant or its agents upon the Premises. Tenant shall cause any such claim or lien to be fully discharged within sixty (60) days after the date of filing thereof; provided, however, that in the event Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall give to Landlord such security as Landlord may reasonably require to ensure payment thereof and prevent any sale, foreclosure, or forfeiture of the Premises or any portion thereof by reason of such nonpayment, Tenant shall not be deemed to be in breach of this Section 3.3, so long as Tenant is diligently pursuing a resolution of such dispute. Upon entry of final judgment resolving the dispute, if litigation or arbitration results therefrom, Tenant shall discharge said lien within thirty (30) days.

#### ARTICLE 4 TAXES; UTILITIES

Section 4.1 Payment of Taxes. Tenant shall pay before they become delinquent all real property taxes assessed or levied against the Premises and Improvements. Tenant shall also pay all personal property taxes assessed or levied against the equipment, machinery, fixtures, furniture, and furnishings thereon and any and all other charges, fees or costs imposed by any governmental or quasi-governmental entity or utility. Tenant shall have the right in good faith, in a proper procedural manner, and at its sole cost, to contest and resist any taxes or assessments or other dispositions levied against or imposed upon the Premises and Improvements. Tenant shall defend and indemnify Landlord from any and all taxes incurred during the term of this Lease.

Section 4.2 Utilities. Tenant shall arrange for and pay before they become delinquent all charges for utility services furnished to the Premises including, but not limited to, electricity, gas, water, sewer, telephone and trash collection charges. Landlord shall have no responsibility for the payment of these utility costs. Tenant shall defend and indemnify Landlord from any and all such charges incurred during the term of this Lease.

#### ARTICLE 5 INSURANCE

Section 5.1 Tenant's Insurance. During the Term, Tenant shall keep and maintain in force, at no cost or expense to Landlord, the following insurance, all of which shall be provided by companies and/or agencies licensed to do business in the State of Oregon:

5.1.1 Premises Insurance. Broad form property insurance covering all risks of physical loss or damage to any of the Improvements, with liability limits of not less than one hundred percent (100%) of the "full replacement value" thereof. Such policies shall include coverage for fire, extended coverage, vandalism, malicious mischief and storm, and shall name Landlord as a loss payee and any Leasehold Mortgagees as mortgagees.

5.1.2 Liability Insurance. Commercial general liability ("CGL") and automobile liability insurance, covering loss or damage resulting from accidents or occurrences on or about or in connection with the Improvements or any work, matters or things under, or in connection with, or related to this Lease, with personal injury, death and property damage combined single limit liability of not less than Two Million Dollars (\$2,000,000) for each accident or occurrence, which limit shall be increased as necessary (but not more frequently than once every two years) to maintain a similar level of coverage provided on the Commencement Date. Coverage under the CGL policy shall be broad form and shall include, but shall not be limited to, operations, contractual, elevators, owner's and contractor's protective, products and completed operations, and the use of all owned, non-owned and hired vehicles, and shall name Landlord as an additional insured.

Section 5.2 General Requirements. All policies described in Section 5.1 shall contain: (a) the agreement of the insurer to give the Landlord and each Leasehold Mortgagee, as applicable, at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said



policies; (b) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the Tenant or Landlord; (c) a provision that no act or omission of the Tenant shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (d) a waiver by the insurer of all rights of subrogation against the Landlord and its authorized parties in connection with any loss or damage thereby insured against; and (e) terms providing that any loss covered by such insurance shall be adjusted with the Landlord and Tenant, but shall, to the extent required by the loan documents of any leasehold mortgage, be payable to the holder of any leasehold mortgage, who shall agree to receive and disburse all proceeds of such insurance, subject to the duty of the Tenant to repair or restore the Improvements.

Section 5.3 Evidence of Insurance. Certificates of insurance for all insurance required to be maintained by Tenant under this Article 5 shall be furnished by Tenant to Landlord.

## ARTICLE 6 MAINTENANCE AND ALTERATIONS

Section 6.1 Maintenance of Leased Premises. During the Term, at Tenant's sole cost and expense, Tenant shall keep and maintain the Premises, the Project, all Improvements, and all appurtenances thereunto belonging, in good and safe order, condition and repair. Tenant shall be responsible for any repairs and replacements, whether structural or nonstructural, ordinary or extraordinary, necessary to maintain the Premises and the Improvements thereon. At Tenant's own expense, Tenant shall keep and maintain the Premises in compliance with all applicable laws, rules, regulations and ordinances of all federal, state, county, municipal and other public authorities having or claiming jurisdiction. Additionally, Tenant shall protect against and refrain from creating or allowing the creation of a recognized hazardous environmental condition. During the Term, Tenant, at Tenant's sole cost and expense, shall take all actions necessary to eliminate, remove, remediate or otherwise clean up any recognized hazardous environmental condition.

Section 6.2 Alterations to Leased Premises. Subject to the permitted uses of the Premises set forth in Section 1.3 and the restriction on the use of financing proceeds set forth in Section 3.2, Tenant may make any additions, alterations or changes in or to the Improvements.

Section 6.3 Prohibited Uses of Leased Premises. In addition to any other prohibitions or limitations on Tenant's use of the Premises contained in the Lease, Tenant shall not: i) use the Premises in any illegal manner; ii) create any damage, nuisance or waste to the Premises, including any objectionable noise, vibration, or odor to be emitted or escape from the Premises; iii) cause damage or injury to nearby properties or property owners; iv) create any condition which would constitute a fire or environmental hazard, or be dangerous to persons or property; v) sell any alcoholic beverages or alcoholic liquors on the Premises excepting upon Landlord's prior written consent and pursuant to the limitations of state issued permit(s) or license(s); vi) sell any controlled substances on or about the Premises; vii) store gasoline or other highly combustible materials on the Premises except for commercially reasonable amounts of gasoline or fuel for yard equipment; viii) permit the sale of any pornographic material on the Premises; ix) permit any cash, credit card, or coin-operated novelty or gaming machines on the Premises without the prior written consent of Landlord; x) permit the use of the Premises for a second-hand store, pawnshop, or for conducting auction, distress or fire sale, or bankruptcy or going-out-of-business sale or the like; xi) maintain disabled vehicles, or engage in automotive repair or maintenance on parking lots, in garages, or elsewhere on the Premises; xii) operate a mortuary, funeral parlor or home or similar service establishment on the Premises; xiii) allow any industrial use or processing or rendering use on the Premises; or xiv) operate any facility for the dumping, disposing, incinerating or reducing of garbage on the Premises.

