

**AGREEMENT FOR DISPOSITION
OF PROPERTY
Eastern Lots of Block U**

THIS AGREEMENT FOR DISPOSITION OF PROPERTY (this "Agreement") is made as of _____, 2012 (the "Effective Date"), by and between the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND HOUSING BUREAU ("PHB")**, and **MULTNOMAH COUNTY**, a political subdivision of the State of Oregon ("**COUNTY**"). PHB and COUNTY are referred to jointly in this Agreement as "Parties" and individually as a "Party."

RECITALS:

1. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, the Portland Development Commission ("PDC") has undertaken a program for the development and redevelopment of blighted areas within the city limits and in connection therewith prepared and approved an Urban Renewal Plan for the River District Urban Renewal Area (the "URA"), which was approved by the City Council of the City of Portland on October 21, 1998 by Ordinance No. 172808 (as amended from time to time and as constituted on the date hereof, the "Urban Renewal Plan"), and recorded in the real property records of Multnomah County, Oregon.
2. In July, 2010, in connection with a governmental reorganization, PDC transferred title to certain properties and responsibility for a number of agreements for redevelopment consistent with the Urban Renewal Plan to PHB through a set of related agreements between PDC and PHB (the "IGAs").
3. Under the IGAs, PHB acquired real property of 17,500 square feet located in northwest Portland, Oregon generally bounded by NW Sixth Avenue, NW Hoyt Street, and NW Irving Street from the PDC, comprising the vacant, easterly portion of Block U, adjacent to the newly opened Bud Clark Commons, and further described as Lots 1, 4, 5 and 8, Block U, CITY OF PORTLAND, Multnomah County, Oregon (the "Property") and assumed responsibility for an agreement with HOME FORWARD, an Oregon public body corporate and politic ("HOME FORWARD"), that gave HOME FORWARD the exclusive right to present a proposal to PHB for the development of the Property through July 31, 2012, as extended, and further provides that, if the proposal is accepted, the Property may be transferred to HOME FORWARD at no cost (the "Option to Present Development Proposal").
4. HOME FORWARD is an independent body politic established in 1941 as the Housing Authority of Portland by resolution of the Portland City Council, and is a competent real estate developer as evidenced by many successful affordable housing projects developed over the past decade in partnership with PHB.

5. Pursuant to the Option to Present Development Proposal, HOME FORWARD worked with COUNTY to prepare a Feasibility Study which outlined, in general, the requirements of the Multnomah County Health Department (“MCHD”) building, developed a conceptual analysis of MCHD’s requirements for its new headquarters, administrative offices and health clinics, established the Project’s suitability for the Property, and, in December 2011, presented a preliminary proposal to PHB for the development of the Property on behalf of COUNTY.

6. As a whole, the MCHD serves more than 119,000 clients in its primary care, dental, school based health centers and corrections health clinics. Primary care services are provided at eight clinic locations in the greater Portland, Oregon area including a building originally constructed in 1923 at 426 SW Stark Street (the “McCoy Building”) which serves as the MCHD headquarters, and houses administrative offices in addition to some clinical services. The COUNTY has determined that the McCoy Building inadequately meets its current and future operational needs.

7. HOME FORWARD and COUNTY have entered into an Intergovernmental Agreement, a copy of which is attached hereto as Exhibit A and made a part hereof (the “Development IGA”) and have taken preliminary steps to pursue development of a new 90,000 square foot, concrete building on the Property, to house, among other potential County-approved uses and functions, MCHD headquarters, administration, clinical services functions, and emergency operations currently located at the McCoy Building (collectively the “Project”).

8. On May 15, 2012, the HOME FORWARD Board of Commissioners approved the Development IGA, under which HOME FORWARD will provide development services to County for the Project.

9. On May 24, 2012, COUNTY’S Board of Commissioners approved the Development IGA, providing for COUNTY’s procurement of development services for the Project from HOME FORWARD and County’s funding of design, engineering, entitlement and construction of the Project.

10. PHB is prepared to accept COUNTY as the purchaser of the Property and agrees that, in consideration of COUNTY’s performance under this Agreement, PHB will convey the Property to COUNTY at no cost.

11. To support the development of the Project, COUNTY and PHB have negotiated the terms of and are prepared to execute this Agreement to provide for PHB’s conveyance of the Property to COUNTY at no cost to the Project.

12. PHB recognizes the value of the new MCHD headquarters to the community and particularly to the residents of Bud Clark Commons and supports those services and efforts.

13. PHB, finding it necessary and in the public interest to implement the Urban Renewal Plan pursuant to the IGAs, desires to enter into this Disposition Agreement in order for the Project to be developed on the Property and serve as a catalyst for area investment and improvement.

NOW THEREFORE, in consideration of the mutual benefits to be realized, including the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENTS:

1. GENERAL TERMS OF DISPOSITION

1.1 Agreement for Disposition. Upon the terms and conditions set forth in this Agreement, PHB agrees to sell and convey to COUNTY, and COUNTY agrees to purchase from PHB the Property for the sole purpose of developing the Project (as defined herein) on the Property.

