

DISPOSITION AND DEVELOPMENT AGREEMENT

FOR

TIGARD SENIOR AFFORDABLE HOUSING PROJECT

BETWEEN

THE CITY OF TIGARD

AND

NORTHWEST HOUSING ALTERNATIVES, INC.

DATED

_____, 2020

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is made and entered this ___ day of _____, 2020 (the "Effective Date"), by and between the CITY OF TIGARD, a municipal corporation of the State of Oregon ("City") and NORTHWEST HOUSING ALTERNATIVES, INC., an Oregon nonprofit corporation ("Developer"). City and Developer may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

Capitalized terms that are not defined in the text have the meaning given them in Exhibit A. 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 A, the definition in the text controls. Defined terms may be used in the singular or the plural.

RECITALS

- A.** City owns certain real property located at 8815 SW O'Mara Street, Tigard, Oregon, more particularly described in Exhibit B (the "Property"). The Tigard Senior Center (the "Senior Center") and certain surface parking are located on a portion of the Property.
- B.** Meals on Wheels People, Inc. operates certain programs at the Senior Center pursuant to a written contract with City.
- C.** City desires to facilitate the development of affordable senior housing within the City of Tigard and has determined that the Property can accommodate development of such housing.
- D.** In furtherance of this development objective, City issued the City of Tigard Senior Center Affordable Senior Housing Request for Information issued June 10, 2019 ("RFI").
- E.** Pursuant to the RFI, City selected Developer to develop and operate such senior affordable housing on the Property, and City and Developer entered into negotiations for conveyance of a ground lease in a portion of the Property as agreed upon by City and Developer (the "Site") for Developer's development and operation of such senior affordable housing.
- F.** The Parties have completed their negotiations and now desire to enter into this Agreement setting forth the terms and conditions under which City will convey a leasehold interest in a portion the Property to Developer for development of the Project as further described in Exhibit F.
- G.** The completion of the Project according to the terms of this Agreement, including the Project Plan, Development Budget and the Development Timeline is a material inducement to City to enter into this Agreement; and
- H.** City finds that the fulfillment of this Agreement, and the intentions set forth herein, is in the vital and best interest of the City and the health, safety, and welfare of its residents, and is in accord with the public purposes and provisions of applicable state and federal laws.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is

hereby acknowledged, and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

1. GENERAL TERMS OF CONVEYANCE

1.1 Agreement for Leasehold Disposition and Development. City agrees to convey a leasehold interest in the Site to Developer, and Developer agrees to lease from City and develop the Site upon the terms and conditions set forth in this Agreement.

1.2 Description of the Property and Identification of the Site. The legal description of the Property is set forth in Exhibit B. A general depiction of a possible location of the building Developer desires to construct on the Property is shown in Exhibit B. The Parties anticipate that the Site will include the building footprint and possibly a small amount of the immediately surrounding landscaping and hardscaping. Developer will also have certain rights and responsibilities with respect to the driveway and certain portions of the parking, drive aisles and landscaping on the Property pursuant to one or more easements to be executed at Closing (the "Easements"). The Easements, or a memorandum thereof, will be recorded at Closing. The exact boundaries of the Site; the number of parking spaces and the configuration of the parking areas on the Property; and the location, terms and conditions of the Easements shall be subject to the approval of City and Developer. If the boundary of the Site and the location of the Easements have not been surveyed as of the mutual execution of this Agreement, Developer shall cause a boundary survey and legal description of the Site, and a diagram and legal description of the Easements, all mutually acceptable to Developer and City, to be prepared at Developer's expense prior to Closing.

1.3 Closing.

1.3.1 Manner of Closing. Subject to the terms, covenants, and conditions of this Agreement and the Ground Lease included by reference herein, the Closing of the Conveyance of leasehold interest in the Site from City to Developer shall occur on the Closing Date, upon satisfaction or waiver by the Parties of all Conditions Precedent to Closing identified in Section 3 of this Agreement.

1.3.2 Closing Date. The Closing Date for Conveyance of a leasehold interest in the Site from City to Developer shall take place at a time mutually acceptable to the Parties within thirty (30) days after Developer's receipt of a building permit for the Project, subject to satisfaction or written waiver of the conditions set forth in Section 3.