ARTICLE 7  
PERMITTED MORTGAGES

Section 7.1 Leasehold Mortgage Provisions: Tenant intends that the development of the Improvements be financed with various public and private debt and/or grants, including but not limited to a loan from Landlord ("Subordinate Lender"); a loan from Bank of America, N.A.; and a loan from Network For Oregon Affordable Housing ("NOAH"), all of which in their capacities as such lenders are referred to collectively herein as "Lenders." For purposes of this Lease, a "Leasehold Mortgage" is any mortgage, deed of trust, security agreement or collateral assignment in favor of Bank of America, N.A. and NOAH, any assignees or successor thereof that are Institutional Lenders and any other mortgages, deeds of trust, security agreements or collateral assignments permitted by Landlord hereunder encumbering Tenant's leasehold interest in the Premises and the Improvements. A "Leasehold Mortgagee" is a holder of a Leasehold Mortgage. For purposes hereof an "Institutional Lender" shall mean and entity that is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial (including multi-family residential) real estate loans, including any Affiliate thereof. Any Leasehold Mortgagee or designee thereof that acquires title the leasehold estate or any part thereof, any person that acquires title to the leasehold estate through any judicial or nonjudicial foreclosure sale, deed or assignment in lieu thereof, or any sale or transfer made under any order of any court to satisfy wholly or in part obligations secured by any Leasehold Mortgage, and the successors and assigns of any such Leasehold Mortgagee, is referred to as a "Transferee". Each Leasehold Mortgagee and Transferee is an intended beneficiary of the terms of this Lease.

Section 7.2 Leasehold Mortgages and Transfers Authorized. Landlord acknowledges that Tenant's financing for the Project will require Tenant to provide security interests in Tenant's leasehold interest in the Premises, and its interests in the Improvements. Foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder or any part thereof and Tenant's interest in the Improvements and other rights hereunder, or any part thereof, to any Leasehold Mortgagee or other person through, or in lieu of, foreclosure, trustee's sale or other proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under the Lease, and upon such foreclosure, sale or conveyance Landlord shall recognize the purchaser or other direct or indirect transferee in connection therewith as the Tenant hereunder to the extent of the interest so transferred. The preceding sentence notwithstanding, each Leasehold Mortgagee acknowledges that Landlord has agreed to enter into this Lease because Tenant has unique experience and qualification to perform under the Lease and that, before completing any foreclosure proceeding or any sale or transfer of Tenant's leasehold interest in the Premises, it will notify Landlord and will cooperate with Landlord in good faith for a reasonable period of time to reach a solution that would prevent foreclosure or to ensure that the potential transferee has the requisite experience and qualification to perform under the Lease.

Section 7.3 Notice to Leasehold Mortgagee. During any period in which a Leasehold Mortgage is in place, Landlord shall give each Leasehold Mortgagee at the address set forth in this Lease or at the last address of such Leasehold Mortgagee provided in a written notice to Landlord pursuant to the terms hereof, a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of the Lease, at the same time as such notice is given to or served upon Tenant, provided that such notice shall be duly given when sent to the Leasehold Mortgagee at the notice address set forth herein (or the last address of such Leasehold Mortgagee provided in a written notice to Landlord pursuant to the terms hereof), by US Mail, registered, return receipt requested or by a recognized overnight commercial delivery service; and provided, further, that the failure of Landlord to send a copy of such notice to Leasehold Mortgagee shall not subject Landlord to any liability hereunder. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage may be changed upon written notice delivered to Landlord.

Section 7.4 Right of Leasehold Mortgagee to Cure. Any Leasehold Mortgagee, at its option at any time within thirty (30) days, or such longer period as may be applicable as provided below, following the expiration of the right of Tenant to cure any default under the Lease, may pay any amount or do any act or thing required of

Tenant by the terms of the Lease. Payments made and acts performed by such Leasehold Mortgagee within such thirty (30) day period, or such longer period as may be applicable as provided below, shall be effective to prevent a termination of the rights of Tenant hereunder, if such payments and acts conform to the terms of such notice from Landlord or if, together with any performance by Tenant or any other person with any cure rights, they are sufficient, except as to timing, to exercise the Tenant's right to cure that so expired, but in order to prevent termination of the Lease, a Leasehold Mortgagee shall not be required to cure (A) default on obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in the Lease caused by a wrongful act of Tenant; or (B) defaults on obligations of Tenant under any indemnity provision in this Lease arising from acts or omissions of Tenant; or (C) other past monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee (it being understood that the lack of funds of the Tenant or the Leasehold Mortgagee shall not excuse performance by Tenant or Leasehold Mortgagee); or (D) any default resulting from the acts or omissions of the Landlord ("Excluded Defaults"). For purposes of clarification and illustration, it is the intention of the parties hereto that Excluded Defaults shall include (but not as an exclusive list) claims, damages, liability and expenses, including personal injury and property damage arising or alleged to be arising from actions or inactions of Tenant such as failure to pay insurance premiums, allowing dangerous conditions to exist at the Premises or failure to operate the Premises in accordance with regulatory restrictions. Accordingly, in such event Leasehold Mortgagee shall not be required to cure such Excluded Defaults to avoid termination of the Lease, but Leasehold Mortgagee would be required to remediate, ameliorate, or eliminate such continuing conditions to Landlord's reasonable satisfaction to avoid such termination. If the default by Tenant is of such nature that it cannot practicably be cured without possession of the Premises, then the thirty-day period set forth above shall be extended for so long as a Leasehold Mortgagee shall be proceeding with reasonable diligence to foreclose on the Tenant's interest or otherwise obtain possession of the Premises for itself or a receiver.

Prior to the expiration of the cure rights of Leasehold Mortgagees, the Landlord shall not effect or cause any purported termination of the Lease nor take any action to deny Tenant or any subtenant possession, occupancy, or quiet enjoyment of the Premises or any part thereof.

Without limiting the rights of Leasehold Mortgagees as stated above, and whether or not there shall be any notice of default hereunder, each Leasehold Mortgagee shall have the right, but not the obligation, at any time prior to termination of the Lease to pay all of the rent due hereunder, with all due interest and late charges, to procure any insurance, to pay any taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of the Lease. Any Leasehold Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Leasehold Mortgagee shall be as effective to prevent a termination of the Lease as the same would have been if done by Tenant.

