

MARTHA WASHINGTON APARTMENTS
AGREEMENT FOR DISPOSITION OF PROPERTY
between
MULTNOMAH COUNTY
and
HOUSING AUTHORITY OF PORTLAND

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MARTHA WASHINGTON APARTMENTS

AGREEMENT FOR DISPOSITION OF PROPERTY

THIS AGREEMENT FOR DISPOSITION OF PROPERTY (this “Agreement”) is made as of _____, 2009, by MULTNOMAH COUNTY (“Multnomah County”), a political subdivision of the State of Oregon, and the HOUSING AUTHORITY OF PORTLAND, a public body corporate and politic of the State of Oregon (“HAP”). Multnomah County and HAP are referred to jointly in this Agreement as “Parties” and individually as a “Party”.

RECITALS

1. Multnomah County owns the Martha Washington Apartments located at 1115 SW 11th Avenue, in Portland, Multnomah County, Oregon, the legal description of which is set forth on Exhibit A (“Property”).
2. The Parties desire to enter into this Agreement setting forth the terms and conditions under which Multnomah County will convey the Property to HAP in exchange for HAP’s agreement to undertake the Project (as defined below) and cause units in the Project to be rented to members of targeted populations pursuant to the terms and conditions of this Agreement.
3. HAP expects to lease, or sell, the Property to a limited partnership or limited liability company (the “Tax Credit Entity”) of which HAP is the general partner or managing member for purposes of leveraging investor funds. HAP further expects that the Tax Credit Entity will provide HAP with an option and/or right of first refusal to purchase the Property (or the Tax Credit Entity’s leasehold interest in the Property) at the expiration of the 15-year “compliance period” for the Project determined under Section 42 of the Internal Revenue Code of 1986, as amended.
4. As General Partner, HAP will negotiate a Right of First Refusal to purchase the property at the end of the compliance period. HAP will subsequently enter into a mirror-image Right of First Refusal with Central City Concern (CCC), subject to approval and negotiation with Investor. CCC’s Right of First Refusal will provide for a reasonable term, to be negotiated by HAP and CCC that is within and less than the term of the Right of First Refusal between HAP and the limited partnership, and will be bound by the limits imposed in such agreement between HAP and the Investor. This is intended to provide CCC a reasonable opportunity to execute the purchase of the Project, including an opportunity to put together the financing needed for the purchase, while also providing HAP fall back opportunity to purchase the Project should CCC be unwilling or unable to do so. The Right of First Refusal between HAP and CCC will mirror the price methodology set forth in the Right of First Refusal between HAP and the limited partnership, and consider HAP’s loan or capital contribution to the Project and all transaction costs related to the purchase.
5. Multnomah County finds that HAP’s undertakings hereunder will help achieve Multnomah County’s goals. Multnomah County also finds that the fulfillment generally

of this Agreement, and the intentions set forth herein, are in the vital and best interests of Multnomah County and the health, safety, and welfare of its residents.

AGREEMENT

The Parties, in consideration of the premises and the agreements set forth herein and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, covenant and agree as follows:

DEFINITIONS

The following terms have the designated meanings in this Agreement:

1. “Affiliate” means any entity that controls, is controlled by or is under common control with HAP.
2. “Affordable Housing” means residential rental property that is occupied by individuals whose income is, at the time of their initial lease, 60% or less of area median gross income, and for which rent is affordable.
3. “Agreement” means this Agreement for Disposition of Property and all attached Exhibits.
4. “CCC” shall have the meaning set forth in the recitals hereto.
5. “Certificate of Initial Compliance” means a certificate to be issued by Multnomah County to HAP pursuant to Section 3.7 of this Agreement.
6. “Close” or “Closing” means the conveyance to HAP by Multnomah County of the Property by the Deed.
7. “Closing Date” means the date set forth in Section 1.1.2.
8. “Conveyance” means the transfer by Multnomah County to HAP of fee simple title to the Property, by means of the Deed and subject to reversion as provided herein.
9. “Deed” means the form of Bargain and Sale Deed conveying fee simple title to the Property to HAP, substantially in the form attached to this Agreement as Exhibit B.
10. “Effective Date” means the date that both Parties have executed this Agreement.
11. “Environmental Abatement” means the testing for and lawful disposition of all Hazardous Substances on the Property (including asbestos, lead paint, and PCBs, if any) as required prior to commencement of the Project in compliance with Environmental Laws.
12. “Environmental Laws” means all federal, state and local laws, ordinances, rules and regulations pertaining to the protection or regulation of the environment that apply to the Property, including without limitation, ORS chapter 466, OAR Chapter 341, RCRA

(defined herein), CERCLA (defined herein), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.

13. “Environmental Report” means the “Phase I Environmental Site Assessment” dated August 23, 2005 prepared by Ash Creek Associates for the Portland Development Commission, as updated by a “level 1” update dated April 18, 2008, and a “level 2” update dated May 17, 2008.
14. “Escrow Agent” means Fidelity National Title, 900 SW 5th Avenue, Portland, Oregon 97204 (Attn: Karleen M Huggins).
15. “Extended Use Period” means a period of sixty (60) years commencing with the date of issuance of the Certificate of Initial Compliance.
16. “Final Permitted Exceptions” shall have the meaning set forth in Section 1.4.2.
17. “Final Termination Date” shall have the meaning set forth in Section 1.6.3.
18. “Hazardous Substances” means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substances as defined in or regulated by 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.
19. “Investor” means, collectively, all limited partners or non-managing members of the Tax Credit Entity.
20. “Mortgage” means a mortgage or deed of trust against the Property, or any portion thereof, approved by Multnomah County and recorded in the real property records of Multnomah County, Oregon.
21. “Mortgagee” means the holder of any Mortgage, approved by Multnomah County, affecting or encumbering the Property or any portion thereof, together with any successor or assignee of such holder. The term “Mortgagee” shall include any Mortgagee as owner of the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a Mortgage but shall not include (a) any other party who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee.
22. “Permanent Housing” means housing with no limit on length of stay and no requirement that tenants move out so long as the tenant(s) is in compliance with their lease and the terms of the restrictive covenants applicable to the unit.
23. “Permanent Supportive Housing” means a unit of Permanent Housing that is: (a) subject to restrictive covenants requiring that the unit be affordable to single individual

households with incomes equal to or less than 30% of area median gross income, or multiple individual households with incomes equal to or less than 50% of area median gross income, as defined by the U.S. Department of Housing and Urban Development and the restrictive covenants applicable to the unit; (b) occupied by a person who has access to Services; and (c) occupied by a person or household who is, or was at the time of initial occupancy of the unit, a PSH Tenant.