1.3.3 Payment of Costs. At the Closing, Developer shall accept the Conveyance of the Site and both Parties shall pay costs in the manner set forth in this Section 1.3.

1.3.4 Conveyance by Ground Lease. Subject to satisfaction of the Conditions Precedent to Closing set forth in Section 3 below, at the Closing, City will convey a leasehold interest in the Property to Developer by a Ground Lease, substantially in the form attached hereto as Exhibit C.

1.3.5 Proration of Taxes. The Parties shall cooperate to cause a separate tax account to be created for the Site. All property taxes attributable to the year in which the execution of this Agreement and the corresponding Ground Lease occurs shall be prorated and adjusted as of the Closing Date (regardless of whether such taxes and special assessments are then due and payable or delinquent). Developer shall be solely responsible for obtaining and maintaining any

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tax exemption that may be available in connection with the Site and the Project. Developer shall pay any property taxes accruing as a result of the Conveyance of the leasehold interest in the Site to Developer.

1.3.6 Utilities. City 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 City 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.

1.3.7 Other Prorations and Costs. For the purpose of calculating prorations, the Developer shall be deemed to be entitled to the Site and, therefore, entitled to the income and responsible for the expenses for the entire day following the Closing Date. Developer shall pay the cost of recording a memorandum of the Ground Lease and all other recording charges. Developer shall pay all conveyance, excise, and/or transfer taxes payable by reason of execution of the Ground Lease. The escrow fee shall be divided evenly between the Parties. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Washington County. Each party will pay the premium for any title insurance policy for its benefit. Developer and the City shall each pay its own legal fees the professional fees of any consultants it engages in connection with the Project, unless otherwise specified in this Agreement or the Ground Lease.

1.4 Title Review.

1.4.1 Developer acknowledges receipt of the Title Report issued by the Title Company. Developer agrees that the following exceptions set forth in the Title Report are "Permitted Exceptions": [_____].

1.4.2 Developer may obtain an update to the Title Report on the Property. Developer shall promptly give to City a copy of any updated Title Report. Within twenty (20) days after receiving an updated Title Report, but no later than thirty (30) days prior to the Closing Date described in Section 1.3.2, Developer shall give City notice, in writing, of any objections to any exceptions to the updated Title Report other than those identified as Permitted Exceptions in Section 1.4.1. Within ten (10) days of Developer's written notice to City described in the preceding sentence, City shall notify Developer in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If City declines to remove the objected to exceptions or does not respond to Developer's objections within such ten (10) day time period, Developer shall thereafter have ten (10) days in which to terminate this Agreement by written notice to City. If this Agreement is not terminated pursuant to this Section 1.4.2, all Permitted Exceptions identified in Section 1.4.1; any exceptions appearing in an updated Title report other than those, if any that City has expressly agreed to remove before Closing; and any other exceptions accepted by Developer at Closing shall be deemed the "Final Permitted Exceptions."

1.5 Title Insurance.

1.5.1 Developer shall obtain from the Title Company, at Developer's sole expense, such policy or policies of title insurance, and any endorsements thereto, covering the leasehold interest in the Site, as Developer deems in its best interest. City agrees to execute any affidavits reasonably required by the title company to enable Developer to obtain such coverage.

1.5.2 City shall obtain at City's expense from the Title Company, such policy or policies of title insurance with respect to the Site or the Property or the Ground Lease that City deems in its best interest. Developer agrees to cooperate with City and to execute any documents reasonably required by the title company to enable City to obtain such coverage.

2. REPRESENTATIONS AND WARRANTIES

2.1 City Representations and Warranties. City's representations and warranties under this Agreement are limited to the following. City hereby warrants and represents to Developer as of the Effective Date the following:

2.1.1 City Authority. The persons executing this Agreement and the instruments referred to herein on behalf of City have the legal power, right and actual authority to bind City to the terms and conditions of this Agreement. City has the legal power, right, and authority to enter into this Agreement and to consummate the Conveyance. All requisite action has been taken by City in connection with entering into this Agreement and the Conveyance.