Section 7.5 Right to New Lease. If the Lease terminates for any reason, including the rejection of the Lease in a bankruptcy proceeding, then Landlord shall give written notice of such fact to each Leasehold Mortgagee, and if one or more Leasehold Mortgagees gives written notice to Landlord within thirty (30) days following delivery of such notice of termination by Landlord, Landlord agrees in such case to enter into a new ground lease for the Premises (a "New Lease") with the most senior Leasehold Mortgagee or its affiliated designee providing such notice for the remainder of the term of the Lease (including any option terms) effective as of the date of such termination, at the rent and additional rent and upon the other terms, conditions, covenants and agreements contained in the Lease and with equal priority thereto, on the conditions set forth in this Article 7. Notwithstanding anything to the contrary contained herein, no termination of the Lease shall become effective until, and the lien of each Leasehold Mortgagee on the Premises shall remain effective until, either a New Lease has been made pursuant to this Article 7 or no Leasehold Mortgagee has timely accepted (or caused to be accepted) a New Lease, upon the expiration of the 30-day period as set forth above. Upon entering into a New Lease, such Leasehold Mortgagee or its affiliated designee shall cure any monetary default by Tenant hereunder, except Excluded Defaults.



The tenant under the New Lease shall have the same right, title and interest in and to all Improvements and all obligations as Tenant had under the terminated Lease (other than with respect to Excluded Defaults) and the Landlord and the new tenant shall execute and deliver any deed or other instrument and take such other action as may be reasonably necessary to confirm or assure such right, title, interest or obligations.

Nothing in this Article or the Lease shall be construed to imply that the Lease may be terminated by reason of rejection in any bankruptcy proceeding of the Tenant. The parties intend, for the protection of Leasehold Mortgagees, that any such rejection shall not cause a termination of the Lease.

If the Landlord shall, without termination of the Lease, evict the Tenant, or if the Tenant shall abandon the Premises, then any reletting thereof shall be subject to the liens and rights of Leasehold Mortgagees, and in any event Landlord shall not relet the Premises or any part thereof, other than renewal of occupancies of residential tenants and leases or other occupancy agreements with new residential tenants consistent with any covenants of record for low-income housing, without sixty (60) days' advance written notice to all Leasehold Mortgagees of the intended reletting and the terms thereof, and if any Leasehold Mortgagee shall, within thirty days of receipt of such notice, give notice to the Landlord of such Leasehold Mortgagee's intent to pursue proceedings to foreclose on the Premises or otherwise cause the transfer thereof, then so long as the Leasehold Mortgagee shall diligently pursue such proceedings the Landlord shall not proceed with such reletting without the written consent of such Leasehold Mortgagee.

If a Leasehold Mortgagee shall elect to demand a New Lease under this Article and only in the event that such Leasehold Mortgagee is not recognized as a proper plaintiff, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, and those subtenants actually occupying the Premises, or any part thereof, as designated by the Leasehold Mortgagee, subject to the rights of non-defaulting residential tenants in occupancy of apartment units at the Premises. Leasehold Mortgagees shall cooperate with Landlord in connection with any such actions.

Nothing herein contained shall require any Leasehold Mortgagee to accept a New Lease.

Section 7.6 Limitation on Liability of Leasehold Mortgagee. No Leasehold Mortgagee shall be liable to Landlord unless it expressly assumes such liability in writing. In the event any Leasehold Mortgagee or other Transferee becomes the Tenant under the Lease or under any new lease obtained pursuant to this Article, the Leasehold Mortgagee or other Transferee shall not be liable for the obligations of the Tenant under the Lease that do not accrue during the period of time that the Leasehold Mortgagee or such other Transferee, as the case may be, remains the actual Tenant under the Lease or new lease, holding record title to the leasehold interest thereunder. In no event shall any Leasehold Mortgagee or other Transferee be (i) liable for the erection, completion or restoration of any improvements; (ii) liable for any condition of the Improvements that existed prior to the date of its acquisition of Tenant's interest in the Improvements, or for any damage, loss, or injury caused by such preexisting condition, or for the correction thereof or the compliance with any law related thereto; (iii) bound by any amendment of the Lease made without the prior written consent of the Leasehold Mortgagee; or (iv) liable for any act or omission of any prior lessee of any portion of the Improvements (including Tenant). Any liability of any Leasehold Mortgagee or other Transferee shall be limited to its interests in the leasehold and the Premises, and shall be enforceable solely against those interests.

Section 7.7 Estoppel Certificates; Nondisturbance Agreements. Landlord and Tenant agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other party, or upon request from any Leasehold Mortgagee or a permitted assignee, Landlord or Tenant will execute, acknowledge and deliver to the other party or to such Leasehold Mortgagee a statement in writing certifying (a) that the Lease is unmodified and in full force and effect if such be the case or, if not, the extent to which the Lease has been modified; (b) the date through which the Rent has been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Landlord or Tenant, as applicable, other than those, if any, so specified under the provisions of the Lease or such statement. It is intended that any



such statement may be relied upon by any persons proposing to acquire the interest of Landlord, Tenant or any Leasehold Mortgagee, as the case may be, in the Lease or by any prospective Leasehold Mortgagee or assignee of any Leasehold Mortgage.

Section 7.8 Actions not Effective Without Leasehold Mortgagee Consent. No cancellation, surrender, or modification or amendment of the Lease, and no waiver of any of Tenant's rights thereunder, shall be effective as to any Leasehold Mortgagee unless consented to in writing by each Leasehold Mortgagee. No subordination of the Tenant's interest in the leasehold or the Premises, or the rents or income therefrom, to any encumbrance or assignment granted by Landlord, and no joinder by Tenant in any such encumbrance or assignment, shall be valid without the express written consent of each Leasehold Mortgagee. No consent or waiver of any Lender as Leasehold Mortgagee shall be effective for purposes of the Lease unless it is made in writing.

Section 7.9 No Merger. Any acquisition of the fee interest in the Premises by Tenant (or any fee interest in the Improvements by Landlord), or other event by which the leasehold estate hereunder or any part thereof and the fee interest in the Improvements shall come into common ownership, shall not cause a merger of the leasehold interest hereunder or the fee interest in the Improvements with the fee interest in Premises, without the express written consent of each Leasehold Mortgagee. Any merger of fee and leasehold estates that may occur, whether voluntary or involuntary, in whole or in part, shall not result in termination of this Lease or extinguishment of any Leasehold Mortgage, in whole or in part, without the express written consent of each Leasehold Mortgagee.

Section 7.10 Bankruptcy of Landlord. If the Lease is rejected by Landlord or Landlord's trustee in bankruptcy following the bankruptcy of Landlord under the United States Bankruptcy Code (Title 11 U.S.C.), as now or hereafter in effect, Tenant shall not have the right to treat the Lease as terminated except with the prior written consent of all Leasehold Mortgagees, and the right to treat the Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and each Leasehold Mortgagee shall be required as a condition to treating the Lease as terminated in connection with any such bankruptcy proceeding.