24. “Permit of Entry” means the permit issued by the County to HAP prior to execution of this Agreement.
25. “Permitted Exceptions” shall have the meaning set forth in Section 1.4.1.
26. “Project” means, depending on the context, (a) rehabilitating the existing structure on the Property, or (b) the apartment complex, as so rehabilitated.
27. “Project Budget” means the chart of sources and uses of funds for the Project and detailed listing of estimated Project costs that will be furnished by HAP to Multnomah County.
28. “Project Completion” shall have the meaning set forth in Section 3.5.
29. “PSH Tenant” means an individual or family: (a) earning up to 30% of area median gross income (for individuals) or 50% of area median gross income (for families); (b) homeless or at risk of homelessness, including those who may be leaving other systems of care (corrections, hospitalization, etc.) without a place to live; (c) with chronic health conditions that are at least episodically disabling (*e.g.* mental illness, HIV/AIDS, and substance use issues) or other substantial barriers to housing stability; (d) who would not be able to retain stable housing without tightly linked supportive services; and (e) who is a member of a specific target population.
30. “Release” means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
31. “Seller’s Documents” shall have the meaning set forth in Section 1.6.1(b)(x).
32. “Services” means those services described in Exhibit D.
33. “Tax Credit Entity” shall have the meaning set forth in the recitals hereto.
34. “Termination Date” shall have the meaning set forth in Section 1.6.2(a).
35. “Title Report” shall have the meaning set forth in Section 1.4.1.
36. “Unavoidable Delay” shall have the meaning set forth in Section 7.8.1.

1. GENERAL TERMS OF CONVEYANCE

1.1 Conveyance by Deed.

1.1.1 **Deed.** Subject to the terms, covenants and conditions of this Agreement, at Closing Multnomah County will convey the Property by the Deed to HAP.

1.1.2 **Closing.** The conveyance of the Property to HAP shall occur in an escrow closing at the office of the Escrow Agent _____, 2009 (the "Closing Date"), subject to extension to not later than the Final Termination Date as provided in Section 1.6.3. or such earlier date as the parties may agree to in writing. At Closing, HAP shall accept such conveyance from Multnomah County.

1.2 **Conveyance of Property.** Upon satisfaction of the Conditions Precedent to Conveyance provided in Section 1.6 hereof, Multnomah County will convey the Property to HAP by Deed.

1.3 **Consideration for Conveyance of the Property.** The sole consideration for the Property is HAP's agreements to rehabilitate the Property so that it is suitable for the uses described in this Agreement, and to cause the Services to be provided at the Project as described in this Agreement.

1.4 **Title Review.**

1.4.1 Within ten (10) days after the Effective Date, Multnomah County will deliver to HAP a preliminary title report from the Escrow Agent and copies of all exception documents (the "Title Report"). HAP will have twenty (20) days after receiving the Title Report to notify Multnomah County in writing if HAP objects to any item in the Title Report. Those items to which HAP does not object are the "Permitted Exceptions". If HAP objects to any item, then Multnomah County shall have twenty (20) days after receiving HAP's written objection to notify HAP in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If Multnomah County does not give its response to HAP's objections within the twenty (20) day time period or if Multnomah County refuses to remove any such objected to exceptions, HAP shall have twenty (20) days to terminate this Agreement by written notice to Multnomah County. If HAP does not terminate the Agreement, the exceptions that HAP originally objected to and that Multnomah County refused to remove or failed to respond to will be deemed additional Permitted Exceptions.

1.4.2 From and after the Effective Date, Multnomah County will not suffer or permit any liens, encumbrances or other exceptions to title to the Property without HAP's prior written consent, which consent shall not be unreasonably withheld. HAP may obtain an update to the Title Report at any time prior to the Closing. HAP shall promptly give to Multnomah County a copy of any updated Title Report. HAP may object to Multnomah County in writing to any exceptions (which are not Permitted Exceptions or which have not been approved by HAP as provided in this Section 1.4.2) to title that appear on the updated Title Report as a result of Multnomah County's actions or inactions. Within ten (10) days of HAP's written notice to Multnomah County described in the preceding sentence, Multnomah County shall remove the objected to exceptions to title prior to Closing. If Multnomah County fails to remove any such objected to exceptions, HAP may terminate this Agreement with ten (10) days written notice to Multnomah County or seek extension of the Closing Date pending removal of those exceptions that are capable of removal. The Permitted Exceptions identified and established pursuant to

Section 1.4.1 above together with any exceptions that HAP approves pursuant to this Section 1.4.2 are the “Final Permitted Exceptions”.

1.5 Title Insurance, Survey, Property Taxes and Closing Costs.

1.5.1 The Escrow Agent shall deliver to HAP at Closing an ALTA Owner’s Policy of Title Insurance covering the Property, subject only to the printed exceptions appearing in an ALTA extended form Owner’s Policy of Title Insurance and the Permitted Exceptions, with coverage in an amount equal to \$_____ (the “Title Policy”) or an irrevocable commitment to issue same to HAP. Multnomah County agrees to execute any affidavits or other documents required by the Escrow Agent to enable HAP to obtain such coverage.

1.5.2 HAP shall pay the following costs in connection with Closing: (a) all real estate excise taxes; (b) the premium payable for the standard coverage portion of the Title Policy (excluding, without limitation, any premiums or other charges relating to any extended coverage or endorsements requested by HAP); (c) the costs for recording a Memorandum of this Agreement and the Deed; (d) escrow fees charged by the Escrow Agent; and (e) all other Closing costs. Each Party shall pay the fees of its own attorneys, accountants and other professionals. HAP shall be responsible for the Property’s pro-rated share of special assessments, or any payments on special assessments, due after the Closing Date.

1.6 Conditions Precedent to Conveyance.

1.6.1 **Conditions.** HAP and Multnomah County are not obligated to Close the Conveyance unless the following conditions are satisfied to the reasonable satisfaction of the benefited Party. The Party benefited by a particular condition shall not unreasonably withhold, condition or delay acknowledgment that the condition has been satisfied.

(a) To the satisfaction of both Multnomah County and HAP, there shall be no litigation pending that prevents Multnomah County or HAP from performing their respective obligations under this Agreement.

(b) To HAP’s reasonable satisfaction:

(i) Any required building permits shall have been issued by the City of Portland.

(ii) HAP shall have determined that Multnomah County has title to the Property subject only to the Final Permitted Exceptions.

(iii) HAP’s lenders shall have agreed to the final form of the Deed and any documents necessary to close the private financing.

(iv) Escrow Agent shall have issued to HAP a binding commitment (a) to issue to HAP an Owner’s Extended Title Insurance Policy covering the Property in an amount not less than the total cost of performing the Project in form and substance satisfactory to HAP, subject only to the Final Permitted Exceptions; and (b) to issue a Lender’s

Extended Title Insurance Policy covering the fee interest in the Property in the amount of the loans to be provided to HAP in form and substance satisfactory to any lender identified by HAP.

