

CONSTRUCTION ACTIVITIES REIMBURSEMENT AGREEMENT

THIS CONSTRUCTION ACTIVITIES REIMBURSEMENT AGREEMENT (this “Agreement”) is made as of _____, 2015¹, by and between [*assignee of Trinsic Acquisition Company, LLC*] (“TRG”), Multnomah County, a political subdivision of the State of Oregon (the “County”), and Central City Concern, an Oregon non-profit corporation (“CCC”).

R E C I T A L S:

A. TRG plans to develop a mixed-use apartment complex and parking garage (the “Project”) on certain real property located in the City of Portland, Multnomah County, Oregon, more particularly described on Exhibit A attached hereto and incorporated herein by reference, together with all improvements and fixtures located thereon (the “Project Property”).

B. CCC is the owner of certain real property adjacent to the Project Property more particularly described on Exhibit C attached hereto and incorporated herein (the “CCC Property”).

C. The County leases a portion of the CCC Property pursuant to a certain Commercial Lease, dated April 1, 2011.

D. The County, through its contractor, Telecare (Telecare or its successor or assign, the “Services Contractor”), operates the CCC Property as a mental health crisis assessment and treatment center (the “County Services”).

E. The County-operated facility on the CCC Property is called the Crisis Assessment Treatment Center (“CATC”), and is a modern, relatively new (2010-2011 construction) facility providing essential care and treatment in a hospital-like setting for its patients and residents, and further is the result of millions of dollars in public money to locate and construct the CATC on the CCC Property. In addition, the County has expanded the services to include the “CATC Triage”, for placing criminal defendants with mental health issues at the CATC for evaluation, as an alternative to incarceration. There are no other facilities in the Burnside community equivalent to the CATC and CATC Triage available to provide the essential services and treatment, should the CATC operations be disrupted or subject to displacement because of the effects and impacts of the proposed construction.

F. In connection with the development of the Project, TRG will be demolishing all existing improvements and fixtures located on the Project Property and constructing the new improvements constituting the Project, and constructing and demolishing temporary improvements on the CCC Property (such activities, collectively, the “Construction Activities”).

¹ To be signed and delivered at closing.

G. In partial consideration of the County's agreements with CCC and TRG in connection with the Project, the County has requested that TRG and CCC provide a process and establish funds to be available for reimbursement of certain costs necessarily incurred by the County to hospitalize patients receiving County Services, where such hospitalization is caused by the Construction Activities.

H. In order to proceed with the development of the Project, CCC and TRG are willing to agree to provide for such reimbursement on the terms and conditions set forth below in this Agreement

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TRG, CCC, and the County hereby covenant and agree, as follows:

AGREEMENT

1. Establishment of Sources of Funds Available for Reimbursement. Contemporaneously with the mutual execution and delivery of this Agreement, CCC and TRG, respectively, will each do the following:

a. CCC Escrow Holdback. CCC will instruct the title company serving as the escrow agent handling the closing of the sale of its property to TRG to hold back and deposit into escrow with such title company (the "Escrow Agent") the sum of Three Hundred Seventy-Five Thousand and 00/100 (\$375,000.00) Dollars (the "CCC Holdback") from CCC's sale proceeds, which shall be available for reimbursement of Recoverable Costs (as defined below) subject to the Conditions of Reimbursement (as defined below) in accordance with the terms and conditions of this Agreement.

b. TRG Funds. TRG will establish a funding source in the form of cash in escrow or a letter of credit, or a combination thereof, in TRG's discretion, in the amount of Three Hundred Seventy-Five Thousand and 00/100 (\$375,000.00) Dollars, which shall be available for reimbursement of Recoverable Costs (as defined below) subject to the Conditions of Reimbursement (as defined below) in accordance with the terms and conditions of this Agreement (the "TRG Funds").

c. Recoverable Costs. As used in this Agreement, "Recoverable Costs" means any necessary incremental costs actually incurred by the County in order to continue to provide or contract with another medical facility to provide the County Services, to the extent that such costs are directly attributable to one or more continuing Hospitalizations (as defined below) directly caused by the Construction Activities, and which the County would not have incurred but for such Hospitalization(s). The County represents and warrants to TRG and CCC that the schedule of costs attached hereto as Exhibit D is representative of the types and amounts or rates of costs to be incurred by the County in the event of a Hospitalization (as defined below).