Section 7.11 Encumbrances by Landlord. Landlord shall not encumber the fee interest in the Land, nor assign or encumber Landlord's interest in the Lease, unless the assignment or encumbrance is required or imposed by law or by its express terms is subject and subordinate to this Lease and the rights and interests of the Tenant and Leasehold Mortgagees hereunder.

Section 7.12 Registration of Leasehold Mortgagees. Tenant shall provide written notice to Landlord of the name and address of each Leasehold Mortgagee under this Lease.

Section 7.13 Rights of Investor and Notice. Bank of America, N.A. (the "Tax Credit Investor") shall have the same notice and cure rights as any Leasehold Mortgagee, which rights shall run concurrently with those of the Leasehold Mortgagee for so long as it is limited partner of the Tenant. The initial addresses for any notices to Tax Credit Investor, as of the date hereof, are:

Tax Credit Investor:      Bank of America, N.A.  
                                  Banc of America CDC Special Holding Company, Inc.  
                                  c/o Bank of America Merrill Lynch  
                                  225 Franklin Street  
                                  MA1-225-02-04  
                                  Boston, MA 02110  
                                  Attention: Sharon Strange, Senior Vice President  
                                  Facsimile: 617/346-2724

with copies to: Sidley Austin, LLP  
 One South Dearborn Street  
 Chicago, IL 60603  
 Attention: David R. Hill, Esq.  
 Facsimile: 312/853-7036

The initial addresses for notice to the Leasehold Mortgagees pursuant to this Article are set forth in Section 17.11 of the Lease.

Section 7.14 Rights of OHCS. For so long as OHCS is the beneficiary of a Restrictive Covenant burdening the Premises, a copy of all notices to the Tenant shall also be delivered to OHCS and OHCS shall be entitled to the cure rights of a "Leasehold Mortgagee" pursuant to Section 7.4 of the Lease.

Section 7.15 Waiver of Landlord's Lien. Landlord hereby waives its statutory landlord's lien under ORS 87.162 and any other lien right that Landlord may now or in the future have at law or in equity in the Improvements and all trade fixtures and other personal property owned by Tenant.

#### ARTICLE 8 REPRESENTATIONS AND WARRANTIES

Section 8.1 Representations and Warranties of Landlord. As an inducement to Tenant to enter into and proceed under this Lease, Landlord warrants and represents to Tenant as follows, which warranties, representations and covenants are true and correct as of the date of this Lease and will be true and correct as of the Commencement Date, to the best knowledge of the Landlord:

- (a) The execution and delivery of this Lease and the performance of all acts heretofore or hereafter made or taken or to be made or taken, pertaining to the Landlord or the Premises by the Landlord have been or will be duly authorized by all necessary agency or other action, and the consummation of any such transactions with or on behalf of the Landlord will not constitute a breach or violation of, or a default under, the charter or by laws or other governing documents of the Landlord or any agreement by which Landlord, nor constitute a violation of any law, administrative regulation or court decree; and
- (b) Landlord has received no written notice and has no knowledge, nor has Landlord been otherwise advised, of any pending or threatened taking relating to all or any part of the Premises.

Section 8.2 Representations, Warranties and Covenants of Tenant. As an inducement to Landlord to enter into and to proceed under this Agreement, Tenant warrants and represents to Landlord as follows, which warranties, representations and covenants are true and correct as of the date of this Lease:

- (a) Tenant has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease; and
- (b) The entry by Tenant into this Lease and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreements to which Tenant is a party or by which it is bound.

ARTICLE 9  
EMINENT DOMAIN

Section 9.1 Total Condemnation. If the whole of the Premises and the Improvements, (or such portion of the Premises and Improvements as renders it infeasible, in Tenant's sole discretion, for Tenant to continue to operate and maintain the Premises and Improvements), shall be appropriated or condemned under power of eminent domain during the Term, Tenant reserves unto itself the right to prosecute its claim for an award for damages for the termination of this Lease caused by such appropriation or taking, together with damages based on the value of Tenant's Improvements on the Premises and damages Tenant may sustain caused by such appropriation and taking of, or the injury to, Tenant's leasehold interest. Landlord shall be entitled to prosecute its claim for the fee interest in the Premises, subject to the Lease and damages Landlord may sustain caused by such appropriation and taking of, or the injury to, Landlord's fee interest. In such event, this Lease shall terminate when Tenant can no longer use the Premises in the manner herein intended, or when possession thereof shall be required by the appropriating or condemning authority, whichever shall first occur; but such termination of this Lease shall not preclude nor restrict Tenant's right to an award as herein before provided.

Section 9.2 Partial Condemnation. In the event that a part of the Premises shall be taken or condemned under circumstances in which Tenant desires to continue the Lease, this Lease shall continue in full force and effect and shall terminate only as to that part of the Premises so taken. In that event Tenant shall, at its own cost and expense, make all repairs to the buildings and Improvements on the Premises affected by such taking or condemnation to the extent necessary to restore the same to a complete architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase). Compensation available or paid to Landlord or Tenant upon such a partial taking or condemnation shall be paid to Tenant to the extent that such compensation is attributable to the taking of Tenant's leasehold interest in the Premises or the Improvements, and the remainder shall be paid to Landlord.

Section 9.3 Temporary Taking. If there shall be a temporary taking with respect to all or any part of the Premises or of Tenant's interest in this Lease, then the Term shall not be reduced and Tenant shall continue to pay in full all rents, and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Tenant shall not be required to perform such obligations that Tenant is prevented from performing by reason of such temporary taking.

Section 9.4 Joinder. If a Leasehold Mortgage exists, the Leasehold Mortgagees, to the extent permitted by law, shall be made parties to any taking proceeding and all rights of Tenant shall be subject to the terms of the Leasehold Mortgages.

ARTICLE 10  
DAMAGE OR DESTRUCTION

Section 10.1 Damage or Destruction to Leased Premises. Tenant shall give prompt written notice to Landlord after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Premises, the Improvements or any portion thereof (hereinafter sometimes referred to as a "Casualty"). Subject to Section 10.2 below, if during the Term the Improvements shall be damaged or destroyed by casualty, Tenant shall, subject to the terms of the Leasehold Mortgages, promptly and with all due diligence, apply for and collect all applicable insurance proceeds recoverable with respect to such casualty to fully repair or restore the Improvements.