1.2 Description of the Property. The Property which is the subject of this Agreement consists of the following: a certain, vacant parcel of land owned and controlled by PHB, generally bounded by NW Irving, NW Sixth and NW Hoyt, and comprising the easterly portion of Block U, adjacent to the newly opened Bud Clark Commons, commonly known as Block U2, and more particularly described as Lots 1, 4, 5 and 8, Block U, CITY OF PORTLAND, Multnomah County, Oregon (collectively, the “Land”) together with (i) all rights, privileges and easements appurtenant to the Land owned by PHB, including, all development rights relating to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land (collectively, the “Appurtenances”); and (ii) all improvements and fixtures located on the Land, if any (collectively, the “Improvements”). The Land, together with the Appurtenances and Improvements, is collectively referred to herein as the “Property.”

1.3 Purchase Price. The purchase price for the Property (the “Purchase Price”) is Zero Dollars (\$0). The Purchase Price does not represent the fair market value of the Property, which shall be established prior to Closing by an appraiser chosen by the Parties and paid by the COUNTY (the “Appraised Value”). The Purchase Price includes other valuable consideration promised or given by County to PHB, including COUNTY’s commitments in this Agreement, and shall not be adjusted at Closing to match the Appraised Value.

1.3.1 Proration of Taxes. COUNTY acknowledges that the Property is currently exempt from property taxes because it is owned by PHB. COUNTY anticipates the Project and the Property will remain exempt from property taxes under County ownership but will pay any property taxes imposed on the Property from and after the Closing Date.

1.3.2 Utilities. To the extent that there are existing utilities located on the Property that will be retained as part of the Project, PHB shall assign such utility accounts to COUNTY on the Closing Date. Ownership and maintenance of offsite utilities serving the Property will be determined by COUNTY and the utility providers as part of the governmental approvals for the Project.

1.3.3 Closing Costs. COUNTY shall pay all closing costs under this Agreement, including, but not limited to, costs for recording a Memorandum of this Agreement, the Deed, the Certificate of Project Approval, and any other documents required to be recorded by the Parties.

1.3.4 Other Costs: COUNTY shall pay for its own costs incurred for amending the Urban Renewal Plan and shall reimburse PHB for any other activity reasonably required for PHB's disposition of the Property.

1.3.5 AS-IS, WHERE-IS Sale. COUNTY acknowledges and agrees that, upon the Closing, PHB shall sell and convey to COUNTY, and COUNTY shall accept the Property conveyed "AS IS, WHERE IS, WITH ALL FAULTS," except to the extent expressly provided otherwise in this Agreement. Except as expressly set forth in this Agreement, COUNTY has not relied and will not rely on, and PHB has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or any portion thereof or relating thereto made or furnished by PHB or any real estate broker, agent or third party representing or purporting to represent PHB, to whomever made or given, directly or indirectly, orally or in writing. COUNTY acknowledges that it has had free access to PHB's records with respect to the condition of the Property. Upon the Closing, except as expressly provided in this Agreement, COUNTY shall assume the risk of any and all adverse matters, including, but not limited to, adverse physical or adverse environmental, health or safety conditions, in, on, under or about the Property.

1.4 Representations and Warranties.

1.4.1 PHB hereby makes the following representations and warranties to COUNTY as of the Effective Date and as of the Closing Date:

(a) Subject to the requirements of the Urban Renewal Plan, PHB 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 PHB in connection with the execution of this Agreement and the transactions contemplated hereby.

(b) To PHB's knowledge, there is no litigation, action, suit, or any

condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property or PHB's ability to perform its obligations under this Agreement.

(c) Except as has been disclosed to COUNTY in the Environmental Reports (as defined in Section 3), PHB has not received notice of the release of any Hazardous Substances on the Property.

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

(e) To PHB's knowledge, and except as disclosed in the E&ES recorded with Multnomah County November 2, 2009 under recording number 2009-152667 which includes an Updated Contaminated Media Management Plan (CMMP), dated September 30, 2009, the Property is in compliance with all recorded covenants, restrictions and other agreements binding on the Property and with all applicable laws, rules, regulations, ordinances and other governmental requirements (collectively, "Laws").

1.4.2 COUNTY hereby represents and warrants to PHB as of the Effective Date and the Closing Date that:

This Agreement has been duly authorized, executed and delivered by COUNTY and all consents required under COUNTY's organizational documents or by law have been obtained, that 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 COUNTY in connection with the execution of this Agreement and the transactions contemplated hereby.

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

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

(c) COUNTY has entered into this Agreement without reliance upon any verbal representation of any kind by PHB, its employees, agents or consultants regarding any aspect of the Property, the Project, its feasibility, financing or compliance with any governmental regulation.

1.5 Access; Inspection; Due Diligence.

1.5.1 Access. PHB agrees that COUNTY and its authorized agents shall be entitled to enter upon the Property during normal business hours pursuant to the terms and conditions of a written permit of entry (in substantially the form attached as Exhibit G to this Agreement), to make such investigations, studies, soil and groundwater tests as COUNTY deems necessary or advisable (collectively, the "Inspections").