d. Duration of Hospitalization; County's Duty to Mitigate. TRG, CCC, and the County will cooperate with one another and keep in communication with one another in accordance with this Agreement in order to minimize the interference of Construction Activities

with provision of County Services and the necessity for or duration of any Hospitalization (as defined below). The County will exercise, and/or will cause its Services Contractor to exercise, good faith, reasonable, diligent efforts to avoid Hospitalization through proactive programmatic strategies to mitigate against the potential effect of Construction Activities and to minimize the duration of any Hospitalization and return to its ordinary course of operations (such that no further Recoverable Costs are incurred with respect to such Hospitalization) as soon as practicable, in the professional, medical judgment of the Services Contractor.

2. Claims for Reimbursement.

a. Order of Reimbursement Claims. Except as otherwise provided and as may be modified by Section 3.b below upon the occurrence of the Reduction Event, any claims by the County for reimbursement of Recoverable Costs shall be asserted only in accordance with the following order and amounts:

Party to Whom Asserted	Fund Source	Amount Available for Claim
<i>Pari passu</i> to CCC and TRG	TRG Funds & CCC Holdback	Up to \$750,000

b. Hospitalization Caused by Construction Activities. Subject to the Conditions of Reimbursement (as defined below), the County may seek reimbursement of Recoverable Costs in accordance with this Agreement in the event that the County, through the County official in charge of supervising and managing the County Services, and the Facility Program Manager for the Services Contractor, in its professional, medical judgment, determine that it is medically necessary to hospitalize one or more patients due to noise, dust, fumes, concussions or vibration levels caused by the Construction Activities (“Hospitalization(s)”).

c. Contacts: Notices of Potential Hospitalizations.

i) Each of the County, TRG, and CCC shall designate two (2) individual contact persons for receipt of notices of complaints pursuant to Section 2.c.ii below. The County shall also cause its Services Contractor to provide two (2) individual contact persons for receipt of notices of complaints pursuant to Section 2.c.(ii) below. As of the Effective Date, such individuals and their contact information (telephone and email) are those listed on Exhibit C attached hereto. The parties may change such persons by notification to the other parties in accordance with Section 4 below.

ii) In the event that the County or its Services Contractor determines, in its professional, medical judgment, that the Construction Activities are impacting the CCC Property or the occupants of the CCC Property such that one or more Hospitalizations may be necessary, the County or its Services Contractor shall immediately notify, **by telephone and email**, the contact persons designated by the other parties hereto for receipt of such notices, which notice shall describe the problem and the activities causing the problem in sufficient detail so that TRG may seek to cure the problem.

iii) If TRG is unable, in its sole and absolute discretion, to cure the problem complained of in such notice within two (2) hours after such notice, or if the problem complained of is, in the County’s or the Services Contractor’s professional, medical judgment, an emergency in which there is present imminent risk of harm to one or more patients receiving

County Services at the CCC Property, then the County, subject to the other requirements of this Agreement, may determine that a Hospitalization is necessary. Notwithstanding any other provisions of this Agreement, nothing in this Agreement shall be deemed or construed to obligate TRG or its contractors to cease, delay, alter, or defer Construction Activities in any manner.

d. Conditions of Reimbursement. The following are conditions precedent to reimbursement pursuant to this Agreement (the “Conditions of Reimbursement”):

i) Provided that the County shall have followed the notice requirements of Section 2.c. above, the County shall submit a written request for reimbursement to the custodian(s) of the CCC Holdback or the TRG Funds, as applicable in accordance with Section 2.a. above, in either case with copies to CCC and TRG, together with (a) a certification signed by a County official in charge of supervising or managing the County Services and a Facility Program Manager of the Services Contractor that the costs incurred for which payment is sought are for a Hospitalization as defined by this Agreement, together with a list of the date and approximate time of the disturbance leading to the Hospitalization; and (b) itemized invoices or receipts in sufficient detail to demonstrate that such costs are Recoverable Costs under this Agreement (collectively, the “County’s Certified Claim”); and

ii) TRG and CCC have expressly approved in writing such request within thirty (30) days from receipt of the County’s Certified Claim, which approval shall not be unreasonably withheld or conditioned. Provided that the County’s Certified Claim includes the signed certifications required by Section d.(i)(a) of this Section 2, neither TRG, CCC, the Escrow Agent, nor the TRG Funds custodian shall have any right to refuse reimbursement based on a question of whether or not a Hospitalization was caused by the Construction Activities, unless such party proves that there were no Construction Activities that occurred at the date and approximate time of the disturbance that led to the Hospitalization. Failure of TRG or CCC to expressly approve or disapprove any such request in writing within such 30-day period, and thereafter within 5 days after receipt of notice from the County that CCC or TRG, as applicable, has failed to respond during such 30-day period, shall be deemed to be an approval of the County’s Certified Claim.