Section 10.2 Right to Terminate. In the event Tenant shall determine, subject to the rights of the Leasehold Mortgagees, by notice to Landlord given within thirty (30) days after receipt by Tenant of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. However, notwithstanding anything to the contrary in the foregoing, Tenant shall not have the right to terminate this Lease

pursuant to this Section 10.2 without Landlord's prior written consent, which may be withheld in Landlord's sole discretion, if there are, at the time of such Casualty or at the time Tenant desires to exercise such right of termination, any encumbrances on the fee interest of Landlord (including, without limitation, any Extended Use Regulatory Agreement required under Section 42 of the Internal Revenue Code). If Tenant terminates this Lease pursuant to this Section 10.2, Tenant shall be responsible for and shall bear all costs of removing the remaining Improvements and debris from the Premises and then surrendering possession of the Premises to Landlord immediately.

Section 10.3 Damage or Destruction near the end of the Term. If, during the last ten (10) years of the Term, the Improvements shall be damaged by casualty, then Tenant shall have the option, to be exercised within one hundred twenty (120) days after such casualty:

- (a) To repair or restore the Improvements as provided in Section 10.1; or
- (b) Subject to the rights of Leasehold Mortgagees, to terminate this Lease by notice to Landlord, which termination shall be deemed to be effective as of a date not less than thirty (30) days after the date such notice is received by Landlord. If Tenant terminates this Lease pursuant to this Section 10.3, Tenant shall surrender possession of the Leased Premises to Landlord upon the effective date of termination and assign to Landlord (or, if same has already been received by Tenant, pay to Landlord) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises, subject to the prior rights of any Leasehold Mortgage therein, as referenced in Section 10.4 below.

Section 10.4 Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to this Article 10, the insurance proceeds received as the result of such casualty shall be distributed as follows: (a) if any Leasehold Mortgages are in place, to the Leasehold Mortgagee to the extent of any indebtedness then owed to such Leasehold Mortgagees; and (b) to Tenant or Landlord pursuant to Section 10.3.

## ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

Section 11.1 Default By Tenant. Each of the following is a material default and breach of this Lease by Tenant:

- (a) Failure to make any required Rent or any other payment as and when due, if the failure continues for a period of ten (10) business days after written notice from Landlord.
- (b) Failure to comply with any of the covenants or provisions of this Agreement, other than those described in Section 11.1(a), if the failure continues for a period of sixty (60) days after written notice from Landlord. If the nature of Tenant's default reasonably requires more than sixty (60) days for its cure, Tenant will not be in default if it commences to cure within the sixty (60) day period and thereafter diligently pursues its completion.

Section 11.2 Remedies Upon Default By Tenant. If any material default or breach by Tenant occurs, Landlord may, subject in all respects to the provisions of this Lease with respect to Landlord's rights to cure defaults by Tenant and to the rights of any Leasehold Mortgagees, and subject further to the provisions of Section 11.3 and 11.5 of this Lease, do any or all of the following:

- (a) Except as set forth in Section 11.7, upon ninety (90) day's written notice to Tenant, terminate Tenant's right to possession of the Premises, and this Lease shall terminate. Landlord may re-enter and take possession of and remove, at Tenant's costs and expense, all persons or property, and Tenant shall immediately surrender possession of the Premises to Landlord.



- (b) Maintain Tenant's right to possession, and this Lease shall continue in force whether or not Tenant has abandoned the Premises. Landlord shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due.
- (c) Pursue any other remedy available to Landlord under the law or equity. These remedies are not exclusive.

Notwithstanding any other provision herein, in the event Landlord exercises its remedies pursuant to Section 11.2(a) or (c) and terminates this Agreement, Tenant may, within thirty (30) days following such termination reinstitute this Lease for the balance of the term, by paying to Landlord an amount equal to the actual damages incurred by Landlord as a result of such breach and payment of any actual costs or expenses incurred by Landlord, including reasonable attorneys' fees and disbursements, as a result of such breach or reinstatement of this Agreement.

Further notwithstanding anything to contrary herein, Landlord agrees that it will take no action to effect a termination of this Lease by reason of any breach or default by Tenant under this Lease at any time that Tenant or any affiliate of Tenant is the general partner of the Tenant without first giving to the Tax Credit Investor reasonable time, not to exceed sixty (60) days, to replace the Tenant's general partner and/or to admit an additional general partner of the Tenant and cause such new general partner to cure the breach or default hereunder; provided, however, that as a condition of such forbearance, Landlord must receive notice from the Tax Credit Investor of the substitution of a new general partner of the Tenant within twenty (20) days following receipt of Landlord's notice of the breach or default, and Tenant, following such substitution of general partners, shall thereupon proceed with reasonable diligence to cure such breach or default.

Section 11.3 Default by Landlord. Landlord shall be in default of this Lease if it fails to perform any material provision of this Lease that it is obligated to perform or if any of Landlord's representations or warranties is untrue in any material respect and if the failure to perform is not cured within thirty (30) days after written notice of the default has been given to Landlord. If the default cannot reasonably be cured within thirty (30) days, Landlord shall not be in default of this Lease if Landlord commences to cure the default within such thirty-day period and thereafter diligently pursues its completion.

Section 11.4 Remedies Upon Default by Landlord. Tenant may upon Landlord's default pursue any remedy available to Tenant under the law or equity.

Section 11.5 Reversion. Upon expiration of the term of the Lease or earlier termination or cancellation of the Lease and subject to Article 7, the Premises shall revert to and become the sole property of Landlord and all rights of the Tenant shall terminate.

## ARTICLE 12 QUIET ENJOYMENT AND POSSESSION, INSPECTIONS

Landlord covenants and warrants that Tenant, upon payment of all sums herein provided and upon performance and observance of all of its covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Premises during the Term, subject only to the provisions of this Lease and all applicable laws, ordinances and regulations.

## ARTICLE 13 VACATION OF LEASED PREMISES

Tenant covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Tenant will peaceably and quietly yield and surrender possession of the Premises and, if required under Section 2.3, the Improvements to Landlord, subject to reasonable wear and

tear and damage by casualty and condemnation. An action of forcible detainer shall lie if Tenant holds over after a demand for possession is made by Landlord.