1.5.2 Due Diligence Materials. PHB has provided COUNTY or will provide COUNTY no later than ten (10) days after the Effective Date, with the information and materials listed on Schedule 1.5.2 attached hereto (the "Due Diligence Materials") which includes all information and reports known to PHB related to the environmental condition and previous environmental remediation of the Property.

1.6 Title, Survey, Property Taxes and Closing Costs. Within twenty (20) business days after the Effective Date, PHB shall deliver to COUNTY as part of the Due Diligence Materials, a preliminary title report and copies of all exception documents thereto (the "Title Report"). COUNTY may cause to be prepared for its behalf title insurance commitments, including such affirmative insurance and endorsements as COUNTY may desire, and shall pay the cost and expense thereof. PHB agrees to execute any affidavits or other documents required by the Escrow Agent to enable COUNTY to obtain such coverage. COUNTY may, at its sole cost and expense, also cause surveys to be prepared of the Property. The Title Report and any survey shall be referred to herein as the "Title Evidence". Within thirty (30) business days after receipt of the Title Evidence by COUNTY, COUNTY will make such written objections ("Title Objections") to the form and/or contents of the Title Evidence as COUNTY may wish. COUNTY's failure to make Title Objections with respect to a particular matter within this time period shall constitute a waiver of Title Objections with respect to a particular matter. Any matter shown on the Title Evidence and not objected to by COUNTY shall be a "Permitted Exception" hereunder. PHB shall have the election of whether or not to attempt to cure Title Objections raised by COUNTY. PHB shall have ten (10) business days after receiving COUNTY's Title Objections (the "Notice Period") to notify COUNTY of its intent to cure or not to cure such Title Objections. If PHB notifies COUNTY of its intention not to attempt to cure any of the Title Objections raised by COUNTY or fails to notify COUNTY of its intentions within the Notice Period, then COUNTY may, within three (3) business days after the Notice Period expires, terminate this Agreement by written notice to PHB. PHB shall remove any encumbrances or exceptions to title which are created by, through, or under PHB or any other party after the date of the Title Evidence and which are not consented to by COUNTY under the terms hereof. If the Title Objections are not cured prior to Closing, COUNTY will have the option as its sole and exclusive remedies to (i) terminate this Agreement; or (ii) proceed to Closing without any reduction in the Purchase Price. If COUNTY elects the latter, any uncured Title Objections shall be deemed Permitted Exceptions.

1.6.1 Title Insurance. PHB shall provide COUNTY, at COUNTY's request and COUNTY's sole cost, with a standard coverage Owner's Policy of Title Insurance issued by Fidelity Title Insurance Company, Karleen M. Huggins, CSEO, Vice President Escrow Operations, 900 SW 5th Ave., Mezzanine Level, Portland, Or 97204 (the "Escrow Agent"), covering the Property and insuring COUNTY in the amount of the Appraised Value, all free and clear of encumbrances except the Permitted Exceptions.

1.6.2 Required State of Title. On the Closing Date, PHB shall convey the Property by statutory bargain and sale deed substantially in the form attached hereto as Exhibit B (the "Deed").

1.6.3 Encroachment by Adjacent Property, the Bud Clark Commons Within thirty (30) business days after COUNTY's receipt of the Due Diligence Materials and Title Evidence, COUNTY shall deliver written evidence to PHB that there is no objection raised by COUNTY to an encroachment onto the Property by the adjacent property, known as the Bud Clark Commons, in the northwest corner of the Property, or the encroachment shall become a Permitted Exception.

1.7 Conditions Precedent to PHB's and COUNTY's Performance.

1.7.1 Conditions Precedent to PHB's Performance. The obligations of PHB to close the transaction contemplated by this Agreement are, in addition to the other terms and conditions of this Agreement, subject to PHB's satisfaction with the following (any one or more of which may be waived in whole or in part by PHB at its discretion):

- (a) Evidence that COUNTY is a political subdivision of the State of Oregon and a resolution of COUNTY's Board of Commissioners that COUNTY has full authority to enter into and perform its obligations under this Agreement.
- (b) COUNTY shall not be in default under any material term or condition of this Agreement. As of Closing, COUNTY shall represent to PHB that there are no material defaults by COUNTY under this Agreement and that COUNTY has no knowledge of events which, with the passage of time, would constitute a material default by COUNTY under this Agreement.
- (c) COUNTY's representations and warranties stated herein are true and correct as of the Closing Date.
- (d) COUNTY shall have confirmed the approval of all Design

Drawings and specifications relating to the Project as required by governmental entities and/or agencies, including PHB with respect to (i) exterior elevations and (ii) ground floor design to interact with the adjoining sidewalks and Bud Clark Commons, the County funds and/or financing necessary for the development of the Project is available, and construction is expected to start within ninety (90) days after the Closing Date or within thirty (30) days after the Project receives final, nonappealable, permit approvals, whichever occurs last.

(e) COUNTY shall have obtained all land use approvals for the Project required by Title 33 of the Code of the City of Portland, if any, including Conditional Use Permit(s), Adjustments and Modifications, and no appeal of any required approval or permit shall have been filed, and the time for filing any such appeal shall have expired. If an appeal has been filed, it shall have been finally resolved.