iii) If TRG or CCC objects to any claim by the County for Recoverable Costs in accordance with clause (ii) above, and such dispute is not resolved within sixty (60) days, then such dispute shall be submitted to mandatory nonbinding mediation. If the parties are unable to resolve the dispute through such mediation, then either party may pursue formal legal action to resolve the dispute.

iv) Notwithstanding any other provision of this Agreement, the County shall not be entitled to reimbursement of any costs under this Agreement to the extent such costs are of the type covered by any insurance policy or policies maintained by TRG, or its general contractor, under which the County is an additional insured.

3. Effect; Duration.

a. Character and Effect of Agreement. This Agreement, and each of the rights granted hereunder, are personal to the parties hereto. Nothing in this Agreement and no payment to the County pursuant to this Agreement shall be construed as an admission by TRG, TRG's general contractor, or CCC of any duty to act or not act, fault, negligence, or of any misconduct or wrongdoing under any theory of law or contract, and, to the extent of any payments made to the County hereunder, the County hereby releases and agrees to hold TRG, TRG's general contractor, and CCC harmless from any such claims.

b. Reduction of CCC Holdback and TRG Funds. Upon written notice from TRG of enclosure of the Project building within windows, walls and a roof (anticipated to occur in month 12 of construction), and written approval of such enclosure by the County, which shall not be unreasonably withheld, and which shall in any event be given or rejected (specifying reasons for such rejection) in writing within ten (10) days of TRG's notice (with failure to respond being deemed approval) (the "Reduction Event"), the then-remaining aggregate amount of TRG Funds and the CCC Holdback in excess of \$250,000 shall be automatically reduced to \$250,000 and TRG's and CCC's respective shares in excess of \$250,000 shall immediately be released *pari passu* to TRG, and to CCC in accordance with the provisions of the 2011 Purchase and Sale Agreement, as amended, between CCC and the County. Remaining funds will continue to be disbursed *pari passu* pursuant to Section 2.a above. The County agrees to provide such reasonable written evidence or authorization of the reduction and release as may be requested by CCC or TRG to satisfy the request of the custodian of the CCC Holdback or TRG Funds, as applicable, but such written evidence shall not be necessary to effect such automatic reduction of available funds under this Agreement.

c. Duration of Agreement Otherwise. Except as provided in Section 3.b above, TRG's and CCC's obligations under this Agreement shall automatically terminate and be of no further force and effect, and all remaining TRG Funds shall be released to TRG and all remaining CCC Holdback shall be released to CCC, upon completion of construction of the Project and issuance of a temporary certificate of occupancy for the Project, provided, however, that any claims by the County for reimbursement attributable to costs incurred by the County prior to termination of this Agreement shall not be terminated, and this Agreement shall survive only with respect to such claims in accordance with its terms. The County will execute such instruments as are reasonably requested by TRG or CCC in order to evidence the termination of this Agreement, provided, however, that the execution of such instruments shall not be necessary to effectuate the automatic termination of this Agreement as described herein.

4. Notices. Except for notices of potential Hospitalizations pursuant to Section 2.c., any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) three (3) business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. The parties' current addresses for notice purposes are as follows:

TRG:

c/o Trinsic Acquisition Company, LLC
3100 Monticello, Suite 900
Dallas, Texas 75205
Attention: Brian J. Tusa
Fax No.: (214) 468-4114
E-mail: btusa@trinsicres.com

with a copy to: Stutzman, Bromberg, Esserman & Plifka
2323 Bryan Street, Suite 2200
Dallas, Texas 75201
Attention: John J. Reoch, Jr.
Fax No.: (214) 969-4999
E-mail: reoch@sbep-law.com