ARTICLE 14  
INTENTIONALLY OMITTED

ARTICLE 15  
TRANSFERS

Except as otherwise provided in this Article 15 and subject to all statutory and regulatory requirements applicable to this leasehold, Tenant shall have no right to transfer any legal or beneficial interest in Tenant's estate hereunder without Landlord's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord consents to: (i) a transfer by Tenant to any Leasehold Mortgagee in compliance with Article 7 hereof, and to an assignment or other transfer by any Leasehold Mortgagee to a third party purchaser following a foreclosure sale or acceptance by the Leasehold Mortgagee or its designee of a deed-in-lieu of foreclosure; (ii) any residential tenant lease by Tenant to households qualifying; (iii) any transfer of a partnership interest in the Tenant; and (iv) any transfer of a partnership interest in Tenant that occurs in connection with the exercise of general partner removal rights by the Tax Credit Investor. Furthermore, notwithstanding the foregoing, following completion of construction of the Improvements, Landlord acknowledges that Landlord will not unreasonably withhold, delay or condition a request by Tenant for Landlord's consent to an internal reorganization of the corporate or partnership structure of Tenant or the general partner of Tenant.

Upon the granting of any consent (deemed or otherwise) by Landlord with respect to a transfer by Tenant, this Lease shall be binding upon the assignee, Leasehold Mortgagees and other transferees.

ARTICLE 16  
GENERAL INDEMNIFICATIONS

Section 16.1 Indemnifications

16.1.1 By Landlord. Subject to the Oregon Tort Claims Act and the Oregon Constitution, Landlord agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Tenant) the Tenant, its officers, commissioners, directors, affiliates, agents and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys fees and expenses), arising directly or indirectly out of the performance of, or arising from or relating to Landlord's obligations under this Lease.

These indemnities shall survive the termination of the Lease.

16.1.2 By Tenant. Notwithstanding any other provision of this Lease, the Tenant hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Landlord) the Landlord, its officers, commissioners, directors, affiliates, agents and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorneys fees and expenses), arising directly or indirectly out of the performance of, or arising from or relating to Tenant's obligations under, this Lease or the construction or operation of the Improvements, except to the extent caused by the negligence or willful misconduct of Landlord. In addition, if any contractor or subcontractor which performed any construction work for the Tenant or the Tenant's affiliates on the Improvements shall assert

any claim against the Landlord on account of any damage alleged to have been caused by the Tenant or the Tenant's affiliates, their members, partners, officers, commissioners, directors, affiliates (other than Landlord), agents or employees, or their construction contractors, the Tenant shall defend at its own expense any suit based upon such claim; and if any judgment or claim against the Landlord shall be allowed, the Tenant shall pay or cause to be paid or satisfied such judgment or claim and pay all costs and expenses in connection therewith.

These indemnities shall survive the termination of the Lease.

#### ARTICLE 17 OPTION TO PURCHASE

It is anticipated that the Phase 2 developer may seek to acquire the City land at some point after the multifamily project in each phase has completed its respective initial tax credit compliance period which is anticipated to occur in approximately 2031. The City is agreeable to disposition of the land upon the passage the minimal tax credit compliance period, completion of Glisan Commons project by Phase 1 and Phase 2 developers, and their fulfillment of all obligations and commitments to create affordable housing as summarized, and upon the following conditions:

- Payment of nominal sale price of \$1.00 by developer for its applicable partitioned City land;
- Phase 2 developers bearing responsibility for drafting and recording of necessary conveyance documents and seeking review and obtaining approval of the City Attorney's Office;
- Phase 2 developer bearing all expenses, fees and costs, including any attorney's fee, associated with conveyance of its applicable partitioned City land, so that the City will have no further financial liability for undertaking disposition;
- Phase 2 developer must notify the City within one year of the initial tax credit compliance period expiration of the intent to purchase its applicable partitioned City land, and execute required conveyance documents no later than six months after notifying the City.

#### ARTICLE 18 MISCELLANEOUS PROVISIONS

Section 18.1 Entire Agreement; Modifications. This Lease, including all Addenda hereto, supersedes all prior discussions and agreements between the parties with respect to the leasing of the Premises. This Lease contains the sole and entire understanding between the parties with respect to the leasing of the Premises pursuant to this Lease, and all promises, inducements, offers, solicitations, agreements, representations and warranties heretofore made between the Parties, if any, are merged into this Lease. This Lease, including all Addenda hereto, shall not be modified or amended in any respect, except by written instrument specifically referencing such a modification or amendment which is executed by or on behalf of the Parties in the same manner as this Lease, including all Addenda hereto, is executed and to which each Leasehold Mortgagee has consented in writing.

Section 18.2 Governing Law and Choice of Venue. This Lease, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the substantive laws of the State of Oregon. Any legal action to enforce the terms of this Lease shall be brought in Multnomah County, Oregon. The prevailing party in such action shall be entitled to its attorney's fees and costs.

Section 18.3 Binding Effect. This Lease shall inure to the benefit of and be binding upon the parties hereto, their heirs, successors, administrators, executors and permitted assigns.

Section 18.4 Severability. In the event any provision or portion of this Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid



or unenforceable provision or portion never been a part hereof, except to the extent the rights and obligations of the parties have been materially altered by such unenforceability.

Section 18.5 Further Assurances. From and after the date of this Lease, Landlord and Tenant, at the request of the other party, shall make, execute and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things that either party may reasonably require in order to effectuate the provisions and the intention of this Lease.

Section 18.6 Captions. All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular articles, sections, subsections, paragraphs and subparagraphs by number refer to the text of such items as so numbered in this Lease.

Section 18.7 Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

Section 18.8 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and other-wise mentioned.

Section 18.9 References. All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Lease. Unless otherwise specified in this Lease, the terms "herein", "hereof", "hereinafter", "hereunder" and other terms of like or similar import, shall be deemed to refer to this Lease as a whole, and not to any particular paragraph or subparagraph hereof.

Section 18.10 Rights Cumulative. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

Section 18.11 Notices. All, notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express, or another recognized, reputable overnight courier service, or by hand delivery by a recognized, reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other party any notices, requests, demands or other communications required or permitted to be given hereunder by such party.

