

# GRESHAM REDEVELOPMENT COMMISSION AGENDA

## COMMISSION CHAIR TRAVIS STOVALL

COMMISSION VICE CHAIR DINA DINUCCI  
COMMISSION ACTING CHAIR JERRY HINTON  
COMMISSIONER JANINE GLADFELTER

COMMISSIONER VINCENT JONES-DIXON  
COMMISSIONER EDDY MORALES  
COMMISSIONER SUE PIAZZA

## GRESHAM REDEVELOPMENT COMMISSION December 10, 2024 (REVISED AGENDA)

**OPEN SESSION – 3:00 P.M.**

**Gresham Civic Center, Public Safety & Schools Building, Council Chambers  
1331 NW Eastman Parkway, Gresham, Oregon**

### **PLEASE NOTE**

The Gresham Redevelopment Commission is transitioning back to in-person meetings. Members of the public are now welcome to attend **in-person** in the Council Chambers. This meeting will also be broadcast live at [GreshamOregon.gov/Agendas](https://GreshamOregon.gov/Agendas) and via Zoom, an online meeting platform.

The City's business hours are Monday through Friday from 8:00 a.m. to 5:00 p.m.

Persons who desire to access the meeting and are unable to access the meeting via the livestream at [GreshamOregon.gov/Agendas](https://GreshamOregon.gov/Agendas) or via Zoom are encouraged to contact Johntae Ivory, Program Technician, by calling 503-618-2473 or emailing [johntae.ivory@greshamoregon.gov](mailto:johntae.ivory@greshamoregon.gov) by 5:00 p.m. two (2) business days before the meeting, so that the City can provide alternate arrangements.

Persons who desire translation services for this meeting must notify Johntae Ivory, Program Technician, by calling 503-618-2473 or emailing [johntae.ivory@greshamoregon.gov](mailto:johntae.ivory@greshamoregon.gov) by 5:00 p.m. three (3) business days before the meeting, so that the City can make arrangements for translation services.

### **ZOOM ACCESS LINK AND CALL-IN NUMBERS FOR THIS MEETING**

**Click the link below to join the webinar:**

<https://greshamoregon.zoom.us/j/87895316107?pwd=YTIJZFJrcTV5SU8xa1NoVWdXWXhsZz09>

Passcode: 4xERZB5sqX

**Or One Tap Mobile:**

US: +16699006833,,87895316107#,,,,\*4983688933# or +12133388477,,87895316107#,,,,\*4983688933#

**Or Telephone:**

Dial (for higher quality, dial a number based on your current location):

US: +1 669 900 6833 or +1 213 338 8477 or +1 253 215 8782 or +1 646 876 9923

Webinar ID: 878 9531 6107

Passcode: 4983688933

International numbers available: <https://greshamoregon.zoom.us/j/87895316107?pwd=YTIJZFJrcTV5SU8xa1NoVWdXWXhsZz09>

### **PLEASE NOTE**

Instructions for signing up for **written or oral testimony** are provided on this agenda under section A (2): Instructions to Citizens on Signing Up for Public Testimony Regarding Agenda and Non-Agenda Items.

**GRESHAM REDEVELOPMENT COMMISSION AGENDA - REVISED  
DECEMBER 10, 2024 – PAGE 2**

**TIME ESTIMATE (Minutes)**

<b>A. CALL TO ORDER BY PRESIDING OFFICER</b>	<b>5</b>
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1. ROLL CALL OF THE GRESHAM REDEVELOPMENT COMMISSION
2. INSTRUCTIONS TO CITIZENS FOR TESTIFYING ON AGENDA AND NON-AGENDA ITEMS

**Written Testimony** must be received by 3:00 p.m. on Monday, December 9, 2024, via email to Johntae Ivory, Program Technician, at [johntae.ivory@greshamoregon.gov](mailto:johntae.ivory@greshamoregon.gov)

**Oral Testimony**: Persons wishing to provide oral testimony must register their request to Johntae Ivory, Program Technician, by calling 503-618-2473 or emailing [johntae.ivory@greshamoregon.gov](mailto:johntae.ivory@greshamoregon.gov) by 3:00 p.m. on Monday, December 9, 2024 and include their name, email address, phone number, and subject matter of the oral testimony.

*Mr. Ivory will send persons who wish to provide oral testimony via Zoom a Zoom link to use to provide the oral testimony.*

<b>B. CITIZEN AND COMMUNITY GROUP COMMENTS FOR AGENDA (EXCEPT PUBLIC HEARING) AND NON-AGENDA ITEMS</b>	<b>10</b>
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1. CITIZEN AND COMMUNITY GROUP COMMENTS

<b>C. CONSENT AGENDA</b>	<b>5</b>
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Commission actions are taken in one motion on Consent Agenda items; however, Commission members can remove items from the Consent Agenda to be addressed separately.

1. **GRESHAM REDEVELOPMENT COMMISSION MEETING MINUTES**  
Commission approval of this item will approve the minutes of the Commission meeting of July 16, 2024.

<b>D. PUBLIC HEARING</b>	
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None.

<b>E. COMMISSION BUSINESS</b>	<b>40</b>
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1. **APPROVAL OF PROPERTY ACQUISITION: 18330 E BURNSIDE STREET**  
Staff will be seeking to approve the purchase of 18330 E Burnside Street for \$1,430,000 and direct the Interim Director to proceed with closing consistent with the Purchase and Sale Agreement.
2. **SUNRISE SITE/ ROCKWOOD B188: DDA**  
Staff will be seeking approval of the Disposition and Development Agreement for the Rockwood Sunrise Site between the GRDC and HMS Developments, LLC and Portland Opportunity Industrialization Center, Inc.

<b>F. COMMISSION MEASURES AND PROPOSALS</b>	
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None.

<b>G. ADJOURNMENT OF MEETING</b>	
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**TOTAL ESTIMATED TIME (MINUTES): 60**

**GRESHAM REDEVELOPMENT COMMISSION AGENDA - REVISED  
DECEMBER 10, 2024 – PAGE 3**

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**MEETING BROADCAST AND REPLAY SCHEDULE**

**Live Broadcast**

- Comcast Channel 22 (322 HD)
- City of Gresham website: [GreshamOregon.gov/Videos](https://GreshamOregon.gov/Videos). (Under “Upcoming Events,” select the Redevelopment Commission “Agenda.” An active link to the Zoom meeting is posted on page 1 of the Agenda. Phone numbers are also posted for the option of attending the meeting by phone.)

**Replays**

- 4<sup>th</sup> Monday of the same month at 6:00 p.m. on Comcast Channel 30 (330 HD)
- 1<sup>st</sup> Friday of the following month at 11:30 p.m. on Comcast Channel 30 (330 HD)
- Any time after 72 hours following the meeting: [GreshamOregon.gov/Videos](https://GreshamOregon.gov/Videos)

# GRESHAM

## REDEVELOPMENT COMMISSION

### AGENDA ITEM TYPE: DECISION

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### Gresham Redevelopment Commission Meeting Minutes

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**Meeting Date:** December 10, 2024

**Agenda Item Number:** C-1

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#### REQUESTED COMMISSION ACTION

Move to approve minutes from the Gresham Redevelopment Commission meeting of July 16, 2024.

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#### ATTACHMENTS

A. Meeting Minutes: July 16, 2024

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#### FROM

Johntae Ivory, Program Technician

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#### REVIEWED THROUGH

Michael Gonzales, Interim Gresham Redevelopment Commission Executive Director

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#### FOR MORE INFORMATION

Staff Contact: Johntae Ivory, Program Technician

Telephone: (503) 618-2473

Staff E-Mail: [Johntae.Ivory@GreshamOregon.gov](mailto:Johntae.Ivory@GreshamOregon.gov)

Website: [GreshamOregon.gov/Urban-Renewal](http://GreshamOregon.gov/Urban-Renewal)

**A. CALL TO ORDER BY PRESIDING OFFICER**

**Chair Travis Stovall** called the Gresham Redevelopment Commission (GRDC) meeting to order on Tuesday, July 16, 2024, at 2:32 P.M. via Conference Call +1 253 215 8782, Meeting ID 878 9531 6107 or <https://greshamoregon.zoom.us/j/87895316107>

**1. ROLL CALL OF THE GRESHAM REDEVELOPMENT COMMISSION**

**Chair Stovall** called the roll.

COMMISSION PRESENT: Commission Chair Travis Stovall  
Commission Vice Chair Dina DiNucci  
Commissioner Acting Chair Jerry Hinton  
Commissioner Janine Gladfelter  
Commissioner Vincent Jones-Dixon  
Commissioner Sue Piazza

COMMISSION ABSENT: Commissioner Eddy Morales

STAFF PRESENT: Ellen Van Riper, Gresham City Attorney  
Eric Schmidt, Gresham City Manager  
Brian Monberg, Gresham Redevelopment Commission Executive Director  
Michael Gonzales, Redevelopment Commission Project Coordinator  
Johntae Ivory, Program Technician, Recording Secretary

**2. INSTRUCTIONS TO CITIZENS ON SIGNING UP FOR PUBLIC TESTIMONY REGARDING AGENDA AND NON-AGENDA ITEMS**

**Chair Travis Stovall** read the instructions.

**B. CITIZEN AND COMMUNITY GROUP COMMENTS FOR AGENDA (EXCEPT PUBLIC HEARING) AND NON-AGENDA ITEMS**

**1. CITIZEN AND COMMUNITY GROUP COMMENTS**

**Johntae Ivory, Recording Secretary**, reported that we have 1 written testimony submitted by **Catherine Nicewood**.

**C. CONSENT AGENDA**

**1. GRESHAM REDEVELOPMENT COMMISSION MEETING MINUTES**

Commission approval of this item would approve the minutes of the Commission meetings of June 18, 2024.

**Chair Stovall** called for a motion on the Consent Agenda.

Motion was made by **Commissioner Gladfelter** and seconded by **Commissioner Hinton** APPROVE CONSENT AGENDA ITEM C-1.

**Chair Stovall** asked if there was any discussion on the Consent Agenda or motion.

Hearing none, **Chair Stovall** called for the vote. The motion passed as follows:

Commission Chair Travis Stovall	YES
Commissioner Janine Gladfelter	YES
Commissioner Jerry Hinton	YES
Commissioner Sue Piazza	YES
Commission Vice Chair Dina DiNucci	YES
Commissioner Vincent Jones-Dixon	ABSENT

#### **D. PUBLIC HEARING**

#### **E. COMMISSION BUSINESS**

##### **1. YAHMILL CORRIDOR IMPROVEMENT UPDATE**

**Brian Monberg**, Gresham Redevelopment Commission Executive Director, presented the staff report.

(PowerPoint presentation attached as Exhibit A.)

**Commissioner Hinton** asked if Yamhill Street has been a part of the resurfacing project because it looks like it hasn't been touched.

**Mr. Monberg** believes it's not part of the resurfacing project, but he will look for ways to add to our Capital projects in the future, to improve the street surface.

**Commissioner Gladfelter** agrees with **Commissioner Hinton** about adding more street upgrades and she would like to see more funding toward the Yamhill Street improvements.

**Chair Stovall** agrees with everyone regarding street improvement on Yamhill. He believes it's been long overdue, and he understands how important the connection is between the Y-East trail and Yamhill Street, bicycling, and overall safety during transit. He is completely in support of leveraging the County, ourselves, and larger grants to accomplish our goals.

**Commission Vice Chair Dina DiNucci** acknowledged she attends most of the Advisory Committee meetings and they're excited as well for the Yamhill Street improvement project. She's glad to see what we might be able to do with Multnomah County. She is happy that all parties are on board to help with the improvements for Vance park and the projects in the Yamhill Street area.

**Chair Stovall** thanked **Mr. Monberg** for his service for the City of Gresham, including the years he served in government and especially his great work on the Metro East Connection plan when he was with Metro. He explained how complicated it was to get some many groups together to launch that project, and Mr. Monberg was key with getting everyone together.

**Commission Vice Chair Dina DiNucci** thanked **Mr. Monberg** for all his work with Metro and especially the Gresham Redevelopment Commission. She will miss him and everything he has touched; he has done so well. She acknowledged his leadership has inspired the Gresham Redevelopment Commission Advisory Committee and she hopes everyone gets a chance to work with them cause their amazing.

**Commissioner Gladfelter** thanked **Mr. Monberg** for all the work he has done, and it's been an honor for her to work with him over the years.

**Mr. Monberg** thanked everyone and said it's a bittersweet day. He explained he worked for the City of Gresham for over 9 years and acknowledged that it has been a highlight of his professional career to make a positive contribution to the city and our residents.

**F. COMMISSION MEASURES AND PROPOSALS**

**G. ADJOURNMENT OF MEETING**

Hearing no further business, **Chair Stovall** adjourned the meeting at 2:37 PM.

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TRAVIS STOVALL  
CHAIR

Respectfully submitted,

/s/ Johntae Ivory  
\_\_\_\_\_  
Johntae Ivory  
Recording Secretary

# GRESHAM

## REDEVELOPMENT COMMISSION

### AGENDA ITEM TYPE: DECISION

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#### Approval of Property Acquisition: 18330 E. Burnside Street

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**Meeting Date:** December 10, 2024

**Agenda Item Number:** E-1

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#### REQUESTED COMMISSION ACTION

Move to approve the purchase of 18330 E. Burnside Street for \$1,430,000 and authorize the Interim Urban Renewal Director to proceed with closing consistent with the Purchase and Sale Agreement and execute on behalf of the GRDC all documents necessary to complete the purchase.

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#### PUBLIC PURPOSE AND COMMUNITY OUTCOME

Purchase of this property will ensure quality redevelopment in the Rockwood Town Center as well as contribute to the long-term vitality of the Rockwood neighborhood. The proposed acquisition supports the following goals of the Rockwood-West Gresham Renewal Plan: Goal 2, "Improve Rockwood Town Center" and Goal 8, "Promote Quality Development."

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#### BACKGROUND

The parcel under consideration for purchase by Gresham Redevelopment Commission (GRDC) is strategically located in the Rockwood Town Center. This parcel (property ID: R943322150) is located at 18330 E. Burnside. It is approximately 1.0 acre in size and adjacent to currently owned GRDC property at 18428-18432 E. Burnside, to the TriMet 181<sup>st</sup> Ave Park & Ride, and the Downtown Rockwood Development. GRDC ownership of the site would ensure that the site is redeveloped in the future in a manner consistent with the goals of the Urban Renewal Plan and the GRDC.

The site consists of one building (former Lydia's Restaurant) which is not actively in use. The property is currently privately owned, and while not on the market, the seller is willing to sell the property to the GRDC. Kohler Meyers O'Halloran, Inc. (KMO Real Estate) has represented the GRDC as the brokerage in this transaction. This property is ideally located within the Rockwood Town Center and along with the adjacent properties under GRDC control, presents a great opportunity for site control and land assemblage.





*Location of 18330 E. Burnside St. outlined in yellow*

**Terms of the Transaction:**

Following negotiations between the Seller and the GRDC, a Purchase and Sale Agreement (PSA) was executed on November 21, 2024, subject to approval by the GRDC. The terms of the PSA include:

- Purchase price: \$1,430,000
- Earnest money: \$25,000, applicable to purchase price and refundable if Purchaser (the GRDC) does not approve the Agreement before closing;
- Buyer Approval: Purchase must be approved by the Purchaser (GRDC) before closing;
- Closing Costs: Purchaser will be responsible for one-half of closing fees charged by escrow agent and/or title company.
- Site Conditions: As-Is, subject to approval by the Buyer as a result of its due diligence investigations.

**Due Diligence**

Staff coordinated the following due diligence activities:

- **Title Review:** GRDC staff and KMO Real Estate reviewed the Title Report and determined that there are no significant issues related to the Title.
- **Appraisal:** Zell & Associates completed an appraisal of the market value of the property, which concluded the value to be \$1,165,000, which is lower than the initial estimate, but within 18% of the price agreed to in the PSA. The reason for the lower appraised value is that the appraiser believed the land and location is what carries the true value and not the physical building. Comps and recent sales were difficult to obtain that reflect the current

market for properties of the type in Rockwood. The concluded highest and best use is for eventual demolition of the current building to make way for construction of new mixed-use commercial/residential redevelopment. Staff is satisfied that the purchase price, which reflects a good investment to secure a property in the Rockwood Town Center, is in alignment with the Urban Renewal plan goals.

- **Environmental:** No significant issues were identified in the Environmental Site Assessment.
- **Property/Building Conditions:** O’Neil Home Inspections, LLC., preformed a physical inspection of the building structure, roof, foundation, building envelope, and mechanical, electrical, and plumbing systems. They found the roof is in poor condition with soft spots throughout, electrical systems need further evaluation, and they found possible asbestos and fungus throughout the building. According to Kohler Meyer & Associates, this building should be subject to demolition with the asbestos properly disposed.

In the course of this research, staff identified no significant impediments to acquisition of the site.

#### **Future Redevelopment**

In the future and at the direction of the GRDC, staff could develop a plan for redevelopment of the site. This plan would include uses that would complement the Central Rockwood Plan, Downtown Rockwood, the future B188 development and further the goals of the GRDC, as well as identifying potential development strategies, financing tools, and partnerships that could support a project on the site.

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### **RECOMMENDATION and ALTERNATIVES**

Recommendation: Move to approve the purchase of 18330 E. Burnside Street for \$1,430,000, and authorize the Interim Urban Renewal Director to proceed with closing consistent with the Purchase and Sale Agreement and execute all documents on behalf of the GRDC necessary to complete the purchase .

Alternatives: GRDC options include directing staff not to proceed with the acquisition and terminate the PSA.

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### **BUDGET / FINANCIAL IMPACT**

Funding for this acquisition is budgeted for in the Urban Renewal Capital Improvement Program (CIPUR00006).

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### **PUBLIC INVOLVEMENT**

The Gresham Redevelopment Commission Advisory Committee reviewed and recommended this acquisition at the November 20, 2024 meeting. This transaction has been a confidential real estate negotiation with a willing seller for a property not currently on the market.

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### **NEXT STEPS**

Staff will work with the City Attorney’s Office, the Budget and Finance Department, and the broker to complete the purchase of the property. Closing will be scheduled according to the terms of the Purchase and Sale Agreement.

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**ATTACHMENTS**

Attachment A: Purchase and Sale Agreement

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**FROM**

Michael Gonzales, Interim Urban Renewal Director

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**REVIEWED THROUGH**

Eric Schmidt, City Manager  
Sharron Monohon, Budget and Finance Director  
Ellen Van Riper, City Attorney

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**FOR MORE INFORMATION**

Staff Contact: Michael Gonzales  
Telephone: 503-618-2482  
Staff E-Mail: [Michael.Gonzales@GreshamOregon.gov](mailto:Michael.Gonzales@GreshamOregon.gov)  
Website: [www.GreshamOregon.gov/UrbanRenewal](http://www.GreshamOregon.gov/UrbanRenewal)

COMMERCIAL ASSOCIATION OF BROKERS OREGON/SW WASHINGTON  
PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY  
(Oregon Commercial Form)

AGENCY ACKNOWLEDGMENT

Buyer shall execute this Acknowledgment concurrent with the execution of the Agreement below and prior to delivery of that Agreement to Seller. Seller shall execute this Acknowledgment upon receipt of the Agreement by Seller, even if Seller intends to reject the Agreement or make a counter-offer. In no event shall Seller's execution of this Acknowledgment constitute acceptance of the Agreement or any terms contained therein.

Pursuant to the requirements of Oregon Administrative Rules (OAR 863-015-0215), both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and by execution below acknowledge and consent to the agency relationships in the following real estate purchase and sale transaction as follows:

(a) Seller Agent: \_\_\_\_\_ of \_\_\_\_\_ firm (the "Selling Firm") is the agent of (check one):  
 Buyer exclusively;  Seller exclusively;  both Seller and Buyer ("Disclosed Limited Agency").

(b) Buyer Agent: Sue O'Halloran and Darren O'Halloran of Kohler Meyers O'Halloran, Inc. (the "Buying Firm") is the agent of (check one):  Buyer exclusively;  Seller exclusively;  both Seller and Buyer ("Disclosed Limited Agency").

If the name of the same real estate firm appears in both Paragraphs (a) and (b) above, Buyer and Seller acknowledge that a principal broker of that real estate firm shall become the Disclosed Limited Agent for both Buyer and Seller, as more fully set forth in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and the named real estate agent(s).

ACKNOWLEDGED

Buyer: Gresham Redevelopment Commission By: Michael Gonzales Date: 11/21/2024

Seller: Ly Thor, LLC By: [Signature] Date: 11/15/2024 | 7:03 PM PST  
Its: Interim Urban Renewal Director

[No further text appears on this page.]

PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY

This PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY (this "Agreement") dated \_\_\_\_\_, 2024, for reference purposes only, shall be effective on the date when this Agreement has been executed and delivered by Seller and Buyer (the "Execution Date"):

BETWEEN: Ly Thor, LLC ("Seller")
Address: \_\_\_\_\_
Home Phone: 503-270-7794
Office Phone:
Fax No.:
E-Mail: Kthor11@gmail.com

AND: Gresham Redevelopment Commission ("Buyer")
Address: 1333 NW Eastman Parkway, Gresham OR 97030
Home Phone:
Office Phone: 503-618-2482
Fax No.:
E-Mail: Michael.gonzales@greshamoregon.gov

1. Purchase and Sale.

1.1 Generally. In accordance with this Agreement, Buyer agrees to buy and acquire from Seller, and Seller agrees to sell to Buyer the following, all of which are collectively referred to in this Agreement as the "Property:" (a) the real property and all improvements thereon generally described or located at 18330 E. Burnside Street, Gresham OR 97233, County of Multnomah, Oregon, and legally described on Exhibit A (the "Real Estate") (if no legal description is attached, the legal description shall be the legal description of the Real Estate in the Preliminary Report (described in Section 5), subject to the review and approval of both parties hereto), including all of Seller's right, title and interest in and to all fixtures, appurtenances, and easements thereon or related thereto; (b) all of Seller's right, title and interest, if any, in and to any and all leases to which the Real Estate is subject (each, a "Lease"); and (c) any and all personal property located on and used in connection with the operation of the Real Estate and owned by Seller (the "Personal Property"). If there are any Leases, see Section 22.1, below. The occupancies of the Property pursuant to any Leases are referred to as the "Tenancies" and the occupants thereunder are referred to as "Tenants." If there is any Personal Property, see Section 22.2, below.

1.2 Purchase Price. The purchase price for the Property shall be One Million Four Hundred Thirty Thousand dollars (\$1,430,000.00) (the "Purchase Price"). The Purchase Price shall be adjusted, as applicable, by the net amount of credits and debits to Seller's account at Closing (defined below) made by Escrow Holder pursuant to the terms of this Agreement. The Purchase Price shall be payable as follows:

1.2.1 Earnest Money Deposit.

(a) Within Five (5) City business days days of the Execution Date, Buyer shall deliver into Escrow (as defined herein), for the account of Buyer, \$25,000.00 as earnest money (the "Earnest Money") in the form of:

[ ] promissory note in the form of Exhibit B (the "Note"); [ ] check; or XX cash equivalent (wire transfer; cashier's or certified check) or other immediately available funds.

50  
 51 b. The purchase and sale of the Property shall be accomplished through an escrow (the  
 52 "Escrow") that Seller has established or will establish with Fidelity National Title, Kim McFeron (the "Escrow Holder")  
 53 within 5 business days after the Execution Date. Except as otherwise provided in this Agreement: (i) any interest  
 54 earned on the Earnest Money shall be considered to be part of the Earnest Money; (ii) the Earnest Money shall be  
 55 non-refundable upon satisfaction or waiver of all Conditions as defined in Section 2.1; and (iii) the Earnest Money  
 56 shall be applied to the Purchase Price at Closing.

57  
 58 1.2.2 Balance of Purchase Price. Buyer shall pay the balance of the Purchase Price at Closing  
 59 by XX cash or other immediately available funds..

60  
 61 1.3 Section 1031 Like-Kind Exchange. Each party acknowledges that either party (as applicable, the  
 62 "Exchanging Party") may elect to engage in and effect a like-kind exchange under Section 1031 of the Internal  
 63 Revenue Code, involving the Property (or any legal lot thereof) (a "1031 Exchange"). The non-Exchanging Party with  
 64 respect to a 1031 Exchange is referred to herein as the "Cooperating Party." Buyer and Seller each hereby agree to  
 65 reasonably cooperate with the other in completing each such 1031 Exchange; provided, however, that such  
 66 cooperation shall be at the Exchanging Party's sole expense and shall not delay the Closing for the Property. An  
 67 assignment of this Agreement by the Exchanging Party to a 1031 Exchange accommodator shall be permitted but  
 68 shall not delay Closing or release the Exchanging Party from its obligations under this Agreement. The Cooperating  
 69 Party shall not suffer any costs, expenses or liabilities for cooperating with the Exchanging Party and shall not be  
 70 required to take title to the exchange property. The Exchanging Party agrees to indemnify, defend and hold the  
 71 Cooperating Party harmless from any liability, damages and costs arising out of the 1031 Exchange.

72  
 73 2. Conditions to Purchase.