(f) The Parties shall have agreed to the final form of the Deed, and any other documents necessary for the Closing.

(g) There shall be no litigation pending that prevents PHB or COUNTY from performing their respective obligations under this Agreement;

(h) COUNTY shall have completed each task within COUNTY's control shown on the Project Schedule, describing the dates by which pre-Closing design, engineering and entitlements will be finished, a copy of which is attached hereto as Exhibit C (the "Project Schedule").

(i) PHB shall be satisfied that the Project complies with the Urban Renewal Plan, as amended.

(j) COUNTY has or will meet all of COUNTY's Project-related Obligations (including those based on land value) to the Regional Arts and Culture Council, the State of Oregon's Bureau of Labor and Industries, and COUNTY's Project Goals and Objectives as to its fair contracting programs set forth in Exhibit D to the Development IGA.

(k) PHB shall have determined to its satisfaction that the Design Review Drawings relating to the Project have been approved by all required governmental entities and/or agencies; and

(l) COUNTY shall have delivered evidence satisfactory to PHB that COUNTY will commence the development and that COUNTY is prepared to acquire the Property for the development of the Project as of the Closing Date.

1.7.2 Conditions Precedent to COUNTY's Performance. The obligations of COUNTY to close the transaction contemplated by this Agreement are, in addition to the other terms and conditions of this Agreement, subject to the following (any one or more of which may be waived in whole or in part by COUNTY at its discretion):

- (a) Evidence that the CITY OF PORTLAND is a municipal corporation of the State of Oregon, acting by and through PHB, and a resolution of the City Council that PHB has full authority to enter into and perform its obligations under this Agreement.
- (b) PHB shall not be in default under any material term or condition of this Agreement. As of Closing, PHB shall represent to COUNTY that there are no material defaults by PHB under this Agreement and that PHB has no knowledge of events which, with the passage of time, would constitute a material default by PHB under this Agreement.
- (c) COUNTY shall have determined that PHB has title to the Property subject only to the Permitted Exceptions.
- (d) Escrow Agent shall have issued to COUNTY a binding commitment satisfactory to COUNTY (i) to issue to COUNTY an Owner's Extended Title Insurance Policy covering the Property in an amount not less than the Appraised Value of the Property subject only to the Permitted Exceptions; and (ii) satisfactory to COUNTY and any lender identified by COUNTY to issue a Lender's Extended Title Insurance Policy covering its interests in all or part of the Property in the amount of the Appraised Value of the Property and COUNTY's budgeted construction costs for the Project.

1.7.3 Elections upon Non-Occurrence of Condition. Except as provided below, if any condition in Section 1.7 is not fulfilled to the satisfaction of the benefited Party or Parties (i) at the time designated for satisfaction of the same;; or (ii) if no deadline is specified for satisfaction of such condition, then on the date scheduled for Closing, subject to any extension that may have been granted;; then such benefited Party or Parties may elect to:

- (a) Terminate this Agreement, by written notice to the other Party which termination shall become effective thirty (30) days after the notice of termination is sent ("Termination Date") unless, before the thirty (30) 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 condition can be satisfied by the other Party, and if the other Party agrees in writing to the extension.

1.7.4 Final Termination Date. If all of the conditions precedent under Section 1.7 have not been satisfied, waived or otherwise resolved pursuant to this Agreement by the Termination Date (as same may be extended as provided in Subsection 1.7.3 hereof), then this Agreement shall automatically terminate unless the Closing Date is extended by written agreement prior to the Termination Date. If this Agreement is terminated for failure of satisfaction of the conditions precedent by either Party, then the obligations of the Parties to each other under this Agreement shall terminate, except Section 3.2, which will survive any termination of this Agreement. Furthermore, if a Party is in default under this Agreement on the date this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to Closing, then the rights and remedies accruing to the other Party under this Agreement as a result of such default shall survive termination of this Agreement.

1.8 Closing.

1.8.1 Escrow Closing. Except as otherwise provided in this Agreement, the consummation of the transaction contemplated by this Agreement (the "Closing") shall occur through an escrow closing arrangement pursuant to each Parties' closing escrow instructions or mutually agreed joint escrow instructions no later than June 30, 2014 (the "Closing Date"). It is agreed that time is of the essence in this Agreement.

1.8.2 PHB's Closing Deliveries. On the Closing Date, PHB shall deliver or cause to be delivered at its expense each of the following items to COUNTY:

- (a) A duly executed and acknowledged Deed;
- (b) An original certificate of non-foreign person duly executed by PHB and notarized; and
- (c) Such other documents as are reasonably required by the Escrow Agent.

1.8.3 COUNTY's Closing Deliveries. On the Closing Date, COUNTY shall deliver or cause to be delivered at its expense each of the following items to PHB:

- (a) Purchase Price; and

- (b) Such other documents as are reasonably required by the Escrow Agent.