(a) To Landlord: City of Portland  
Portland Housing Bureau  
421 SW 6<sup>th</sup> Ave., Suite 500  
Portland, OR 97204  
Attn: Asset Management

With a copy to: City Attorney's Office  
1221 SW 4<sup>th</sup> Avenue, suite 430  
Portland, OR 97201  
Attn: Trinh C. Tran



- (b) To Tenant: REACH Gateway Senior Housing Limited Partnership  
c/o REACH Community Development, Inc.  
4150 SW Moody Avenue  
Portland, OR 97239  
Attention: Housing Development Director
- With a Copy to: Schwabe, Williamson & Wyatt, P.C.  
1211 SW Fifth Avenue, Suite 1900  
Portland, OR 97204  
Attn: Dan Eller
- (c) To Bank of America: Bank of America, N.A.  
2001 Clayton Road, 2<sup>nd</sup> Floor  
CA4-702-02-29  
Concord, CA 94520  
Attention: Loan Administration
- With a Copy to: Paul Hastings LLP  
515 South Flower Street, Twenty-Fifth Floor  
Los Angeles, CA 90071  
Attn: Ken Krug
- (d) To OHCS: Oregon Housing and Community Services Department  
725 Summer St. NE, Suite B  
Salem, OR 97301
- (f) To NOAH: Network for Oregon Affordable Housing  
1020 SW Taylor, Suite 585  
Portland, OR 97205  
Attn: Executive Director

For so long as the Tax Credit Investor is a limited partner of Tenant, a copy of all notices to the Tenant shall also be delivered to the Tax Credit Investor at the address set forth in Section 7.13. For so long as OHCS is the beneficiary of a Restrictive Covenant burdening the Premises, a copy of all notices to the Tenant shall also be delivered to OHCS at the address set forth above.

Section 18.12 Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

Section 18.13 Time of Essence. Time is and shall be of the essence in this Lease.

Section 18.14 Recording of Lease. Tenant may record a memorandum of this Lease at Tenant's expense.

Section 18.15 No Third-Party Beneficiaries. Except to the extent expressly provided in this Lease, this Lease is not intended to confer upon any person other than the parties to this Lease any rights or remedies under this Lease.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, this Lease is made and entered into in multiple original counterparts on the day and year first above written.

"LANDLORD"

CITY OF PORTLAND, a municipal corporation in the State of Oregon, acting by and through the Portland Housing Bureau as the duly designated housing agency of the City of Portland

\_\_\_\_\_  
Traci Manning, Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Trinh C. Tran, Attorney  
City Attorney's Office

"TENANT"

REACH GATEWAY SENIOR HOUSING LIMITED PARTNERSHIP

By: REACH Gateway, LLC  
Its: General Partner

By: REACH Community Development, Inc.  
Its: Manager and Sole Member

By: \_\_\_\_\_  
Name:  
Title:

STATE OF OREGON                    )  
  ) ss.  
County of \_\_\_\_\_                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by Traci Manning, Director of the Portland Housing Bureau, duly designated housing agency of the City of Portland, on its behalf.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:  
Commission No.:

STATE OF OREGON                    )  
  ) ss.  
County of \_\_\_\_\_                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_ of REACH Community Development, Inc., Manager and Sole Member of REACH Gateway, LLC, General Partner of REACH Gateway Senior Housing Limited Partnership, an Oregon limited partnership, on its behalf.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:  
Commission No.:

## EXHIBIT A TO GROUND LEASE

Legal Description

A PORTION OF THAT TRACT OF LAND CONVEYED TO THE CITY OF PORTLAND BY DEED RECORDED IN DOCUMENT NO. 2010-129014, MULTNOMAH COUNTY DEED RECORDS, AND A PORTION OF THAT TRACT OF LAND CONVEYED TO NECULAI AND LUCRETIA PANAITO BY DEED RECORDED IN DOCUMENT NO. 95-108275, MULTNOMAH COUNTY DEED RECORDS, SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH, AND STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 33, BEING A POINT ON THE CENTERLINE OF NE GLISAN ST; THENCE NORTH 00°02'44" EAST, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF NE 100TH AVENUE AS PRESENTLY LOCATED (BEING 25 FEET WEST OF CENTERLINE WHEN MEASURED AT RIGHT ANGLES) AND ITS SOUTHERLY EXTENSION, A DISTANCE OF 334.00 FEET; THENCE NORTH 89°53'04" WEST, A DISTANCE OF 10.00' TO THE TRUE PLACE OF BEGINNING;

THENCE CONTINUING NORTH 89°53'04" WEST, A DISTANCE OF 255.89 FEET TO A POINT THAT IS 41.00 FEET EAST OF CENTERLINE OF NE 99TH AVENUE;

THENCE SOUTH 00°02'44" WEST, PARALLEL WITH AND 41.00 FEET EAST OF SAID CENTERLINE OF NE 99TH AVENUE, A DISTANCE OF 120.00 FEET;

THENCE SOUTH 89°53'04" EAST, A DISTANCE OF 58.39 FEET;

THENCE NORTH 89°53'26" EAST A DISTANCE OF 45.01 FEET;

THENCE SOUTH 00°03'54" WEST, A DISTANCE OF 28.42 FEET TO A POINT OF CURVE;

THENCE ALONG A 4.50 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, THROUGH A CENTRAL ANGLE OF 90°03'54" (CHORD BEARS SOUTH 44°58'03" EAST, A DISTANCE OF 6.37 FEET) AN ARC DISTANCE OF 7.07 FEET TO A POINT OF TANGENCY;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 19.50 FEET;

THENCE NORTH 45°00'00" EAST, A DISTANCE OF 14.86 FEET;

THENCE NORTH 00°01'20" EAST, A DISTANCE OF 66.82 FEET;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 118.03 FEET TO A POINT THAT IS 35.00 FEET WEST OF CENTERLINE OF SAID 100TH AVENUE;

THENCE NORTH 00°02'44" EAST, PARALLEL WITH AND 35.00 FEET WEST OF CENTERLINE OF SAID 100TH AVENUE, A DISTANCE OF 75.11 FEET TO THE TRUE PLACE OF BEGINNING.



**EXHIBIT B TO GROUND LEASE****Phase 1 Premises****NOT INCLUDED IN THE LEASEHOLD ESTATE**

A portion of that tract of land conveyed to the City of Portland, by Deed recorded in Document No. 2010-129014, Multnomah County Deed Records, situated in the Northeast one-quarter of Section 33, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, being more particularly described as follows:

Commencing at the Southeast corner of the Southwest one-quarter of the Southeast one-quarter of the Northeast one-quarter of said Section 33, being a point on the centerline of NE Glisan Street; thence North 00°02'44" East, along the Westerly right-of-way line of NE 100th Avenue as presently located (being 25 feet West of centerline when measured at right angles) and its Southerly extension, a distance of 51.00 feet; thence North 89°53'04" West, parallel with and 51.00 feet North of centerline of said NE Glisan Street, a distance of 10.00 feet to the True Place of Beginning; thence North 89°53'04" West, parallel with and 51.00 feet North of centerline of said NE Glisan Street, a distance of 197.50 feet; thence North 00°02'44" East, a distance of 163.00 feet; thence North 89°53'26" East a distance of 45.01 feet; thence South 00°03'54" West, a distance of 28.42 feet to a point of curve; thence along a 4.50 foot radius curve concave to the Northeast, through a central angle of 90°03'54" (chord bears South 44°58'03" East, a distance of 6.37 feet) an arc distance of 7.07 feet to a point of tangency; thence North 90°00'00" East, a distance of 19.50 feet; thence North 45°00'00" East, a distance of 14.86 feet; thence North 00°01'20" East, a distance of 66.82 feet; thence North 90°00'00" East, a distance of 118.03 feet to a point that is 35.00 feet West of centerline of said 100th Avenue; thence South 00°02'44" West, parallel with and 35.00 feet West of centerline of said 100th Avenue, a distance of 207.89 feet to the true place of beginning.