74  
 75 2.1 Buyer's obligation to purchase the Property is conditioned on the following:

- 76  
 77  None;  
 78  Within \_\_\_ days of the Execution Date, Buyer's approval of the results of (collectively, the  
 79 "General Conditions"): (a) the Property inspection described in Section 3 below; and (b) the  
 80 document review described in Section 4 below;  
 81  Within \_\_\_ days of the Execution Date, Buyer's receipt of confirmation of satisfactory financing  
 82 (the "Financing Condition"); and/or  
 83 **XX Consideration and approval by the Gresham Redevelopment Commission of the**  
 84 **Commission's purchase of the Property pursuant to this Agreement no later than**  
 85 **December 10, 2024. If the Redevelopment Commission should decide to not approve**  
 86 **the Commission's purchase of the Property, the Commission shall not be obligated to**  
 87 **proceed with the Closing, the Earnest Money will be returned to the Commission and**  
 88 **this Agreement shall be terminated and be void and of no effect.**

89  
 90 The General Conditions, Financing Condition and any other conditions in Section 2.1 above shall be collectively  
 91 defined as the "Conditions."

92  
 93 2.2 If, for any reason in Buyer's sole discretion, Buyer has not timely given written waiver of the  
 94 Conditions, or stated in writing that such Conditions have been satisfied, by notice given to Seller within the time  
 95 periods for such Conditions set forth above, this Agreement shall be deemed automatically terminated, the Earnest  
 96 Money shall be promptly returned to Buyer, and thereafter, except as specifically provided to the contrary herein,  
 97 neither party shall have any further obligation, right or remedy hereunder.

98  
 99 3. Property Inspection. Seller shall permit Buyer and its agents, at Buyer's sole expense and risk, to enter  
 100 the Property at reasonable times after reasonable prior notice to Seller and after prior notice by Seller to the Tenants

100 tests, and surveys concerning the structural condition of the improvements, all mechanical, electrical and  
101 plumbing systems, hazardous materials, pest infestation, soils conditions, wetlands, Americans with  
102 Disabilities Act compliance, zoning, and all other matters affecting the suitability of the Property for  
103 Buyer's intended use and/or otherwise reasonably related to the purchase of the Property including the  
104 economic feasibility of such purchase. If the transaction contemplated in this Agreement fails to close for  
105 any reason (or no reason) as a result of the act or omission of Buyer or its agents, Buyer shall promptly  
106 restore the Property to substantially the condition the Property was in prior to Buyer's performance of  
107 any inspections or work. **Subject to provisions of the Oregon Tort Claims Act and the Oregon**  
108 **Constitution**, Buyer shall indemnify, hold harmless, and defend Seller from all liens, liability, damages,  
109 costs, and expenses, including reasonable attorneys' fees and experts' fees, arising from or relating to  
110 Buyer's or its agents', contractors' or consultants' entry on and inspection of the Property. This  
111 agreement to indemnify, hold harmless, and defend Seller shall survive Closing or any termination of this  
112 Agreement.

113  
114 4. Seller's Documents. Within \_\_\_ days after the Execution Date, Seller shall deliver, physically  
115 or electronically, to Buyer or Buyer's designee, legible and complete copies of the following documents,  
116 including without limitation, a list of the Personal Property, and other items relating to the ownership,  
117 operation, and maintenance of the Property to the extent now in existence and to the extent such items  
118 are or come within Seller's possession or control, including, without limitation, surveys, building and site  
119 plans, environmental reports, Leases, service contracts, rent roll, operating statements for the previous  
120 two years and current year-to-date, governmental notices, and See Addendum A.

121  
122 5. Title Insurance. Within three (3) days after the Execution Date, Seller shall instruct a title  
123 company selected by Seller (the "Title Company") to deliver to Buyer a preliminary title report from the  
124 Title Company (the "Preliminary Report"), showing the status of Seller's title to the Property, together  
125 with complete and legible copies of all documents shown therein as exceptions to title ("Exceptions").  
126 Buyer shall have ten (10) days after receipt of a copy of the Preliminary Report and Exceptions within  
127 which to give notice in writing to Seller of any objection to such title or to any liens or  
128 encumbrances affecting the Property. Within ten (10) days after receipt of such notice from Buyer, Seller  
129 shall give Buyer written notice of whether it is willing and able to remove the objected-to Exceptions.  
130 Without the need for objection by Buyer, Seller shall, with respect to liens and encumbrances that can be  
131 satisfied and released by the payment of money, eliminate such exceptions to title on or before Closing.  
132 On or before the last day for Buyer to approve the results of the General Conditions set forth in Section  
133 2.1 above (the "Title Contingency Date"), Buyer shall elect whether to: (i) purchase the Property subject  
134 to those objected-to Exceptions which Seller is not willing or able to remove; or (ii) terminate this  
135 Agreement. If Buyer fails to give Seller notice of Buyer's election, then such inaction shall be deemed to  
136 be Buyer's election to terminate this Agreement. On or before the Closing Date (defined below), Seller  
137 shall remove all Exceptions to which Buyer objected and which Seller agreed, or is deemed to have  
138 agreed, to remove. All remaining Exceptions set forth in the Preliminary Report and those Exceptions  
139 caused by or agreed to by Buyer shall be deemed "Permitted Exceptions."

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141 6. Default Remedies. Notwithstanding anything to the contrary contained in this Agreement, in  
142 the event Buyer fails to deposit the Earnest Money in Escrow strictly as and when contemplated under  
143 Section 1.2.1 above, Seller shall have the right at any time thereafter, but prior to Buyer's deposit of the  
144 Earnest Money in Escrow, to terminate this Agreement and all further rights and obligations hereunder  
145 by giving written notice thereof to Buyer. If the conditions, if any, to Buyer's obligation to close  
146 this transaction are satisfied or waived by Buyer and Buyer fails, through no fault of Seller, to close on  
147 the purchase of the Property, Seller's sole remedy shall be to retain the Earnest Money paid by Buyer as  
148 liquidated damages. If the conditions, if any, to Seller's obligation to close this transaction are satisfied  
149 or waived by Seller and Seller fails, through no fault of Buyer, to close the sale of the Property, Buyer  
150 shall be entitled as its sole and exclusive remedy to either: (i) terminate this Agreement, receive a refund

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performance within sixty (60) days after the scheduled Closing Date, Buyer shall be deemed to have elected remedy (i) above. In no event shall either party be entitled to punitive or consequential damages, if any, resulting from the other party's failure to close the sale of the Property. **BUYER AND SELLER EACH AGREE THAT IF BUYER DEFAULTS UNDER THIS AGREEMENT, THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THAT THEREFORE, IF BUYER DEFAULTS HEREUNDER THE LIQUIDATED DAMAGES AMOUNT SHALL SERVE AS DAMAGES FOR THE DEFAULT BY BUYER, AS A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER, INCLUDING COSTS OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HERewith.**

7 Closing of Sale.

7.1 Buyer and Seller agree the sale of the Property shall be closed ("Closing"), in Escrow, ~~XX~~ on or before **December 13, 2024, or Ten (10 business days** after the Conditions set forth in Sections 2.1 have been satisfied or waived in writing by Buyer (the "Closing Date"). The sale of the Property shall be deemed closed when the document(s) conveying title to the Property is/are delivered and recorded and the Purchase Price is disbursed to Seller.

7.2 At Closing, Buyer and Seller shall deposit with the Escrow Holder all documents and funds required to close the transaction in accordance with the terms of this Agreement. At Closing, Seller shall deliver a certification confirming whether Seller is or is not a "foreign person" as such term is defined by applicable law and regulations.

7.3 At Closing, Seller shall convey fee simple title to the Property to Buyer by ~~XX~~ statutory warranty deed (the "Deed"). At Closing, Seller shall cause the Title Company to deliver to Buyer a standard ALTA form owner's policy of title insurance (the "Title Policy") in the amount of the Purchase Price insuring fee simple title to the Property in Buyer subject only to the Permitted Exceptions and the standard preprinted exceptions contained in the Title Policy. Seller shall reasonably cooperate in the issuance to Buyer of an ALTA extended form policy of title insurance. Buyer shall pay any additional expense resulting from the ALTA extended coverage and any endorsements required by Buyer.

8 Closing Costs; Prorations. Seller shall pay the premium for the Title Policy, provided, however, if Buyer elects to obtain an ALTA extended form policy of title insurance and/or any endorsements, Buyer shall pay the difference in the premium relating to such election. Seller and Buyer shall each pay one-half (1/2) of the escrow fees charged by the Escrow Holder. Real property taxes for the tax year of the Closing, ~~assessments (if a Permitted Exception), personal property taxes, rents and other charges arising from existing Tenancies paid for the month of Closing, and interest on assumed obligations~~ shall be prorated as of the Closing Date based on amounts collected. Seller shall use reasonable efforts to cause any applicable utility meters to be read on the day prior to the Closing Date, and will be responsible for the cost of any utilities used prior to the Closing Date. ~~If applicable, prepaid rents, prepaid common area maintenance charges, reserves, security deposits, and other unearned refundable deposits relating to Tenancies shall be assigned and delivered to Buyer at Closing.  Seller  Buyer  N/A shall be responsible for payment of all taxes, interest, and penalties, if any, upon removal of the Property from any special assessment or program.~~ If any of the aforesaid prorations cannot be definitely calculated on the Closing Date, then they shall be estimated at Closing and definitely calculated as soon after the Closing Date as feasible.



201 9 Possession. Seller shall deliver exclusive possession of the Property, subject to the Tenancies (if  
202 any) existing as of the Closing Date and the Permitted Exceptions, to Buyer  on the Closing Date or  \_\_\_.

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204 10 Condition of Property. Seller represents and warrants to Buyer that: (i) Seller has received no  
205 written notices of violation of any laws, codes, rules, or regulations applicable to the Property ("Laws") that were  
206 not delivered to Buyer pursuant to Section 4 above; (ii) to the best of Seller's knowledge without specific inquiry,  
207 the Property is not in violation of any Laws and there are no concealed material defects in the Property; (iii)  
208 Seller has delivered complete copies of all Leases and service contracts for the Property to Buyer; and (iv) to the  
209 best of Seller's knowledge, the documents prepared by Seller and delivered to Buyer pursuant to Section 4 are  
210 accurate in all material respects. Unless caused by Buyer, Seller shall bear all risk of loss and damage to the  
211 Property until Closing, and Buyer shall bear such risk at and after Closing. Except for Seller's representations  
212 and warranties set forth in this Section 10, Buyer shall acquire the Property "AS IS" with all faults and Buyer shall  
213 rely on the results of its own inspection and investigation in Buyer's acquisition of the Property. It shall be a  
214 condition of Buyer's Closing obligation that all of Seller's representations and warranties stated in this Agreement  
215 are materially true and correct on the Closing Date. Seller's representations and warranties stated in this  
216 Agreement shall survive Closing for one (1) year.

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218 11 Condemnation or Casualty. If, prior to Closing, all or any material part of the Property is (a)  
219 condemned or appropriated by public authority or any party exercising the right of eminent domain, or is  
220 threatened thereby, or (b) if there occurs a fire or other casualty causing material damage to the Property or any  
221 material portion thereof, then, at the election of Buyer by written notice to Seller, either: (i) this Agreement shall  
222 terminate, whereupon all Earnest Money and any interest accrued thereon shall be promptly refunded to Buyer;  
223 or (ii) this Agreement shall remain in effect and Seller shall assign to Buyer at Closing Seller's entire right, title  
224 and interest in the taking award or casualty insurance proceeds attributable to the portion of the Property taken  
225 or destroyed, as the case may be. If Buyer fails to make such election within twenty (20) days after written  
226 notice from Seller, Buyer shall be deemed to have elected option (ii) above. Seller will promptly notify Buyer as  
227 to the commencement of any such action or any communication from a condemning authority that a  
228 condemnation or appropriation is contemplated, and will cooperate with Buyer in the response to or defense of  
229 such actions.

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231 12 Operation of Property. Between the Execution Date and the Closing Date, Seller shall: (i) continue  
232 to operate, maintain and insure the Property consistent with Seller's current operating practices; (ii) provide  
233 Buyer with copies of any proposed new leases, agreements or contracts described below; and (iii) not, without  
234 Buyer's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, enter  
235 into: (a) any new leases or occupancy agreements for the Property; (b) any material amendments or modification  
236 agreements for any existing Leases or occupancy agreements for the Property; or (c) any service contracts or  
237 other agreements affecting the Property that are not terminable prior to Closing.

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239 13 Assignment. Assignment of this Agreement:  is PROHIBITED; or **XX** is PERMITTED, without  
240 consent of Seller; provided, that assignment of this Agreement by Buyer to an entity owned or controlled by  
241 Buyer or to a 1031 Exchange accommodator is permitted without Seller's consent. If Seller's written consent is  
242 required for assignment, such consent may be withheld in Seller's reasonable discretion. In the event of any  
243 assignment, Buyer shall remain liable for all Buyer's obligations under this Agreement.

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245 14 Arbitration. IF AND ONLY IF THIS SECTION IS INITIALED BY BUYER AND SELLER, THE  
246 FOLLOWING SHALL APPLY TO THIS AGREEMENT:

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248 ANY DISPUTE BETWEEN BUYER AND SELLER RELATED TO THIS AGREEMENT, THE PROPERTY, OR THE  
249 TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT WILL BE RESOLVED BY ARBITRATION GOVERNED  
250 BY THE OREGON UNIFORM ARBITRATION ACT (ORS 36.600 et seq.) AND, TO THE EXTENT NOT  
251 INCONSISTENT WITH THAT STATUTE, CONDUCTED IN ACCORDANCE WITH THE RULES OF PRACTICE AND



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~~18 Brokerage Agreement. The Agency Acknowledgement on page 1 this Agreement is incorporated into this Agreement as if fully set forth herein. Seller agrees to pay a commission to Selling Firm in the amount of either:  percent (\_\_\_%) of the Purchase Price or  \$\_\_\_. Such commission shall be divided between Selling Firm and Buying Firm such that Selling Firm receives \_\_\_ percent (\_\_\_%) and Buying Firm receives percent (\_\_\_%). Seller shall cause the Escrow Holder to deliver to Selling Firm and Buying Firm the real estate commission on the Closing Date or upon the failure of this transaction to Close on account of Seller's default under this Agreement, whichever occurs first. If the Earnest Money is forfeited by Buyer and retained by Seller in accordance with this Agreement, in addition to any other rights the Selling Firm and Buying Firm may have, the Selling Firm and the Buying Firm, together, shall be entitled to the lesser of: (i) fifty percent (50%) of the Earnest Money; or (ii) the commission agreed to above, and Seller hereby assigns such amount to the Selling Firm and the Buying Firm.~~

19 Notices. Unless otherwise specified, any notice required or permitted in, or related to this Agreement must be in writing and signed by the party to be bound. Any notice will be deemed delivered: (a) when personally delivered; (b) when delivered by facsimile or electronic mail transmission (in either case, with confirmation of delivery); (c) on the day of delivery of the notice by reputable overnight courier; or (d) on the day of delivery of the notice by mailing by certified or registered U.S. mail, postage prepaid, return receipt requested, unless that day is a Saturday, Sunday, or federal or Oregon State legal holiday, in which event such notice will be deemed delivered on the next following business day. All notices shall be sent by the applicable party to the address of the other party shown at the beginning of this Agreement.

20 Miscellaneous. Time is of the essence of this Agreement. If the deadline under this Agreement for delivery of a notice or performance of any obligation is a Saturday, Sunday, or federal or Oregon State legal holiday, such deadline will be deemed extended to the next following business day. The facsimile and/or electronic mail transmission of any signed document including this Agreement shall be the same as delivery of an original, and digital signatures shall be valid and binding. At the request of either party, the party delivering a document by facsimile and/or electronic mail will confirm such transmission by signing and delivering to the other party a duplicate original document. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements between them. Without limiting the provisions of Section 13 of this Agreement, this Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns. Solely with respect to Sections 15 and 18, Selling Firm and Buying Firm are third party beneficiaries of this Agreement. The person signing this Agreement on behalf of Buyer and the person signing this Agreement on behalf of Seller each represents, covenants and warrants that such person has full right and authority to enter into this Agreement and to bind the party for whom such person signs this Agreement to its terms and provisions. Neither this Agreement nor a memorandum hereof shall be recorded unless the parties otherwise agree in writing.

21 Governing Law. This Agreement is made and executed under, and in all respects shall be governed and construed by, the laws of the State of Oregon.

~~22 Lease(s) and Personal Property.~~

~~22.1 Leases.~~

~~22.1.1 Seller shall use commercially reasonable efforts to deliver to Buyer, at least \_\_\_ days (three (3) if not filled in) before the Closing Date, a tenant estoppel certificate, reasonably acceptable to Buyer, pertaining to each Lease at the Property in effect as of the Closing Date (each, a "Tenant Estoppel") for each Tenant occupying 5,000 square feet or more of the Property and Tenants occupying not less than eighty percent (80%) of~~

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~~the remaining leasable square feet of the Property. Such Tenant Estoppels shall be dated no more than \_\_\_ days (thirty (30) if not filled in) prior to the Closing Date and shall certify, among other things: (a) that the Lease is unmodified and in full force and effect, or is in full force and effect as modified, and stating the modifications; (b) the amount of the rent and the date to which rent has been paid; (c) the amount of any security deposit held by Seller; and (d) that neither party is in default under the Lease or if a default by either party is claimed, stating the nature of any such claimed default. If Seller has not obtained Tenant Estoppels from all Tenants of the Property, then Seller shall have the right, but not the obligation, to execute and deliver to Buyer a Tenant Estoppel with respect to any such Lease setting forth the information required by this Section 22.1.1 and confirming the accuracy thereof. Buyer's timely receipt of Tenant Estoppels from all Tenants satisfying the foregoing requirements shall be a condition to Buyer's obligation to Close this transaction.~~

~~22.1.2 If applicable, the assignment of the Lease(s) by Seller, and assumption of the Lease(s) by Buyer, shall be accomplished by executing and delivering to each other through Escrow on the Closing Date an Assignment of Lessor's Interest under Lease substantially in the form of Exhibit C (the "Assignment").~~

~~22.2 Personal Property. If applicable, Seller shall convey all Personal Property to Buyer by executing and delivering to Buyer at Closing through Escrow (as defined below), a Bill of Sale substantially in the form of Exhibit D (the "Bill of Sale"). A list of such Personal Property shall be attached to the Bill of Sale.~~

~~23 Residential Lead Based Paint Disclosure. IF THE PROPERTY CONSISTS OF RESIDENTIAL HOUSING BUILT PRIOR TO 1978, BUYER AND SELLER MUST COMPLETE THE LEAD-BASED PAINT DISCLOSURE ADDENDUM ATTACHED HERETO AS EXHIBIT E.~~

24 Addenda; Exhibits. The following named addenda and exhibits are attached to this Agreement and incorporated within this Agreement:

- Exhibit A – Legal Description of Property
- Addendum A

25 OFAC Certification. The Federal Government, Executive Order 13224, requires that business persons of the United States not do business with any individual or entity on a list of "Specially Designated nationals and Blocked Persons" - that is, individuals and entities identified as terrorists or other types of criminals. Seller and Buyer hereinafter certify to each other that:

25.1 It is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, specially designated national and/or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and

25.2 It has not executed this Agreement, directly or indirectly on behalf of, or instigating or facilitating this Agreement, directly or indirectly on behalf of, any such person, group, entity, or nation.

Seller and Buyer hereby agree to defend, indemnify, and hold harmless each other from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related

404 to any breach of the foregoing certification. This certification and agreement to indemnify, hold harmless, and defend  
405 shall survive Closing or any termination of this Agreement.

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407 CONSULT YOUR ATTORNEY. THIS DOCUMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR  
408 ATTORNEY FOR REVIEW AND APPROVAL PRIOR TO SIGNING. NO REPRESENTATION OR  
409 RECOMMENDATION IS MADE BY THE COMMERCIAL ASSOCIATION OF BROKERS OREGON/SW  
410 WASHINGTON OR BY THE REAL ESTATE AGENTS INVOLVED WITH THIS DOCUMENT AS TO THE LEGAL  
411 SUFFICIENCY OR TAX CONSEQUENCES OF THIS DOCUMENT.

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413 THIS FORM SHOULD NOT BE MODIFIED WITHOUT SHOWING SUCH MODIFICATIONS BY REDLINING,  
414 INSERTION MARKS, OR ADDENDA.

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416 Buyer: Gresham Redevelopment Commission

Approved as to Form:

Signed by:

Signed by:

417 By: Michael Gonzales

By: Ellen Van Riper

418 Title: Interim Urban Renewal Director

Name: Ellen Van Riper

419 Date: 11/21/2024

Title: City Attorney

420  
421 Seller: Ly Thor LLC

Signed by:

422 By: [Signature]

423 Name: David Ly

424 Title: \_\_\_\_\_

425 Date: 11/15/2024 | 7:03 PM PST

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428  
429 **Time for Acceptance.** If the second party to execute this Agreement has not executed and delivered this Agreement  
430 within **Five days (five (5) if not filled in)** after the date this Agreement was signed by the first party to execute this  
431 Agreement set forth above, then any Earnest Money deposited shall be promptly refunded to Buyer and neither party  
432 shall have any right or obligation hereunder.

433

**Addendum A to Purchase and Sale Agreement**

**Buyer: Gresham Redevelopment Commission**

**Seller: Ly Thor, LLC**

**Property: 18330 E. Burnside Street, Gresham OR 97233**

Seller and Buyer agree the following shall be a part of the Purchase and Sale Agreement above referenced:

1. Section 2 Conditions to Purchase: Buyer has performed inspections and has received an appraisal of market value and is satisfied therewith.
2. Section 4 Seller Documents: Seller shall provide Buyer any building and site plans, any governmental or jurisdictional agency notices within Five (5) days of mutual execution date hereof.
3. Section 7 Closing of Sale: Closing of Sale shall occur on or before December 13, 2024, or not later than Ten (10) city business day after conditions in Section 2.1 of the Purchase and Sale Agreement have been satisfied.
4. Section 10 Condition of Property: Buyer accepts the Property in its "AS IS" condition including miscellaneous furnishings located within the Property, and including any repairs as required in notification from the City of Gresham for sidewalk repairs on the subject parcel.
5. Section 18 Brokerage Agreement: Seller is unrepresented in this transaction. Buyer's Broker representatives are Sue O'Halloran, Principal Broker of Kohler Meyers O'Halloran, Inc., and Darren O'Halloran, Senior Broker of Kohler Meyers O'Halloran, Inc. A Broker Service Agreement to be provided to Fidelity National Title for compensation by Buyer at Closing of this transaction.

Buyer: **Gresham Redevelopment Commission** By Michael Gonzales Date 11/21/2024

Seller: **Ly Thor, LLC** By [Signature] Date 11/15/2024 | 7:03 PM PST

# GRESHAM

## REDEVELOPMENT COMMISSION

### AGENDA ITEM TYPE: DECISION

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### Sunrise Site / Rockwood B188: Disposition & Development Agreement

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**Meeting Date:** December 10, 2024

**Agenda Item Number:** E-2

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#### REQUESTED COMMISSION ACTION

Move to approve the draft Disposition and Development Agreement (DDA) of the Rockwood Sunrise Site (B188) and direct the Interim Urban Renewal Director to finalize negotiations and execute on behalf of the GRDC all documents necessary to complete the draft DDA.

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#### PUBLIC PURPOSE AND COMMUNITY OUTCOME

Redevelopment of the former Sunrise Site furthers the following Rockwood-West Gresham Urban Renewal Plan Goals: Goal 1 (Public Involvement), Goal 2 (Improve Rockwood Town Center), Goal 4 (Help Create and Retain Family Wage Jobs by Improving Industrial and Commercial Areas), Goal 6 (Parks & Recreation Facilities) Goal 7 (Improve Transportation), and Goal 8 (Promote Quality Development).

In addition to the services provided by Portland Opportunities Industrialization Center (POIC), the City and its residents will benefit from recreational opportunities; youth engagement activities; education and mentoring opportunities, and other community benefits that positively impact the health, safety and welfare of its citizens

Portland Opportunities Industrialization Center, Inc (POIC), and HMS Development (HMS/Developer), a private developer partner, will provide capital and resources in the design, permitting, construction, tenant selection, improvements and operations of the former Sunrise Site.

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#### BACKGROUND

Today's meeting is an opportunity to review the work of HMS Development to date, including project refinements to the site program and plan, based on community feedback and need.

On November 19, 2021, the GRDC released RFP No. 22-20, which led to the selection of HMS Development as the development partner for this project.

On May 17, 2022 the Gresham Redevelopment Commission (GRDC) directed the Executive Director to proceed with a non-binding Exclusive Negotiation Agreement (ENA) with HMS Development for the redevelopment of the Sunrise Site.

On September 26, 2022, the Executive Director entered into the ENA to proceed with due diligence work, design development and project refinements. This has included tasks such as

title review, environmental and soils reports, market and marketing study, land use review and initial schematic design. HMS has proceeded with these tasks consistent with the ENA, in anticipation of future negotiation of a development agreement and disposition of the property. The HMS and POIC team has been meeting weekly with GRDC staff.

On June 20, 2023, HMS and POIC presented to the GRDC their vision and shared interest in collaborating with the City of Gresham to provide programming, services and benefits to the community.

On February 27, 2024, GRDC and the Developer, entered into a Term Sheet to facilitate and provide for further due diligence, design development, and the negotiation of this Agreement.

In March, 2024, POIC was identified as the primary “Owner” of this agreement with HMS Development as the Development partner to make up the “Parties”. Pursuant to a separate agreement between Developer and POIC, Developer is providing development services related to POIC’s proposed acquisition and development of the Land under this Agreement.

POIC provides education, training, health, wellness, and job placement services to disadvantaged and underserved members of the community and operates an alternative high school called Rosemary Anderson Prep.

HMS Development is using the name “Rockwood B188” for this new investment during the development process. This is in reference to the location at East Burnside St and SE 188<sup>th</sup> Ave. This name will change as the project proceeds to construction and opening.