(v) Multnomah County's representations and warranties stated in Section 1.7 herein are true and correct as of the Closing Date.

(vi) HAP and/or the Tax Credit Entity shall have obtained financing for the Project reasonably satisfactory to HAP, including (A) an equity contribution to the Tax Credit Entity from the Investor based on an allocation of federal low-income tax credits from the Oregon Housing and Community Services Department, (B) an equity contribution to the Tax Credit Entity from the Investor based on the Project's qualification for federal rehabilitation (*i.e.* historic) tax credits, (C) Housing Plus Funds from the Oregon Housing and Community Services Department, (D) money resulting from the transfer to investors of Business Energy Tax Credits provided by the Oregon Department of Energy for weatherization, (E) a Mental Health Housing Grant, (E) in tax increment financing from the Portland Development Commission, (F) a Green Communities Grant from the Green Communities Initiative, (G) a Weatherization Grant from the Multnomah County Department of Community and Family Services, and/or (H) HAP's available funds (whether in the form of a loan or capital contribution to the Tax Credit Entity) to finance Public Housing units at the Project.

(vii) Multnomah County shall not be in default under any material term or condition of this Agreement. As of Closing, if requested by HAP, Multnomah County shall represent to HAP that there are no material defaults by Multnomah County under this Agreement or events which with the passage of time would constitute a material default by Multnomah County under this Agreement.

(viii) HAP, or a third-party developer retained by HAP or the Tax Credit Entity, shall have secured all land use approvals for the Project required by the City of Portland and no appeal of any required approval or permit shall have been filed, and the time for any such appeal shall have expired. If an appeal has been filed, it shall have been finally resolved.

(ix) HAP shall have reviewed and approved the results of its due diligence investigation of Project feasibility including, without limitation, survey, title, geotechnical, environmental, land use, parking and financing.

(x) Multnomah County has made available to HAP a copy of all surveys, studies, reports and other documents or information in Multnomah County's possession or reasonably available to Multnomah County regarding the Property ("Seller's Documents") and shall, upon request by HAP, assist HAP with obtaining updates or reliance letters from the providers thereof, at HAP's expense.

(c) To Multnomah County's reasonable satisfaction:

(i) HAP shall have provided to Multnomah County a certified copy of the resolution adopted by its board of commissioners, authorizing execution of this Agreement and performance of the transactions contemplated hereby.

(ii) HAP shall not be in default under any material term or condition of this Agreement. As of Closing, HAP shall represent to Multnomah County that there are no material defaults by HAP under this Agreement or events which with the passage of time would constitute a material default by HAP under this Agreement.

(iii) HAP's representations and warranties stated in Section 1.8 herein are true and correct as of the Closing Date.

(iv) HAP shall have demonstrated financial feasibility for the Project by closing adequate financing to fund the Project or by providing to Multnomah County copies of binding commitment letters for financing from lenders, subject to standard conditions to closing, and consistent with the Project Budget.

(v) HAP shall have obtained the approvals and agreements described in clauses (i), (iii), (vi) and (viii) of Section 1.6.1(b).

(vi) The plans approved for the building permit describe facilities that are adequate to provide the Services described in Exhibit D, with the number and configuration of units described in Exhibit C.

1.6.2 Elections upon Non-Occurrence of Conditions. Except as provided below, if any condition in Section 1.6.1 is not fulfilled to the reasonable satisfaction of the benefited Party or Parties on the Closing Date, subject to any extension that may be granted pursuant to this Section 1.6, then such benefited Party may elect to:

(a) Terminate this Agreement by written notice to the other Party, which termination shall become effective sixty (60) days after the notice of termination is given ("Termination Date") unless, before the sixty (60) day period ends, the other Party fulfills such condition or conditions to the reasonable satisfaction of the benefited Party or Parties; or

(b) Waive in writing the benefit of that condition precedent to its obligation to perform under this Agreement, and proceed in accordance with the terms hereof; or

(c) Extend the Termination Date by which the other Party must satisfy the applicable condition, if the other Party can satisfy the condition and if the other Party agrees in writing to the extension.

1.6.3 Final Termination Date. If all of the conditions precedent under Section 1.6.1 have not been satisfied, waived or otherwise resolved pursuant to this Agreement by the date sixty (60) days after the Closing Date, then this Agreement shall automatically terminate 60 days after the Closing Date ("Final Termination Date") unless the Final Termination Date is extended by agreement of the Parties prior to Final Termination Date, or unless the failure of satisfaction of the conditions precedent is the result of Unavoidable Delay as defined in Section 7.8.1. The maximum extension of the Final Termination Date shall be 90 days from the Closing Date. If the Agreement is terminated for failure of satisfaction of any of the conditions precedent, and such failure is not the result of a breach of this Agreement by either Party, then the obligations of the Parties to each other under this Agreement shall terminate, with neither obligations nor remedies accruing to either Party.

1.7 **Multnomah County Representations and Warranties.** Multnomah County represents that, except as disclosed in Seller's Documents:

1.7.1 Except as has been disclosed to HAP in the Environmental Report and to Multnomah County's knowledge, there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, Release or production of Hazardous Substances, or other dangerous or toxic substances or solid wastes on the Property, or underground storage tanks existing on the Property, except in compliance with Environmental Laws currently in effect, and Multnomah County has not received notice of the Release of any Hazardous Substances on the Property.

1.7.2 Multnomah County 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 Multnomah County in connection with the execution of this Agreement and the transactions contemplated hereby.

1.7.3 Multnomah County is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

1.7.4 To Multnomah County's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, Multnomah County's ability to perform its obligations under this Agreement or HAP's ability to perform the Project except that HAP is advised that the City of Portland Fire Marshall has determined that additional fire safety improvements are required to be installed at the Property.

1.7.5 Except as provided herein or otherwise disclosed in writing, to Multnomah County's knowledge, Multnomah County has not received or given any notice stating that the Property is in violation of any applicable laws, rules, regulations, ordinances and other governmental requirements; provided, however that Multnomah County makes no representation as to the availability or suitability of utility connections to the Property. HAP acknowledges, in particular, that the electrical service to the building is not adequate for the Project.

1.7.6 No representation, warranty or statement of Multnomah County in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

1.7.7 To Multnomah County's knowledge, as of the date hereof, there are no defaults by Multnomah County under this Agreement or events that with the passage of time would constitute a default of Multnomah County under this Agreement.

1.7.8 The existing building(s) on the Property currently are, and have been since May 2007 vacant.

1.7.9 As used in this section, "***Multnomah County's knowledge***" shall mean the actual knowledge of the managerial and supervisory personnel of Multnomah County having direct responsibility for the supervision of the Property, without any duty of inquiry or investigation.