## GROUND LEASE ADDENDUM

### (Provisions Regarding Senior Loans)

Tenant's ownership interest in the Project and its leasehold interest in the Premises pursuant to this Lease have been pledged to Bank of America, N.A., a national banking association ("**Bank of America**"), as security for a loan to be made by Bank of America to Tenant in the principal amount of up to \$7,067,000, as construction financing for the Project. The parties anticipate that Tenant's ownership interest in the Project and its leasehold interest in the Premises pursuant to this Lease will ultimately be pledged to the Network for Oregon Affordable Housing, an Oregon nonprofit public benefit corporation ("**NOAH**"), as security for a loan to be made by NOAH to Tenant in the principal amount of up to approximately \$1,340,000.00, as permanent financing for the Project. The terms "**Senior Lender**" and "**Senior Loan**" shall initially apply to Bank of America and the loan from Bank of America and, if and when the loan from NOAH is made, to NOAH and the loan from NOAH. The Senior Loan will be evidenced and/or secured by a leasehold deed of trust (the "**Senior Deed of Trust**"), a promissory note and other security documents in favor of the Senior Lender (collectively, the "**Senior Loan Documents**"). Landlord and Tenant hereby agree that, notwithstanding any other provision of this Lease, the following provisions shall apply for so long as the Senior Loan is outstanding:

1. Leasehold Mortgage. The Senior Loan, as evidenced by the Senior Deed of Trust and the other Senior Loan Documents, is or will be deemed a "Leasehold Mortgage" for all purposes under the Lease, and Bank of America and NOAH will each be deemed a "Leasehold Mortgage" for all purposes under the Lease.

2. Use of Premises Following a Foreclosure. In the event Senior Lender, its successors or assigns, takes title to Tenant's leasehold interest in the Premises pursuant to a foreclosure of the Senior Deed of Trust, or a conveyance in lieu of foreclosure (in either case, a "**Foreclosure**"), or Senior Lender or a successor or assign enters into a new Lease of the Premises with Landlord pursuant to Section 7.5 of the Lease (a "**New Lease**"), then in either case Section 1.3 of the Lease shall be deemed to be amended to read as follows in its entirety, as of the date that the Foreclosure is completed or a New Lease is executed:

Section 1.3. Use. Tenant shall use the Premises solely for the operation of a multi-family residential development containing approximately 60 units of housing for occupancy by individuals or families whose income is 80% or less of the area family adjusted median gross income ("**AMI**"), as determined from time to time by the U.S. Department of Housing and Urban Development.

3. Landlord Restrictive Covenant. Any Restrictive Covenant (as defined in Section 3.1.2 of the Lease) recorded by Landlord with respect to the Project shall expressly recite that, notwithstanding any tenant income restrictions set forth in such Restrictive Covenant, in the event of a Foreclosure or the execution of a New Lease following a Foreclosure all income restrictions applicable to the Project pursuant to such Restrictive Covenant shall automatically increase to 80% of AMI as of the date that the Foreclosure is completed or a New Lease is executed.

4. Insurance. In the event of any conflict between the provisions of Article 5 of the Lease, pertaining to insurance, and the provisions of the Senior Deed of Trust and other Senior Loan Documents pertaining to insurance, the provisions in the Senior Deed of Trust and the other Senior Loan Documents shall control for so long as the Senior Loan is outstanding.

5. Eminent Domain. In the event of any conflict between the provisions of Article 9 of the Lease, pertaining to eminent domain and condemnation, and the provisions of the Senior Deed of Trust and other Senior Loan Documents pertaining to any condemnation or eminent domain, the provisions in the Senior Deed of Trust and the other Senior Loan Documents shall control for so long as the Senior Loan is outstanding.

6. Damage or Destruction. In the event of any conflict between the provisions of Article 10 of the Lease, pertaining to fire or other damage or destruction of the Project, and the provisions of the Senior Deed of Trust and other Senior Loan Documents pertaining to any damage destruction, or other casualty with respect to the

Project, the provisions in the Senior Deed of Trust and the other Senior Loan Documents shall control for so long as the Senior Loan is outstanding.

7. Transfers. The provisions of Article 15 of the Lease, pertaining to transfers of interests in Tenant and in Tenant's constituent partners, are subject to the provisions of the Senior Deed of Trust and other Senior Loan Documents pertaining to permitted transfers by Tenant and by Tenant's general partner and limited partner(s), and shall be deemed superseded by such provisions in the Senior Loan Documents for so long as the Senior Loan is outstanding.

8. Cross Default. Landlord and Tenant hereby acknowledge that a default by Tenant under the Lease shall constitute a default under the Senior Loan Documents.

9. Attornment by Landlord. In the event that Senior Lender acquires Tenant's interest under the Lease by foreclosure or conveyance in lieu of foreclosure, then Landlord shall attorn to Senior Lender and recognize Senior Lender as Landlord's lawful tenant under the Lease. In addition, following any such foreclosure or conveyance in lieu of foreclosure and Senior Lender's subsequent sale of its interest in the Lease to a third party purchaser, Landlord shall attorn to such third party purchaser and recognize such third party purchaser as Landlord's lawful tenant under the Lease. Landlord shall execute and deliver any reasonable document or instrument required by Senior Lender or such third party purchaser confirming the attornments agreed to hereunder.

10. References to Senior Lender. All references to Senior Lender in this Addendum shall be deemed to include Senior Lender's successors, assigns, transferees, and participating lenders.

11. Notice Address. For purposes of any notices to NOAH under the Lease, the following address shall be used in accordance with the provisions of Section 17.11 of the Lease:

Network for Oregon Affordable Housing  
1020 SW Taylor, Suite 585  
Portland, OR 97205  
Attn: Executive Director

12. Non-Funding of Senior Loan. In the event the Senior Loan is not funded, for any reason, this Addendum shall be deemed null and void and of no effect whatsoever.

[End.]