2.1.2 Knowledge of Hazardous Substances. To the best of City's knowledge, except as has been disclosed to Developer in the Environmental Due Diligence Reports: (i) City has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, released, or produced Hazardous Substances on the Property; (ii) no underground storage tanks exist on the Property; and (iii) and City has not received notice of the Release of any Hazardous Substances on the Property.

2.1.3 Due Diligence Reports. City makes no representation or warranty about the completeness, accuracy, reliability or sufficiency of any of the Due Diligence Reports.

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

2.1.5 Existing Litigation. To City's knowledge, there is no condemnation pending or threatened, which may affect the Property, Site, Project or City's ability to perform its obligations with respect to the Conveyance under this Agreement. To City's knowledge, there is no litigation, environmental proceeding, or zoning proceeding pending, which may adversely affect the Property, Site, Project or City's ability to perform its obligations with respect to the Conveyance under this Agreement.

2.1.6 Utility Connections. The City makes no representations regarding utility connections. Developer shall identify existing utility connections and determine what new connections may be necessary to meet the needs of the Project. Installation of new utility connections shall be by Developer.

2.1.7 Enforceability. To the best of City's knowledge, this Agreement is and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms.

2.1.8 No Conflict with Other Agreements. 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 City is a party. Prior to execution of the Ground Lease, the City shall not enter into any other lease of the Site that would conflict with the City's ability to enter into the Lease with Developer as contemplated herein.

2.1.9 No False Representation. To the best of City's knowledge, no representation, warranty or statement of City in this Agreement contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.

2.2 Developer Representations and Warranties. Developer's representations and warranties under this Agreement are limited to the following. Developer hereby warrants and represents to City as of the Effective Date the following:

2.2.1 Developer Authority. 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.

2.2.2 Enforceability. This Agreement and all documents required to be executed by Developer in connection with this Agreement are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms.

2.2.3 No Conflict with Other Agreements. 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.

2.2.4 No False Representation. 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 representation, warranty or statement not misleading.

2.2.5 No Default. As of the Effective Date, Developer is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of Developer under this Agreement.

2.2.6 Due Diligence. Developer acknowledges that Developer has received the Due Diligence Reports. Developer enters into this Agreement after conducting such additional studies and due diligence inquiries as Developer deems necessary or appropriate, including but

not limited to title, environmental, soils and geologic, survey, transportation, geotechnical, and any other due diligence matters identified by Developer.

2.2.7 No Reliance. Developer enters into this Agreement without reliance on any oral or written representations by City, its employees, agents or consultants (except as expressly set forth in Section 2.1.2) regarding any aspect of the Property, including but not limited to feasibility, availability of financing, or whether the permits and approvals of applicable City agencies and departments necessary for construction of the Project will be granted.

2.2.8 NEPA Clearance. Developer will use commercially reasonable efforts to obtain NEPA Clearance (defined below) in a timely manner. Developer will notify the City within five (5) business days of its receipt of NEPA Clearance or its decision to pursue construction of the Project in a manner that does not require NEPA Clearance.

3. CONDITIONS PRECEDENT TO CLOSING

3.1 Conditions. Developer and City shall not be obligated to proceed with the Conveyance of leasehold interest in the Site and with the other transactions contemplated under this Agreement, unless, prior to Closing, the following conditions for the benefit of City are satisfied in the sole discretion of City and the following conditions for the benefit of Developer are satisfied in the sole discretion of Developer. The condition for the benefit of a Party has been satisfied, such Party shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied.

3.1.1 To the Satisfaction of Both City and Developer:

i. All of the Construction Documents and Technical Specifications shall have been approved by all required governmental entities and/or agencies, including City Planning Department, and Schematic Design Documents and Design Development Drawings shall have received City review and, if required by this Agreement approval pursuant to Section 5.2 below. Developer shall have submitted all required documents and fees for building permit review and approval by the City and all other jurisdictions having authority over the Project and shall have modified such documents as necessary for timely approval.

ii. All land use approvals and permits for the Project required by the City shall have been secured and no appeal of any required approval or permit shall have been filed, the time for any such appeal shall have expired, or, if an appeal was filed, the appeal shall have been finally resolved in such a way that allows the Project to proceed as intended under this Agreement.