The Disposition and Development Agreement (DDA) contains the agreed terms and conditions for the design, development, construction and programming of the Sunrise Site/Rockwood B188 by HMS & POIC in exchange for the conveyance of a good and marketable title to the parcel of real property (the “Land”) representing 18901 E. Burnside (property ID: R754700880) by the Gresham Redevelopment Commission.

Dunn Carney, LLP is representing the GRDC as outside legal counsel and developed the DDA.

## **Primary Terms**

**Project:** Develop a multi-story mixed-use building with a large gymnasium, a landscaped outdoor open area, and onsite parking. A primary purpose of the development is the operation of an alternative, community-based high school, Rosemary Anderson Prep (RAP), operated by Portland Opportunities Industrialization Center (POIC), that provides wraparound services, and which includes significant gymnasium space, administrative office space, and space for other related educational uses, which may include, but are not limited to, workforce training, a business innovation hub, and other related educational and supportive uses.

**Project Budget:** The proposed project budget is estimated to be approximately \$47 million, subject to refinement after further design and construction estimates.

**GRDC Contribution:** Financial contribution by the GRDC included \$500,000 in pre-development funds as part of the previously approved Exclusive Negotiating Agreement (ENA), and any amount to be agreed to in exchange for use and programming of the gymnasium, pending a future agreement.

**Sequencing and Operations:** Property management of the site, buildings, and exterior will be the responsibility of POIC.

**GRDC Approvals:** Project design will be subject to GRDC review and approval at key



milestones, including 100% Schematic Design and 50% Design Development and has approved the Final Construction Drawings.

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**RECOMMENDATION and ALTERNATIVES**

Move to approve the draft Disposition and Development Agreement of the Rockwood Sunrise Site, and direct staff to finalize and execute the Disposition and Development Agreement and included Restrictive Covenant.

Alternatives: GRDC options include directing staff not to proceed with the Disposition and Development Agreement, or to recommend different terms.

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**BUDGET / FINANCIAL IMPACT**

The Purchase Price for the Property shall be One Dollar (\$1.00), which will be paid to Seller (GRDC) in cash at Closing, subject to the restrictive covenants contained within the DDA, which outline the required uses and benefits to the GRDC and the City of Gresham and its residents. Funding for the pre-development work that is stipulated within the Disposition and Development Agreement is budgeted for in the Urban Renewal Capital Improvement Program, Sunrise Site: CIPUR00004.

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**PUBLIC INVOLVEMENT**

Public involvement over this past year has included presentations to the neighborhood association, public workshops, Engage Gresham (online engagement tool), participation at community events including, Cinco de Mayo, Kickoff to Summer, Play Ball, Movies in the Park, Rock the Block and the Yamhill block party, and presentations to the GRDC and GRDC Advisory Committee. Through the feedback received during this public engagement and outreach, the Developer has refined its site design and is reflected in the attached presentation.

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**NEXT STEPS**

Based on Commission direction, staff will proceed to finalize and execute the Disposition and Development Agreement.

Upon execution of the Disposition and Development Agreement, the Developer will commence work according to the schedule of performance outlined in the Disposition and Development Agreement.

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**ATTACHMENTS**

Attachment A: Draft Terms (>90%) for the Disposition and Development of the Rockwood Sunrise Site.

Attachment B: Restrictive Covenant (Exhibit L of DDA)

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**FROM**

Michael Gonzales, Interim Urban Renewal Director

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**REVIEWED THROUGH**

Eric Schmidt, City Manager  
Ellen Van Riper, City Attorney  
Sharron Monohon, Director of Budget & Finance

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**FOR MORE INFORMATION**

Staff Contact: Michael Gonzales  
Telephone: 503-618-2482  
Staff E-Mail: [Michael.Gonzales@GreshamOregon.gov](mailto:Michael.Gonzales@GreshamOregon.gov)  
Website: [www.GreshamOregon.gov/UrbanRenewal](http://www.GreshamOregon.gov/UrbanRenewal)

**DISPOSITION AND DEVELOPMENT AGREEMENT  
(ROCKWOOD SUNRISE SITE)**

This **DISPOSITION AND DEVELOPMENT AGREEMENT** (this “**Agreement**”) is made as of December \_\_\_\_, 2024 by the **GRESHAM REDEVELOPMENT COMMISSION**, a public body corporate and politic, the duly authorized and acting urban renewal agency of the City of Gresham (“**GRDC**”), **HMS DEVELOPMENTS, LLC**, an Oregon limited liability company and/or its assigns (“**Developer**”), and Portland Opportunities Industrialization Center, Inc., an Oregon non-profit corporation (“**POIC**”). The GRDC, Developer, and POIC may be referred to jointly in this Agreement as “**Parties**” and individually as a “**Party**.”

**RECITALS**

- A. In furtherance of the objectives of ORS Chapter 457 and Article 2.24 of the Gresham Revised Code, the GRDC, as the urban renewal agency of the City of Gresham, has undertaken a program for the development and redevelopment of blighted areas within the city limits and in connection therewith prepared an Urban Renewal Plan for the Rockwood-West Gresham Urban Renewal Area, which was approved by the citizens of Gresham by city-wide vote on November 4, 2003 as required by Section 36A of the Charter of the City of Gresham, and which was updated December 14, 2012, and approved by the citizens of Gresham by city-wide vote on May 17, 2022 (the “**Urban Renewal Plan**”).
- B. GRDC, finding it necessary and in the public interest to implement the Urban Renewal Plan, acquired real property located at 18801 E. Burnside and 18901 E. Burnside, Gresham, Oregon 97233 in the Rockwood-West Gresham Urban Renewal Area to further the following Rockwood-West Gresham Renewal Plan Goals: Goal 1 (Public Involvement), Goal 2 (Improve Rockwood Town Center), Goal 4 (Help Create and Retain Family Wage Jobs by Improving Industrial and Commercial Areas), Goal 6 (Parks & Recreation Facilities), Goal 7 (Improve Transportation), and Goal 8 (Promote Quality Development).
- C. The parcel of real property that is the subject of this Agreement is located at 18901 E. Burnside (tax lot identification no. R754700880, tax account no. R268414) and more particularly described on Exhibit A attached hereto (the “**Land**”). The Land and any improvements now or hereafter constructed on it are collectively referred to herein as the “**Property**”.
- D. GRDC released RFP No. 22-20 on November 19, 2021. Developer was selected as the preferred development partner after two rounds of interviews by the review committee, GRDC Advisory Committee review, and GRDC review.
- E. On May 17, 2022, the GRDC selected a conceptual proposal by Developer to advance into predevelopment scoping consistent with the terms of that certain Exclusive Negotiating Agreement dated September 26, 2022 between GRDC and Developer (the “**ENA**”).

- F. GRDC and Developer entered into that certain nonbinding Proposed Terms for Disposition and Development of Rockwood Sunrise Site dated February 27, 2024 (the “**Term Sheet**”), to facilitate and provide for further due diligence, design development, and the negotiation of this Agreement.
- G. POIC provides education, training, health, wellness, and job placement services to disadvantaged and underserved members of the community and operates an alternative high school called Rosemary Anderson Prep. Pursuant to a separate agreement between Developer and POIC, Developer is providing development services related to POIC’s proposed acquisition and development of the Land under this Agreement.
- H. A primary purpose of the development is the operation of an alternative, community-based high school that provides wraparound services, and which includes significant gymnasium space, administrative office space, and space for other related educational uses, which may include, but are not limited to, workforce training, a business innovation hub, and other related educational and supportive uses. The Parties anticipate that the upper floors of the building will be devoted to the educational purposes described above and administrative offices and other uses in support of POIC’s operations. The Parties anticipate that the ground floor of the building will include educational labs or “hub” spaces, spaces for uses ancillary to the gymnasium, lobby areas, and some commercial retail space. The improvements to be constructed by POIC pursuant to this Agreement will include a multi-story mixed-use building with a large gymnasium, a landscaped outdoor open area, and on-site parking, which are collectively referred to herein as the “**Project**”. The Parties anticipate that POIC and the City will enter into an agreement to allow the City to use certain mutually agreed upon portions of the school facilities, including the gymnasium, in a manner compatible with POIC’s operation of the school. The Parties anticipate that POIC, with input from GRDC and Developer, will provide collaborative programming of indoor and outdoor space to serve the community, pursuant to an agreement between POIC and GRDC or between POIC and the City.
- I. As a precondition to development of the Property, the Parties anticipate obtaining a property line adjustment between the Property and the lot located directly adjacent to the Property with the address of 18801 E. Burnside (the “**Adjacent Lot**”), which shall not result in a reduction of aggregate square footage of the Property.
- J. GRDC acknowledges that significant benefits will accrue to the City and its residents from the Project, including, without limitation, recreational opportunities; youth engagement activities; education and mentoring opportunities and other furtherance of economic development within the City; and other tangible and intangible, direct and indirect, benefits to the City and its citizens.
- K. GRDC finds that the fulfillment, generally, of this Agreement and the intentions set forth herein, are in the vital and best interest of the City and the health, safety, and welfare of its citizens.

## AGREEMENT

This Agreement incorporates by this reference the Recitals, the Definitions and all Exhibits hereto. The Parties, in consideration of the agreements set forth herein and for other valuable consideration the receipt and adequacy of which are hereby acknowledged, covenant and agree as follows:

### 1. DEFINITIONS

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Agreement. Some defined terms are first defined in the text of this Agreement, and some are first defined in Exhibit B, which is a glossary of defined terms. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. If there is any difference between the definition of a defined term in the text of this Agreement and the definition of that term in Exhibit B, the definition in the text controls. Defined terms may be used in the singular or the plural.

### 2. GENERAL TERMS OF CONVEYANCE OF THE LOT

**2.1 Conveyance of the Property.** Subject to the terms, covenants, and conditions of this Agreement, upon satisfaction or waiver of the Conditions Precedent to conveyance in Section 2.7 hereof, GRDC will convey good and marketable title to the Property to POIC or its assigns by Bargain and Sale Deed in the form attached hereto as Exhibit C (“**Deed**”). The Closing (defined in Exhibit B) shall occur in an escrow closing at the office of the Title Company (defined in Section 2.4(b) below) on the Closing Date (defined in Exhibit B). POIC shall have the right to extend the milestones set forth on the Schedule of Performance, including the Closing Date, for two (2) periods of up to one hundred eighty (180) days each (each, an “**Extension Option**”). POIC may exercise the Extension Options at any time prior to the Closing Date. If POIC exercises an Extension Option, all dates on the Schedule of Performance that have not yet been completed shall be extended one day for each day of the extension. At Closing a covenant in the form attached hereto as Exhibit L (the “**Covenant**”) shall be recorded immediately after the Deed and the trust deed of POIC’s first-position Mortgagee, provided such Mortgagee is an Institutional Lender, which Covenant restricts the use of the Project for a period of fifteen (15) years after the date the Certificate of Completion (as defined in Exhibit B) is recorded.

**2.2 AS IS.** POIC shall accept the Property in “AS IS” condition on the Closing Date, without warranty of any kind except as otherwise specifically set forth in this Agreement and in any document executed by GRDC at Closing. Without limiting the generality of the foregoing, GRDC makes no warranties or representations that the soil conditions, environmental conditions or any other physical conditions of the Property are suitable for any improvements. POIC acknowledges that it has not relied on any oral representations made by GRDC as to the soil conditions, environmental conditions or any other physical conditions of the Property. POIC for itself and its assigns hereby waives and releases GRDC, its officers, employees and agents from and against any liability or claim related to the physical condition of the Property, except with

respect to any express representations or warranties by GRDC set forth in this Agreement and any document executed by GRDC at Closing.

**2.3 Purchase Price.** The Purchase Price for the Property shall be One Dollar (\$1.00), which will be paid to Seller in cash at Closing.

**2.4 Title/Survey Review.**

2.4.1 Survey. Developer acknowledges and agrees that it obtained a new survey prior to the Effective Date prepared by Chase Jones & Associates Inc., Registered Professional Land Surveyor, as Project No. 16399, dated November 7, 2022 (the “**Existing Survey**”) which expense was reimbursed by GRDC with funds from the predevelopment grant. Developer, should it elect to or be required to do so by any party, will order and pay for an update to the Existing Survey (“**Updated Survey**”) if necessary to effectuate Closing. All expenses incurred in connection with the Updated Survey shall be borne solely by Developer and, to the extent that Pre-Development Funds, as defined herein, remain available, may be reimbursed by GRDC.

2.4.2 Within fifteen (15) days after the Effective Date, GRDC will deliver to POIC a preliminary title commitment (“**Title Commitment**”) for the Property issued by Chicago Title Insurance Company (Kelly Norton) (the “**Title Company**”) together with copies of all documents listed as special exceptions in the Title Commitment (“**Title Documents**”). Within ten (10) days following its receipt of the Title Commitment, Title Documents or an Updated Survey (if any), POIC shall deliver written notice to GRDC of its disapproval of any matter revealed in the Title Commitment, the Existing Survey, or Updated Survey (“**Title Objections**”). Within twenty (20) days of POIC’s written notice to GRDC described in the preceding sentence (the “**GRDC Title Response Deadline**”), GRDC shall notify POIC in writing of its intention to remove or cure any or all of the Title Objections prior to Closing. If GRDC notifies POIC that GRDC elects not to remove or cure such Title Objections, or if GRDC does not deliver a written response to the Title Objections by the GRDC Title Response Deadline, POIC may terminate this Agreement by giving GRDC written notice of termination within ten (10) days after the GRDC Title Response Deadline. If POIC does not deliver written notice of termination by such date, POIC will be deemed to have waived such title defect(s) and proceed to Close subject to same pursuant to the terms and conditions of this Agreement.

2.4.3 GRDC shall not further encumber the Property (other than those exceptions appearing on the Title Commitment on the date provided to POIC) without the written consent of POIC, which shall not be unreasonably withheld.

2.4.4 In the event any matter affecting title to the Property first appears in the public records or attaches after the Effective Date, or otherwise did not appear in the Title Commitment, the Existing Survey or the Updated Survey, and POIC notifies GRDC in writing within ten (10) days of receiving an updated Title Commitment or Updated Survey, as applicable, that it objects to such matter, then the following provisions shall apply:

2.4.4.1 If the objection is a lien that was not caused or suffered by POIC or Developer and that can be cured solely by the payment of money, then GRDC shall cure such

title defect not later than Closing by either discharging the matter by payment, posting a bond for payment, or by causing the Title Company affirmatively, at GRDC's sole cost and without reimbursement, to insure over the matter.

2.4.4.2 In the event the objection is not described in subsection (i) above, and GRDC, within ten (10) days after delivery of POIC's written notice of said objection (the "**GRDC New Title Response Deadline**"), provides POIC with written notice that it does not elect to remove or cure such objection or if GRDC does not respond in writing to the new title objection within such time, then POIC may terminate this Agreement by written notice to GRDC delivered within ten (10) days after the GRDC New Title Response Deadline. In the event of such termination, neither party shall have any further rights or obligations under this Agreement except those that expressly survive the termination. If POIC does not terminate this Agreement, POIC will be deemed to have waived such title matters and such matters shall constitute Approved Title Matters. Notwithstanding the foregoing, the Closing Date will be extended to the extent necessary to allow for the objection and response time periods set forth in this Section 2.4(d).

2.4.5 Any exceptions: (1) that are the standard printed exceptions on the Title Policy; (2) to which POIC does not timely object in writing; (3) that are created or consented to in writing by POIC prior to Closing; or (4) which POIC otherwise accepts at Closing, are the "**Approved Title Matters.**" The Title Commitment shall be updated prior to Closing to replace the legal description of the Property with the legal description from the PLA (defined in Section 3.3). In no event shall monetary liens on the Property be deemed to be Approved Title Matters unless caused or suffered by POIC or Developer.

## **2.5 Title Insurance, Property Taxes and Closing Costs.**

2.5.1 GRDC, at GRDC's expense, shall provide POIC with a standard coverage ALTA Owner's Policy of Title Insurance issued by the Title Company, together with such endorsements, modifications, amendments, or additional coverages thereto as may be requested by POIC and agreed to by the Title Company, and paid by POIC, insuring POIC or its assigns for the most recent appraised value of the Property, free and clear of encumbrances except the Approved Title Matters, is vested in POIC or its assigns (collectively, the "**Title Policy**"). POIC shall pay the incremental cost above the premium for the standard coverage ALTA Owner's Policy of Title Insurance for any desired extended coverage, modifications, amendments, and endorsements to the Title Policy, and GRDC agrees to execute any affidavits (but not indemnifications) reasonably required by the Title Company to enable POIC to obtain such coverage.

2.5.2 POIC will pay the costs for recording a Memorandum of this Agreement, the Deed, and any other documents required by POIC and Developer to be recorded.

2.5.3 POIC and GRDC shall each pay one-half (1/2) of all escrow fees charged by Title Company and all other closing costs. In addition, property taxes shall be prorated as of the Closing Date.

2.5.4 GRDC shall cause all meters for electricity, gas, water, sewer or other utility usage at the Property, if any, to be read on the Closing Date and GRDC shall pay all charges

for such utility charges which have accrued on or prior to the Closing Date. If the utility companies are unable or refuse to read the meters on the Closing Date, all charges for such utility charges to the extent unpaid shall be prorated and adjusted as of the Closing Date based on the most recent bills therefor.

2.5.5 Any expenses paid by Developer or its assigns under this Section 2.5, with the exception of any expense accruing from and after the Closing Date, shall be reimbursed by the City from Pre-Development Funds to the extent of any remaining Pre-Development Funds in accordance with Section 4.1(a) herein.

**2.6 Due Diligence and Inspections.** Developer and POIC may conduct due diligence and inspections of the Property and the Project, including any additional physical inspections, engineering tests and investigations as they may deem necessary or desirable, in their sole and absolute discretion, including soils and environmental studies. Such studies and investigations may include, without limitation, zoning, land use, environmental, geotechnical, design review, covenants, conditions and restrictions, financing, leasing markets, project feasibility and related matters. Any invasive environmental, soils, or geologic testing shall be performed only with the prior written consent of GRDC, which shall not be unreasonably withheld, conditioned or delayed. The scope and cost of the due diligence and inspections conducted by Developer or POIC shall be paid by Developer and reimbursed by GRDC from Pre-Development Funds to the extent any Pre-Development Funds remain available. Developer will repair or restore any damage to the Property caused by the entry of or testing by Developer, POIC, their agents, contractors, or affiliates. Developer and POIC acknowledge receipt of the due diligence documents identified in Exhibit D (the “**Property Documents**”). GRDC agrees to cooperate with Developer and POIC in connection with said due diligence and will use commercially reasonable efforts to provide information within GRDC’s possession or control concerning the Property in addition to the Property Documents at the request of Developer or POIC.

## **2.7 Conditions Precedent to Conveyance of the Lot.**

2.7.1 **Conditions.** POIC and GRDC are not obligated to Close (defined in Exhibit B) unless the following conditions are satisfied or waived by the benefited Party. Except where a Party is expressly entitled to act in its sole discretion, the Party benefited by a particular condition shall not unreasonably withhold, condition or delay acknowledgment that the condition has been satisfied. The Parties shall act diligently and in good faith to satisfy conditions over which they have control; provided, however, nothing in this Agreement shall bind the City in its regulatory capacity or require GRDC to exercise control over the City in its regulatory capacity. GRDC 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. GRDC shall assist POIC and Developer throughout any City process of the appropriate service areas or agencies within the City, but GRDC does not represent or warrant that its assistance will guarantee approval.



**2.7.2 Access Easement.** The Parties contemplate that, given the currently proposed configuration of the Property at Closing, it will be necessary to record at Closing an easement agreement encumbering the Property for the benefit of the Adjacent Lot addressing matters that may include, but are not limited to, access and shared parking, trash and recycling areas (the “**Access Easement**”). The Parties will work diligently and cooperatively in an attempt to agree upon the form and substance of the Access Easement to be recorded at Closing within sixty (60) days after GRDC delivers written notice to POIC that it approves POIC’s 100% Schematic Design (“**Schematic Design Approval**”), when the Parties anticipate having adequate information to negotiate the Access Easement. If the Parties are unable to agree on the form and substance of the Access Agreement within 60 days of Schematic Design Approval, then either Party may terminate this Agreement by written notice delivered to the other Party within thirty (30) days of the expiration of such 60-day period. If neither Party timely delivers such termination notice, such termination right shall expire and be of no further force and effect, and notwithstanding anything to the contrary set forth in this Agreement, the Access Easement will not be a condition precedent to either Party’s obligation to proceed to Closing nor a document to be delivered by the Parties at Closing.

In addition to causing the 60-day negotiation period to commence under this Section 2.7.2 with respect to the Access Easement, Schematic Design Approval shall trigger commencement of the 60-day negotiation periods described in Section 2.7.3.9 with respect to the Public Use Agreement and Section 4.1.2 with respect to funds for construction of the gymnasium.

**2.7.3 POIC’s Conditions Precedent.** POIC is not obligated to purchase the Property unless and until:

2.7.3.1 POIC is satisfied in its sole and absolute discretion with the results of its and Developer’s due diligence investigations, including but not limited to the condition of the Property, the economic feasibility of the Project, and all other factors POIC elects to consider in its sole and absolute discretion;

2.7.3.2 POIC or Developer has completed the PLA (defined in Section 3.3);

2.7.3.3 GRDC has caused the Title Company to issue a Title Commitment evidencing its willingness to insure fee simple title to the Property in POIC or its assigns, subject only to the Approved Title Matters;

2.7.3.4 POIC has obtained financing and funding for the Project in an amount and under such terms as POIC, in its sole and absolute discretion, deems necessary or desirable to allow POIC to purchase the Property;

2.7.3.5 The City, in its regulatory capacity, has approved all entitlements and land use approvals for the Property and Project and the appeal period for each and every such approval has passed without an appeal being filed; or, if an appeal has been filed, it has been satisfactorily and finally resolved;

2.7.3.6 GRDC has approved Final Construction Drawings (defined in Exhibit B) for the Property pursuant to the process and criteria described in Section 3.2 below;

2.7.3.7 The City, in its regulatory capacity, has issued all building permits for the Property, or such permits shall be ready to be issued subject only to POIC's payment of permit fees, and Developer shall have obtained all other governmental approvals necessary to construct the Project;

2.7.3.8 Developer and POIC has approved the environmental condition of the Property (including, without limitation, the results of the environmental assessment report existing as of the Effective Date and any other environmental testing completed after the Effective Date of this Agreement);

2.7.3.9 POIC and GRDC and/or the City have entered into an agreement, mutually acceptable to all parties, in each party's sole and absolute discretion, regarding use of certain agreed upon school facilities and outdoor areas of the Property by the City, including the gymnasium, and programming of indoor and outdoor space to serve the community (collectively, the "**Public Use Agreement**") which agreement the Parties will (a) work cooperatively and diligently to agree upon the form of by the date that is sixty (60) days after Schematic Design Approval, and (b) record at Closing (or will record a memorandum thereof) after recording of the Deed and after recording of the trust deed of POIC's lender(s), provided such lender(s) have entered into a subordination and non-disturbance agreement containing commercially reasonable terms with GRDC, and prior to the recording of any other liens or encumbrances. If the Parties are unable to agree on the form and substance of the Public Use Agreement within 60 days of Schematic Design Approval, then either Party may terminate this Agreement by written notice delivered to the other Party within thirty (30) days of the expiration of such 60-day period. If neither Party timely delivers such termination notice, such termination right shall expire and be of no further force and effect, and notwithstanding anything to the contrary set forth in this Agreement, the Public Use Agreement will not be a condition precedent to either Party's obligation to proceed to Closing nor a document to be delivered by the Parties at Closing;

2.7.3.10 No litigation is pending or threatened that would substantially interfere with the performance of the respective obligations of GRDC, Developer and POIC under this Agreement or with the ability of Developer to develop the Project;

2.7.3.11 GRDC is not in default of this Agreement, and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of GRDC under this Agreement;

2.7.3.12 GRDC has performed its obligations under Section 4 below;

2.7.3.13 The representations and warranties of GRDC remain true and correct in all material respects; and

2.7.3.14 Subject to Section 2.7.2, POIC and GRDC have entered into the Access Easement, which will be recorded at Closing after recording of the Deed and prior to the recording of any liens or encumbrances.

2.7.4 **GRDC's Conditions Precedent.** GRDC is not obligated to sell the Property unless and until:

2.7.4.1 Subject to GRDC's approval, Developer has completed the PLA;

2.7.4.2 POIC has demonstrated to GRDC's reasonable satisfaction the financial feasibility of the Project consistent with POIC's or Developer's budget, by providing GRDC executed term sheets and commitment letters or other evidence reasonably acceptable to GRDC from lenders and equity financiers, including both private and public financing sources, that POIC has committed and available financing sufficient to complete the Project. All such financing shall close concurrently with the Closing;

2.7.4.3 POIC shall have delivered or caused to be delivered (a) a completion guaranty for the benefit of GRDC in substantially and materially the same form and executed by the same guarantors (the "**Guarantors**") as any completion guaranty executed and delivered to a New Market Tax Credit ("**NMTC**") lender or investor, an Institutional Lender, or any other party that provides construction financing to POIC, as applicable (the "**Completion Guaranty**"), or (b) a payment and performance bond acceptable to a NMTC lender or investor, an Institutional Lender, or another party providing construction financing to POIC, as applicable, and naming GRDC as an obligee (the "**P&P Bond**"). GRDC shall be prohibited from enforcing the Completion Guaranty or P&P Bond unless and until POIC's construction lender has disbursed loan proceeds to the borrower or Guarantor(s) if and as such construction lender is legally required to do so as a prerequisite to borrower's or Guarantors' obligation to complete construction under the guaranty, P&P Bond, and other loan documents in favor of the construction lender. Upon request by POIC, GRDC will enter into a commercially reasonable standstill agreement with POIC's construction lender(s).