1.8 **HAP Representations and Warranties.** HAP represents that:

1.8.1 HAP has full power and authority to enter into and perform this Agreement in accordance with its terms, and HAP has taken all requisite action in connection with the execution of this Agreement and the transactions contemplated hereby.

1.8.2 No representation, warranty or statement of HAP in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

1.8.3 As of the date hereof there are no defaults by HAP under this Agreement or events that with the passage of time would constitute a default of HAP under this Agreement.

1.8.4 HAP enters into this Agreement without reliance upon any verbal representation of any kind by Multnomah County, its employees, agents or consultants regarding any aspect of the Property, the Project, its feasibility, financing or compliance with any governmental regulation.

2. PREPARATION OF THE PROPERTY

2.1 **Permits.** HAP, at its own cost, will design, perform, fund and obtain permits for the Project.

2.1 **Termination of Leases; Relocation of Tenants.** Multnomah County represents and warrants that there are no tenants of the Property and that all leases with respect to the Property (and any part thereof) have expired or have otherwise been terminated. Multnomah County agrees that it will not lease any portion of the Property to any tenant after the Effective Date.

2.2 **Utility Service.** Multnomah County makes no representation as to the availability or suitability of utility connections to the Property. HAP shall pay any and all costs of removal, installation, connection, or upgrade of new or existing utilities to serve the Project.

2.3 **Subsurface and Surface Conditions.** The Property shall be conveyed from Multnomah County to HAP in "as is" condition. Except as otherwise specifically provided in this Agreement, Multnomah County makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Property for any improvements to be performed by HAP, and, except for representations and warranties otherwise provided by Multnomah County in this Agreement, HAP warrants that it has not relied on any representations or warranties made by Multnomah County as to the environmental condition, the suitability of the soil conditions or any of the conditions of the Property for any improvements to be performed by HAP. Except for breach of any of Multnomah County's representations and warranties expressly set forth in this Agreement, HAP agrees that Multnomah County will not be liable for any loss, cost or damage that may be caused or incurred by HAP by reason of any such soil or physical conditions on the Property. Multnomah County shall allow HAP free access to Multnomah County's records with respect to such conditions.

2.4 **Plan Review and Approval.** HAP shall submit plans to Multnomah County for review and approval prior to the Closing Date. Multnomah County's approval shall be limited to a determination whether the plans describe facilities that are adequate to provide the Services described in Exhibit D, with the number and configuration of units described in Exhibit C.

3. COMPLETION OF PROJECT

3.1 **Project Financing.** HAP will be responsible for obtaining all financing and equity funds necessary to acquire the Property and complete the Project.

3.2 **Diligent Completion.** Subject to the terms and conditions of this Agreement, HAP covenants to diligently pursue and complete the Project within sixteen (16) months after the Closing Date, subject to Unavoidable Delays as provided in Section 7.8.1.

3.3 **Inspection and Property Access.** Multnomah County has, as of the date of this Agreement, provided HAP with a written permit of entry ("Permit of Entry") to allow HAP and HAP's employees, agents and consultants to enter upon the Property at all times to carry out the purposes of this Agreement. Such permit shall remain in effect until Closing.

3.4 **Use of the Property.** HAP covenants and agrees for itself, its successors, its assigns and every successor-in-interest to the Property or any part thereof, that upon completion of the Project, HAP or such successors and assignees will devote the Property (a) to use as Affordable Housing throughout the Extended Use Period and (b) to use as Permanent Supportive Housing for which Services consistent with the provisions of Exhibits C and D are provided for at least thirty (30) years after the Certificate of Initial Compliance is issued; provided, however, that HAP's covenant is subject to any reduction of funding by any governmental entity of any of the programs or sources described in Exhibit D and the other provisions of Section 7.8.1. This Section 3.4 shall run with the land and survive the issuance of any Certificate of Initial Compliance.

3.5 **Project Completion.** The project shall be deemed complete ("Project Completion") when the work described in the building permits issued by the City of Portland has been approved by City of Portland, as evidenced by the City's granting of one or more temporary certificates of occupancy for the Project.

3.6 **Staffing and Operation of Project.** HAP covenants and agrees that from and after the Effective Date, HAP's Executive Director will be the full-time representative with authority to act on behalf of HAP (or the Tax Credit Entity), or will notify Multnomah County in writing if another person has been given such authority. Until the Property is sold or leased to the Tax Credit Entity, HAP will own, operate and maintain the Project at its sole cost and expense.

3.7 **Certificate of Initial Compliance.**

3.7.1 **When HAP is Entitled to Certificate of Initial Compliance.** Upon HAP's request after Project Completion, Multnomah County will furnish HAP with a Certificate of Initial Compliance for the Project substantially in the form attached hereto as Exhibit E.

3.7.2 **Meaning and Effect of the Certificate of Initial Compliance.** The Certificate of Initial Compliance shall provide for termination of obligations under this Agreement and limitation of remedies of Multnomah County as expressly provided for therein.

3.7.3 **Form of Certificate of Initial Compliance; Procedure Where Multnomah County Refuses to Issue.** A Certificate of Initial Compliance shall be in the form attached as Exhibit E. If Multnomah County refuses or fails to provide a Certificate of Initial Compliance in accordance with this section, then Multnomah County, within fifteen (15) days after HAP provides a written request together with reasonably satisfactory proof of Project Completion, shall provide HAP with a written statement indicating in detail in what respects HAP has failed to provide such proof of Project Completion and what measures or acts HAP must take or perform to obtain such Certificate of Initial Compliance. Multnomah County's failure to furnish HAP with such detailed written statement within such fifteen (15) day period shall be deemed Multnomah County's approval of HAP's request for the Certificate of Initial Compliance.

4. ENVIRONMENTAL MATTERS

4.1 **Indemnification.** HAP shall be responsible for compliance with all Environmental Laws with respect to its business and the operation of the Project from and after the Closing Date, except for matters caused in whole or in part by the act or failure to act of Multnomah County, its employees, agents, contractors, or invitees.

4.1.1 Except for matters caused in whole or in part by the act or failure to act of Multnomah County, its employees, agents, contractors, or invitees, or the falsity of any representation or warranty of Multnomah County set forth in this Agreement, HAP, subject to the conditions and limitations of Article XI, Section 10 of the Oregon Constitution and the monetary limits of the Oregon Tort Claims Act, ORS 30.260 through 30.300, shall defend, indemnify and hold harmless Multnomah County, its successors and assigns, against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by Multnomah County, its successors or assigns, or asserted against Multnomah County, its successors or assigns, by any other party or parties, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by HAP after the Closing.

4.1.2 Except for matters caused in whole or in part by the act or failure to act of HAP, its employees, agents, contractors, or invitees, Multnomah County, subject to the conditions and limitations of Article XI, Section 10 of the Oregon Constitution and the monetary limits of the Oregon Tort Claims Act, ORS 30.260 through 30.300, shall defend, indemnify and hold harmless HAP, its successors and assigns, against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by HAP, its successors or assigns, or asserted against HAP, its successors or assigns, by any other party or parties, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Multnomah County before the Closing.