iii. Developer shall have delivered to City Staff documentation demonstrating that all financing necessary to construct the Project has closed or will close simultaneously with the Closing.

iv. The Parties shall have approved a survey and legal description of the Site and a diagram and legal description of the Easements; shall have agreed on the final form of the Ground Lease and the Final Permitted Exceptions; shall have agreed on the number of parking spaces and configuration of the parking areas on the Property and the terms and conditions and final form of the Easements; and the Easements, or a memorandum thereof, shall be recorded at Closing.

v. There shall be no litigation pending that prevents City or Developer from performing their respective obligations under this Agreement.

3.1.2 To Developer's Satisfaction:

i. City shall not be in default under this Agreement and no event shall have occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of City under this Agreement.

ii. No material adverse change in the physical or legal condition of the Property shall have occurred.

iii. Developer shall be satisfied in its sole discretion with the results of its due diligence investigation, including but not limited to the condition of the Property, the economic feasibility of the Project, Developer's financing for the Project, all land use approvals and governmental consents have been obtained, the environmental condition of the Property, and all other factors Developer elects to consider.

iv. Title Company is prepared to issue to Developer the title insurance in form satisfactory to Developer, subject only to the Final Permitted Exceptions.

v. Receipt of NEPA Clearance (as defined herein) by Developer. Developer has applied for financing for the development of the Project from one or more funding sources that require environmental clearance under the National Environmental Policy Act of 1979 with respect to the Property (the "NEPA Clearance") If Developer does not receive NEPA Clearance, Developer may terminate this Agreement, in which event the Parties will have no further liability or responsibility to each other except for the provisions of this Agreement that survive termination.

3.1.3 To City's Satisfaction:

i. City shall have received documentation indicating that all applicable permits and approvals will be issued.

ii. Developer shall have provided to City documentation, that:

a. Developer is an entity validly existing in the state of Oregon;

b. Developer has full power and authority to enter into and perform its obligations under this Agreement; and

c. This Agreement has been executed and delivered, for and on behalf of Developer, by an authorized individual.

iii. Developer shall be prepared to close on construction financing sufficient to construct the Project, and unless otherwise waived in writing by City, Developer shall provide City at closing of the Ground Lease with a payment bond issued by a surety reasonably acceptable to City pursuant to which City shall be named as an obligee pursuant to a rider or riders reasonably acceptable to City, or other security acceptable to City ensuring lien-free completion of the Project.

iv. Developer shall not be in default under this Agreement and no event shall have occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Developer under this Agreement.

v. Title Company is prepared to issue to City title insurance, if desired by City, in form acceptable to City.

3.2 Elections upon Non-Satisfaction of Conditions. If any condition in Section 3 is not fulfilled to the satisfaction of the benefited Party or Parties as of the date scheduled for the Closing, or such later date, if any, designated pursuant to Section 1.3.2, and if the same is not satisfied within fifteen (15) days after written notice to the other Party, then such benefited Party or Parties may elect to take any of the following actions:

i. terminate this Agreement by and effective upon written notice to the other Party; or

ii. waive in writing the benefit of that condition and proceed in accordance with the terms hereof; or

iii. designate in writing a later date for the Closing, to allow additional time for the condition to be satisfied, if the condition can be satisfied and the other Party agrees in writing to the later date if Closing is extended more than sixty (60) days.

3.3 Final Termination Date. If all of the conditions precedent to the Closing set forth in Section 3.1 have not been satisfied or waived by the later of (a) the date scheduled for the Closing as set forth in the Development Timeline, as may be extended by Unavoidable Delay, as provided in Section 12.7, or (b) such later date, if any, designated pursuant to Section 3.2(iii), as may be extended by Unavoidable Delay as provided in Section 12.7, then this Agreement shall automatically terminate thirty (30) days after the later of the foregoing dates.