2.7.4.4 The City, in its regulatory capacity, has given all land use approvals for the Property and the appeal period for such approvals has passed without an appeal being filed; or, if an appeal has been filed, it has been satisfactorily and finally resolved;

2.7.4.5 GRDC has approved the Design Development Documents (defined in Exhibit B) at the 100% Schematic Design and 50% Design Development design milestones, and has approved the Final Construction Drawings (defined in Exhibit B) for the Project pursuant to the process and criteria described in Section 3.2 below;

2.7.4.6 The City, in its regulatory capacity, has issued all building permits for the Property, or such permits shall be ready to be issued subject only to POIC's payment of permit fees, and Developer shall have obtained all other governmental approvals necessary to construct the Project;

2.7.4.7 Subject to Section 2.7.3.9, POIC and GRDC and/or the City have entered into the Public Use Agreement mutually acceptable to all parties, which agreement (or a memorandum thereof) will be recorded in accordance with Section 2.7.3.9 above;

2.7.4.8 Subject to Section 2.7.2, POIC and GRDC have entered into the Access Easement, which will be recorded in accordance with Section 2.7.3.14 above;

2.7.4.9 Developer and POIC are not in default of this Agreement, and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Developer or POIC under this Agreement;

2.7.4.10 No litigation shall be pending or threatened that would substantially interfere with the performance of the respective obligations of GRDC, Developer and POIC under this Agreement; and

2.7.4.11 The representations and warranties of Developer and POIC remain true and correct in all material respects.

**2.7.5 Elections upon Non-Occurrence of Conditions.** Except as provided below, if any condition in Sections 2.7.3 and 2.7.4 are not fulfilled to the satisfaction of the benefited Party or Parties on the earlier of (1) the date designated for satisfaction of the condition, or (2) on the Closing Date, subject to any extension that may be granted or elected pursuant to this Agreement (including, without limitation, POIC's right to extend the Closing Date pursuant to Section 2.1), then such benefited Party or Parties may elect to:

2.7.5.1 Terminate this Agreement, which termination shall become effective sixty (60) days after the notice of termination is sent ("**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

2.7.5.2 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

2.7.5.3 Extend the Termination Date by which the applicable condition may be satisfied, but only if the other Party agrees in writing to the extension.

**2.7.6 Final Termination Date.**

2.7.6.1 If all of the conditions precedent to the Closing set forth in Section 2.7 have not been satisfied or waived by the Closing Date, as may be extended by POIC as provided in Section 2.1 or by Unavoidable Delays as provided in Section 8.2 (the "**Final Termination Date**"), then this Agreement shall automatically terminate on such date, unless the date for satisfying the unsatisfied condition(s) is extended by agreement of the Parties prior to the Final Termination Date.

2.7.6.2 If this Agreement terminates or is terminated for failure of satisfaction of the conditions precedent, without breach by GRDC, Developer or POIC, then,

except as set forth in Section 2.7.6.3 below, and except for the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Multnomah County, and except as otherwise provided in this Agreement (e.g., provisions that expressly survive termination), the obligations of the Parties to each other under this Agreement shall terminate and neither GRDC, Developer nor POIC shall have any other recourse against the other for failure of satisfaction of the conditions precedent without breach by any Party.

2.7.6.3 If the Agreement terminates or is terminated for failure of satisfaction of the conditions precedent, then, unless such termination is caused by GRDC's default of this Agreement, Developer and POIC agree to deliver to GRDC copies of all inspection reports, environmental studies, surveys, soils reports and any reports produced by third party consultants ("**Consultants**") for Developer or POIC as part of their due diligence with respect to the Property (the "**Consultant Reports**", but only to the extent permitted under the contracts with Consultants. GRDC shall indemnify, defend and hold POIC, Developer, and Consultants harmless for any claims, losses, damages, attorney fees and costs arising out of the use of any Consultant Reports by GRDC or its assignees for any purpose, which use by GRDC shall be at the risk of GRDC and such assignees. Neither Developer nor POIC makes any representations or warranties as to the accuracy of any such Consultant Reports delivered to GRDC.

2.7.6.4 If a Party is in default under this Agreement on the date this Agreement terminates or this Agreement 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.

**2.8 GRDC Representations and Warranties.** As of the date of this Agreement and as of the Closing Date, GRDC represents and warrants to POIC and Developer that:

2.8.1 The persons executing this Agreement and the instruments referred to herein on behalf of GRDC have the legal power, right and actual authority to bind GRDC to the terms and conditions of this Agreement. GRDC has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and GRDC has taken all requisite action to authorize the execution of this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any judicial or administrative body, governmental authority or other party is required.

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

2.8.3 There is no litigation, action, suit, or other legal, administrative or governmental investigations or proceedings, or any condemnation or similar proceeding pending or, to GRDC's Actual Knowledge (as defined below), threatened, which will affect the Property or GRDC's ability to perform its obligations under this Agreement.

2.8.4 There are no management, leasing, employment, service or maintenance contracts, licenses, or other agreements affecting the Property that will be binding upon POIC after the Closing Date.

2.8.5 The execution and delivery of this Agreement and documents referred to herein, the incurring of the obligations set forth herein, the consummation of the transactions herein contemplated, and compliance with the terms of this Agreement and the documents referred to herein do not conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which GRDC is a party.

2.8.6 GRDC is not (and is not engaged in this transaction with or on behalf of) a person or entity that either of POIC or Developer is prohibited or restricted from doing business with pursuant to anti-terrorism laws and regulations including, but not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Patriot Act), the Bank Secrecy Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act, sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control as well as laws related to the prevention and detection of money laundering.

2.8.7 No representation, warranty or statement of GRDC 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.

2.8.8 Prior to the Closing Date, GRDC shall notify Developer and POIC in writing of any material change in GRDC's representations and warranties or in any information furnished to Developer and POIC pursuant to this Agreement from the Effective Date to the Closing Date. Developer and POIC shall have thirty (30) days from receipt of such notice to give GRDC notice of termination of the Agreement based on the material change stated in GRDC's notice, with a termination date not less than ten (10) days after delivery of such notice from Developer and POIC to GRDC. If Developer and POIC do not provide the notice of termination pursuant to this subsection, then the transaction shall proceed to Closing.

For the purposes of this Agreement, whenever the phrase "to GRDC's Actual Knowledge" is used, then it shall be deemed to refer to the current, actual knowledge of the City Manager of the City of Gresham ("**GRDC Designated Knowledge Party**"), on behalf of GRDC, without such person undertaking any investigation and without liability. GRDC represents and warrants that the GRDC Designated Knowledge Party has knowledge regarding GRDC and the Property sufficient to make the representations and warranties contains in this Section 2.8.

**2.9 Developer Representations and Warranties.** As of the date of this Agreement and of the Closing Date, Developer represents and warrants to GRDC that:

2.9.1 Developer is a limited liability company duly formed and validly existing in the State of Oregon. The persons executing this Agreement and the instruments referred to

herein on behalf of Developer have the legal power, right and actual authority to bind Developer to the terms and conditions of this Agreement. Developer has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action has been taken by Developer to authorize the execution of this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.

2.9.2 The execution and delivery of this Agreement and documents referred to herein, the incurring of the obligations set forth herein, the consummation of the transactions herein contemplated, and compliance with the terms of this Agreement and the documents referred to herein do not conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Developer is a party.

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

2.9.4 Developer is not (and is not engaged in this transaction with or on behalf of) a person or entity that GRDC is prohibited or restricted from doing business with pursuant to anti-terrorism laws and regulations including, but not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Patriot Act), the Bank Secrecy Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act, sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control as well as laws related to the prevention and detection of money laundering.

2.9.5 Developer enters into this Agreement without reliance on any oral or written representations by GRDC, its employees, agents or consultants, regarding any aspect of the Property or the Project, including but not limited to feasibility or financing, or compliance with any governmental regulation except as expressly stated in this Agreement or documents referenced herein.

**2.10 POIC Representations and Warranties.** POIC represents and warrants to GRDC that:

2.10.1 POIC is a nonprofit corporation duly formed and validly existing in the State of Oregon. The persons executing this Agreement and the instruments referred to herein on behalf of POIC have the legal power, right and actual authority to bind POIC to the terms and conditions of this Agreement. POIC has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action has been taken by POIC to authorize the execution of this Agreement, the instruments referred to herein, and the consummation of the transactions

contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.

2.10.2 The execution and delivery of this Agreement and documents referred to herein, the incurring of the obligations set forth herein, the consummation of the transactions herein contemplated, and compliance with the terms of this Agreement and the documents referred to herein do not conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which POIC is a party.

2.10.3 No representation, warranty or statement of POIC 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.

2.10.4 POIC is not (and is not engaged in this transaction with or on behalf of) a person or entity that GRDC is prohibited or restricted from doing business with pursuant to anti-terrorism laws and regulations including, but not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Patriot Act), the Bank Secrecy Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act, sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control as well as laws related to the prevention and detection of money laundering.

2.10.5 POIC enters into this Agreement without reliance on any oral or written representations by GRDC, its employees, agents or consultants, regarding any aspect of the Property or the Project, including but not limited to feasibility or financing, or compliance with any governmental regulation except as expressly stated in this Agreement or documents referenced herein.

### **3. DEVELOPMENT**

**3.1 Project Managers.** The Developer's Project Manager is Kerry Hughes and, in the alternative, Angela Guo. GRDC's Project Manager is Michael Gonzales. POIC's Project Manager is Joe McFerrin II and, in the alternative, John Stilwell or other persons designated in writing by Joe McFerrin II. The Parties agree that regular engagement by GRDC and Developer is essential to the Project's success. The Parties agree that the Developer's Project Manager, GRDC's Project Manager, and POIC's Project Manager shall coordinate regularly regarding the Project, meeting (a) from the Effective Date until construction commences (as defined in Section 8.4 below) no less than twice monthly, and (b) from the date construction commences until the City issues or is deemed to have issued its Certificate of Completion, no less than once monthly. This will consist of telephone calls and may include in-person and on-site meetings as requested by Developer or GRDC or POIC.

#### **3.2 Project Scope of Development.**



3.2.1 GRDC acknowledges and agrees that it has reviewed and approved the Conceptual Design for the Project prepared by Bora Architects and issued on August 23, 2024, as shown in Exhibit E attached hereto. Developer has prepared a preliminary budget for the Project, approved by POIC, which is set forth in Exhibit F attached hereto (the “**Preliminary Budget**”). Developer, on behalf of POIC, shall prepare and submit to GRDC design development documents for the Project for GRDC’s approval at 100% Schematic Design and 50% Design Development (collectively referred to as the “**Design Milestones**”). SCHEMATIC DESIGN APPROVAL (AS DEFINED IN SECTION 2.7.2) SHALL CAUSE THE 60-DAY NEGOTIATION PERIOD DESCRIBED IN SECTION 2.7.2, SECTION 2.7.3.9, AND SECTION 4.1.2 TO COMMENCE. GRDC’s approval shall not be unreasonably withheld, conditioned or delayed and in the event of any conflict between any component of a Design Milestone approved by GRDC and the City’s regulatory requirements and/or approvals, the City’s regulatory requirements and approvals shall govern and control. GRDC’s comments, required changes, or approval shall be provided to Developer within thirty (30) days after GRDC’s receipt of the documents for each Design Milestone. GRDC may require material changes to the design at the 100% Schematic Design, but any requirement that the Developer make material changes at the 50% Design Development stage shall be limited to (i) required changes that are responsive to any material modification of the design or programming following the 100% Schematic Design, or (ii) any portion of the design that was not at a level of detail to be approved at the 100% Schematic Design. Developer, on behalf of POIC, will prepare Final Construction Drawings (defined in Exhibit B) and will submit them to GRDC for approval, which approval shall not be unreasonably withheld, conditioned or delayed, and GRDC’s approval, shall be provided to Developer within thirty (30) days of GRDC’s receipt of the proposed Final Construction Drawings.

3.2.2 Notwithstanding the foregoing, the following shall apply to the area between the western edge of the proposed building on the Property and the eastern boundary of the Adjacent Parcel (the “**Open Space**”). The Conceptual Design for the Open Space is attached to this Agreement as Exhibit E. The Conceptual Design depicts the Open Space as consisting of Three Thousand Two Hundred Eighty (3,280) square feet with a width of Thirty-Eight (38) linear feet. POIC and Developer agree that any change to the Open Space that decreases the size to less than Two Thousand Six Hundred Fifty (2,650) square feet, reduces the width of any part of the Open Space to less than Thirty (30) linear feet, or both, shall require the prior written approval of GRDC, which approval GRDC may withhold in its sole discretion. Developer acknowledges that it may be required to secure separate City land use, design review, or building permit approval of any of the foregoing changes to the Open Space.

**3.3 Property Line Adjustment.** Developer, at its expense, shall initiate and complete a property line adjustment for the purpose of adjusting the property line between the Property and the Adjacent Lot consistent with the anticipated redevelopment of the Property for the Project, with the Adjacent Lot containing not less than 4,500 square feet (the “**PLA**”). GRDC has approved the anticipated adjusted property line and the configurations of the Property and the Adjacent Lot as shown on Exhibit E attached hereto (the “**Preliminary PLA**”). Modifications to the Preliminary PLA shall be subject to GRDC’s approval, which shall not be unreasonably withheld, conditioned or delayed, so long as the PLA is not materially different than the Preliminary PLA. GRDC shall

not be required to approve a modification to the Preliminary PLA that reduces the size of or would make it unreasonably difficult to redevelop the Adjacent Lot. GRDC shall cooperate, at no out of pocket cost other than its attorney fees, with the execution of applications and other documents necessary for completion of the PLA. To the extent of any remaining Pre-Development Funds, Developer's out of pocket costs incurred in applying for and obtaining the PLA shall be reimbursed by the City in accordance with Section 4.1(a) herein. Unless otherwise agreed by GRDC, the PLA shall be executed and held in escrow by the Title Company and shall be recorded at Closing or earlier, if required by POIC's lender or financing partner.

**3.4 Project Schedule of Performance.** Developer has prepared, on behalf of POIC, and GRDC has approved, a preliminary draft Schedule of Performance attached hereto as Exhibit G, which includes approximate estimated time periods for completion of Project construction milestones. The Parties may mutually agree to amend the Schedule of Performance as required to accommodate changed conditions, or otherwise. If an action on the Schedule of Performance is dependent on occurrence of an earlier action on the Schedule, unless otherwise agreed by the Parties, the extension of the date to complete the earlier action shall automatically extend the date for completion of the dependent action, including the Closing Date. Either Party may, at any time, propose a restated Schedule of Performance to reflect revisions previously mutually approved. The other Party shall approve or disapprove of the restated Schedule of Performance in writing within five (5) business days after receipt from the proposing Party, provided however, that a Party may only disapprove a restated Schedule of Performance if the restated version has errors of calculation or otherwise does not accurately reflect revisions previously mutually approved between the Parties. Any approved amended or restated Schedule of Performance will be deemed to replace Exhibit G. To the extent that the Parties agree upon changes to the Schedule of Performance that would impact the ability of the Parties to close the purchase of the Property on the Closing Date, the Closing Date shall be deemed extended in accordance with the extension incorporated in the agreed upon change to the Schedule of Performance.

**3.5 Construction Contract and Financing.** POIC, with Developer's input, will be responsible for (i) entering into a construction contract with the General Contractor which shall have a guaranteed maximum price ("GMP"). Developer shall contract with POIC to act as POIC's representative to manage development and construction of the Project. Except for the express funding obligations of GRDC in this Agreement, GRDC shall have no obligation to provide or obtain funds and financing necessary to acquire the Property and construct the Project, including any costs in excess of the Preliminary Budget or GMP ("Cost Overruns"). GRDC will not be responsible for Cost Overruns, but will cooperate and use commercially reasonable efforts to support POIC or its assigns in obtaining Project funding as applicable.

**3.6 Prevailing Wage Law.** Developer and POIC shall be solely responsible for determining whether the Project is subject to Oregon Prevailing Wage Law and similar federal Law. If the Project or any part thereof is subject to Oregon Prevailing Wage Law, POIC shall comply Oregon's Prevailing Wage Law and similar federal Laws in all respects (collectively "PWR Laws"), shall include provisions in the construction contract requiring the General Contractor to comply with PWR Laws, shall use diligent efforts to include a provision in the construction contract requiring the General Contractor to require subcontractors of every tier to comply with PWR Laws, shall use diligent efforts to enforce such contractual obligations to the

extent that Developer or POIC is actually aware of a failure, or alleged failure, of the General Contractor or subcontractor of any tier to comply with the same. Developer and POIC shall have the right, in their sole and absolute discretion, to request a determination by BOLI that the Project is not subject to Oregon Prevailing Wage Law.

**3.7 Changes in Approved Drawings.** Developer shall submit to GRDC for review and approval any substantial changes to the approved Final Construction Drawings, which approval GRDC shall not unreasonably withhold, condition or delay. A “substantial change” means any change that would increase the “footprint” of the improvements by more than ten percent (10%), decrease the usable square footage of the Project by more than ten percent (10%), or materially change or impact the function and use of the Project. Developer acknowledges that it may be required to secure separate City land use, design review, or building permit approval of such changes.

**3.8 Diligent Completion.** Subject to the terms and conditions of this Agreement, after Closing, POIC will complete or cause the completion of the Project in conformance with the Final Construction Drawings, and in compliance with the Schedule of Performance, as such Schedule of Performance may be updated or amended in accordance with this Agreement, subject to Unavoidable Delay as provided in Section 8.2. POIC, through Developer, agrees to keep GRDC informed of its progress with respect to development of the Project during construction, with periodic reports to be issued no less frequently than once a month until the City issues the Certificate of Completion (defined below) for the Project.

**3.9 Community Engagement.** The Parties will make good faith efforts to participate in a public outreach process to solicit community feedback and engagement about the Project. Such outreach will continue as appropriate through construction.

3.9.1 Consistent with the Schedule of Performance, Developer, GRDC, and POIC will identify and engage in public outreach opportunities to diverse community stakeholders and other interested parties. The public engagement approach will serve to create a communication protocol, establish a list of interested parties within the community, and provide opportunities for stakeholder groups to be updated on the Project and provide input at key decision points. The public engagement approach will include a) establishment of an interested parties communication list and email updates; b) feedback on the proposed program and site plan that will include at least two open houses during land use approval; c) establishment of a community liaison program comprised of community representatives to share regular feedback; and d) presentations to the GRDC Advisory Committee at the Property Design Milestones.

3.9.2 Community engagement will include feedback in the following areas: (a) design at Property Design Milestones; b) Project programming including strategies for a business incubator and retail leasing, programming for proposed innovation lab, recreation opportunities, youth engagement strategies, and an art program that reflects Rockwood's history and diversity; and (c) construction opportunities including strategies for Industry Apprenticeship Programs/Partners: Professional (A/E), construction trades and mentoring.

3.9.3 Through completion of construction of the Project, the Parties will coordinate with one another in advance with respect to any and all press releases, responses to media requests and inquiries, and other publicity related to the Project. All such coordination shall be handled by Kerry Hughes, Ndamukong Suh, or Angela Guo on behalf of Developer, Joe McFerrin or his designee on behalf of POIC, and the GRDC Executive Director and the City Communications Manager on behalf of GRDC.

### **3.10 Community Benefits; City Policies**

3.10.1 **MWESB Contracting and Workforce Training.** POIC and Developer will use commercially reasonable efforts to comply with applicable City policies, which include, allocating twenty percent (20%) of total development costs for contracts with business certified under ORS 200.055 (“**COBID Firms**”), and advancing GRDC’s desire to track and increase the participation of women, people of color, and apprentices in the construction workforce of the Project. POIC and Developer shall submit a report or shall cause the General Contractor to submit a report at completion of the Project construction describing (i) COBID Firm participation and labor force demographic information (including women and people of color), in addition to the number of apprentices working on the Project, their trade category, and their number of hours worked, and (ii) efforts to increase the participation of COBID Firms and apprenticeships, including meetings and/or organizations contacted.

3.10.2 **Buy Local Policy.** POIC and Developer will use commercially reasonable efforts to select multiple quality conscious and financially sound subcontractors and suppliers, consistent with the City’s Buy Local Policy, a copy of which is attached hereto as Exhibit H, and to support minority, women, and veteran owned businesses and emerging small businesses from the City community. The City defines "**local**" as businesses that have a physical location in the City of Gresham or in East Multnomah County jurisdictions.

3.10.3 **Green Building.** POIC and Developer shall make commercially reasonable efforts, as Project finances permit, to include as part of the design and construction plans for the Project those “green” and environmental-friendly materials, components, and methods that increase the energy efficiency and decrease the environmental impact of the Project. GRDC shall not withhold approval of the Property Design Milestones or the Final Construction Drawings based on the level of said materials, components and methods actually included in the Project.

### **3.11 Tenancy of Commercial Space**

3.11.1 It is GRDC's intent that the completed Project will supply products and services to meet unmet demand in the Rockwood West Gresham community and serve as a catalyst to stimulate adjacent and nearby businesses. Additionally, it is GRDC's intent that the tenant or subtenant mix for the completed Project will (i) be compatible with adjacent residential uses, and (ii) create economic opportunities for people of all backgrounds in the community. POIC shall use commercially reasonable efforts to make leasing or subleasing opportunities in the Project known to members of disadvantaged groups in the community. Notwithstanding the foregoing, except as

otherwise provided in Section 3.12, the ultimate decision to lease/sublease the Project shall be made by POIC.

3.11.2 POIC will make commercially reasonable efforts to attract locally owned commercial tenants to the Project until the Property is fully leased. As used in Sections 3.11.1 and 3.11.2, "**commercially reasonable efforts**" means that POIC will do the following:

3.11.2.1 Hold at least two (2) informational meetings to describe the leasing opportunities for interested persons before construction is completed;

3.11.2.2 Advertise the leasing opportunities and the informational meetings in The Skanner, The Gresham Outlook, El Hispanic News, the Asian Reporter, and other emerging community and immigrant media publications;

3.11.2.3 Send written notice of the leasing opportunities and informational meetings to Latino Network, El Programa Hispana, the Urban League, the Oregon Association of Minority Entrepreneurs, the Immigrant & Refugee Community Organization, the Rosewood Initiative, the Rockwood Community Development Corporation, Slavic Family Radio, the Rockwood, Wilkes-East, and Centennial Neighborhood Associations, and the Gresham Area Chamber of Commerce; and

3.11.2.4 Provide documentation to GRDC to verify the above efforts.

3.11.3 For a period of fifteen (15) years from recording of the Certificate of Completion (the "**Commercial Use Period**"), POIC shall use commercially reasonable efforts to cause at least 1,500 square feet of the ground floor of the Project designated by POIC (the "**Commercial Space**") to be used for for-profit retail sales or services purposes. Subject to the provisions of this Section 3.11.3, POIC shall not use the Commercial Space for purposes other than the above-described uses or fail to make the Commercial Space available for such use during such 15-year period without GRDC's prior written consent.

3.11.3.1 Prior to the date POIC receives temporary certificate of occupancy (the "**TCO**") for the Commercial Space, POIC shall provide GRDC with a written leasing strategy with respect to the Commercial Space to review and approve. Within ten (10) business days of receipt of the proposed leasing strategy, GRDC shall either approve or disapprove of the same; provided, that if POIC provides a reasonable, market-based, leasing strategy, GRDC shall have no basis to withhold its approval. If GRDC disapproves of the proposed leasing strategy, GRDC shall specify in detail in writing the basis for the disapproval and how GRDC would like to see the leasing proposal revised. GRDC's failure to timely respond to POIC's proposed leasing strategy shall be deemed GRDC's approval thereof. POIC may revise its leasing strategy from time to time if and as warranted by market conditions.

3.11.3.2 During the eighteen (18) month period following POIC's receipt of a TCO for the Commercial Space (or until the Commercial Space is leased, if the

Commercial Space is leased during that period), POIC and GRDC staff shall meet at least every six (6) months to discuss POIC's leasing efforts and strategy.

3.11.3.3 Notwithstanding anything to the contrary set forth in this Section 3.11, if POIC has engaged a real estate broker to lease the Commercial Space and has executed on the leasing strategy approved or deemed approved by GRDC in its reasonable discretion (or, if the initial leasing strategy is revised, if POIC executed on a revised leasing strategy that has been approved or deemed approved by GRDC in its reasonable discretion in a manner consistent with the standard and process described in Section 3.11.3.1 above), and the Commercial Space is not leased for such use within twenty four (24) months after POIC's receipt of the TCO, then POIC may lease the Commercial Space for any purpose allowed by applicable Laws except as provided in Sections 3.12.1 and 3.12.2.

3.11.3.4 The obligations set forth in this Section 3.11.3 shall survive Closing and shall be a covenant and equitable servitude that runs with the land as to the Property until the date the requirements of this Section 3.11.3 expire in accordance with their terms, at which time at which time the terms and conditions set forth in this Section 3.11.3 shall automatically terminate and be of no further force and effect.

## **3.12 Prohibited Uses**

3.12.1 **Prohibited Uses.** POIC will not use or occupy the Property or the Project, or permit or suffer all or any part of the Property to be used or occupied: (i) for any unlawful or illegal business, use, or purpose, including any illegal gambling; (ii) in any manner so as to constitute a public nuisance of any kind; (iii) for any purpose or in any way in violation of the certificate of occupancy, or of any applicable Laws, including applicable Laws respecting Hazardous Substances; or (iv) for any adult businesses. This obligation shall survive Closing and shall be enforceable by GRDC for a period of thirty (30) years from the date the Certificate of Completion is recorded.