County:
Joanne Fuller, Director
Multnomah County Health Department
Gladys McCoy Building, 426 SW Stark St.
Portland, OR 97204
Fax No.: 503-988-3093
E-mail: joanne.fuller@multco.us

with a copy to: Multnomah County Attorney
Attn: Property Group
501 SE Hawthorne Blvd, Suite 500
Portland, OR 97214
Fax No.: 503-988-3377
E-mail: jenny.m.madkour@multco.us

CCC:
Central City Concern
Attn: Sean Hubert, Chief Housing and Employment Officer
232 NW 6th Avenue
Portland, OR 97209
Fax No.: 503-294-4321
E-mail: Sean.Hubert@ccconcern.org

with a copy to: Central City Concern
Attn: Kristy Faricy, Director of Legal Affairs
232 NW 6th Avenue
Portland, OR 97209
Fax No.: 503-294-4321
E-mail: Kristy.Faricy@ccconcern.org

5. No Public or Third Party Benefit. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights to, or in favor of, any person or entity who is not a party hereto.

6. Integration; Amendment. This Agreement contains the complete agreement of the parties with respect to the matters set forth herein and cannot be varied except by written agreement executed by the parties hereto. The parties agree that there are no oral agreements, representations or warranties that are not expressly set forth in this Agreement.

7. Legal Construction. If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain between the parties, the unenforceability will not affect any other provisions hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of this Agreement. Whenever context requires, the singular will include the plural and neuter will include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

8. Remedies; Recourse. The Parties acknowledge and agree that the sole purpose, scope, and effect of this Agreement is to establish a framework of agreements for avoiding or minimizing Hospitalizations due to Construction Activities and to provide a finite funding source for reimbursement of Recoverable Costs subject to the terms and conditions of this Agreement, all as expressly and only as set forth in this Agreement. This Agreement does not constitute a bar to or waiver of or in any way affect claims by any party hereto which are outside of the scope of this Agreement, such as claims in tort in the event of death, personal injury, or property damage caused by the negligence of another party hereto or any other claim for which a party hereto may have a cause of action under applicable law beyond the scope of this Agreement.

9. Choice of Law. This Agreement will be construed under the laws of the State of Oregon, without regard to choice-of-law rules of any jurisdiction.

10. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

[Signature pages follow.]

IN WITNESS WHEREOF, this Agreement has been executed as of (but not necessarily on) the date and year first above written.

TRG:

a _____

By: _____
Name: _____
Title: _____

CCC:

CENTRAL CITY CONCERN,
an Oregon non-profit corporation

By: _____
Name: _____
Title: _____

COUNTY:

COUNTY OF MULTNOMAH,
a political subdivision of the State of Oregon

By: _____
Name: Deborah Kafoury
Title: Chair

Exhibit A

Project Property

LOTS 7 AND 8, BLOCK 107, EAST PORTLAND (PLAT BOOK 1, PAGE 0053), IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON.

EXCEPTING THEREFROM THAT PORTION OF SAID LOTS 7 AND 8 LYING WITHIN THE BOUNDARIES OF NE GRAND.

Exhibit B

CCC Property

LOTS 1 AND 2, BLOCK 107, EAST PORTLAND (PLAT BOOK 1, PAGE 0053), IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON.

EXCEPTING THEREFROM THAT PORTION OF SAID LOT 1 LYING WITHIN THE BOUNDARIES OF NE MARTIN LUTHER KING JR BLVD.

Exhibit C

**Contacts With Respect to Potential Hospitalizations
(Name, Email, Cell Phone Number)**

TRG:

1. Jack Paauw, jpaauw@trinsicres.com, 425.681.0638
2. Tim Trachsel, ttrachsel@trinsicres.com, 206.619.7442

CCC:

1. Keri Burnidge, Keri.Burnidge@ccconcern.org, 503.327.6561
2. Sean Hubert, Sean.Hubert@ccconcern.org, 503.493-6062

County:

1. [Neal Rotman, neal.rotman@multco.us, 503-988-8219](mailto:neal.rotman@multco.us)
2. [David Hidalgo, david.a.hidalgo@multco.us, 503-988-3076](mailto:david.a.hidalgo@multco.us)

Field Code Changed

Services Contractor:

1. _____
2. _____

Exhibit D

Schedule of Approximate Costs/Rates

Daily Cost of Relocating One Bed/Patient to Temporary Facility	\$930.00
Ambulance Transit (one-way)	\$180.00