3.4 Effect of Termination for Non-Satisfaction of Conditions Precedent to Closing. If this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to Closing and neither Party is in default under this Agreement, then all rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement other than the Parties' indemnity obligations under this Agreement and all other provisions under this Agreement that expressly survive Closing or the earlier termination of this Agreement. In the event of such a termination, the Parties shall 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 Washington County, and such obligation shall survive termination of this Agreement. If a Party is in default under this Agreement on the date this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to Closing, then the rights and remedies accruing to the other Party under this Agreement as a result of such default shall survive termination of this Agreement.

4. INFRASTRUCTURE, UTILITIES, AND PROPERTY CONDITION

4.1 Infrastructure Improvements. As part of the Project, Developer, at its sole expense, will design, construct, fund and obtain permits for all Infrastructure.

4.2 Site Preparation. As part of the Project, Developer will, at its sole expense, complete or cause completion of all necessary site preparation in accordance with the Development

Timeline.

4.3 Utility Service. As part of the Project, Developer shall install, connect, and upgrade new and existing utilities necessary to serve the Project.

4.4 Subsurface, Surface and Building Conditions. City shall convey a leasehold interest in the Site to Developer, and Developer shall accept the Site, in its "AS IS" condition on the Closing Date, without warranty of any kind except as otherwise specifically set forth in this Agreement. In particular, City makes no warranties or representations that the soil conditions, Environmental Conditions (except as expressly set forth in Section 2.1.2) or any other conditions of the Property are suitable for any improvements. Developer acknowledges that it has not relied on any oral representations made by the City as to the soil conditions, Environmental Conditions or any other conditions of the Property. Developer acknowledges that it has had free access to City's records with respect to the condition of the Property, specifically including the Due Diligence Reports. Except for the representations and warranties expressly set forth in Section 2.1, Developer, for itself and any entity affiliated with Developer, and its successors and assigns, hereby waves and releases City, its officials, employees and agents from any liability or claim related to the condition of the Property (including but not limited to any Environmental Conditions, except to the extent such Environmental Conditions are proved to have been caused by City).

4.5 Prior to receiving written notice from Developer that Developer has received NEPA Clearance or decided to pursue construction of the Project in a manner that does not require NEPA Clearance, the City will not undertake any construction, demolition, site work, soil removal or environmental remediation, or other ground-disturbing activity of the Site (as described in Section 1.2). Notwithstanding the foregoing, (i) the City may undertake such activities if reasonably necessary to eliminate or mitigate conditions that create a material risk of injury to persons or damage to property or if City required to do so by applicable legal requirements, and (ii) the preceding sentence shall not prohibit maintenance of any existing improvements on the Site or the maintenance, enhancement or replacement of plantings on the Site.

5. DEVELOPMENT

5.1 Project Financing. Developer will be responsible for obtaining from third parties all funds and financing necessary to develop, construct, and operate the Project. The Parties anticipate that the Project financing will be structured generally as shown in the Sources and Uses section of the Development Budget attached as Exhibit D. The Parties acknowledge and agree that the Development Budget is only a projection and that a number of factors may change this projection which may include but are not limited to interest rates, lender requirements, market shifts, and the soft and hard development costs. Developer shall provide the City with updates to the Development Budget and a copy of the Final Development Budget at closing, but such updates shall not require amendment of this Agreement. Developer shall provide its lenders with any required completion guarantee or a repayment guarantees that may be required by its lenders.

5.2 City Review.

5.2.1 Draft Project Plan. The scope of development is described in the Project Plan in Exhibit F.

5.2.2 Council Review. Promptly after Developer conducts a public open house, Developer will consider and incorporate public comments reasonably determined by the Parties to be appropriate into the Draft Project Plan. Within forty-five (45) days after the open house, City Staff and Developer will present the revised Project Plan to the City Council for review. The revised Project Plan presented to the City Council as set forth herein is referred to in this Agreement as the Final Project Plan. Developer acknowledges that process provided for in this paragraph does not constitute a determination that the Final Project Plan conforms to the Tigard Community Development Code and that Developer must obtain all land use approvals as provided below.