3.12.2 **Specific Prohibited Uses.** Additionally, POIC shall not permit all or any part of the Property or the Project to be used or occupied for any of the following uses without GRDC's prior written consent: (i) businesses involving the production, processing, handling, sale, or use of marijuana or marijuana-based products; (ii) nail or tanning salons; (iii) massage parlors (but not including spas or medical clinics that provide ancillary massage services); (iv) stores the principal business of which is the sale of alcoholic beverages for off-premises consumption (which restriction does not prohibit grocery, convenience store, or similar retailers that may sell alcohol); (v) casinos or other facilities used for gambling; (vi) motor vehicle sales, servicing, or repair; (vii) self-serve storage, other than for businesses leasing retail or restaurant space in the Project or nearby properties; (viii) heavy industrial uses; (ix) drive-through businesses; and (x) businesses that exclude minors from the entire premises at all hours of the day. Upon request, GRDC will consider in good faith any changes to the foregoing restrictions proposed by POIC to reflect changes in policy or prevailing community standards, but GRDC's decision, in its sole discretion shall be final. In the event New Markets Tax Credits are used to finance any portion of the Project, any uses prohibited by Treasury Regulations § 1.45D-1d)(5)(ii)(B), as amended, shall also be excluded uses during the tax credit compliance period (the "**Tax Credit Compliance Period**").

### **3.13 Inspection and Property Access.**

3.13.1 **Before Closing.** Before Closing, GRDC shall allow POIC, Developer and their employees, agents and consultants to enter upon the Property, at all reasonable times to perform due diligence and to carry out the purposes of this Agreement, subject to a separate access agreement containing terms reasonably acceptable to GRDC, POIC and Developer.

3.13.2 **During Construction.** During construction of the Project and until GRDC has issued or is deemed to have issued the Certificate of Completion, GRDC shall, upon reasonable notice, be granted access to the Property periodically and at reasonable times for purposes of inspection for Developer's and POIC's compliance with this Agreement. GRDC agrees not to interfere with the work occurring on the Property. In the event that GRDC or its representatives enter the Property pursuant to this Section 3.13.2, they shall do so at their own risk and shall comply with all construction site rules applicable to construction of the Project. In addition, GRDC shall not be entitled to indemnification for any losses, liability or injury arising in connection with entry to the Property, except to the extent the same arises out of the gross negligence or willful misconduct of POIC.

**3.14 Liens.** From the Effective Date until the termination of the Repurchase Right, POIC agrees that in the event any statutory lien shall be filed against the Property by reason of labor, services, or materials supplied to or at the request of POIC or pursuant to any construction of the Project, POIC shall pay and discharge the same of record within thirty (30) days after the filing thereof, subject also to the provisions of the following sentence. POIC shall have the right to contest the validity, amount or applicability of any such lien by appropriate legal proceedings, and so long as it shall furnish bond or indemnity, the requirement that it pay and discharge such items within said thirty (30) day period shall not be applicable.

### **3.15 Certificate of Completion.**

3.15.1 **When Developer and POIC are Entitled to Certificate of Completion.** Upon substantial completion of the Project, GRDC will furnish POIC and Developer with a Certificate of Completion, substantially in the form attached hereto as Exhibit I. The Project will be deemed to be substantially complete when: (i) GRDC, in its proprietary capacity as a Party to this Agreement, reasonably determines that the Project has been completed in accordance with the Final Construction Drawings, except for punch list items which do not materially affect the use for the purposes intended under this Agreement; (ii) the Project Architect has issued its certificate of substantial completion; and (iii) the City in its regulatory capacity has issued a temporary certificate of occupancy or its equivalent with respect to the Project.

3.15.2 **Contents and Effect of the Certificate of Completion.** The Certificate of Completion will represent GRDC's conclusive determination that POIC and Developer have satisfactorily completed the construction required by POIC and Developer under this Agreement and will so state. A Certificate of Completion shall be in a form that can be recorded in the real property records of Multnomah County. Issuance of the Certificate of Completion shall terminate any and all construction obligations under this Agreement and all remedies of GRDC related thereto. Notwithstanding the foregoing, after issuance of the Certificate of Completion, neither

GRDC nor any other person will have the rights, remedies, or controls with respect to the development and construction of the Project that it would otherwise have had or been entitled to exercise under this Agreement.

**3.15.3 Procedure Where GRDC Refuses to Issue.** If GRDC refuses or fails to provide a Certificate of Completion in accordance with this Section 3.15, then GRDC, within thirty (30) days after written request by POIC or Developer for such Certificate of Completion, shall provide POIC and Developer with a written statement indicating in detail in what respects POIC and Developer have failed to complete the Project in accordance with the provisions of this Agreement or are otherwise in default of this Agreement and what measures or acts POIC and Developer must take or perform to obtain such Certificate of Completion. Upon receipt of such detailed statement from GRDC, and unless POIC or Developer disagrees with GRDC's assertions or statements, POIC and Developer shall complete the improvements or cure the alleged default in a manner responsive to the stated reasons for disapproval. GRDC's failure to furnish POIC and Developer with a detailed written statement under this Section 3.15.3 within such thirty (30) day period shall be deemed GRDC's approval of POIC's and Developer's request for the Certificate of Completion. GRDC will not unreasonably withhold, condition, or delay the Certificate of Completion.

**3.15.4 Recording of Certificate of Completion.** POIC shall promptly record the Certificate of Completion in the Multnomah County Recorder's Office. After recordation of the Certificate of Completion, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Project or Property will not incur any obligation or liability under this Agreement related to the development or construction of the Project.

**4. OBLIGATIONS OF GRDC.** In addition to the obligations of good faith, commercially reasonable efforts, cooperation and such other obligations set forth in this Agreement, GRDC acknowledges and agrees that the Project would not be economically feasible without GRDC's performance of the following obligations, which GRDC hereby agrees to perform:

**4.1.1 Pre-Development Funds.** GRDC shall provide up to \$500,000 to Developer for qualifying predevelopment activities in accordance with the Pre-Development Fund Budget set out in Exhibit J (the "**Pre-Development Funds**"). Developer acknowledges that it has received the sums listed in the "Spent" column in Exhibit J. GRDC agrees to assist in good faith in obtaining all local and state property tax abatement options that are available to the Project or can be made available through GRDC action. Changes to the Pre-Development Fund Budget (including any change to the allocation of funds among categories of expense or any change to the specified third-party vendors) are subject to GRDC Executive Director review and approval, which shall not be unreasonably withheld. Developer's expenditures will be reimbursed by GRDC within thirty (30) days of GRDC's receipt of any invoice from Developer.

**4.1.2 Gymnasium Construction Funds.** Within sixty (60) days of Schematic Design Approval, GRDC and POIC will work cooperatively and diligently to determine the amount, if any, that GRDC will contribute to partially fund construction of the gymnasium. If the Parties are unable to agree on the amount of such contribution from GRDC, if any, within 60-days of Schematic Design Approval, then either Party may terminate this Agreement by written notice delivered to the other Party within thirty (30) days of the expiration of such 60-day period. If



neither Party timely delivers such termination notice, such termination right shall expire and be of no further force and effect, and GRDC will have no obligation to contribute funds for construction of the gymnasium;

4.1.3 **PLA.** GRDC, at no out of pocket expense other than its attorney fees, shall assist and cooperate with Developer to obtain all necessary approvals and signatures to complete the PLA prior to Closing. Unless otherwise agreed by GRDC, the PLA shall be executed and held in escrow by the Title Company and shall be recorded at Closing, except that, if required by POIC's lender or financing partner, GRDC will allow the PLA to be recorded at any time that is not more than ninety (90) days prior to the anticipated Closing Date.

4.1.4 **Property Condition; Contracts; Liens.** Before Closing, GRDC shall maintain the Property in the condition existing as of the Effective Date and shall not enter into any leases, management agreements, rights of first refusal, options, or other contracts that would be binding on the Property or POIC after Closing without POIC's prior written consent, which may be withheld in POIC's sole and absolute discretion. GRDC may not cause or allow monetary liens or other encumbrances to be filed or created against the Property prior to Closing.

## 5. ENVIRONMENTAL MATTERS

5.1 **Reports.** GRDC has delivered to Developer copies of all existing environmental reports and studies regarding the Property in GRDC's possession or control. Developer has performed or will perform further environmental studies in connection with Developer's due diligence, which may require additional reports and studies in accordance with Section 2.6.

5.2 **Compliance with Laws.** POIC shall comply with all applicable Environmental Laws with respect to construction of the Project from and after the date of Closing and shall be liable for any violation of applicable Environmental Laws. GRDC shall not be liable to POIC, or its employees, agents, contractors, successors or assigns, for remediation or violations of Environmental Laws with respect to the Property, regardless of whether such violations or need for remediation occurred before or after the Effective Date, except for any violations of Environmental Laws directly caused by GRDC or its agents between the Effective Date and the Closing Date.

5.3 **Contribution.** This Agreement is not intended to limit any rights of contribution that POIC may have against third parties, and is intended only as an allocation of responsibility between the Parties to this Agreement.

## 6. ASSIGNMENT PROVISIONS

### 6.1 Assignment.

6.1.1 GRDC is entering into this Agreement based on its relationship with POIC and Developer, and in so doing, GRDC is relying on the obligations of each of POIC and Developer for the faithful performance of the covenants to be performed by POIC and Developer, respectively, under this Agreement. Therefore, until the City has issued a final Certificate of

Occupancy for the Property (“**Completion**”), POIC shall not partially or wholly transfer or dispose of or agree to transfer or dispose of its interest in the Project or this Agreement, and Developer shall not partially or wholly transfer or dispose of or agree to transfer or dispose of its interest in this Agreement, unless approved by the express written consent of GRDC, which may be withheld in GRDC’s sole discretion.

6.1.2 Notwithstanding anything to the contrary set forth in Section 6.1.1 or this Agreement, without the need for GRDC’s consent:

6.1.2.1 POIC may (x) assign its interest in the Project or this Agreement to any entity the day-to-day management of which is controlled by POIC through ownership, voting or contractual management rights and/or (y) collaterally assign its interest in the Project or this Agreement to any construction financier; and

6.1.2.2 Developer may assign its interest in the Project and in this Agreement, including its right to develop the Project on behalf of POIC, to any entity the day-to-day management of which is controlled by HMS or by either or both of Kerry Hughes or Ndamukong Suh through ownership, or voting or contractual management rights.

Notwithstanding the foregoing, it shall be a default by POIC and Developer if neither Kerry Hughes nor Ndamukong Suh remains in control of the day-to-day management of Developer until the Certificate of Completion is issued (or deemed to have been issued) except in the event of the death or disability of Kerry Hughes and Ndamukong Suh, which shall not be a default so long as POIC designates a new developer reasonably acceptable to GRDC within ninety (90) days of the occurrence of such death or disability. GRDC shall not unreasonably withhold consent to a substitute developer if the substitute developer has experience equal to or greater than Developer.

**6.2 Assignment by GRDC.** GRDC shall have the right to assign this Agreement without prior written consent of POIC or Developer to the City or any agency or bureau thereof. Furthermore, should GRDC cease to exist during the term of this Agreement or the term of any covenants applicable to the Property pursuant to this Agreement, the City shall automatically have the right to enforce this Agreement and such covenants and to exercise all rights and remedies of GRDC under this Agreement, such covenants, and applicable Laws, and any obligation owed by POIC or Developer under this Agreement shall be deemed owed to the City. Notwithstanding anything to the contrary set forth in this Agreement, GRDC may not assign this Agreement in whole or in part other than to the City without the prior written consent of POIC, which consent may be withheld in POIC’s sole and absolute discretion.

**6.3 Permitted Assignment or Transfer.** Notwithstanding Section 6.1, “assignment or transfer” shall not include any Mortgage which POIC may cause to attach to the Property at or after Closing.

## 7. INDEMNITY AND INSURANCE

### 7.1 Indemnity.

7.1.1 To the fullest extent permitted by law, POIC shall defend, hold harmless, and indemnify GRDC, the City, their respective officers, agents, consultants, and employees from all third-party claims, suits, or actions to the extent resulting from or arising out of (i) breach of this Agreement by POIC, (ii) violation of PWR Laws by the General Contractor or subcontractor of any tier, (iii) violation of Environmental Laws with respect to the Property. This indemnification obligation expressly includes, but is not limited to, compliance with Oregon Prevailing Wage Law and similar federal Laws to the extent they apply to the Property.

7.1.2 To the fullest extent permitted by law, Developer shall defend, hold harmless, and indemnify GRDC, the City, their respective officers, agents, consultants, and employees from all third-party claims, suits, or actions to the extent resulting from or arising out of breach of this Agreement by Developer.

7.1.3 Nothing in this Agreement shall obligate POIC or Developer to indemnify GRDC from claims to the extent such claims arise from a negligent act, error, omission or willful misconduct of GRDC or its employees, consultants or agents; provided, however, the review, approval, or acceptance by GRDC, its Project Manager, or any GRDC employee of documents or other work performed, prepared, or submitted by POIC to GRDC, and the acts and omissions of the City in its regulatory capacity, shall not be considered a negligent act, error, omission, or willful misconduct on the part of GRDC.

**7.2 Insurance.** POIC shall, and shall cause POIC's contractors to, obtain, at each of their own expense, and keep in effect until issuance of the Certificate of Completion, such insurance coverage as is required by POIC's construction lender. In addition, POIC shall maintain in effect until the issuance of the Certificate of Completion, commercial general liability insurance written on an "occurrence" form policy with minimum coverage limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Coverage limits may be fulfilled through underlying coverage limits aggregated with excess or umbrella liability coverage limits.

**7.3 Business Automobile Liability Insurance.** If, prior to issuance of the Certificate of Completion, Developer or any of POIC's contractors or consultants will be using a motor vehicle in the performance of work contemplated by this Agreement, the same shall provide GRDC a certificate of insurance indicating that Developer or any of POIC's contractors or consultants, as applicable, have business automobile liability coverage for all owned, hired and non-owned vehicles with a combined single limit of not less than \$1,000,000.

**7.4 Insurance Carrier Rating.** Coverages provided by POIC and its General Contractor must be underwritten by insurers that comply with the requirements of the construction lender for the Project.

**7.5 Additional Insured and Termination Endorsements.** GRDC will be named as an additional insured with respect to POIC's commercial general liability insurance coverages, which coverage shall be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent, if and as applicable. Waiver of subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is how GRDC shall be shown as an

additional insured: "the Gresham Redevelopment Commission, the duly authorized and acting urban renewal agency of the City of Gresham, and the City of Gresham, its elected and appointed officials, officers, agents, and employees." An endorsement shall also be provided requiring the insurance carrier to give GRDC at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder to the extent such notice requirement is commercially available.

**7.6 Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, POIC shall furnish a certificate of insurance to GRDC. This Agreement shall not be effective until the required certificates and the additional insured endorsements have been received and approved by GRDC with respect to POIC. POIC agrees that it will not terminate or change its coverage during the term of this Agreement without giving GRDC at least thirty (30) days' prior advance notice, and POIC will endeavor to obtain an endorsement from its insurance carrier, in favor of GRDC, requiring the carrier to notify GRDC of any termination or change in insurance coverage, as provided above.

**7.7 Primary Coverage.** The coverage provided by these policies shall be primary, and any other insurance carried by GRDC is excess. Developer shall be responsible for any deductible amounts payable under all policies of insurance other than the policy of insurance required of the general contractor.

## **8. DEFAULT; REMEDIES**

### **8.1 Default and Cure.**

**8.1.1 Default by Developer or POIC.** Developer or POIC shall be in default upon the occurrence of any of the following:

**8.1.1.1 Subject to Unavoidable Delay,** Developer or POIC 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 the defaulting Party receives written notice from GRDC 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 not occur if the defaulting Party commences the cure of the breach within thirty (30) days after it receives written notice from GRDC and thereafter diligently prosecutes to completion such cure, but in any event within one hundred twenty (120) days. Notwithstanding anything to the contrary set forth in this Agreement, failure of any condition precedent shall not constitute a Developer or POIC default, and any such failure shall be subject to Section 2.7.5 above.

**8.1.1.2** Developer or POIC makes an assignment for the benefit of creditors, or is adjudicated as bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within sixty (60) days after appointment.

8.1.1.3 Developer or POIC breaches Section 6.1 of this Agreement.

**8.1.2 Default by GRDC.** Subject to Unavoidable Delay, a default shall occur if GRDC 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 GRDC receives written notice 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 not occur if GRDC commences the cure of the breach within thirty (30) days after GRDC receives written notice and thereafter diligently prosecutes to completion such cure. In the event of a default by GRDC that is not cured as provided herein, the non-defaulting parties, as their sole and exclusive remedy, shall be entitled to either: (a) terminate in writing this Agreement; or (b) seek specific performance of this Agreement.

**8.2 GRDC's Pre-Conveyance Remedies.** If Developer or POIC defaults in any material term of this Agreement beyond any applicable cure period before the Property is conveyed to POIC, then GRDC, as its sole and exclusive remedy, may terminate this Agreement by written notice to Developer and POIC. In addition, if POIC does not acquire the Property by the Closing Date set forth in the Schedule of Performance, as such date may be extended by exercise of one or both Extension Options or by Unavoidable Delay, GRDC shall have the right to terminate this Agreement by written notice to POIC and Developer, provided such failure to Close is not caused by GRDC's default under this Agreement. If GRDC terminates this Agreement as provided in this Section 8.2, then Developer and POIC shall deliver to GRDC within thirty (30) days after such termination, copies of all Consultant Reports, all of which shall be provided to GRDC without representation or warranty of any kind. GRDC, at its own risk, may use the Consultant Reports in any manner that GRDC deem appropriate with the consent of any party having approval rights thereunder, and shall indemnify and hold Developer and POIC harmless from any and all claims, loss, liabilities, fees, and penalties (including reasonable attorney fees) resulting from such use.

**8.3 Restoration.** Neither Developer nor POIC shall perform any construction activities on the Property prior to Closing without GRDC's prior written consent. If, prior to acquiring the Property, Developer or POIC performs any construction activities on the Property related to the Project and POIC fails to acquire the Property, Developer agrees to restore the Property to substantially the condition that existed prior to the time that Developer performed any activities thereon or to such other condition that GRDC reasonably approves in writing.

#### **8.4 Post-Conveyance Remedies.**

**8.4.1 Failure to Commence Construction.** If POIC and Developer shall fail to commence construction of the Project or to cause commencement of construction within forty-five (45) days of the Closing Date, then,

8.4.1.1 If construction financing for the Project includes a NMTC transaction, the primary source of construction funding is from an Institutional Lender, or POIC has provided a Completion Guaranty to the primary source of construction financing, GRDC, as its sole and exclusive remedy, may pursue an action for specific performance against POIC or enforce its rights under the

Completion Guaranty, provided, however, that if POIC has provided the P&P Bond in lieu of a Completion Guaranty, then GRDC, at its sole and exclusive remedy, may make a claim under the P&P Bond.

8.4.1.2 If section 8.4.1.1 does not apply, then GRDC, as its sole and exclusive remedy, shall have the right to repurchase the Property (the “**Repurchase Right**”) for \$1.00. Within one hundred five (105) days of the Closing Date, GRDC may provide written notice to POIC of GRDC’s intent to exercise the Repurchase Right. Within thirty (30) days of timely delivery of such notice, POIC (or its assignee that took title) shall convey the Property to GRDC free of encumbrances other than any encumbrances identified as special exceptions in the Title Policy issued to POIC or its assignee at Closing, including the trust deed of POIC’s construction lender, and any easements recorded after Closing that are reasonably necessary or appropriate for the development of the Property. If GRDC does not timely provide notice of its intent to exercise the Repurchase Right, such right shall automatically terminate. In addition, the Repurchase Right shall automatically terminate and be of no further force and effect on the date that Developer or POIC commences construction.

8.4.2 As used in this Section 8.4, “**commence construction**,” “**commencement of construction**” and words of similar import shall mean that: (a) the financing for construction of the Project has closed; (b) all permits necessary to commence site work for the Project are ready to be issued subject only to payment of permit fees; (c) a contract has been executed with the General Contractor; (d) the General Contractor has mobilized for construction; and (e) excavation work on the Property has started.

**8.5 POIC Pre-Conveyance Remedies.** If GRDC fails to perform any obligation under this Agreement, POIC, at its option and in its sole and absolute discretion, as its sole and exclusive remedy, may either (a) terminate this Agreement by written notice to GRDC, or (b) specifically enforce the obligations of GRDC under this Agreement. POIC and Developer expressly waive any right to damages or other remedies under Laws or equity.

**8.6 POIC’s Post Conveyance Remedies.** In the event of GRDC’s default under this Agreement beyond any applicable cure period after GRDC conveys the Property to POIC, POIC, at its option and in its sole and absolute discretion, may specifically enforce the obligations of GRDC under this Agreement. POIC and Developer expressly waive any right to damages or other remedies under Laws or equity.

**8.9 Delay in Enforcement.** Any delay by a Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 8 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 GRDC 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 8.1 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 GRDC with respect to any specific default by the defaulting Party be considered or treated as a waiver of

the rights of GRDC with respect to any other defaults or subsequent defaults by the defaulting Party or with respect to any particular default except to the extent specifically waived.

**8.10 Nonexclusive Remedies.** The rights and remedies provided by this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to any and all rights and remedies otherwise available at law or in equity. The exercise by any 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 any other Party, including, without limitation, the right to compel specific performance.

**8.11 No Consequential Damages.** In no event shall any Party be liable to the non-defaulting Parties for any special, indirect or consequential damages which may be asserted to arise from a Party's default under the terms and conditions of this Agreement.

### **8.12 Unavoidable Delay.**

8.12.1 Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation is a result of conditions unforeseeable, beyond the Party's control, and without the Party's fault or negligence, such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, supply chain disruptions, strike, acts or delays of governmental authorities provided that POIC and/or Developer have used and are using commercially reasonable efforts to pursue all entitlements and permits needed for construction of the Project in a timely manner, litigation affecting the Project or Property other than litigation arising from the alleged gross negligence or willful misconduct of POIC and/or Developer, malicious mischief, or explosion (each, an "**Unavoidable Delay**").

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

8.12.3 Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay. In no event will the time or times for performance of an obligation be extended for more than one hundred eighty (180) days in the aggregate without written agreement by all Parties.

## **9. Mortgage Provisions.**

**9.1 Mortgagee Not Obligated to Construct.** Notwithstanding any of the provisions of this Agreement, none of a Mortgagee, its designee for purposes of acquiring title at foreclosure, a purchaser at a foreclosure sale, or a party who purchases from a Mortgagee shall be obligated by the provisions of this Agreement to construct or complete the Project or any portion or component thereof or to guarantee such construction or completion. No Mortgagee shall be liable to GRDC

under this Agreement for indemnification or other obligations of POIC and Developer under this Agreement arising or based on events that occurred prior to a foreclosure of a Mortgage by such Mortgagee unless such Mortgagee expressly assumes such liability in writing. However, nothing in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted by this Agreement, and all improvements constructed by such Mortgagee shall be consistent with and conform to the terms and conditions of this Agreement.

**9.2 Copy of Notice of Default to Mortgagee.** Whenever GRDC shall deliver any notice or demand to POIC or Developer with respect to any breach or default by POIC or Developer in its obligations or covenants under this Agreement, GRDC shall at the same time forward a copy of such notice or demand to each Mortgagee allowed under this Agreement at the address of such Mortgagee set forth in such Mortgagee's trust deed or as otherwise provided in writing by POIC or Developer.

**9.3 Copy of Notice of Default to GRDC.** Prior to recordation of the Certificate of Completion, whenever a Mortgagee shall deliver any notice or demand to POIC or Developer with respect to any breach or default by POIC or Developer in its obligations or covenants under its agreements with such Mortgagee, POIC or Developer shall promptly forward a copy of such notice or demand to GRDC at the address of GRDC set forth herein or as otherwise provided in writing by GRDC pursuant to this Agreement.

**9.4 Mortgagee's Option to Cure Defaults.** After any default in or breach of this Agreement by POIC, Developer, or their respective successors in interest, the Mortgagee(s) shall, collectively, have the right after the failure of POIC or Developer to cure or remedy said default or breach, at its/their option, to cure or remedy such breach or default within one hundred twenty (120) days, and if permitted by its loan documents, to add the cost thereof to the Mortgage debt and the lien of its Mortgage. If the breach or default is with respect to construction of the improvements, nothing contained in this subsection or any other subsection of this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion only of the Project in accordance with the approved Final Construction Plans and Specifications and the provisions of this Agreement. Any Mortgagee who shall complete the Project improvements in accordance with this Agreement shall be entitled to issuance of a Certificate of Completion, upon written request made to GRDC. For clarity, a Mortgagee's cure period does not run concurrently with POIC's Developer's cure period but begins and ends after such cure period.

**9.5 Amendments Requested by Mortgagee.** GRDC shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to POIC secured by a security interest in all or any portion of the Property or the Project to be built thereon; provided that such proposed amendments or other agreements do not materially and adversely affect the rights of GRDC under this Agreement.