The indemnities set forth in this Section 4.1 shall survive the termination of this Agreement and the issuance of any Certificate of Initial Compliance.

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

5. ASSIGNMENT PROVISIONS

5.1 **Transfers before Certificate Issuance.** Because it is a governmental entity, Multnomah County is uniquely benefited by the Project. HAP is uniquely qualified to perform the Project. Except as provided in Section 5.2, HAP shall not, prior to the issuance of the Certificate of Initial Compliance, partially or wholly dispose of or agree to dispose of HAP's interest in this Agreement without the prior written approval of Multnomah County.

5.1.1 Multnomah County may require as conditions to such approval that:

- (a) The transfer is not in violation of other provisions of this Agreement; and
- (b) Any proposed transferee shall have qualifications and financial responsibility acceptable to Multnomah County in its sole discretion; and
- (c) The transfer will not cause a material delay in the completion of the Project.

5.1.2 This prohibition will not apply to (a) any sale of the Property at foreclosure (or a conveyance of the Property in lieu of foreclosure) pursuant to foreclosure thereof by a lender.

5.1.3 The provisions of this Agreement (including, without limitation, this Section) will not prevent, prior to the issuance of the Certificate of Initial Compliance, the granting of easements, licenses or permits to facilitate the Project provided that all such easements, licenses or permits shall be subject to the prior approval of Multnomah County, which approval shall not be unreasonably delayed or withheld.

5.2 **Approved Transfers before Certificate Issuance.** Notwithstanding Section 5.1 above, and provided that HAP provides Multnomah County with copies of all agreements (or drafts thereof) related to the transfer at least fifteen (15) days prior to the effective date of the proposed transfer, and any other information reasonably necessary for Multnomah County to determine whether such transfer complies with the requirements of this Agreement, Multnomah County hereby consents to:

5.2.1 Any Mortgage(s) which HAP may cause to attach to the Property prior to Multnomah County's issuance of the final Certificate of Initial Compliance, provided that Multnomah County has approved the terms of the Mortgage, which approval shall not be unreasonably withheld;

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

5.2.3 Transfer to the Tax Credit Entity. In the event of such transfer, HAP shall remain fully responsible to Multnomah County for the performance of this Agreement through Multnomah County's issuance of the final Certificate of Initial Compliance for the Project.

5.3 **Transfers after Certificate Issuance.** After Multnomah County's issuance of a Certificate of Initial Compliance for the Project, HAP may transfer its interest, or portions of its interest in the Project or this Agreement, without restriction, consent or approval by Multnomah County, provided such transfer is subject to the requirements of Section 3.4.

6. PERMITTED MORTGAGES

6.1. **Effect of Post-Conveyance Rights on Mortgages.** Any and all other post-conveyance rights and remedies of Multnomah County pursuant to this Agreement shall always be subordinate and subject to and limited by, and shall not defeat, render invalid, or limit in any way any lien, Mortgage, or security interest approved by Multnomah County and authorized by this Agreement.

6.2. **Mortgagee Not Obligated To Complete.** Notwithstanding any of the provisions of the Agreement, the Mortgagee or its designee, nor the Investor, for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to complete the Project or to guarantee such completion.

6.3. **Copy of Notice of Default to Mortgagee and Investor.** If Multnomah County delivers any notice or demand to HAP with respect to any breach of or default by HAP in its obligations or covenants under this Agreement, Multnomah County shall at the same time send a copy of such notice or demand to Investor at the last address provided in writing by Investor to Multnomah County, and to each Mortgagee approved by Multnomah County at the last address of such Mortgagee shown in the records of Multnomah County.

6.4. **Mortgagee's and Investor's Options to Cure Defaults.** After any default in or breach of this Agreement by HAP where HAP fails to cure or remedy said default or breach, each Mortgagee and Investor may, at its option, cure or remedy such breach or default within thirty (30) days after passage of the latest date for HAP's cure of the default, or such longer period as may be required to cure the default with diligence, and if permitted by the Mortgagee's loan documents, a Mortgagee may add the cost thereof to the Mortgage debt and the lien of its Mortgage. If the breach or default is with respect to completion of the Project, nothing contained in this Agreement shall be deemed to prohibit the Investor or a Mortgagee, either before or after foreclosure or action in lieu thereof, from completing the Project, provided that the Investor or Mortgagee notifies Multnomah County in writing of its intention to complete the Project in accordance with this Agreement. Any Investor or Mortgagee who properly completes the Project and is substantially providing the Services shall be entitled to issuance of a Certificate of Initial Compliance, upon written request made to Multnomah County following the procedures set forth in Section 3.7 above.

6.5. Amendments or Subordination Agreements Requested by Mortgagee or Investor. Multnomah County shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by the Investor, or Mortgagee proposing to make a loan to HAP (or the Tax Credit Entity) secured by a security interest in all or any part of the Property and/or the Project, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of Multnomah County with respect to the Property. Multnomah County agrees to execute a standard form of mortgage subordination relating to the Property presented by any proposed Mortgagee with respect to a Mortgage. Multnomah County may require that Multnomah County be made an additional beneficiary of any restrictive use or other covenants required by a proposed Mortgagee as a condition of Multnomah County's subordination.

7. DEFAULT; REMEDIES

7.1. Default and Cure.

7.1.1. Default by HAP. A default shall occur if HAP breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after HAP receives written notice from Multnomah County specifying the breach. In the case of a breach which cannot with due diligence be cured within a period of thirty (30) days, a default shall occur if HAP does not commence the cure of the breach within thirty (30) days after HAP receives written notice from Multnomah County and thereafter diligently prosecute to completion such cure within one hundred twenty (120) days after the written notice from Multnomah County. A default also shall occur if HAP makes any assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within sixty (60) days after appointment. Default shall occur, and Multnomah County shall be irreparably harmed by such default, if HAP or its assignee does not substantially provide the Services; provided, however, no such default shall be deemed to have occurred if the Services are reduced, or can no longer be provided, due to a reduction of funding by any governmental entity of any of the programs or sources described in Exhibit D and the other provisions of Section 7.8.1. HAP shall not be in default hereunder for failure to pay any tax, assessment, lien or other charge if HAP in good faith is contesting the same and has furnished an appropriate bond or other undertaking to assure payment in the event HAP's contest is unsuccessful.

7.1.2. Default by Multnomah County. A default shall occur if Multnomah County breaches any material provision of this Agreement including, without limitation, Multnomah County's failure to perform any obligation which is the responsibility of Multnomah County when such performance is due, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Multnomah County receives written notice from HAP specifying the breach or, in the case of a breach which cannot with due diligence be cured within a period of thirty (30) days, if Multnomah County shall not within such thirty (30) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure within one hundred twenty (120) days after written notice from HAP.