1.9 Repurchase Rights. If the Property is conveyed from PHB to COUNTY and COUNTY does not begin construction of the Project in accordance with this Agreement within one hundred eighty (180) days after Closing, then PHB shall have the right to purchase the Property from COUNTY for the Purchase Price.

2. DEVELOPMENT

2.1 Project. The Project shall consist of the construction of a six-story, concrete building of approximately 90,000 square feet to house, among other County-approved uses and functions, the MCHD department headquarters, administrative offices, health clinics, and public health emergency operations to replace the current COUNTY facility located at the McCoy Building. The Project to be completed substantially in accordance with the budget and the schedule attached as Exhibit C and the design standards and project goals attached as Exhibit D.

2.2 Project Financing. COUNTY shall self-fund development and construction of the Project or be responsible for obtaining legally binding commitments for financing required, if any, to develop the Project.

2.3 Public Participation: COUNTY shall be responsible for a public participation plan that involves stakeholders in the development of the Project.

2.4 Design of the Project.

2.4.1 General Cooperation. PHB and COUNTY will work closely throughout the development period to jointly address issues and concerns to achieve the most successful Project.

2.4.2 Design Plans and Drawings. COUNTY and its development team shall refine and develop a set of documents that sets forth in detail the requirements for the construction of the Project and shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project, approved by PHB (with respect to the elements described in Subsection 2.4.3[a]) and the appropriate City agencies (the "Final Construction Documents and Specifications"). All plans and specifications identified in this Section are referred to herein as the "Drawings." Drawings of the Project's exterior elevations shall include adjacent improvements to fully show the Project's relationship to its context.

2.4.3 Design Standards. PHB will not unreasonably withhold, condition or delay its approval of any Drawings which meet the following standards.

- (a) **Exterior Elevations & Ground Floor Activation.** The Project's exterior elevations shall complement those of the adjoining

Bud Clark Commons, and the ground floor should foster an active pedestrian environment along NW Hoyt Street & NW 6th Avenue and be well-designed to support Project clients, staff and the surrounding neighborhood.

(b) Limitations on Review of Design. PHB's review and comment or approval of Drawings will occur in stages and will be progressive in nature, but limited to the elements described in Subsection 2.4.3(a), for each of which COUNTY shall cause to be submitted to PHB a set of Drawings at the following two stages:

(i) Draft Exterior Design Development Drawings. The submittal shall include the Project's exterior elevations, with colors and materials, and site and landscape plans, together with those of the adjoining Bud Clark Commons, to fully show the Project's relationship to its context. The submittal shall also include the draft Design Review application and narrative and shall be delivered to PHB by COUNTY fifteen (15) business days prior to filing the Design Review application.

(ii) Final Construction Documents and Specifications. Excerpts from the Final Construction Documents and Specifications pertaining to the elements described in Subsection 2.4.3(a) shall be submitted to PHB by COUNTY 30 days prior to the Closing Date.

(iii) PHB Review Timeline. PHB and COUNTY acknowledge that the Project schedule requires expeditious review and response from PHB and responsiveness and cooperation from COUNTY in connection with PHB's review and approval of the elements described in Subsection 2.4.3(a). PHB shall comment on and disapprove or approve said design elements not later than ten (10) business days after submittal by COUNTY. COUNTY shall not be obligated to consider any comments which are not provided by PHB within such ten (10) business day period. COUNTY shall provide PHB within ten (10) business days after receipt of comments or disapproval from PHB with a reasoned response to any suggestions or recommendations by PHB and COUNTY's proposal to address such comments or disapproval. In the event that the Parties have a dispute regarding PHB's approvals of the elements described in Subsection 2.4.3(a), such dispute shall be referred for resolution in accordance with Section 5.8 of this Agreement.

(iv) PHB Support of COUNTY Applications. PHB shall cooperate in all reasonable respects with COUNTY's efforts to obtain Portland Design Review approval of the Design Drawings,

with respect to (i) exterior elevations and (ii) ground floor design to interact with the adjoining sidewalks and Bud Clark Commons, consistent with PHB's prior approvals under (iii) hereof.

(c) **City of Portland Design Commission.** All Drawings must conform to approvals and requirements of the City of Portland Design Commission.

2.4.4 Environmental Sustainability. PHB and COUNTY agree that the Project shall be designed, constructed and commissioned with the goal of achieving the U.S. Green Building Council ("USGBC") Leadership in Energy and Environmental Design ("LEED") Gold rating or an equivalent construction benchmark.

2.5 Diligent Completion.

2.5.1 Subject to the terms and conditions of this Agreement, COUNTY covenants to complete the development of the Project in substantial conformance with the Final Construction Plans and Specifications and to comply with the Schedule of Performance, subject to force majeure as provided in Section 5.7. COUNTY agrees to keep PHB informed of its progress with respect to development of the Project during construction, until PHB issues a Certificate of Project Approval hereto as Exhibit E.

2.5.2 Project development shall include:

(a) Entering into all necessary architectural, engineering, environmental, construction and other pertinent contracts;

(b) Securing all necessary public entitlements, if any are outstanding as of the Effective Date, and building permits;

(c) COUNTY approval of all funding and/or securing all financing necessary to complete the Project, consistent with the Project budget.