## **10. MISCELLANEOUS PROVISIONS**



**10.1 Entitlements.** So long as this Agreement remains in effect, and subject to the provisions of this Section 10.1, POIC and Developer, at no out of pocket expense to GRDC, may pursue and work to obtain all necessary approvals for developing the Project in such manner as POIC and Developer shall deem reasonably appropriate. GRDC agrees that POIC and Developer shall have the right during such time to (a) enter into discussions and negotiations regarding the development of the Property with all governmental authorities having jurisdiction over the Property, and (b) apply for, prosecute, participate in and cause to be issued and finally approved any permit, or variance, site plan or other approval which may be required as part of the Project; *provided, however*, that such approvals must be consistent with the terms of this Agreement. GRDC shall reasonably cooperate with POIC and Developer in all respects in connection with obtaining governmental approvals, which cooperation may include the execution and delivery of any applications, agreements, approvals, licenses, plans, permits, and other instruments and assurances as may be requested by POIC and Developer while GRDC owns the Property. The obligations of POIC and Developer under this Agreement are in addition to any requirements of the City or any bureau or agency thereof acting in its regulatory capacity. By making this Agreement, GRDC is specifically not obligating itself, the City of Gresham, or any other agency or bureau of the City of Gresham with respect to any police power or regulatory actions relating to development or construction of the Project including, but not limited to, any rezoning, variance, design review approval, or any other governmental entitlements required for the Project. In the event of any conflict or inconsistency between review and approval required by GRDC in its proprietary capacity as a party to this Agreement (for example and not by way of limitation, GRDC's approval of Design Milestones or changes to approved Final Construction Drawings) and review and approval by the City of Gresham or any bureau or agency thereof in its regulatory capacity, the decision of the City of Gresham or any bureau or agency thereof acting in its regulatory capacity shall control and govern.

**10.2 Notice.** Any notice or communication under this Agreement by any Party shall be sent with all applicable postage and delivery charges prepaid by: (a) registered or certified U.S. mail; postage prepaid, return receipt requested; (b) nationally-recognized overnight courier service; or (c) personal delivery or messenger service to the address of the applicable Party set forth below.

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

HMS Developments, LLC  
1123 NE Fremont  
Portland, OR 97212  
Attn: Kerry Hughes  
Email: kerry@hmsdevelopments.com

With a copy to:

Munck Wilson Mandala LLP  
1330 Post Oak Blvd, Suite 2850  
Houston, TX 77056

Attn: Tasha Schwikert Moser  
Email: gschwikert@munckwilson.com

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

Gresham Redevelopment Commission  
1333 NW Eastman Parkway  
Gresham, OR 97030  
Attn: City Manager  
Email: eric.schmidt@greshamoregon.com

With a copy to:

City of Gresham  
1333 NW Eastman Parkway  
Gresham, OR 97030  
Attn: City Attorney  
Email: ellenvanriper@greshamoregon.gov

And a copy to:

Dunn Carney LLP  
851 SW Sixth Ave, Suite 1500  
Portland, OR 97204  
Attn: Damien Hall  
Email: dhall@dunncarney.com

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

Portland Opportunities Industrialization Center, Inc.  
717 Killingsworth Court  
Portland, OR 97217  
Attn: Joe McFerrin II  
Email: jmcFerrinii@portlandoic.org

With a copy to:

Radler White Parks & Alexander LLP  
111 SW Columbia Street, Suite 700  
Portland, OR 97201  
Attn: Dina Alexander  
Email: dalexander@radlerwhite.com

or addressed in such other way in respect to any Party as that Party may, from time to time, designate in writing dispatched as provided in this Section. Notices shall be deemed given on the earlier of actual delivery or refusal of a Party to accept delivery thereof, which shall include a Party

ignoring delivery attempts. Notwithstanding the foregoing, notices sent by email shall be deemed given when sent if and only if delivered by 6:00 p.m. Pacific Time as indicated on the sending Party's transmitted email and sent on the same day by another means allowed by this Section 10.2. Notices may be given by counsel to a Party on behalf of such Party

**10.3 Approvals.** Unless otherwise set forth herein, where this Agreement requires approvals from GRDC, GRDC will approve or disapprove in writing within thirty (30) days, beginning with the business day following the submission to GRDC of the material to be approved, except where a longer or shorter time period is expressly provided in this Agreement. Failure by GRDC to approve or disapprove within said period of time shall be deemed an approval. Any disapproval by GRDC shall state the reasons for such disapproval in sufficient detail to allow Developer or POIC to respond, as applicable. Except as otherwise set forth in this Agreement, approvals by GRDC will not be unreasonably withheld, conditioned or delayed.

**10.4 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.

**10.5 Waivers.** Except as otherwise expressly provided in this Agreement, no waiver made by any Party with respect to the performance, or manner or time thereof, of any obligation of any 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 any party 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.

**10.6 Discrimination.** Developer and POIC, for themselves and their successors and assigns, agree that, during the development of the Property and construction of the Project, they will not discriminate against any contractor, employee or applicant for employment because of race, color, ethnicity, religion, marital status, disability, political affiliation, age, gender, sexual orientation, national origin, or any other protected status under Oregon or federal law.

**10.7 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, without regard to principles of conflicts of laws.

**10.8 Calculation of Time.** Except as otherwise expressly set forth in this Agreement, 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.

**10.9 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.

**10.10 Severability.** If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the Parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

**10.11 Entire Agreement.** This Agreement and the attachments hereto are the entire agreement between the Parties, and supersedes all prior agreements, letters of intent, understandings and negotiations, whether oral or written, of the Parties, including the Term Sheet and the ENA. 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 a Party, implied or express, other than those contained in this Agreement.

**10.12 Modifications.** The following modifications to this Agreement will require Commission approval: (a) material changes to the terms of the Covenant, and (b) extension of the Closing Date if such extension, together with any previously granted discretionary extensions, would extend the Closing Date by more than one hundred eighty (180) days beyond the two, 180-day extensions POIC is entitled to under Section 2.1. All other modifications to this Agreement, including but not limited to, modifications to the dates forth in the Schedule of Performance (other than extensions of the Closing Date that require Commission approval pursuant to the immediately preceding sentence), modifications to development plan for the Project, and modifications to the uses described in this Agreement, may be approved by the GRDC Executive Director without Commission approval. Any modifications to this Agreement made without the approval of Commission must include an acknowledgement by the City Attorney. Notwithstanding the foregoing, GRDC's Executive Director may elect to seek Commission approval of any decision required under this Agreement or any modification of this Agreement, even if Commission approval is not required by this Agreement.

**10.13 Successors and Assigns.** Subject to the provisions of Section 6, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.

**10.14 Interpretation.** As a further condition of this Agreement, the Parties acknowledge that this Agreement shall be deemed and construed to have been prepared by each Party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any Party.

**10.15 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.

**10.16 No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture.

**10.17 Approval by GRDC Project Manager.** Unless specified to the contrary elsewhere in this Agreement as to a particular consent or approval, whenever consent or approval by GRDC is required under the terms of this Agreement, all such consents or approvals shall be given in writing from GRDC Project Manager, or from such other staff as GRDC has designated.

**10.18 Confidentiality and Communication with Public.**

10.18.1 Developer and POIC acknowledge that information provided to GRDC is subject to the Oregon Public Records Law (ORS 192.410 to 192.505). If the Developer or POIC submits information to GRDC in confidence requested by Developer or POIC to be maintained as confidential, GRDC will consider whether the public interest will suffer from the disclosure of such information, and if so, to the extent allowed by state law, GRDC will hold in confidence such information, and will not divulge such information to any third party, except for GRDC's advisors and consultants. To be considered confidential information, any materials submitted must be marked as "Submitted in Confidence" or "Confidential" on the first page of any such materials. As between the Parties, GRDC's decision to disclose or to hold information in confidence shall be final. This Section 10.18 shall survive termination of this Agreement, but shall not apply to the extent any such information is publicly available, has been disclosed by other parties, or is required to be disclosed by state law. Should a third party request such confidential information from GRDC, GRDC will notify Developer and POIC of GRDC's receipt of the request at least ten (10) days' notice prior to disclosure so that Developer and POIC may seek a protective order. Developer or POIC will be solely responsible to defend against disclosure should a third party challenge the nondisclosure of the confidential information.

10.18.2 Both Parties shall work in good faith to coordinate Project-related public communications, including press releases, statements to the media, and public testimony. Media requests and inquiries will be coordinated through the GRDC Executive Director and the City Communications Manager.

**10.19 Brokers.** The Parties represent and warrant to the other Parties that no commissions will be due any broker or finder in connection with their participation in the transactions contemplated by this Agreement. In the event any person or entity asserts a claim for a broker's commission or finder's fee against one of the Parties to this Agreement, then Developer shall indemnify, hold harmless, and defend the other Parties from and against any such claim if based on any action, agreement, or representations made by Developer; GRDC shall indemnify, hold harmless, and defend the other Parties from and against any such claim if based on any action, agreement, or representations made by GRDC; and POIC shall indemnify, hold harmless, and defend the other Parties from and against any such claim if based on any action, agreement, or representations made by POIC.

**10.20 No Third Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and, except as provided in Section 6.2, no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

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

**10.22 Covenants Running with the Property.** POIC, its successors and assigns, covenant and agree that (i) it will use the Property and Project only for purposes consistent with this Agreement, including but not limited to complying with the provisions of Sections 3.11 and 3.12, and (ii) prior to the issuance of a final Certificate of Occupancy by the City for the Property and subject to the terms and conditions of Section 9 above, the design review and approval provisions contained in Sections 3.1 to 3.10 of this Agreement shall survive any foreclosure or transfer of the Property by a deed in lieu of foreclosure or any other transfer of POIC's interest in the Property.

POIC hereby declares and agrees that the covenants set forth in this Section 10.22 shall be deemed covenants running with the land and equitable servitudes burdening the Property, and shall pass to and be binding upon POIC, its successors and assigns, including, without limitation, any mortgagee, purchaser, grantee, or lessee of any portion of the Property. Notwithstanding anything to the contrary in this Section 10.22, this Agreement shall terminate upon the date that is fifteen (15) years after the date the Certificate of Completion is recorded.

**10.23 Casualty and Condemnation.** POIC shall be bound to purchase the Property if and as required by the terms of this Agreement without regard to the occurrence or effect of any damage to or destruction of all or any portion of the Property or condemnation (or threat or intent to condemn) by right of eminent domain by any public body other than the City of Gresham, provided that the occurrence of any damage, destruction or condemnation is not material. In the event of any material damage, destruction or condemnation prior to Closing, or receipt of notice of intent to condemn all or any portion of the Property prior to Closing, POIC, may terminate this Agreement by written notice delivered to GRDC within thirty (30) days after POIC receives notice of such damage, destruction or taking, or prior to acquisition of the Property, whichever occurs first. If POIC fails to deliver such notice by such date, POIC will be deemed to have waived any such damage, destruction or condemnation, and elected to proceed to acquire the Property. In the event of a condemnation or intended condemnation, at Closing, as a condition precedent thereto, GRDC shall pay to POIC the amount of any condemnation proceeds attributable thereto which have been received by GRDC, and assign to POIC all rights or claims to such proceeds payable thereafter. GRDC shall cooperate with POIC in the collection of such proceeds. For purposes of this Section 10.23, damage, destruction or condemnation shall be deemed material if it: (a) would result in the permanent loss or use of two percent (2%) or more of the square footage of the Property; or (b) involves any repair, restoration or remediation costs in excess of one hundred thousand dollars (\$100,000.00); or (c) in the case of condemnation, imposes any restriction or condition that materially impairs or causes an impediment to POIC's proposed development of the Project, as determined by Developer in its sole and absolute discretion.

**10.24 Conflict of Interests.** If any member, official, or employee of GRDC is subject to ORS chapter 244 and has any conflict of interest relating to this Agreement, such member, official, or employee shall comply with any applicable obligations under ORS chapter 244. This Section 10.24 shall not give rise to any claim for damages under this Agreement.

**10.26 Estoppel Certificates.** GRDC and POIC and Developer shall at any time and from time to time, within thirty (30) days after written request by either of the other Parties, execute, acknowledge and deliver to the Party that has requested the same or to any Mortgagee, or prospective Mortgagee, assignee, buyer, tenant or subtenant designated by POIC, a certificate stating that: (a) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, and if there have been modifications, supplements or amendments, the Agreement is in full force and effect as modified, supplemented or amended, identifying such modification, supplement or amendment agreement; and if the Agreement is not in force and effect, the certificate shall so state; (b) the dates on which the term of this Agreement commenced and will terminate, to the extent such termination date is actually known; (c) all conditions under the Agreement to be performed by the other Parties, as the case may be, have been satisfied and, to

the responding Party's actual knowledge, as of the date of such certificate, there are no existing defenses or offsets which the requesting Party has against the enforcement of this Agreement by the responding Party, or, if such conditions have not been satisfied or if there are any known defenses or offsets, the certificate shall so state; and (d) and other factual matter related to this Agreement and the performance of the Parties hereunder reasonably requested by the requesting Party. The party or parties to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the Party issuing the same shall be estopped from denying the veracity or accuracy of the same.

**10.27 Dispute Resolution.** The Parties shall endeavor to resolve all disputes, issues and other matters in question between them by first escalating the dispute, issue or matter to the principals of Developer, and the Executive Directors of POIC and GRDC. Any Party may provide written request to the other Parties to meet, in which case a meeting shall occur within thirty (30) calendar days of receipt of the request. At the meeting, the Parties will attempt to achieve resolution of the dispute, issue or other matter. If resolution is not achieved at the meeting, then the Parties may attempt to resolve the dispute through mediation with Arbitration Service of Portland, Inc. ("ASP") if the Parties to the dispute, issue, or other matter agree to do so, or otherwise shall proceed to arbitration with ASP, and any Party may file for such arbitration. The arbitration will be conducted in accordance with ASP's rules and procedures, by one neutral arbitrator appointed in the manner provided for in said rules, which arbitrator shall have at least ten (10) years of experience in commercial real estate, with a preference for an arbitrator with experience related to the specific dispute (e.g., construction, development, or operations of commercial/retail projects). No demand for arbitration may be made after the date when the institution of legal or equitable proceedings based on the dispute, issue or other matter would be barred by the applicable statute of limitations. The award rendered by an arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The Parties shall share the cost of such arbitration equally, and each party shall bear the cost of its own attorney fees in any mediation, arbitration or litigation. Notwithstanding the foregoing, the provisions of this Section 10.27 shall not apply to any Party seeking a temporary restraining order, injunction or other relief that requires immediate action to prevent potentially imminent and irreparable harm.

**10.28 Recording of Memorandum of Agreement.** Upon written request of any party to this Agreement, a Memorandum of Agreement substantially in the form attached as Exhibit K to this Agreement (the "**Memorandum**") shall be recorded in the real property records of Multnomah County. If no such request is made, then the Memorandum shall be recorded on the Closing Date. When the City issues the Certificate of Completion, the Parties shall cooperate to promptly record an Amended Memorandum of Agreement to reflect the surviving covenants of this Agreement or, if this Agreement is terminated in its entirety, shall cooperate to promptly record an amendment or termination of the Memorandum of Agreement.

**10.29 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Electronic signatures shall be valid for all purposes.

**10.30 Mechanics' Liens.** GRDC will not permit or suffer any mechanics, materialmen or other similar lien, claim, or notice of an intention to file same, to be filed or claimed against the Property or any portion thereof by reason of any work, labor, materials, services or supplies furnished or purportedly furnished to or for GRDC in connection with the Property at any time prior to the Closing, unless each such lien or notice is satisfied, removed or cured (including by bonding around any such lien) prior to Closing to the satisfaction of the Title Company and POIC.

**10.31 Merger.** Until issuance of a Certificate of Completion, none of the provisions of this Agreement are intended to or shall be merged into the Deed, and 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. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, Section 2 (except the last two sentences of Section 2.7.4.3, and Sections 2.7.6.3 and 2.7.6.4), Section 3.2, Section 3.3 (except the City's reimbursement obligations thereunder), and Section 3.13.1 are intended to and shall merge into the Deed on the Closing Date.

**10.32 Statutory Notice.** 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

**[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]**



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

**GRESHAM REDEVELOPMENT  
COMMISSION,**  
the duly authorized and acting urban renewal  
agency of the City of Gresham

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

APPROVED AS TO FORM:

\_\_\_\_\_  
GRDC General Counsel

**PORTLAND OPPORTUNITIES  
INDUSTRIALIZATION CENTER, INC.,**  
an Oregon non-profit corporation

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

**HMS DEVELOPMENTS, LLC,**  
an Oregon limited liability company

By: HMS PDX HOLDING, LLC,  
a Delaware limited liability company,  
its Manager

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

## EXHIBITS

- Exhibit A – Legal Description of the Property
- Exhibit B – Glossary of Defined Terms
- Exhibit C – Form of Deed
- Exhibit D – Due Diligence Documents
- Exhibit E – Conceptual Design
- Exhibit F – Preliminary Budget
- Exhibit G – Schedule of Performance
- Exhibit H - City of Gresham Buy Local Policy
- Exhibit I – Form of Certificate of Completion
- Exhibit J – Pre-Development Funds
- Exhibit K – Form of Memorandum of Agreement
- Exhibit L – Form of Restrictive Covenant

DRAFT

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

A portion of Lot 4, SEROR PARK, in the City of Gresham, County of Multnomah and State of Oregon, described as follows:

Beginning at a point on the West line of said Lot 4, 500 feet South of the Northwest corner of said Lot 4; thence East parallel with the North line of said Lot 4, 182 feet at the Northwest corner of the tract of land conveyed to Frank Stepanek, recorded November 18, 1953 in Book 1632 Page 130; thence Southerly along the West line of the Stepanek Tract, 203.75 feet to the North line of Burnside Road No. 1273; thence North 59°30' West 185.36 feet to the Easterly line of S.E. 188th Avenue Road No. 1549; thence North 112 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, Highway Division by Deed recorded May 22, 1984 in Book 1749, Page 74.

## EXHIBIT B

### (GLOSSARY OF DEFINED TERMS)

1. “**Business Day**” shall mean a day other than a Saturday, Sunday, or other day on which national banks in Gresham, Oregon, are authorized or required by law to close.
2. “**Certificate of Completion**” means a certificate that will be issued to POIC and Developer pursuant to Section 3.15, promptly following issuance of the architect’s certificate of substantial completion and the City’s issuance of a temporary certificate of occupancy for the Project, indicating GRDC’s material acceptance of the construction of the Project.
3. “**City**” means the City of Gresham, Oregon, a public body corporate and politic.
4. “**Close**” or “**Closing**” means the conveyance of the Property by GRDC by the Deed and the simultaneous payment of the Purchase Price to GRDC, all as more specifically described in Section 2 of this Agreement.
5. “**Closing Date**” means the date on which POIC pays the Purchase Price to GRDC, and GRDC conveys the Property to POIC.
6. “**Commission**” means the Gresham Redevelopment Commission.
7. “**Design Development Documents**” means the 100% Schematic Design and 50% Design Development documents.
8. “**Effective Date**” means the date that all Parties have executed this Agreement as set forth in the introductory paragraph of this Agreement.
9. “**Environmental Laws**” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Federal Water Pollution Control Act, U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1471 *et seq.*; Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; Refuse Act, 33 U.S.C. §§ 407 *et seq.*; Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001 *et seq.*; Occupational Safety and Health Act, 29 U.S.C. §§ 65 *et seq.*, to the extent it includes the emission of any Hazardous Material; Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. §§ 136 *et seq.*; Federal Safe Drinking Water Act, 42 U.S.C. §§ 300(f) *et seq.*; or any similar or analogous state or local statute or ordinance, or any regulation, order, rule, or requirement adopted thereunder which regulates Hazardous Substances.
10. “**Final Construction Drawings**” means permit-ready construction plans and technical specifications required to complete the Project pursuant to the terms of this Agreement consistent with the 50% Design Development plans approved by GRDC, and which are approved by GRDC pursuant to Section 3.2.

EXHIBIT B

{01460400;14}

DCAPDX\5032641.v27

11. “**General Contractor**” means the general contractor agreed upon between POIC and Developer.
12. “**GRDC**” means the Gresham Redevelopment Commission, the duly authorized and acting urban renewal agency of the City of Gresham, a public body corporate and politic.
13. “**Institutional Lender**” means any of the following: (a) any bank, savings and loan association, savings institution, real estate investment trust, trust company or national banking association, acting for its own account or in a fiduciary capacity, (b) any charitable foundation, (c) any insurance company or pension and/or annuity company, (d) any fraternal benefit society, (e) any pension, retirement or profit sharing trust or fund within the meaning of Title I of ERISA or for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisers Act of 1940, as amended, is acting as trustee or agent, (f) any investment company or business development company, as defined in the Investment Company Act of 1940, as amended, or (g) any government, any public employees’ pension or retirement system, or any other government agency supervising the investment of public funds.
14. “**Laws**” means any applicable governmental rule, regulation, code, law, statute, ordinance, order, policy, or similar binding pronouncement enacted by any local, state, or federal government agency, bureau, department, or government.
15. “**Mortgage**” means any mortgage, deed of trust, security agreement, or collateral assignment in favor of a lender, and of any assignees or successors thereof, encumbering POIC’s interest in the Property, and recorded in the real property records of Multnomah County, Oregon.
16. “**Mortgagee**” means the holder of any Mortgage 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 developer at foreclosure sale other than a Mortgagee.
17. “**New Markets Tax Credits**” means credits against federal income taxes for making Qualified Equity Investments (as defined in Section 45D of the Internal Revenue Code) in qualified community development entities allowed under the New Markets Tax Credit (NMTC) Program, enacted by Congress as part of the Community Renewal Tax Relief Act of 2000, is incorporated as Section 45D of the Internal Revenue Code.
18. “**Project**” has the meaning set forth in Recital H, as the same may be refined through GRDC’s review and approval of drawings in accordance with the Agreement.
19. “**Schedule of Performance**” means the document describing the schedule by which the Developer’s and POIC’s obligations under this Agreement will be completed, attached hereto as Exhibit F.

20. “**Schematic Design**” means the general scope and preliminary conceptual design to determine the scale and the relationship between different spaces of the Project incorporating rough drawings that depict the exterior, interior and systems of the improvements, including the site plan, floor plan, building elevations and building systems.

**EXHIBIT C**  
**FORM OF DEED**

After recording return to,  
and until a change is requested  
send all tax statements to:

Portland Opportunities Industrialization Center, Inc.  
717 Killingsworth Court  
Portland, OR 97217  
Attn: Joe McFerrin II

---

**BARGAIN AND SALE DEED**

**Gresham Redevelopment Commission**, a public body corporate and politic, the duly authorized and acting urban renewal agency of the City of Gresham, as Grantor, conveys without warranty to ***[Portland Opportunities Industrialization Center, Inc., an Oregon non-profit corporation] [or its assignee]***, as Grantee, the real property described on Exhibit A. The Property is subject to the permitted encumbrances set forth on Exhibit B.

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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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 TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

The true and actual consideration for this conveyance consists of \$1.00 and other property and value given.

DATED: \_\_\_\_\_, 202\_

*(Remainder of page intentionally left blank;  
Signature page follows.)*

GRANTOR:

GRESHAM REDEVELOPMENT COMMISSION, a public body corporate and politic, the duly authorized and acting urban renewal agency of the City of Gresham

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Gresham Redevelopment Commission, a public body corporate and politic, the duly authorized and acting urban renewal agency of the City of Gresham, on behalf of said commission.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**EXHIBIT A**  
Legal Description

A portion of Lot 4, SEROR PARK, in the City of Gresham, County of Multnomah and State of Oregon, described as follows:

Beginning at a point on the West line of said Lot 4, 500 feet South of the Northwest corner of said Lot 4; thence East parallel with the North line of said Lot 4, 182 feet at the Northwest corner of the tract of land conveyed to Frank Stepanek, recorded November 18, 1953 in Book 1632 Page 130; thence Southerly along the West line of the Stepanek Tract, 203.75 feet to the North line of Burnside Road No. 1273; thence North 59°30' West 185.36 feet to the Easterly line of S.E. 188th Avenue Road No. 1549; thence North 112 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, Highway Division by Deed recorded May 22, 1984 in Book 1749, Page 74.