7.2. Multnomah County's Pre-Conveyance Remedies. If HAP defaults in any material term of this Agreement before the Property is conveyed to HAP, Multnomah County

may, at its option: (i) terminate this Agreement by written notice to HAP, without waiving any cause of action Multnomah County may have against HAP; or (ii) seek monetary damages against HAP. If Multnomah County terminates this Agreement as provided in this Section 7.2 then HAP shall deliver to Multnomah County within thirty (30) days after such termination, copies of all environmental and engineering documents related to the Project prepared by HAP or prepared for HAP by unrelated third parties. HAP shall further execute such documents as may be necessary to assign HAP's rights in and to any permits relating to the Project which Multnomah County requests be assigned. Project permits may be used by Multnomah County in any manner that Multnomah County deems appropriate with the consent of any party (other than HAP) having approval rights thereunder.

7.3. **Restoration.** If, prior to Project Commencement (including the period prior to Closing), HAP modifies the Property and HAP fails to acquire the Property, HAP shall be obligated to restore the Property to the extent, and in the manner, required by the Permit of Entry. Multnomah County shall not be obligated to reimburse HAP for any costs incurred to so modify the Property.

7.4. **Multnomah County's Post-Conveyance Remedies.** If HAP fails to use the Property as required under Section 3.4 hereof at any time after the completion date in Section 3.2, then Multnomah County may demand in writing that HAP cure such default within sixty (60) days. If HAP does not cure the default within the sixty (60) day period (or in the case that such default is not curable within said sixty (60) day period, if HAP shall have not commenced and be diligently pursuing such cure to completion), then such action or inaction shall create in Multnomah County the following remedies:

7.4.1. **Right to Cure.** Prior to Multnomah County's issuance of the Certificate of Initial Compliance, Multnomah County has the right to cure HAP's default under this Agreement so long as default is not related to HAP's failure to commence preparations for the Project. In the event Multnomah County cures such default, Multnomah County may make demand upon HAP for reimbursement of all reasonable costs associated with such cure within thirty (30) days of demand. Interest on any such costs shall run at the legal rate in Oregon from the date or dates such costs were incurred.

7.4.2. **Right of Legal Action.** Multnomah County may, by mandamus or other suit, action or proceeding at law or in equity, require HAP to perform its obligations and covenants under this Agreement or enjoin any acts or things that may be unlawful or in violation of the rights of Multnomah County under this Agreement.

7.4.3. **Right of Inspection.** Prior to Multnomah County's issuance of the Certificate of Initial Compliance, Multnomah County shall have access to, and may inspect, examine and make copies of, all of the books and records of HAP pertaining to the Project.

7.4.4. **Non-Waiver.** Any delay by Multnomah County in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 7.4 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that Multnomah County should not be constrained because of concepts of waiver, laches or estoppel so as to avoid the risk of being deprived of or limited in

the exercise of the remedy provided in this section or otherwise to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by Multnomah County with respect to any specific default by HAP be considered or treated as a waiver of the rights of Multnomah County with respect to any other defaults by HAP or with respect to any particular default except to the extent specifically waived.

7.4.5. **Mortgagee's Rights.** Multnomah County's remedies under this Section 7.4 are subject to the rights of a Mortgagee or Investor to cure a default and to the other Mortgagee protections specified in Section 6.

7.5. **HAP's Pre-Conveyance Remedies.** If Multnomah County fails to perform any obligation under this Agreement, HAP may, at its option: (i) terminate this Agreement by written notice to Multnomah County without waiving any cause of action HAP may have against Multnomah County; (ii) specifically enforce the obligations of Multnomah County under this Agreement; and (iii) seek monetary damages against Multnomah County.

7.6. **HAP's Post-Conveyance Remedies.** In the event of Multnomah County's material default after Multnomah County conveys the Property to HAP, HAP may specifically enforce the obligations of Multnomah County under this Agreement, and seek monetary damages against Multnomah County.

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

7.8. **Force Majeure.**

7.8.1. Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation created hereunder or progress in respect thereto if the delay in performance of such obligations (the "Unavoidable Delay") is due to causes that are beyond its control, and without its fault or negligence, including but not limited to (a) acts of God, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, and riot, (b) inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, (c) litigation or arbitration relating to zoning or governmental action or inaction pertaining to the Project, delay in the issuance of necessary permits for the Project not caused by the fault of HAP, (d) any reduction of funding by any governmental entity of any of the programs or sources described in Exhibit D, (e) any sustained vacancy attributable to the Permanent Supportive Housing units that cannot be mitigated with PSA Risk Mitigation Pool funds available to HAP and which threatens the Property's financial stability, or (f) malicious mischief, unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar events and/or occurrences beyond the control of such Party; provided, however, that

Multnomah County may not rely on the references herein to acts of the government or governmental action or inaction to excuse its own delays.

7.8.2. It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of Multnomah County or HAP, as the case may be, shall be extended for the period of the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section shall, within five (5) after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and the estimated time of correction. The period(s) of Unavoidable Delay for matters listed Section 7.8.1 shall not exceed 180 days in the aggregate during any one-year period.

8. MISCELLANEOUS PROVISIONS

8.1. **Discrimination.** HAP, for itself and its successor and assigns, agrees that during the preparations for the Project, HAP will not discriminate against any employee or applicant for employment because of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income.

8.2. **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, or (b) when received if personally delivered, and:

In the case of a notice to HAP, addressed as follows:

Housing Authority of Portland
135 SW Ash Street
Portland, OR 97204
Attn. Executive Director

with a copy to:

Jeff Nave
Foster Pepper PLLC
422 W. Riverside Ave., Suite 1310
Spokane, WA 99201-0302

In the case of a notice to Investor, addressed as follows:

Enterprise Community Investment, Inc.
10227 Wincopin Circle
Columbia, MD 21044
Attn: General Counsel

with a copy to:

Craig Emden
Bocarsly, Emden, Cowan, Esmail & Arndt LLP
7200 Wisconsin Avenue, Suite 900
Bethesda, MD 20814

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

Director, Department of County Human Services
421 SW Oak
Portland, OR 97204

and

Director, Multnomah County Facilities and Property Management
401 North Dixon
Portland, Oregon 97227

with a copy to:

Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214

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.

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

8.4. **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.

8.5. **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 Multnomah County or HAP 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.

8.6. **Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the U.S. Bankruptcy Code, is

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

8.7. **Choice of Law.** Oregon law shall govern this Agreement.

8.8. **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.

8.9. **Legal Purpose.** HAP agrees that it shall use the Property solely for lawful purposes.