2.6 Inspection and Property Access by PHB. After the Closing Date, during construction of the Project, and until a Certificate of Project Approval is issued, PHB shall be entitled to accompany building inspectors from the City of Portland on their scheduled inspections of the Property (or otherwise as coordinated with COUNTY). PHB agrees not to interfere with the work occurring on the Property.

2.7 Certificate of Project Approval.

2.7.1 When COUNTY is Entitled to Certificate of Project Approval. Upon substantial completion (as defined below) of the Project, PHB will furnish COUNTY with a Certificate of Project Approval, substantially in the form attached hereto as Exhibit E. The Project will be deemed to be substantially complete when (i) the Project is completed according to the final construction plans and specifications, except for punch list items which do not materially affect the use of the Project for the purposes intended under this Agreement, (ii) the City, through the Bureau of Development Services, has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project, and (iii) any other improvements required by the terms of this Agreement to have been completed at the time the Project is complete are complete in all material respects.

2.7.2 Meaning and Effect of the Certificate of Project Approval. The Certificate of Project Approval shall provide for termination of obligations under this Agreement and limitation of remedies of PHB as expressly provided for therein.

2.7.3 Form of Certificate of Project Approval; Procedure Where PHB Refuses to Issue. A Certificate of Project Approval shall be in a form that can be recorded in the real property records of Multnomah County. The Certificate of Project Approval shall state that the construction obligations are complete. If PHB refuses or fails to provide a Certificate of Project Approval in accordance with this Section, then PHB, within fifteen (15) business days after written request by COUNTY for such Certificate of Project Approval, shall provide COUNTY with a written statement indicating in detail in what respects COUNTY has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts COUNTY must take or perform to obtain such Certificate of Project Approval. Upon receipt of such detailed statement from PHB, COUNTY shall either (a) complete the improvements and/or cure the alleged default in a manner responsive to the stated reasons for disapproval or (b) submit to arbitration, pursuant to Section 5.8, the issue of whether PHB has unreasonably refused to issue the requested Certificate of Project Approval. PHB's failure to furnish COUNTY with such detailed written statement within such fifteen (15) day period shall be deemed PHB's approval of COUNTY's request for the Certificate of Project Approval.

3. ENVIRONMENTAL MATTERS; INDEMNIFICATION

3.1 COUNTY'S Investigations. COUNTY will conduct such Inspections and other investigations of the Property as COUNTY deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. COUNTY acknowledges that this Agreement provides COUNTY with a full opportunity to conduct such investigations of the Property as COUNTY deems necessary to satisfy itself as to the condition of the Property including the existence or non-existence or curative action to be taken with respect to any Hazardous Substances on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of PHB or its

agents or employees with respect thereto. In particular, PHB makes no warranties or representations that the soil conditions and the physical condition of the Property as measured by the standards of the Environmental Laws ("Environmental Conditions") or any other conditions of the Property or structures thereon are suitable for any improvements or particular use. COUNTY acknowledges that it has not relied on any verbal or written warranties or representations made by PHB as to the Environmental Conditions or any other conditions of the Property.

3.2 Environmental Indemnification by COUNTY. COUNTY shall be responsible for compliance with all Environmental Laws with respect to COUNTY's use of the Property, including COUNTY's investigation of Environmental Conditions prior to Closing, and its business and the operation of the Project from and after Closing, including but not limited to compliance with all restrictions, limitations, conditions and obligations imposed by DEQ pursuant to a NFA Letter, UST Letter or easement and equitable servitude ("E&ES") applicable to the Property, if any. In addition COUNTY shall be responsible for all environmental remediation and abatement of all Environmental Conditions on the Property, except for any new Environmental Conditions on the Property either created by PHB's own activities or by any activities allowed to occur by PHB (other than COUNTY's pre-Closing activities on the Property) between the Effective Date and the Closing Date. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300 as applicable to a "local public body" as defined therein, COUNTY shall defend (at PHB's request), indemnify and hold harmless PHB and its respective employees, officers and agents and successors and assigns (collectively, the "PHB Parties"), from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by PHB or the PHB Parties, or asserted against PHB or the PHB Parties, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by COUNTY, COUNTY's failure to comply with a restriction, limitation, condition or obligation imposed by DEQ pursuant to a NFA Letter, UST Letter or E&ES applicable to the Property, if any, or COUNTY's failure to complete any environmental remediation or abatement of Environmental Conditions on the Property. The indemnity set forth in this Section 3.2 shall survive the issuance of the Certificate of Completion and any termination or expiration of this Agreement.

3.3 Environmental Indemnification by PHB. PHB shall be responsible for compliance with all Environmental Laws with respect to its own activities or any activities allowed by PHB to occur on the Property (other than COUNTY's pre-Closing activities on the Property) between the Effective Date and the Closing Date. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300 as applicable to a "local public body" as defined therein, PHB shall defend (at COUNTY's request, respectively), indemnify and hold harmless COUNTY and its employees, officers and agents and successors and assigns (collectively, the "Indemnified Parties"), from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by COUNTY or the Indemnified Parties, or

asserted against COUNTY or the Indemnified Parties, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by PHB or a third party, other than COUNTY or COUNTY's employees, agents or contractors. The indemnity set forth in this Section 3.3 shall survive the issuance of the Certificate of Project Approval and any termination or expiration of this Agreement.