**EXHIBIT D**  
**DUE DILIGENCE DOCUMENTS**

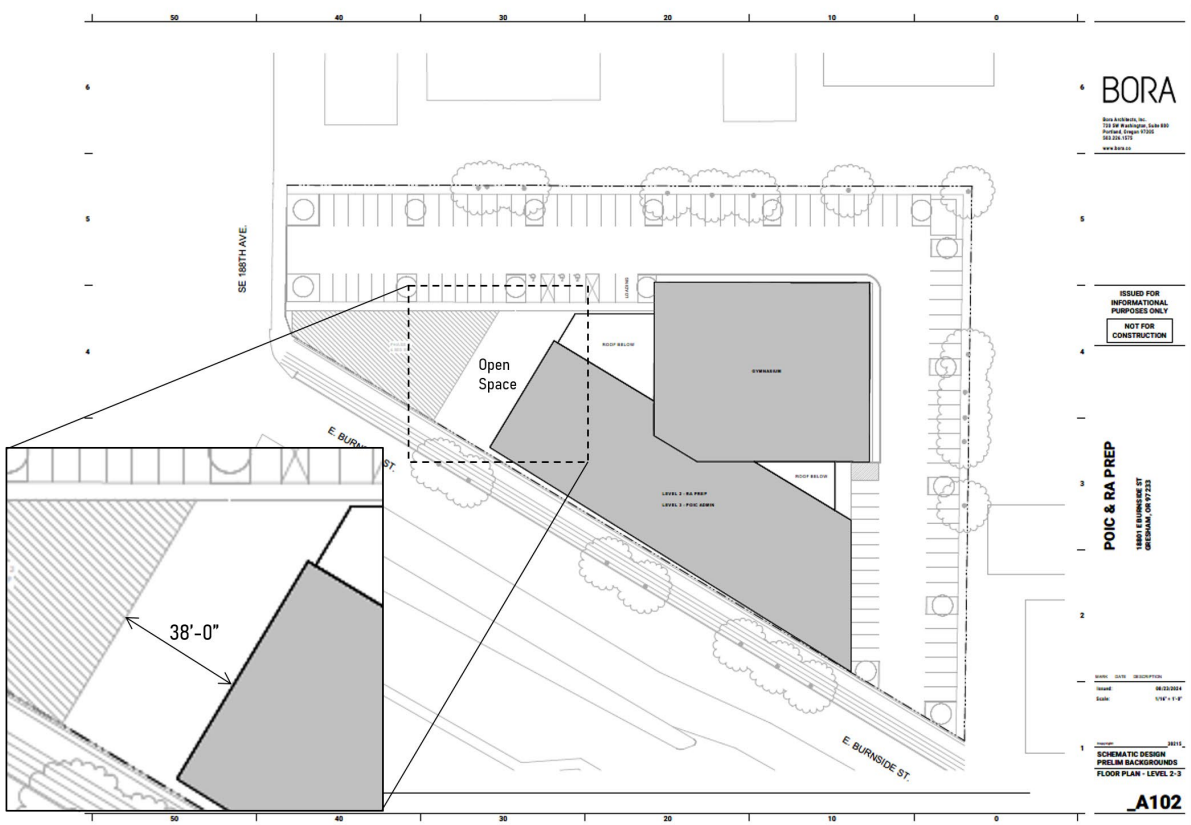
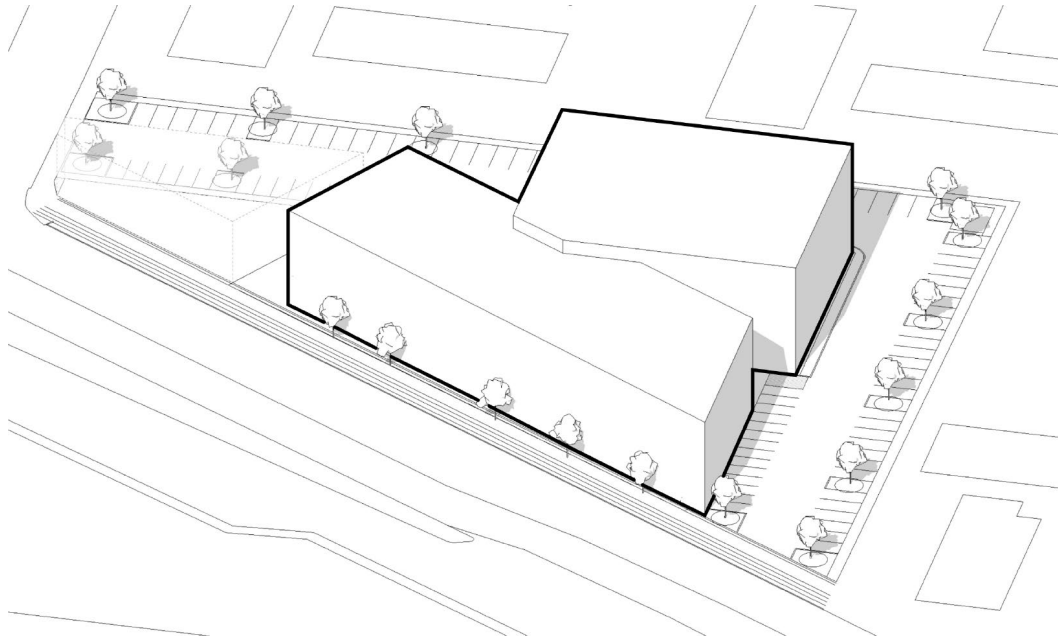
**Asia Kitchen – 18801 E. Burnside St**

160394 Burnside Restaurant Report  
170145 Burnside Restaurant Interviews  
Asia Kitchen Page I ESA 8-22-16  
18801 Burnside – Property Condition Report  
Preliminary Report – 7-27-16  
Preliminary Report – 9-9-16

**Sunrise Center – 18901 E. Burnside St**

Appraisal – 18901 E. Burnside 12-29-15  
DEQ NFA Letter  
18901 Burnside – Property Condition Report  
Info for Property Conditions Assessment  
Preliminary Report – 7-27-16  
Preliminary Report – 8-12-16  
Preliminary Report – 8-29-16

# EXHIBIT E CONCEPT DESIGN



**EXHIBIT F  
PRELIMINARY BUDGET**

**POIC Summary Project Budget<sup>1</sup>**

<b>Estimated Project Hard Costs</b>	<b>\$35,514,875</b>
<b>Estimated Project Soft Costs</b>	<b>\$10,654,463</b>
<b>Estimated Total Development Costs</b>	<b>\$46,169,338</b>

*1- Budget based on early schematic design, and subject to change after further revision and advancing design.*

**EXHIBIT G**  
**SCHEDULE OF PERFORMANCE**

<u><i>Activity</i></u>	<u><i>Expected Completion Date</i></u>
PRE-APPLICATION SUBMISSION	JANUARY 31, 2025
100% SCHEMATIC DESIGN REVIEW & APPROVAL	APRIL 30, 2025
50% DESIGN DEVELOPMENT REVIEW & APPROVAL	JULY 31, 2025
DESIGN REVIEW SUBMISSION	AUGUST 31, 2025
CONSTRUCTION DRAWINGS REVIEW & APPROVAL	NOVEMBER 30, 2025
PERMIT INTAKE	JANUARY 15, 2026
CLOSING DATE	MAY 31, 2026
TEMPORARY CERTIFICATE OF OCCUPANCY	FEBRUARY 15, 2028

**EXHIBIT H  
CITY OF GRESHAM BUY LOCAL POLICY**

**RESOLUTION NO. 3015**

**A RESOLUTION PROMOTING CITY PURCHASING  
OPPORTUNITIES FOR LOCAL BUSINESSES**

**THE CITY OF GRESHAM FINDS:**

**WHEREAS**, the City of Gresham strives to create an environment of business opportunity that nurtures businesses and supports employment opportunities;

**WHEREAS**, stable and healthy local businesses are critical to maintaining a strong, varied, and diverse local economy that provides economic growth and enhances the livability of the community;

**WHEREAS**, stable and healthy local businesses strengthen the local economy by creating healthy competition for goods and services, retaining existing businesses and jobs in the City, and attracting new businesses and employment opportunities to the City;

**WHEREAS**, stable and healthy local businesses benefit the community by supporting local schools, charities, youth organizations and contribute to community social services and events often staffed by volunteers;

**WHEREAS**, stable and healthy local businesses benefit the City of Gresham by paying property taxes, business license fees, development permit fees, and utility charges; and

**WHEREAS**, the goals of the City of Gresham can be achieved by purchasing goods and services from local businesses that pay taxes, fees and other charges that help keep Gresham a livable community.

**THE CITY OF GRESHAM RESOLVES:**

1. The City of Gresham shall seek to promote economic growth and enhance the livability of the community through the purchase of goods and services from local businesses and hereby creates the City's Purchasing Opportunities for Local Business Program as follows:

- a. The City of Gresham will proactively notify local businesses of how to find contract opportunities with the City by:
  - Attending meetings of the Gresham Area Chamber of Commerce and other organizations that assist local businesses;
  - Providing information to persons with a Gresham business license;
  - Regular publication of information in The Outlook regarding how to do business with the City of Gresham; and
  - Publication in The Outlook of Invitations to Bid and Requests for Proposals for goods, services, personal services, and public improvements.
- b. Purchase of Goods, Services, and Personal Services of less than \$50,000.

For the purchase of goods, services and personal services of \$5,000 or less, the City shall make direct appointments of a local business unless other circumstances, such as lack of available contractors or unreasonable prices, require the City to make purchases elsewhere.

For the purchase of goods and services of \$50,000 or less, the City shall solicit price quotations and proposals and ultimately purchase from local businesses unless other circumstances, such as lack of available contractors or unreasonable prices, require the City to make purchases elsewhere.

For the purchase of personal (professional) services of \$50,000 or less, the City shall seek quotations or proposals from local businesses unless other circumstances, such as lack of available contractors or unreasonable prices, require the City to acquire such services elsewhere.

If the City is unable to identify three local businesses as potential sources of goods, services or personal services, additional quotes will be obtained (first from East County businesses) as necessary to obtain three sources. The City Manager or designee shall award to the business that best serves the interest of the City taking into account price as well as other considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, contractor responsibility, and the goal of supporting local businesses. The City Manager or designee shall document the reason for the award decision.

- c. The City shall not make on-line purchases until first determining whether local businesses are qualified for the work and offer a price and quality that are comparable to those offered by non-local businesses.

2. As used in this resolution "local business" means a business that uses real property within the City of Gresham for a commercially useful function; pays city taxes, fees and utility charges; and has a current Gresham business license.

3. Nothing in this resolution is intended to apply to a local business that does not comply with all public contracting requirements or that charges substantially more than non-local businesses for comparable products and services.

4. The City of Gresham, acting as a market participant, encourages local companies and other public agencies to purchase from and use businesses located within the City of Gresham.

Yes: Widmark, Fuhrer, Craddick, Strathern, Warr-King, Nielsen-Hood

None


No:

Bemis

Absent: \_\_\_\_\_

None

Abstain: \_\_\_\_\_



Passed by the Gresham City Council and effective on May 18F 2010

City Manager

Mayor

Approved as to Form:



City Attorney



**EXHIBIT I**  
**FORM OF CERTIFICATE OF COMPLETION**

**AFTER RECORDING RETURN TO:**

Portland Opportunities Industrialization Center, Inc.  
c/o Radler White Parks & Alexander LLP  
Attn: Dina Alexander  
111 SW Columbia Street, Suite 700  
Portland, OR 97201

**CERTIFICATION OF COMPLETION**

Pursuant to that certain DISPOSITION AND DEVELOPMENT AGREEMENT (ROCKWOOD SUNRISE SITE) dated \_\_\_\_\_, 2024, as amended and including all exhibits thereto (“**DDA**”), by and among the **GRESHAM REDEVELOPMENT COMMISSION**, a public body corporate and politic, the duly authorized and acting urban renewal agency of the City of Gresham (“**GRDC**”), **HMS DEVELOPMENTS, LLC**, an Oregon limited liability company and/or its assigns (“**Developer**”), and **PORTLAND OPPORTUNITIES INDUSTRIALIZATION CENTER, INC.**, an Oregon non-profit corporation (“**POIC**”), POIC and HMS agreed to construct certain improvements on real property situated in the City of Gresham, County of Multnomah, State of Oregon, which improvements are described in Exhibit A attached hereto (the “**Improvements**”) and which are located on the real property legally described in Exhibit B attached hereto (the “**Property**”). The parties executed and recorded a memorandum of the DDA on \_\_\_\_\_, 202\_\_\_\_, as document number \_\_\_\_\_ in the real property records of Multnomah County, Oregon,

GRDC has determined that (a) the Improvements have been completed substantially in accordance with the Final Construction Drawings, as defined in the DDA, except for punch list items which do not materially affect the use for the purposes intended under the DDA, and (b) the City of Gresham has issued a temporary certificate of occupancy allowing POIC to occupy the Improvements.

GRDC does hereby conclusively certify that (i) POIC and HMS have satisfied all of the obligations of Developer and POIC under the DDA to construct the Improvements, and (ii) any party acquiring or leasing all or any portion of the Improvements shall not have any obligation under the DDA with respect to the construction of the Improvements.

GRDC’s determination regarding completion of the Improvements is not a certification with respect to, and GRDC assumes no responsibility for, engineering or structural matters, latent defects, or compliance with building codes and regulations or applicable law regarding the Improvements and its certification as to completion of construction of the Improvements is made only as to the obligations under the DDA of Developer and POIC, and their successors and assigns, to GRDC and its successors or assigns.

IN WITNESS WHEREOF, GRDC has executed this Certificate of Completion as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**GRESHAM REDEVELOPMENT COMMISSION,**  
a public body corporate and politic, the duly  
authorized and acting urban renewal agency  
of the City of Gresham

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of the Gresham Redevelopment Commission, a public body corporate and politic, the duly authorized and acting urban renewal agency of the City of Gresham, on behalf of said commission.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

EXHIBIT A  
COMPLETED IMPROVEMENTS

EXHIBIT B  
REAL PROPERTY DESCRIPTION

**EXHIBIT J  
PRE-DEVELOPMENT FUND**

**B188 - PRE-DEVELOPMENT GRANT BUDGET - SPENT / REMAINING  
(10/10/2024)**

<b>Item</b>	<b>Cost (\$)</b>	<b>Spent</b>	<b>Remaining</b>
Environmental Phase I	\$2,500	\$2,500	\$0
Environmental Phase II	\$13,000	\$9,340	\$3,660
CMMP	\$2,939	\$2,939	\$0
Geotechnical Report	\$17,000	\$17,000	\$0
Market Study	\$22,000	\$22,000	\$0
ALTA + Topographic Survey	\$8,900	\$8,900	\$0
A&E - Concept & Feasibility	\$335,000	\$292,875	\$42,125
Project Financing Consultant	\$6,402	\$6,402	\$0
Legal review (contracts, title, land use)	\$75,000	\$63,340	\$11,660
Appraisal	\$5,500	\$5,500	\$0
Contingency	\$11,759	\$0	\$11,759
<b>TOTAL USE OF FUNDS</b>	<b>\$500,000</b>	<b>\$430,796</b>	<b>\$69,204</b>

**EXHIBIT K**  
**FORM OF MEMORANDUM OF AGREEMENT**

AFTER RECORDING RETURN TO:

Portland Opportunities Industrialization Center, Inc.  
c/o Radler White Parks & Alexander LLP  
Attn: Dina Alexander  
111 SW Columbia St., Suite 700  
Portland, OR 97201

**MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Memorandum**”) shall serve as notice to all persons that **Gresham Redevelopment Commission**, a public body corporate and politic, the duly authorized and acting urban renewal agency of the City of Gresham (“**GRDC**”), which has an address of 1333 NW Eastman Parkway, Gresham, OR 97030, **Portland Opportunities Industrialization Center, Inc.**, an Oregon non-profit corporation (“**POIC**”), which has an address of 717 Killingsworth Court, Portland, OR 97217, and **HMS Developments, LLC**, an Oregon limited liability company (“**HMS**”), which has an address of 1123 NE Fremont, Portland, OR 97212, entered into a Disposition and Development Agreement (Rockwood Sunrise Site) dated [\_\_\_\_\_], 2024 (“**Agreement**”) relating to certain real property located in Multnomah County, Oregon and legally described on the attached Exhibit “A” (the “**Property**”).

Among other things, the Agreement requires GRDC to convey the Property to POIC upon the satisfaction of certain conditions precedent. The Agreement (a) imposes certain covenants on POIC and HMS, including, without limitation, covenants related to the development and use of the Property, and (b) gives GRDC remedies for the failure of POIC and HMS to commence construction of the Project (as defined in the Agreement) within a specified time period and complete construction of the Project.

POIC is acquiring the Property in its AS-IS condition without warranty except as otherwise specifically set forth in the Agreement and in documents executed by GRDC at closing of GRDC’s sale of the Property to POIC.

GRDC and Developer declare and agree that, unless and until the same expire or terminate in accordance with the terms of the Agreement, the covenants contained therein run with the Property and shall pass to and be binding on POIC, HMS and their respective successors and assigns and, subject to Section 9 of the Agreement, any mortgagee, purchaser, grantee, or lessee of any portion of the Property.

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

*[Remainder of page intentionally left blank;  
signatures begin on following page]*



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

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of Portland Opportunities Industrialization Center, Inc., an Oregon non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**HMS Developments, LLC,**  
an Oregon limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of HMS Developments, LLC, an Oregon limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



EXHIBIT A  
LEGAL DESCRIPTION

A portion of Lot 4, SEROR PARK, in the City of Gresham, County of Multnomah and State of Oregon, described as follows:

Beginning at a point on the West line of said Lot 4, 500 feet South of the Northwest corner of said Lot 4; thence East parallel with the North line of said Lot 4, 182 feet at the Northwest corner of the tract of land conveyed to Frank Stepanek, recorded November 18, 1953 in Book 1632 Page 130; thence Southerly along the West line of the Stepanek Tract, 203.75 feet to the North line of Burnside Road No. 1273; thence North 59°30' West 185.36 feet to the Easterly line of S.E. 188th Avenue Road No. 1549; thence North 112 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of Transportation, Highway Division by Deed recorded May 22, 1984 in Book 1749, Page 74.

**EXHIBIT L  
COVENANT**

After recording return to:  
Gresham Redevelopment Commission  
1333 NW Eastman Parkway  
Gresham, OR 97030  
Attn: Eric Schmidt

**RESTRICTIVE COVENANT**

THIS RESTRICTIVE COVENANT (this “*Covenant*”) is effective as of \_\_\_\_\_, 202\_\_ (the “*Effective Date*”), and is by and between **Gresham Redevelopment Commission**, a public body corporate and politic, the duly authorized and acting urban renewal agency of the City of Gresham (“*GRDC*”), and \_\_\_\_\_ (“*Owner*”).

**RECITALS**

A. Owner is acquiring from GRDC, and GRDC is conveying to Owner, for and in consideration of the terms and conditions of that certain Disposition and Development Agreement dated \_\_\_\_\_ (“*DDA*”) by and among Owner, GRDC and HMS Developments, LLC, an Oregon limited liability company, that certain real property located in the City of Gresham, County of Multnomah, State of Oregon, the legal description of which is attached hereto and incorporated herein as **EXHIBIT A** (the “*Property*”).

B. GRDC’s agreement to convey the Property to Owner is conditioned upon the conveyance being subject to the restrictive covenants contained herein. This Covenant is executed and recorded along with the Bargain and Sale Deed (“*Deed*”) of the same date conveying the Property from GRDC to Owner.

C. It is the purpose of this Covenant to set forth the conditions under which GRDC is conveying the Property and to impose enforceable restrictions on the use and occupancy of the Property. As a condition to and as partial consideration for the purchase and sale of the Property, these certain agreements and covenants are required for the benefit of GRDC and the City of Gresham.

## AGREEMENT

NOW, THEREFORE, Owner and GRDC agree, covenant and declare that the Deed is subject to the following restrictive covenants and easements, which covenants and easements shall run with the land and burden the Property for the benefit of GRDC and the City of Gresham. GRDC and Owner agree that only GRDC and the City of Gresham shall have standing to enforce these covenants.

Owner and GRDC further agree and declare that the covenants and conditions contained herein touch and concern the land and shall bind Owner and its successors and assigns and all subsequent owners or tenants of any portion of the Property, and the benefits shall inure to GRDC and the City of Gresham and their successors and assigns, subject to expiration, termination, and modification thereof as specifically provided below. Each and every contract, deed or other instrument hereafter executed conveying any portion or interest in the Property shall conclusively be held to have been executed, delivered and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed or other instrument. Notwithstanding the foregoing or anything to the contrary set forth herein and in accordance with Section 2.1 of the DDA, this Covenant is subordinate to the lien of the trust deed of Owner's first-position secured lender.

## COVENANTS

**1. Required Use.** Throughout the Restricted Period, as defined herein, (a) at least one full floor (or the equivalent square footage) (the "*Minimum Area*") of the building constructed on the Property (excluding the gymnasium) shall be used for Educational Purposes, and (b) the gymnasium constructed on the Property shall be used primarily for sports and other recreational activities and as a community gathering space (collectively, the "*Required Use*"). For purposes of this Covenant, "*Educational Purposes*" means use (i) as a school for at-risk youth and/or young adults, and/or (ii) for work force training, and/or (iii) for after-school or before-school programs for at-risk youth and/or young adults on a full-time or nearly full-time basis.

**2. Discontinuance of Required Use.** For purposes of this Covenant, Owner shall be deemed to have discontinued using the Property for the Required Use if (a) the Minimum Area ceases to be used for Educational Purposes for a period of twelve (12) consecutive months, or (b) the gymnasium ceases to be used primarily for sports and other recreational activities and as a community gathering space for a period of twelve (12) consecutive months (either or both, a "*Cessation*"). Short-term or intermittent uses shall not be considered Educational Purposes for purposes of this Covenant. For example, the operation of a week-long STEM camp for youth, although educational, would not be considered an Educational Purpose for purposes of this Covenant and for the determination of whether a Cessation has occurred unless it were part of a series of short uses that were expected to make use of the space full-time or nearly full-time. If utilization of either or both of the Minimum Area or the gymnasium for the Required Use is prevented by a Force Majeure Event (a "*Force Majeure Cessation*"), the period of Force Majeure Cessation shall not be included in the calculation of whether a Cessation has occurred. Notwithstanding anything to the contrary set forth in this Covenant, if Owner is a non-profit corporation, if a Cessation results from either or both of (i) a change in the needs or desires of the community, including, without limitation, school districts, or (ii) the loss or material diminution

EXHIBIT L

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of funding to Owner, and either or both materially impacts the services Owner is able to provide (any such change, “*Changed Circumstances*”), then GRDC will work collaboratively, in good faith, and diligently for up to twelve (12) consecutive months following the Cessation to attempt to agree on revisions to the definition of Educational Purpose, the Required Use of the gymnasium, or both, as necessary to address the Changed Circumstances. In such event, Owner and GRDC shall meet at least one each month during such 12-month period or, if sooner occurring, until a resolution has been reached regarding the Changed Circumstances and the revised definition of Educational Purposes or Required Use of the gymnasium, as applicable, and GRDC shall not unreasonably withhold, condition or delay its consent to such revisions.

**3. Restricted Period.** Unless sooner terminated as expressly provided herein, this Covenant shall remain in effect for fifteen (15) years from the date the Certificate of Completion, as defined in the DDA is recorded (the “*Restricted Period*”). This Covenant shall automatically, without need for further action by any party, terminate upon the expiration of the Restricted Period. In the sole and absolute discretion of GRDC, this Covenant may be terminated at any time prior to such date by the recording in the Official Records of Multnomah County, Oregon, of a written termination notice executed by GRDC. Promptly following the written request of either party after issuance of the Certificate of Completion, the parties shall execute an amendment to this Covenant setting forth the commencement date of the Restricted Period and the expiration date of this Covenant. Such amendment shall be recorded at the expense of the requesting party.

#### **4. GRDC Right to Purchase.**

4.1 If a Cessation occurs during the Restricted Period, Owner shall promptly notify GRDC in writing. If a Cessation occurs during the Restricted Period, GRDC shall have the right to purchase the Property for the greater of (a) its then fair market value, or FMV (as defined below), and (b) the balance of principal and interest owing on Owner’s secured debt encumbering the Property as of the Closing (defined in Section 4.9 below) (the “*Loan Balance*”), all on the terms set forth herein. If a Cessation occurs during the Restricted Period, Owner shall promptly deliver to GRDC a written offer to sell the Property to GRDC as required hereunder (an “*Offer*”). The Offer shall include the proposed sale price and shall expressly state that it is being made pursuant to this Covenant. Within fifteen (15) days after written request by GRDC, Owner shall provide (a) GRDC with copies of any Due Diligence Documents, as defined herein, in its possession or control, and (b) if the Loan Balance is or is likely to be more than FMV, GRDC and the Title Company with written confirmation of the then-current Loan Balance, together with information sufficient for the Title Company to obtain a payoff demand for purposes of the Closing and shall authorize its lender(s) to provide payoff information to GRDC and the Title Company. Upon written request, Owner will provide GRDC, its agents and contractors, with reasonable access to inspect the Property, which may be subject to the terms of a commercially reasonable access license.

4.2 GRDC shall have one hundred twenty (120) days after receipt of an Offer (the “*Acceptance Period*”) to deliver written notice to Owner either (a) that it accepts the Offer at the price offered (a “*Price-Accepted Acceptance*”) or (b) that it accepts the Offer, subject

to a determination of the purchase price as provided in this Covenant (a “*Price Rejection Acceptance*”) (either response, referred to herein as an “*Acceptance*”). If GRDC does not provide an Acceptance within the 120-day time period, GRDC shall be deemed to have declined the Offer, and GRDC’s right to purchase the Property under this Section 4 shall terminate and be of no further force or effect, but this Covenant shall otherwise remain in full force and effect. If GRDC’s right to purchase set forth in this Section 4 terminates as a result of its failure to timely deliver an Acceptance, then, upon request by Owner, GRDC will execute and allow recording of an amendment reflecting such termination of the right to purchase.

4.3 If GRDC delivers a Price-Rejection Acceptance within the required period, the purchase price shall be determined through the appraisal process as set forth in this Section 4. GRDC’s delivery of a Price-Rejection Acceptance within the 120-day period provided above shall be deemed GRDC’s irrevocable agreement to purchase the Property at the price determined by the appraisal process set forth herein. GRDC’s failure to so purchase the Property shall be a material breach of this Covenant unless such failure to so purchase is caused in whole or in part by Owner’s material breach of Section 4 of this Covenant.

4.4 As used herein, “*FMV*” shall mean what a buyer under no compulsion to buy the Property would pay and a seller under no compulsion to sell the Property would accept as the purchase price for the Property, taking into consideration the then-existing improvements on the Property and the uses permitted and required under this Covenant. Within ten (10) business days after GRDC’s delivery of the Acceptance, each party will appoint a MAI certified real estate appraiser with at least ten (10) years’ full-time commercial appraisal experience in the Portland metropolitan area to appraise the Property and to determine the FMV thereof. If a party does not appoint such an appraiser within ten (10) business days after the other (the “*Notifying Party*”) has given written notice of the name of its appraiser, then the Notifying Party shall provide written notice to the other party indicating such other party’s failure to name its appraiser, and the other party shall have five (5) business day following receipt of such notice to appoint its appraiser. If the other party does not appoint its appraiser within such 5-business day period, then the single appraiser appointed by the Notifying Party will be the sole appraiser and will set the FMV of the Property.