8.10. **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,

8.11. **Entire Agreement.** This Agreement and the attachments hereto are the entire agreement between the Parties. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations made by either Party, implied or express, other than those contained in this Agreement.

8.12. **Amendments and Modifications.** Any modifications to this Agreement shall be made in writing and executed by both Parties, and approved by Multnomah County. The Parties recognize that circumstances may change and that it may be in the interest of both Parties that this Agreement be amended from time to time. For this reason, each Party will consider changes that may be proposed by the other during the term of this Agreement. The Chair, Multnomah County Board of County Commissioners shall have the authority to approve modifications to this Agreement on behalf of Multnomah County.

8.13. **Successors and Assigns.** Subject to the provisions of Section 5, the benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.

8.14. **Place of Enforcement.** Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Multnomah County, or the United States District Court for the District of Oregon in Portland, Oregon.

8.15. **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.

8.16. **Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, Multnomah County is specifically not obligating itself or any other agency with respect to any discretionary action relating to preparations for or operation of the Project, including, but not limited to funding of Services, or rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.

8.17. **Approvals.** Where approvals of Multnomah County are required, Multnomah County will approve or disapprove within fifteen (15) business days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary. If Multnomah County fails to approve or disapprove within the second 15-day period, such Multnomah County failure shall be deemed an approval. Any disapproval shall state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to Multnomah County's sole discretion in this Agreement. HAP, 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 Multnomah County within forty-five (45) days after receipt of the notice of disapproval.

8.18. **Approval by Multnomah County.** Unless specified to the contrary elsewhere in this Agreement as to a particular consent or approval, whenever consent or approval by Multnomah County is required under the terms of this Agreement, all such consents or approvals shall be given in writing from the Chair, Board of County Commissioners or from such other Multnomah County staff as the Chair has designated to give approvals.

8.19. **Recording of Memorandum of Agreement.** So long as HAP is not in default herein HAP may at any time record a Memorandum of this Agreement. The form of the Memorandum of Agreement is attached as Exhibit F to this Agreement. When Multnomah County issues to HAP a Certificate of Initial Compliance or if the Agreement is terminated, the Parties shall cooperate to promptly execute and record an appropriate amendment to this Agreement or termination of Agreement to reflect the issuance of the Certificate of Initial Compliance or the termination of this Agreement as the case may be.

8.20. **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. All periods of time shall be deemed calendar days unless specifically designated as Business Days. Business Days shall mean Monday through Friday excluding state or federal legal holidays.

8.21. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

8.22. **Good Faith and Reasonableness.** The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a Party being given “sole discretion” or “sole judgment.”

8.23. **Dispute Resolution.** Except as provided below, all disputes arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal proceedings. The Parties shall endeavor to resolve any disputes initially by mediation. The mediator shall be an individual mutually acceptable to the Parties. A request for mediation shall be filed in writing with the other Party. The Parties shall share the mediator’s fee and any filing fees, equally. The mediation shall be held in Portland, Oregon at a location mutually acceptable to the Parties. The mediation hearing shall occur within thirty (30) days of the request for mediation. Notwithstanding the foregoing, the Parties shall not be required to submit to mediation any claims in equity, such as claims for injunctive relief.

8.24. **Time is of the Essence** of this Agreement.

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

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

[signature pages follow]

Multnomah County:

MULTNOMAH COUNTY, a political subdivision
of the State of Oregon

By: _____
_____, Chair of the Board of County
Commissioners

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

The foregoing instrument was personally acknowledged before me this ____ day of _____, 2009, by _____, who being duly sworn, did say that he or she is the Chair of the Board of County Commissioners of Multnomah County, a political subdivision of the State of Oregon, and that the foregoing instrument was signed on behalf of said political subdivision, and acknowledged said instrument to be its voluntary act and deed.

Notary Public for Oregon
My Commission expires: _____

Reviewed:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

John S. Thomas
Deputy County Attorney

HAP:

HOUSING AUTHORITY OF PORTLAND, a
public body corporate and politic of the State of
Oregon

By: _____
Steven D. Rudman, Executive Director

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

The foregoing instrument was personally acknowledged before me this ____ day of _____, 2009, by Steven D. Rudman, who being duly sworn, did say that he is the Executive Director of the Housing Authority of Portland, a public body corporate and politic of the State of Oregon, and that the foregoing instrument was signed on behalf of said housing authority, and acknowledged said instrument to be its voluntary act and deed.

Notary Public for Oregon
My Commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

Lots 1, 2, 3 and the North 10 feet of Lot 4, Block 262, CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

**EXHIBIT B
DEED FORM**

After recording return to, and until a change is requested, all tax statements shall be sent to the the following address:

Housing Authority of Portland
Attn. Development and Community Revitalization
135 S.W. Ash Street
Portland, OR 97204

**BARGAIN AND SALE DEED
(Statutory Form)**

Multnomah County, a political subdivision of the state of Oregon, Grantor, conveys to the Housing Authority of Portland, a public body corporate and politic of the State of Oregon, Grantee, the following described real property:

See Attached Exhibit 1

The true consideration for this conveyance is \$ 0. However, the actual consideration consists of or includes other property or value given or promised which is the whole consideration.

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

Dated this ____ day of _____, 2009.

MULTNOMAH COUNTY, a political subdivision
of the State of Oregon

By: _____
_____, Chair of the Board of County
Commissioners

Exhibit 1

Legal Description

Lots 1, 2, 3 and the North 10 feet of Lot 4, Block 262, CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

EXHIBIT C
PREPARATION OF THE PROPERTY

The Project consists of preparation of the Property as follows:

1. The Project facility shall consist of an 108-unit housing complex consisting of 90 studio and 18 one-bedroom apartments designated as follows:
 - 57 Affordable Housing units
 - 25 Permanent Supportive Housing units for individuals with mental health and/or addiction issues,
 - 25 Permanent Supportive Housing units for chronically homeless individuals, and
 - 1 unit (one-bedroom apartments) for a live-in apartment manager.
2. The Project includes all of the planning, design, engineering, financing and construction activities necessary to complete the Project.
3. The Project includes all of the preparation of the Property as required by governmental authorities with jurisdiction over the Property in order to provide the Services from the Property.

Upon completion of the Project, HAP shall offer the Services described in Exhibit D to the eligible populations described therein.

EXHIBIT D SERVICES

- 1 The following services shall be provided to serve all individuals occupying units at the Property:
 - 1.1 Establish a pro-social, creative community to promote a safe and healthy environment at the Property, and actively promote a positive peer culture throughout the Property.
 - 1.2 Focus on linkages and referrals to community resources, link tenants to services, lead education and recovery groups, and work with property management to promote lease compliance.
 - 1.3 Supervise program staff and coordinate services at the Property.