3.4 Indemnity from Liability Claims. Subject to the conditions and limitations of Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, as applicable to local public bodies under ORS 30.272 and public bodies under ORS 30.273, COUNTY shall indemnify, defend (at PHB's request) and hold harmless PHB, and its successors and assigns, from and against all claims, costs, expenses (including attorney fees), losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the property of any person (a) as occurs in the process of the construction work or the performance of COUNTY's other obligations under this Agreement, except to the extent caused by PHB or its employees, agents, contractors, subcontractors, licensees, or invitees. Subject to the conditions and limitations of Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, as applicable to local public bodies under ORS 30.272 and public bodies under ORS 30.273, PHB shall indemnify, defend (at COUNTY's request) and hold harmless COUNTY and its successors and assigns, from and against all claims, costs, expenses (including attorney fees), losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the property of any person as occurs in the process of the performance of PHB's obligations under this Agreement, except to the extent caused by COUNTY or its employees, agents, contractors, subcontractors, licensees, or invitees. The indemnification obligations set forth in this Section shall survive the termination of this Agreement.

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

3.6 Environmental Disclosure. The property is within the study boundaries of the EPA Portland Harbor Superfund Site. PHB, acting through PDC, has responded to all CERCLA 104(e) Information Request Letters for businesses located near the Portland Harbor and provided all known environmental information on the Property to the EPA.

3.7 Definitions. For the purpose of this Agreement,

- a) **"Environmental Laws"** means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Property or the Project.

b) **“Environmental Reports”** means the documents listed on Schedule 1.5.2 and provided to COUNTY.

c) **“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 the Environmental Laws.

4. ASSIGNMENT

4.1 No Assignment. Because it is a municipal entity, PHB is uniquely benefited by completion of the Project. COUNTY, with the development assistance of HOME FORWARD as provided in the Development IGA, is uniquely qualified to develop the Project. COUNTY shall not partially or wholly dispose of or agree to dispose of COUNTY’s interest in this Agreement without the prior written approval of PHB. PHB may require as conditions to such approval that:

4.1.1 The transfer is not in violation of other provisions of this Agreement; and

4.1.2 Any proposed transferee shall have qualifications and financial responsibility equal to or superior to COUNTY; and

4.1.3 The transfer will not cause a material delay in the completion of the Project.

4.2 Approved Pre-Completion Transfers. Notwithstanding the above Section, and provided that COUNTY provides PHB with copies of all agreements related to the transfer at least five (5) days prior to the effective date of the proposed transfer, and any other information reasonably necessary for PHB to determine whether such transfer complies with the requirements of this Agreement, PHB hereby consents to:

4.2.1 Any mortgage(s) which COUNTY may cause to attach to the Property provided that PHB has approved the terms of the mortgage; and

4.2.2 Any transfer of all or a part of the Project or other rights in the Project to an affiliate of COUNTY; provided that no provisions of the transfer are in violation of the terms of this Agreement.

4.2.3 Transfers After Completion. After PHB’s issuance of a Certificate of Project Approval for the Project, COUNTY and any permitted transferee under Section 4.2 may transfer their interests, or portions of their interests in the Project or this Agreement, without restriction, consent or approval by PHB.

5. DEFAULT; REMEDIES

5.1 Default and Cure.

5.1.1 Default by COUNTY. A default shall occur if, after all conditions precedent to Closing have been met or waived, COUNTY breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after COUNTY receives written notice from PHB specifying the breach. In the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, a default shall occur if COUNTY does not commence the cure of the breach within sixty (60) days after COUNTY receives written notice from PHB and thereafter diligently prosecute to completion such cure. A default also shall occur if COUNTY 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 which is not removed within one hundred eighty (180) days after appointment. A default shall occur, and PHB shall be irreparably harmed by such default, if COUNTY or its assignee constructs or operates any portion of the Project in a manner materially inconsistent with a PHB-approved development program and construction plans and specifications. COUNTY shall not be in default hereunder for failure to pay any tax, assessment, lien or other charge if COUNTY in good faith is contesting the same and, if necessary to avoid foreclosure, has furnished an appropriate bond or other undertaking to assure payment in the event COUNTY's contest is unsuccessful.

5.1.2 Default by PHB. A default shall occur if PHB breaches any material provision of this Agreement including, without limitation, PHB's failure to adhere to the Schedule of Performance for any element of the Schedule of Performance which is in the control of PHB, whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after PHB receives written notice from COUNTY specifying the breach or, in the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, if PHB shall not within such sixty (60) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure.

5.2 PHB's Pre-Conveyance Remedies. If COUNTY defaults in any material term of this Agreement before the Property is conveyed to COUNTY, PHB may, as its sole and exclusive pre-conveyance remedy, terminate this Agreement by written notice to COUNTY, subject to the notice and right to cure requirements set forth in Subsection 5.1.1.