5.3 Diligent Completion. Subject to the terms and conditions of this Agreement, Developer covenants to complete the development of the Project in substantial conformance with the final Construction Documents and Technical Specifications and in accordance with the Development Timeline, subject to Unavoidable Delay, as provided in Section 12.7. Developer shall complete development of the Project no later than the date for completion of construction set forth in the Development Timeline attached as Exhibit E, as such Development Timeline may be updated or amended in accordance with this Agreement, subject to Unavoidable Delay, as provided in Section 12.7. Developer agrees to keep City Staff 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 City issues the Certificate of Completion for the Project. Reports shall be in the form and format consistent with that provided to Oregon Housing and Community Services.

Project development includes, but is not limited to, the following:

5.3.1 Contracts. Entering into all necessary architectural and construction contracts necessary for construction of the Project;

5.3.2 Entitlements. Securing all necessary land use, design review, building, and other permits and approvals;

5.3.3 Financing. Securing all financing necessary to complete the Project, consistent with the Final Development Budget;

5.3.4 Construction. Completing all construction activities in accordance with the Project Plan and Development Timeline.

5.4 Oregon Prevailing Wage Law. If the Project is a “public work” subject to ORS 279C.800 to 279C.870 and the administrative rules adopted thereunder (the “Oregon Prevailing Wage Law”), Developer shall comply, and shall require the General Contractor and all subcontractors to comply, with Oregon’s Prevailing Wage Law. In such event, workers shall be paid not less than the specified minimum hourly rate of wage as provided in the Oregon Bureau of Labor and Industries (BOLI) publication titled “Prevailing Wage Rates for Public Works Contracts in Oregon.”

5.5 Inspection and Property Access.

5.5.1 Before Closing. Before Closing, City shall allow Developer and/or Developer’s employees, agents and consultants to enter upon the Site and other unoccupied portions of the Property in reasonable furtherance of the transaction contemplated in this Agreement without notice to City; and enter the Senior Center and other occupied portions of the Property with one

business day's notice to City. Developer shall defend, indemnify and hold harmless City, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by City, its successors or assigns, or asserted against City, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with Developer's pre-Closing access to and inspection of the Property. This obligation shall survive Closing.

5.5.2 After Closing. After Closing, during construction of the Project, and until the Certificate of Completion is issued for the Project, Developer's work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of City.

5.6 Safety Matters.

5.6.1 Developer shall comply with all safety laws and take all safety measures necessary to protect its employees, agents, General Contractor, subcontractors, licensees and invitees, their personal property, and improvements of each, and City's employees, agents, contractors, subcontractors, licensees and invitees, their personal property, and improvements of each, from injury or damage caused by or resulting from the performance of Developer's construction and related activities.

5.7 Liens.

5.7.1 If any statutory lien shall be filed, prior to the City's issuance of the Certificate of Completion, against any portion of the Project by reason of labor, services or materials supplied to or at the request of Developer or Developer's contractors or agents or in connection with any construction on the Project, Developer shall, within thirty (30) days after the filing thereof, take whatever action is necessary and proper (including posting a bond or a cash deposit and taking such further action as may be required by the Oregon Construction Lien Law), so that the Project shall thereafter be entirely free of the lien. Developer shall indemnify and hold harmless City from all loss, damage, liability, expense or claim whatsoever (including attorney fees and other costs of defending against the foregoing) resulting from the assertion of any such lien.

5.7.2 Indemnity from Liens. Developer shall indemnify, defend and hold harmless City, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics', materialmen's, laborers' or other construction or statutory liens filed against any portion of the Property or the Project or arising from or related to construction on the Property or the Project performed by or at the request of Developer or Developer's contractors or agents. The indemnity set forth in this Section 5.7.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

5.8 Certificate of Completion.

5.8.1 When Developer is Entitled to Certificate of Completion. Upon issuance of a certificate of substantial completion from the Project Architect, and upon issuance of a Certificate of Occupancy for all buildings and spaces constructed on the Site pursuant to this Agreement, and upon final completion of all punch list items identified by the Project Architect, City will furnish Developer with a Certificate of Completion for the Project.

5.8.2 Form and Effect of the Certificate of Completion. A Certificate of Completion shall be substantially in the form of Exhibit G and shall be recorded in the real property records of Washington County. The Certificate of Completion shall provide for termination of obligations under this Agreement, except those that are intended to survive termination.