- 2 The following additional services shall be provided to chronically homeless individuals occupying Permanent Supportive Housing units:
 - 2.1 These services will be arranged by HAP through CCC and/or other sponsor organizations with qualifications similar to those of CCC on the date hereof.
 - 2.2 Appropriate level of case management and housing retention services.
 - 2.3 Services will be individualized by resident and will consist of individual and group work in addition to consultation and coordination with other on-site program staff.
 - 2.4 The services focus will be on recovery-oriented services, assistance in obtaining and/or maintaining available benefits, support with developing or retaining familial ties, and supportive counseling.
 - 2.5 A major focus of case management will be to support tenants in obtaining and utilizing the skills needed to live independently.

- 3 The following additional services shall be provided to individuals with mental health and addictions issues who are occupying Permanent Supportive Housing units:
 - 3.1 These services will be arranged by HAP through sponsor organizations with qualifications similar to those of CCC on the date hereof.
 - 3.2 Appropriate level of case management and housing retention services.
 - 3.3 Services will be individualized by resident and will consist of individual and group work in addition to consultation and coordination with other on-site program staff.

- 4 HAP will attempt to use, to the extent practicable, the following rent subsidies to provide housing for as many PSH tenants as possible who are unable to pay rent from other income:
 - 4.1 Project-based Section 8.
 - 4.2 Shelter+Care vouchers through CCC's Community Engagement Program, if and as they become available.
 - 4.3 Shelter+Care vouchers through other providers in the community serving a population appropriate from residency in the building, if and as they become available.
 - 4.4 Public Housing Operating Subsidy.
 - 4.5 Other sources, if and as they become available.
- 5 HAP will make reasonable efforts to pursue other resources that can further enhance services at the Property.

EXHIBIT E
CERTIFICATE OF INITIAL COMPLIANCE

MULTNOMAH COUNTY (the "County"), a political subdivision of the State of Oregon, hereby certifies that the HOUSING AUTHORITY OF PORTLAND ("HAP"), a public body corporate and politic of the State of Oregon, has satisfactorily completed the Project and commenced providing the Services, as such Project and Services are described in the Agreement for Disposition of Property for the Martha Washington Apartments, dated _____, 2009 (herein called the "ADP"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. _____, on _____, 2009. Capitalized terms used herein without definition shall have the meaning ascribed to them in the ADP.

The County hereby certifies that as of the date of this Certificate, the Services are being performed to the County's satisfaction, except for any insubstantial items which are being addressed by HAP.

This Certificate of Initial Compliance is and shall be a conclusive determination of the satisfaction of all of the agreements, covenants, and conditions contained in the ADP with respect to the obligations of HAP, its successors and assigns, as to the completion of the Project.

Further, any party acquiring, leasing or taking a mortgage, security interest or other interest in the Project or any portion of the Project shall not (because of such purchase or lease) have any obligation under the ADP with respect to the completion of the Project, and

The County shall hereafter not have, nor be entitled to exercise, any rights or remedies or controls that it may otherwise have been entitled to exercise under the ADP with respect to the completion of the Project, or as a result of a default in or breach of any provisions of the ADP relating to completion of the Project by HAP, or by any successors in interest or assigns of HAP. The County specifically reserves the County's right to enforce HAP's obligations under the ADP to provide the Services during the 30-year period described in Section 3.4 of the ADP and to provide Affordable Housing during the Extended Use Period by injunction, order for specific performance, claim for damages, or any other remedy that may be available at law or in equity.

IN WITNESS WHEREOF, the County has caused this instrument to be executed this ____ day of _____, 2009.

MULTNOMAH COUNTY, a political subdivision
of the State of Oregon

By: _____
Name:
Title:

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

The foregoing instrument was personally acknowledged before me this ____ day of _____, 2009, by _____, who being duly sworn, did say that he or she is the _____ of Multnomah County, a political subdivision of the State of Oregon, and that the foregoing instrument was signed on behalf of said political subdivision, and acknowledged said instrument to be its voluntary act and deed.

Notary Public for Oregon
My Commission expires: _____

EXHIBIT F

Recording requested by
and when recorded return to:

Multnomah County Attorney
501 SE Hawthorne, Suite 500
Portland, OR 97214

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Memorandum”) is made as of this ____ day of _____, 2009, by and between MULTNOMAH COUNTY, a political subdivision of the State of Oregon (“County”), and the HOUSING AUTHORITY OF PORTLAND, a public body corporate and politic of the State of Oregon (“HAP”).

RECITALS

- A. County is the owner of that certain real property located in the County of Multnomah, State of Oregon, more particularly described on Exhibit 1 (the “Property”).
- B. County and HAP entered into an Agreement for Disposition of Property, dated _____, 2009 (the “Agreement”), whereby County agreed to sell, and HAP agreed to purchase, the Property.
- C. The Agreement imposes certain obligations on HAP with respect to preparations for and provision of certain services at the Property (the “Services”).
- D. County and HAP now desire to provide constructive notice of the Agreement.

AGREEMENT

- 1. County has agreed to sell, and HAP has agreed to purchase, the Property in accordance with the terms and conditions set forth in the Agreement.
- 2. After conveyance of the Property by County to HAP, the parties have continuing obligations to each other with respect to the provisions of Affordable Housing and the Services, as described in the Agreement.
- 3. This Memorandum may be modified or terminated only as provided in the Agreement.
- 4. This Memorandum has been executed, acknowledged, and recorded solely for the purpose of providing constructive notice of the Agreement. If any inconsistency or conflict arises between the provisions of the Memorandum and the Agreement itself, the terms, conditions, and covenants of the Agreement are to control. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agreement. This Memorandum may

be executed in one or more counterparts, which when taken together will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum on the day and year first above written.

“COUNTY”

“HAP”

MULTNOMAH COUNTY, a political subdivision of the State of Oregon

HOUSING AUTHORITY OF PORTLAND, a public body corporate and politic of the State of Oregon

By: _____

By: _____

Name: _____

Steven D. Rudman, Executive Director

Title: _____

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

The foregoing instrument was personally acknowledged before me this ____ day of _____, 2009, by _____, who being duly sworn, did say that he or she is the _____ of Multnomah County, a political subdivision of the State of Oregon, and that the foregoing instrument was signed on behalf of said political subdivision, and acknowledged said instrument to be its voluntary act and deed.

Notary Public for Oregon
My Commission expires: _____

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

The foregoing instrument was personally acknowledged before me this ____ day of _____, 2009, by Steven D. Rudman, who being duly sworn, did say that he is the Executive Director of the Housing Authority of Portland, a public body corporate and politic of the State of Oregon, and that the foregoing instrument was signed on behalf of said housing authority, and acknowledged said instrument to be its voluntary act and deed.

Notary Public for Oregon
My Commission expires: _____

Exhibit 1

Lots 1, 2, 3 and the North 10 feet of Lot 4, Block 262, CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.