5.3 Restoration. If, prior to acquiring the Property, COUNTY performs any construction activities on the Property and COUNTY fails to acquire the Property, COUNTY agrees to restore the Property to substantially the condition that existed prior to the time that COUNTY performed any activities thereon.

5.4 COUNTY's Pre-Conveyance Remedies. If PHB fails to perform any obligation under this Agreement, COUNTY may, at its option: (i) terminate this Agreement by written notice to PHB, subject to the notice and right to cure requirements set forth in Subsection 5.1.2, without waiving any cause of action COUNTY may have against PHB, including seeking monetary damages against PHB; or (ii) specifically enforce the obligations of PHB under this Agreement.

5.5 COUNTY's Post-Conveyance Remedies. In the event of PHB's material default after PHB conveys the Property to COUNTY, COUNTY may specifically enforce the obligations of PHB under this Agreement, or seek monetary damages against PHB.

5.6 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.

5.7 Force Majeure

5.7.1 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 unforeseeable, beyond its control, and without its fault or negligence, including but not limited to acts of God, acts of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, delay in the issuance of necessary permits for the Project, malicious mischief, condemnation action, delays of litigation, and 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.

5.7.2 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 PHB or COUNTY, 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 thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and the estimated time of correction.

5.8 Arbitration. All disputes arising pursuant to this Agreement or any additional documents contemplated by this Agreement shall be settled by binding arbitration in the City of Portland, Oregon, in accordance with the then current commercial arbitration rules of the Arbitration Service of Portland, or its successor, by one (1) neutral arbitrator appointed in the manner provided for in said rules. The arbitrator shall have experience in the development and operation of mixed-use projects. The arbitrator shall not have the power to amend this Agreement or to substitute his/her judgment for the judgment of a Party, but may determine whether a Party is acting reasonably if a Party is bound to act reasonably by this Agreement. The arbitrator shall be directed to complete the arbitration within thirty (30) days after the request for arbitration.

6. MISCELLANEOUS PROVISIONS

6.1 PHB Project Manager. For the purposes of making determinations on or revising, where permitted, provisions of this Agreement on behalf of PHB, PHB shall designate a Project Manager. As of the Effective Date, PHB's Project Manager is Barbara Shaw.

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

6.3 Notice.

6.3.1 Any notice or communication under this Agreement by any Party to the other Parties 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:

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

Jacob Fox
Assistant Director
Portland Housing Bureau
421 SW Sixth, Suite 500
Portland, OR 97204

with a copy to:
City Attorney Office
Attn: Trinh C. Tran
Deputy City Attorney
1221 SW 4th Avenue, Rm 430
Portland OR 97204

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

Brett Taute, Project Manager
Multnomah County
Facilities & Property Management
Blanchard Education Service Center
401 North Dixon Street
Portland, OR 97227

with a copy to:
Multnomah County Attorney
Attn.: Kenneth M. Elliott, Asst. County Attorney
501 SE Hawthorne, 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.

6.4 Merger. None of the provisions of this Agreement are intended to or shall be merged by reason of the Deed transferring title to the Property from PHB to COUNTY 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.

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

6.6 Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by PHB or COUNTY 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.

6.7 Choice of Law. This Agreement shall be governed by Oregon law.

6.8 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.

6.9 Legal Purpose. COUNTY agrees that it shall use the Property solely for lawful purposes.

6.10 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.

6.11 Entire Agreement. This Agreement and the attachments hereto are the entire agreement between the Parties with regard to this subject matter. The recitals are incorporated into the agreement of the Parties as if a part thereof. 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.

6.12 Amendments and Modifications. Any modifications to this Agreement shall be approved by both of the Parties, made in writing and executed by both of the Parties.

6.13 Successors and Assigns. The benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.

6.14 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.

6.15 No Partnership. Nothing contained in this Agreement or any acts of the Parties hereto 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 the Parties.

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

6.17 Recording of Memorandum of Agreement. PHB shall provide for execution by COUNTY and for recording a Memorandum of this Agreement within ten (10) days after the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit F to this Agreement. When PHB issues to COUNTY a Certificate of Project Approval or if the Agreement is terminated, the Parties shall cooperate to promptly record the Certificate of Project Approval and/or an Amended Memorandum of Agreement to reflect any surviving covenants of this Agreement.

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

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

By: _____

APPROVED AS TO FORM:

James H. Van Dyke
City Attorney

COUNTY: **MULTNOMAH COUNTY**,
a political subdivision of the State of Oregon

By: _____
Jeff Cogen, Chair

Reviewed and approved:
JENNY M. MORF, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By: _____
Kenneth M. Elliott
Assistant County Attorney

EXHIBITS AND SCHEDULES

Exhibit A	Development IGA
Exhibit B	Form of Deed
Exhibit C	Project Schedule and Budget
Exhibit D	Design Standards and Project Goals and Objectives
Exhibit E	Form of Certificate of Project Approval
Exhibit F	Form of Memorandum of Agreement
Exhibit G	Permit of Entry
Schedule 1.5.2	Due Diligence Materials / Environmental Reports