5.8.3 Procedure If City Refuses to Issue. If City refuses or fails to provide a Certificate of Completion in accordance with this Section 5.8, then City, within thirty (30) days after written request by Developer for such Certificate of Completion, shall provide Developer with a written statement indicating in what respects Developer has failed to complete the Project in accordance with the provisions of this Agreement and what measures or acts Developer must take or perform to obtain such Certificate of Completion. City's failure to furnish Developer with such written statement within such thirty (30) day period shall be deemed City's approval of Developer's request for the Certificate of Completion.

6. ENVIRONMENTAL CONDITIONS AND DEVELOPER INDEMNITY

6.1 Environmental Conditions of the Property and Parties' Responsibilities.

6.1.1 Environmental Due Diligence Reports. Developer acknowledges receipt of copies of the Environmental Due Diligence Reports listed in Exhibit H.

6.1.2 Unforeseen Environmental Conditions. If Developer encounters, after Closing and prior to issuance of the Certificate of Completion, an Unforeseen Environmental Condition on the Property that was not caused directly or indirectly by Developer, Developer shall notify City of the Unforeseen Environmental Condition, and shall also, promptly thereafter, notify DEQ (to the extent required by applicable law) and provide City with any documentation regarding the circumstances of the discovery of the Unforeseen Environmental Condition, including but not limited to any documentation on the release of a Hazardous Substance on the Property. After discovery of an Unforeseen Environmental Condition on the Property, Developer shall make such surveys and conduct such tests and investigations as Developer deems reasonably necessary or desirable to determine the nature and extent of the Unforeseen Environmental Condition. City shall have access to the Property to make such surveys and conduct such tests and investigations as City deems reasonably necessary or desirable to determine the nature and extent of the Unforeseen Environmental Condition. Developer hereby grants a license to City for City to enter onto any part of the Property to perform the foregoing surveys, tests and investigations which City shall conduct in accordance with applicable Environmental Laws. Each Party will provide the other Party with copies of any reports arising from such surveys, tests and investigations. Promptly after completion of the surveys, tests and investigations, the Parties shall meet to agree upon the remediation or abatement, as applicable, of the Unforeseen Environmental Condition, which Developer shall then complete as part of the Project, as a condition to issuance of the Certificate of Completion and in a manner necessary to obtain any approval required by DEQ.

6.1.3 Indemnification. Developer shall be responsible for compliance with all Environmental Laws with respect to the Site and its business and the operation of the Project from and after Closing. In addition, Developer shall be responsible for all required environmental remediation and abatement of Environmental Conditions on the Site or otherwise discovered in the course of developing the Project, except to the extent such conditions are proved to have been caused by City. Developer shall defend, indemnify and hold harmless City, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other

expenses which may be imposed on or incurred by City, its successors or assigns, or asserted against City, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer, or Developer's failure to complete any environmental remediation or abatement of Environmental Conditions on the Property required of Developer under this Agreement. The indemnity set forth in this Section 6.1.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

6.1.4 Contribution. The foregoing indemnity does not limit any rights of contribution that the Parties may have against third parties under applicable law or agreement. The indemnity is intended only as an allocation of responsibility as between the Parties.

7. ASSIGNMENT AND TRANSFER PROVISIONS

7.1 Restrictions on Transfer by Developer Generally. Except as provided in Section 7.2, until the City's issuance of the Certificate of Completion, Developer shall not transfer or dispose of, or agree to transfer or dispose of, all or any part of Developer's interest in the Property, the Ground Lease, the Project, or Developer's interest in this Agreement without the prior written approval of the City, which may be withheld in City's reasonable discretion. Without limiting the generality of the foregoing, City is unlikely to approve a transfer or disposition if (a) the proposed transferee does not possess the financial capacity, operational experience, and other qualifications equal to or superior to those of Developer, or (b) the transfer or disposition will cause a material delay in completion of the Project.