4.5 If two appraisers are appointed pursuant to Section 4.4, then within thirty (30) days after the second appraiser has been appointed, each appraiser will prepare a MAI appraisal of the Property consistent with the terms of Section 4.4. Notwithstanding the foregoing, if either appraiser requests additional time to complete an appraisal, the party commissioning that appraisal, by written notice to the other party, may extend the date for completion of that appraisal for up to thirty (30) additional days or as reasonably requested by the appraiser and approved by the parties. Within thirty (30) days of completion of the two appraisals, the appraisers will meet, compare and discuss their appraisals, and attempt to agree upon and set the FMV of the Property. If the two appraisers agree on the FMV of the Property, such determination shall be binding on the parties.

4.6 If the two appraisers are unable to agree on the FMV within the time

frames set forth in Section 4.5 above, the appraisers will appoint a third appraiser meeting the qualifications stated in Section 4.4 above and who must (a) be competent and impartial, and (b) shall not have worked for either party during the seven (7) year period immediately prior to being appointed. Appointment of the third appraiser shall occur within ten (10) business days after the end of the 30-day period the two appraisers were given to set the FMV of the Property pursuant to Section 4.5. Within five (5) business days following appointment of the third appraiser, each of the two appointed appraisers appointed by the parties shall provide a complete copy of his or her appraisal to the third appraiser. If either of the two party-appointed appraisers fails to submit his or her appraisal within such five (5) business day period, the other party-appointed appraiser's FMV determination shall be deemed to be the FMV. If both party-appointed appraisers timely submit their proposed FMV determination, the role of the third appraiser shall be to select whichever of the two other appraisals most closely approximates the third appraiser's own determination of FMV. The third appraiser shall have no right to propose a middle ground or any modification of either of the two proposed determinations of FMV. The determination of FMV that the third appraiser chooses as that most closely approximating the third appraiser's determination of the FMV shall constitute the decision of the appraisers and shall be final and binding upon the parties. The appraisers shall have no power to modify the provisions of this Covenant.

4.7 The third appraiser's decision shall be made not later than thirty (30) days after the submission by the two party-appointed appraisers of their appraisals. The parties have included these time limits in order to expedite the appraisal process, but they are not jurisdictional and the third appraiser may for good cause allow reasonable extensions or delays, which shall not affect the validity of the decision. Absent fraud, collusion or willful misconduct by the third appraiser, the third appraiser's decision shall be final, and judgment may be entered in any court having jurisdiction thereof.

4.8 If the two party-appointed appraisers are unable to agree on the third appraiser, either party, by giving ten (10) days' prior notice to the other, may apply to the then presiding judge of the Multnomah County Court for the selection of a third appraiser who meets the qualifications stated in Section 4.6. The parties shall each bear the cost of the appraiser selected by such party and one-half (1/2) of the cost of appointing the third appraiser and of paying the third appraiser's fee.

4.9 Upon determination of the FMV, which shall be the purchase price, Owner will convey the Property to GRDC in accordance with this Covenant. The sale of the Property shall be closed in escrow (the "*Closing*") by a title company of GRDC's choice the ("*Title Company*") within forty-five (45) days after determination of the purchase price. At Closing, Owner shall pay off or bond around any construction liens encumbering the Property, shall apply the purchase price to pay any other monetary liens encumbering the Property, and shall convey the Property to GRDC by statutory special warranty deed, free of construction liens, free of other monetary liens except to the extent the amount of such other monetary liens exceeds the purchase price, and subject to all other encumbrances of record. Owner shall convey the Property to GRDC in its "AS IS" condition without representation or warranty of any kind as to the physical condition



with a copy to:                   Dunn Carney LLP  
851 SW Sixth Ave, Suite 1500  
Portland, OR 97204  
Attn: Damien Hall  
Email: [dhall@dunncarney.com](mailto:dhall@dunncarney.com)

Owner:                               Portland Opportunities Industrialization Center, Inc.  
717 Killingsworth Court  
Portland, OR 97217  
Attn: Joe McFerrin II  
Email: [jmcferrinii@portlandoic.org](mailto:jmcferrinii@portlandoic.org)

with a copy to:                   Radler White Parks & Alexander LLP  
111 SW Columbia Street, Suite 700  
Portland, OR 97201  
Attn: Dina Alexander  
Email: [dalexander@radlerwhite.com](mailto:dalexander@radlerwhite.com)

or addressed in such other way in respect to any party as that party may, from time to time, designate in writing dispatched as provided in this Section 8. Notices shall be deemed given on the earlier of actual delivery or refusal of a party to accept delivery thereof, which shall include a party ignoring delivery attempts. Notwithstanding the foregoing, notices sent by email shall be deemed given when sent if and only if delivered by 6:00 p.m. Pacific Time as indicated on the sending party's transmitted email and sent on the same day by one of the means allowed by Section 8(b) or (c). Notices may be given by counsel to a party on behalf of such party.

**9. Severability.** If any provision of this Covenant shall be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**10. Amendments.** This Covenant shall be amended only by a written instrument executed by the parties hereto or their respective successors in title, and duly recorded in the real property records of Multnomah County, Oregon.

**11. Governing Law.** This Covenant shall be governed by the laws of the state of Oregon.

**12. Successors and Assigns.** This Covenant shall run with the land as to the Property and shall be binding on and inure to the benefit of Owner and GRDC and their respective successors and assigns. GRDC shall have the right to assign its rights under this Covenant to the City of Gresham (the "*City*") or to any agency or bureau thereof. Furthermore, should GRDC cease to exist during the term of this Covenant, the City shall automatically, without need for written instrument, succeed to GRDC's interests under this Covenant and shall have the right to exercise



and enforce all rights and remedies of GRDC under this Covenant and applicable law. GRDC shall not otherwise assign its rights under this Covenant.

### **13. Definitions.**

13.1“*Force Majeure Cessation*” shall mean a cessation of the Required Use as a result of conditions unforeseeable, beyond the Owner’s control, and without the Owner’s fault or negligence, such as (a) natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), (b) war, (c) invasion, (d) hostilities, (e) terrorist activities, (f) epidemic, (g) quarantine, (h) blockage, (i) embargo, (j) labor dispute, (k) supply chain disruptions, (l) strike, (m) acts or delays of governmental authorities, (n) litigation affecting the Property other than litigation arising from the alleged gross negligence or willful misconduct of Owner or its agents, employees, or contractors, (o) malicious mischief, or (p) explosion.

13.2“*Due Diligence Documents*” shall mean the following documents to the extent in POIC’s possession or control: surveys of the Property; environmental assessments of the Property; complete copies of all leases, licenses or other occupancy agreements that will survive Closing and any service contracts or other contracts affecting the Property that will survive Closing; a current rent roll; building plans and as-builts; warranties applicable to the Property, and, if the Property is subject to CC&Rs under which certain expenses are shared by the Property and the adjacent parcel, operating statements for the current and prior two-years showing the allocation of expenses governed by the CC&Rs and the status of payment.

*(Remainder of page intentionally left blank;  
signatures on following page.)*

IN WITNESS WHEREOF, Owner and GRDC have executed this Covenant on the date set forth above.

**OWNER:**

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date Executed: \_\_\_\_\_

**GRDC:**

GRESHAM REDEVELOPMENT COMMISSION

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date Executed: \_\_\_\_\_

**EXHIBIT L**  
**RESTRICTIVE COVENANT**

After recording return to:

Gresham Redevelopment Commission  
1333 NW Eastman Parkway  
Gresham, OR 97030  
Attn: Eric Schmidt

**RESTRICTIVE COVENANT**

THIS RESTRICTIVE COVENANT (this “*Covenant*”) is effective as of \_\_\_\_\_, 202\_\_ (the “*Effective Date*”), and is by and between **Gresham Redevelopment Commission**, a public body corporate and politic, the duly authorized and acting urban renewal agency of the City of Gresham (“*GRDC*”), and \_\_\_\_\_ (“*Owner*”).

**RECITALS**

A. Owner is acquiring from GRDC, and GRDC is conveying to Owner, for and in consideration of the terms and conditions of that certain Disposition and Development Agreement dated \_\_\_\_\_ (“*DDA*”) by and among Owner, GRDC and HMS Developments, LLC, an Oregon limited liability company, that certain real property located in the City of Gresham, County of Multnomah, State of Oregon, the legal description of which is attached hereto and incorporated herein as **EXHIBIT A** (the “*Property*”).

B. GRDC’s agreement to convey the Property to Owner is conditioned upon the conveyance being subject to the restrictive covenants contained herein. This Covenant is executed and recorded along with the Bargain and Sale Deed (“*Deed*”) of the same date conveying the Property from GRDC to Owner.

C. It is the purpose of this Covenant to set forth the conditions under which GRDC is conveying the Property and to impose enforceable restrictions on the use and occupancy of the Property. As a condition to and as partial consideration for the purchase and sale of the Property, these certain agreements and covenants are required for the benefit of GRDC and the City of Gresham.

**AGREEMENT**

NOW, THEREFORE, Owner and GRDC agree, covenant and declare that the Deed is subject to the following restrictive covenants and easements, which covenants and easements shall run with the land and burden the Property for the benefit of GRDC and the City of Gresham.

GRDC and Owner agree that only GRDC and the City of Gresham shall have standing to enforce these covenants.

Owner and GRDC further agree and declare that the covenants and conditions contained herein touch and concern the land and shall bind Owner and its successors and assigns and all subsequent owners or tenants of any portion of the Property, and the benefits shall inure to GRDC and the City of Gresham and their successors and assigns, subject to expiration, termination, and modification thereof as specifically provided below. Each and every contract, deed or other instrument hereafter executed conveying any portion or interest in the Property shall conclusively be held to have been executed, delivered and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed or other instrument. Notwithstanding the foregoing or anything to the contrary set forth herein and in accordance with Section 2.1 of the DDA, this Covenant is subordinate to the lien of the trust deed of Owner's first-position secured lender.

## COVENANTS

**1. Required Use.** Throughout the Restricted Period, as defined herein, (a) at least one full floor (or the equivalent square footage) (the "*Minimum Area*") of the building constructed on the Property (excluding the gymnasium) shall be used for Educational Purposes, and (b) the gymnasium constructed on the Property shall be used primarily for sports and other recreational activities and as a community gathering space (collectively, the "*Required Use*"). For purposes of this Covenant, "*Educational Purposes*" means use (i) as a school for at-risk youth and/or young adults, and/or (ii) for work force training, and/or (iii) for after-school or before-school programs for at-risk youth and/or young adults on a full-time or nearly full-time basis.

**2. Discontinuance of Required Use.** For purposes of this Covenant, Owner shall be deemed to have discontinued using the Property for the Required Use if (a) the Minimum Area ceases to be used for Educational Purposes for a period of twelve (12) consecutive months, or (b) the gymnasium ceases to be used primarily for sports and other recreational activities and as a community gathering space for a period of twelve (12) consecutive months (either or both, a "*Cessation*"). Short-term or intermittent uses shall not be considered Educational Purposes for purposes of this Covenant. For example, the operation of a week-long STEM camp for youth, although educational, would not be considered an Educational Purpose for purposes of this Covenant and for the determination of whether a Cessation has occurred unless it were part of a series of short uses that were expected to make use of the space full-time or nearly full-time. If utilization of either or both of the Minimum Area or the gymnasium for the Required Use is prevented by a Force Majeure Event (a "*Force Majeure Cessation*"), the period of Force Majeure Cessation shall not be included in the calculation of whether a Cessation has occurred. Notwithstanding anything to the contrary set forth in this Covenant, if Owner is a non-profit corporation, if a Cessation results from either or both of (i) a change in the needs or desires of the community, including, without limitation, school districts, or (ii) the loss or material diminution of funding to Owner, and either or both materially impacts the services Owner is able to provide (any such change, "*Changed Circumstances*"), then GRDC will work collaboratively, in good faith, and diligently for up to twelve (12) consecutive months following the Cessation to attempt to agree on revisions to the definition of Educational Purpose, the Required Use of the gymnasium,

or both, as necessary to address the Changed Circumstances. In such event, Owner and GRDC shall meet at least one each month during such 12-month period or, if sooner occurring, until a resolution has been reached regarding the Changed Circumstances and the revised definition of Educational Purposes or Required Use of the gymnasium, as applicable, and GRDC shall not unreasonably withhold, condition or delay its consent to such revisions.

**3. Restricted Period.** Unless sooner terminated as expressly provided herein, this Covenant shall remain in effect for fifteen (15) years from the date the Certificate of Completion, as defined in the DDA is recorded (the "*Restricted Period*"). This Covenant shall automatically, without need for further action by any party, terminate upon the expiration of the Restricted Period. In the sole and absolute discretion of GRDC, this Covenant may be terminated at any time prior to such date by the recording in the Official Records of Multnomah County, Oregon, of a written termination notice executed by GRDC. Promptly following the written request of either party after issuance of the Certificate of Completion, the parties shall execute an amendment to this Covenant setting forth the commencement date of the Restricted Period and the expiration date of this Covenant. Such amendment shall be recorded at the expense of the requesting party.

**4. GRDC Right to Purchase.**

4.1 If a Cessation occurs during the Restricted Period, Owner shall promptly notify GRDC in writing. If a Cessation occurs during the Restricted Period, GRDC shall have the right to purchase the Property for the greater of (a) its then fair market value, or FMV (as defined below), and (b) the balance of principal and interest owing on Owner's secured debt encumbering the Property as of the Closing (defined in Section 4.9 below) (the "*Loan Balance*"), all on the terms set forth herein. If a Cessation occurs during the Restricted Period, Owner shall promptly deliver to GRDC a written offer to sell the Property to GRDC as required hereunder (an "*Offer*"). The Offer shall include the proposed sale price and shall expressly state that it is being made pursuant to this Covenant. Within fifteen (15) days after written request by GRDC, Owner shall provide (a) GRDC with copies of any Due Diligence Documents, as defined herein, in its possession or control, and (b) if the Loan Balance is or is likely to be more than FMV, GRDC and the Title Company with written confirmation of the then-current Loan Balance, together with information sufficient for the Title Company to obtain a payoff demand for purposes of the Closing and shall authorize its lender(s) to provide payoff information to GRDC and the Title Company. Upon written request, Owner will provide GRDC, its agents and contractors, with reasonable access to inspect the Property, which may be subject to the terms of a commercially reasonable access license.

4.2 GRDC shall have one hundred twenty (120) days after receipt of an Offer (the "*Acceptance Period*") to deliver written notice to Owner either (a) that it accepts the Offer at the price offered (a "*Price-Accepted Acceptance*") or (b) that it accepts the Offer, subject to a determination of the purchase price as provided in this Covenant (a "*Price Rejection Acceptance*") (either response, referred to herein as an "*Acceptance*"). If GRDC does not provide an Acceptance within the 120-day time period, GRDC shall be deemed to have declined the Offer, and GRDC's right to purchase the Property under this Section 4 shall terminate and be of no further force or effect, but this Covenant shall otherwise remain in full force and effect. If GRDC's right to purchase set forth in this Section 4 terminates as a result of its failure to timely deliver an

Acceptance, then, upon request by Owner, GRDC will execute and allow recording of an amendment reflecting such termination of the right to purchase.

4.3 If GRDC delivers a Price-Rejection Acceptance within the required period, the purchase price shall be determined through the appraisal process as set forth in this Section 4. GRDC's delivery of a Price-Rejection Acceptance within the 120-day period provided above shall be deemed GRDC's irrevocable agreement to purchase the Property at the price determined by the appraisal process set forth herein. GRDC's failure to so purchase the Property shall be a material breach of this Covenant unless such failure to so purchase is caused in whole or in part by Owner's material breach of Section 4 of this Covenant.

4.4 As used herein, "FMV" shall mean what a buyer under no compulsion to buy the Property would pay and a seller under no compulsion to sell the Property would accept as the purchase price for the Property, taking into consideration the then-existing improvements on the Property and the uses permitted and required under this Covenant. Within ten (10) business days after GRDC's delivery of the Acceptance, each party will appoint a MAI certified real estate appraiser with at least ten (10) years' full-time commercial appraisal experience in the Portland metropolitan area to appraise the Property and to determine the FMV thereof. If a party does not appoint such an appraiser within ten (10) business days after the other (the "Notifying Party") has given written notice of the name of its appraiser, then the Notifying Party shall provide written notice to the other party indicating such other party's failure to name its appraiser, and the other party shall have five (5) business day following receipt of such notice to appoint its appraiser. If the other party does not appoint its appraiser within such 5-business day period, then the single appraiser appointed by the Notifying Party will be the sole appraiser and will set the FMV of the Property.

4.5 If two appraisers are appointed pursuant to Section 4.4, then within thirty (30) days after the second appraiser has been appointed, each appraiser will prepare a MAI appraisal of the Property consistent with the terms of Section 4.4. Notwithstanding the foregoing, if either appraiser requests additional time to complete an appraisal, the party commissioning that appraisal, by written notice to the other party, may extend the date for completion of that appraisal for up to thirty (30) additional days or as reasonably requested by the appraiser and approved by the parties. Within thirty (30) days of completion of the two appraisals, the appraisers will meet, compare and discuss their appraisals, and attempt to agree upon and set the FMV of the Property. If the two appraisers agree on the FMV of the Property, such determination shall be binding on the parties.

4.6 If the two appraisers are unable to agree on the FMV within the time frames set forth in Section 4.5 above, the appraisers will appoint a third appraiser meeting the qualifications stated in Section 4.4 above and who must (a) be competent and impartial, and (b) shall not have worked for either party during the seven (7) year period immediately prior to being appointed. Appointment of the third appraiser shall occur within ten (10) business days after the end of the 30-day period the two appraisers were given to set the FMV of the Property pursuant to Section 4.5. Within five (5) business days following appointment of the third appraiser, each of the two appointed appraisers appointed by the parties shall provide a complete copy of his or her appraisal to the third appraiser. If either of the two party-appointed appraisers fails to submit his or her appraisal within such five (5) business day period, the other party-appointed appraiser's

FMV determination shall be deemed to be the FMV. If both party-appointed appraisers timely submit their proposed FMV determination, the role of the third appraiser shall be to select whichever of the two other appraisals most closely approximates the third appraiser's own determination of FMV. The third appraiser shall have no right to propose a middle ground or any modification of either of the two proposed determinations of FMV. The determination of FMV that the third appraiser chooses as that most closely approximating the third appraiser's determination of the FMV shall constitute the decision of the appraisers and shall be final and binding upon the parties. The appraisers shall have no power to modify the provisions of this Covenant.

4.7 The third appraiser's decision shall be made not later than thirty (30) days after the submission by the two party-appointed appraisers of their appraisals. The parties have included these time limits in order to expedite the appraisal process, but they are not jurisdictional and the third appraiser may for good cause allow reasonable extensions or delays, which shall not affect the validity of the decision. Absent fraud, collusion or willful misconduct by the third appraiser, the third appraiser's decision shall be final, and judgment may be entered in any court having jurisdiction thereof.

4.8 If the two party-appointed appraisers are unable to agree on the third appraiser, either party, by giving ten (10) days' prior notice to the other, may apply to the then presiding judge of the Multnomah County Court for the selection of a third appraiser who meets the qualifications stated in Section 4.6. The parties shall each bear the cost of the appraiser selected by such party and one-half (1/2) of the cost of appointing the third appraiser and of paying the third appraiser's fee.

4.9 Upon determination of the FMV, which shall be the purchase price, Owner will convey the Property to GRDC in accordance with this Covenant. The sale of the Property shall be closed in escrow (the "*Closing*") by a title company of GRDC's choice (the "*Title Company*") within forty-five (45) days after determination of the purchase price. At Closing, Owner shall pay off or bond around any construction liens encumbering the Property, shall apply the purchase price to pay any other monetary liens encumbering the Property, and shall convey the Property to GRDC by statutory special warranty deed, free of construction liens, free of other monetary liens except to the extent the amount of such other monetary liens exceeds the purchase price, and subject to all other encumbrances of record. Owner shall convey the Property to GRDC in its "AS IS" condition without representation or warranty of any kind as to the physical condition of the Property. Owner will execute and deliver at Closing a non-foreign certificate and a commercially reasonable owner's affidavit as the Title Company reasonably requires in connection with any title insurance policy obtained by GRDC. Owner shall have no obligation to pay any premiums or endorsement costs associated with a title insurance policy obtained by GRDC.

4.10 If GRDC learns that a Cessation has occurred, and Owner has not thereafter presented an Offer to GRDC as provided above, GRDC may, at any time thereafter, by written notice to Owner, require Owner to present an Offer to GRDC and, if accepted, sell the Property to GRDC on the terms and through the process set forth herein.

**5. Notice of Sale.** Owner shall notify GRDC of any voluntary conveyance of the Property during the Restricted Period within (10) business days of such conveyance. Failure to

provide such notice shall not be a default by Owner under this Covenant.

**6. Default and Remedies.** If Owner fails to observe or perform any of the terms, conditions, obligations, restrictions, easements, covenants, representations or warranties of the this Covenant, then such noncompliance shall be considered an event of default, and so long as GRDC is not pursuing the purchase the Property nor has GRDC actually purchased the Property in accordance with Section 4 above, then GRDC shall be entitled to all remedies in law or in equity against Owner, including without limitation, the right to: (a) compel specific performance by Owner of its obligations under this Covenant; (b) to restrain by injunction the actual or threatened commission or attempt of a breach of this Covenant and to obtain a judgment or order specifically prohibit a violation or breach of this Covenant; and (c) an award of actual damages resulting from violation of this Covenant. Notwithstanding the foregoing, if GRDC pursues, obtains and is able to enforce specific performance, it shall not be entitled to pursue a claim against Owner for monetary damages. In no event shall either party be liable to the other for indirect, special or consequential damages claims as a result of its breach of this Covenant.

**7. Delay.** No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of GRDC to enforce the same or obtain relief against or recover for the continuation or repetition of such breach or violation or any other breach or violation thereof at any later time or times.

**8. Notice.** Any notice or communication under this Agreement by any Party shall be sent with all applicable postage and delivery charges prepaid by: (a) registered or certified U.S. mail; postage prepaid, return receipt requested; (b) nationally-recognized overnight courier service; or (c) personal delivery or messenger service to the address of the applicable Party set forth below.

GRDC: Gresham Redevelopment Commission  
1333 NW Eastman Parkway  
Gresham, OR 97030  
Attn: City Manager  
Email: eric.schmidt@greshamoregon.com

with a copy to: Dunn Carney LLP  
851 SW Sixth Ave, Suite 1500  
Portland, OR 97204  
Attn: Damien Hall  
Email: dhall@dunnearney.com

Owner: Portland Opportunities Industrialization Center, Inc.  
717 Killingsworth Court  
Portland, OR 97217  
Attn: Joe McFerrin II  
Email: jmcferrinii@portlandoic.org

with a copy to: Radler White Parks & Alexander LLP  
111 SW Columbia Street, Suite 700



Portland, OR 97201  
Attn: Dina Alexander  
Email: dalexander@radlerwhite.com

or addressed in such other way in respect to any party as that party may, from time to time, designate in writing dispatched as provided in this Section 8. Notices shall be deemed given on the earlier of actual delivery or refusal of a party to accept delivery thereof, which shall include a party ignoring delivery attempts. Notwithstanding the foregoing, notices sent by email shall be deemed given when sent if and only if delivered by 6:00 p.m. Pacific Time as indicated on the sending party's transmitted email and sent on the same day by one of the means allowed by Section 8(b) or (c). Notices may be given by counsel to a party on behalf of such party.

**9. Severability.** If any provision of this Covenant shall be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**10. Amendments.** This Covenant shall be amended only by a written instrument executed by the parties hereto or their respective successors in title, and duly recorded in the real property records of Multnomah County, Oregon.

**11. Governing Law.** This Covenant shall be governed by the laws of the state of Oregon.

**12. Successors and Assigns.** This Covenant shall run with the land as to the Property and shall be binding on and inure to the benefit of Owner and GRDC and their respective successors and assigns. GRDC shall have the right to assign its rights under this Covenant to the City of Gresham (the "*City*") or to any agency or bureau thereof. Furthermore, should GRDC cease to exist during the term of this Covenant, the City shall automatically, without need for written instrument, succeed to GRDC's interests under this Covenant and shall have the right to exercise and enforce all rights and remedies of GRDC under this Covenant and applicable law. GRDC shall not otherwise assign its rights under this Covenant.

**13. Definitions.**

13.1 "*Force Majeure Cessation*" shall mean a cessation of the Required Use as a result of conditions unforeseeable, beyond the Owner's control, and without the Owner's fault or negligence, such as (a) natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), (b) war, (c) invasion, (d) hostilities, (e) terrorist activities, (f) epidemic, (g) quarantine, (h) blockage, (i) embargo, (j) labor dispute, (k) supply chain disruptions, (l) strike, (m) acts or delays of governmental authorities, (n) litigation affecting the Property other than litigation arising from the alleged gross negligence or willful misconduct of Owner or its agents, employees, or contractors, (o) malicious mischief, or (p) explosion.

13.2 "*Due Diligence Documents*" shall mean the following documents to the extent in POIC's possession or control: surveys of the Property; environmental assessments of the Property; complete copies of all leases, licenses or other occupancy agreements that will survive Closing and any service contracts or other contracts affecting the Property that will survive Closing; a current rent roll; building plans and as-builts; warranties applicable to the Property, and,

if the Property is subject to CC&Rs under which certain expenses are shared by the Property and the adjacent parcel, operating statements for the current and prior two-years showing the allocation of expenses governed by the CC&Rs and the status of payment.

*(Remainder of page intentionally left blank;  
signatures on following page.)*

IN WITNESS WHEREOF, Owner and GRDC have executed this Covenant on the date set forth above.

**OWNER:**

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date Executed: \_\_\_\_\_

**GRDC:**

GRESHAM REDEVELOPMENT COMMISSION

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date Executed: \_\_\_\_\_