7.2 Approved Transfers Prior to Issuance of Certificate of Completion. Notwithstanding Section 7.1 above, and provided that Developer provides City with copies of all agreements related to the transfer at least fifteen (15) days prior to the effective date of the proposed transfer, and any other information reasonably necessary for City to determine whether such transfer complies with the requirements of this Agreement, City will consent to:

7.2.1 An assignment of Developer's rights under this Agreement and interest in the Property (which interest will remain subject to the terms and conditions of this Agreement) to a partnership, limited liability company, or limited partnership provided Northwest Housing Alternatives, Inc. or its affiliate is the managing member or general partner of such assignee, and as such retains operational control of the assignee.

7.2.2 Any Mortgage that is subordinate to the Ground Lease.

7.2.3 Any assignments permitted by the Ground Lease.

8. SUBLEASING REQUIREMENTS AND RESTRICTIONS

8.1 Subleasing. Throughout the term of the Ground Lease, Developer shall use commercially reasonable efforts to market and sublease all dwelling units in the Project. Throughout the term of the Ground Lease, all dwelling units in the Project shall be subject to the affordability and age restriction covenants set forth in the Ground Lease.

8.2 Prohibited Uses. Throughout the term of the Ground Lease, the Project shall be used only for multifamily housing consistent with Section 8.1 above, including common spaces for the use of residents of the Project and incidental spaces for the operation and management of the

Project. Unless otherwise expressly permitted under the Ground Lease, no part of the Project may be used for retail, commercial, industrial, institutional or other non-multifamily residential use. City may institute legal action to void any lease entered into contrary to these provisions

8.3 Project Communications. City shall have the right to attend, or receive meeting notes form, regularly scheduled Architect, Owner and Contractor Meetings during the development process..

9. POST-CLOSING OBLIGATIONS

9.1 Indemnity and Insurance.

9.1.1 To the fullest extent permitted by law, Developer shall reimburse, defend, save, hold harmless, and indemnify City, the City, their respective officers, agents, consultants, and employees from all claims, suits, or actions of whatsoever nature, but only to the extent resulting from or arising out of the actions of, or the failure to act by, Developer or its officers, employees, Consultants, General Contractor, subcontractors, or agents under this Agreement. This indemnification obligation expressly includes, but is not limited to, compliance with Oregon Prevailing Wage Law to the extent it applies to the Project. Nothing in this Agreement shall obligate Developer to indemnify another party from claims to the extent such claims arise from the indemnified party's own negligence, willful misconduct or breach of this Agreement.

9.1.2 During the term of this Agreement, Developer shall maintain in force at its own expense all insurance noted below:

i. Workers' Compensation insurance in compliance with ORS 656.017.

All employers, including Developer, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Developer shall ensure that each of its Consultants and subcontractors comply with these requirements.

ii. Developer shall ensure that each of its Consultants obtains Professional Liability insurance with a combined single limit of not less than \$2,000,000 for each claim, incident, or occurrence. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this Agreement. The coverage must remain in effect for two years after the Project is completed.

iii. Commercial General Liability insurance, on an occurrence basis, with a combined single limit of not less than \$2,000,000 for each occurrence of bodily injury, personal injury and property damage. It shall include coverage for broad form contractual liability; broad form property damage; personal and advertising injury; owners and contractor protective; premises/operations; and products/completed operations. Coverage shall not exclude excavation, collapse, underground, or explosion hazards.

iv. Builder's Risk insurance during construction to the extent of 100 percent of the value of the work for the benefit of the Parties to the Agreement as their interest may appear. Coverage shall also include: (1) formwork in place; (2) form lumber on site; (3) temporary structures; (4) equipment; and (5) supplies related to the work while at the site.

v. Commercial Automobile Liability insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired and non-owned vehicles. "Symbol One" coverage shall be designated.

vi. Notice of Cancellation or Change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days' written notice from the Developer or its insurer(s) to City.

vii. Additional Insured. For general liability insurance and automobile liability insurance City, and its agents, officers, and employees will be Additional Insureds by endorsement, but only with respect to Developer's services to be provided under this contract. This coverage shall be by endorsement physically attached to the certificate of insurance.

viii. Certificates of Insurance. Developer shall furnish insurance certificates acceptable to City prior to the Effective Date. The certificate will include the deductible or retention level and required endorsements. Insuring companies or entities are subject to City approval. If requested, copies of insurance policies shall be provided to City. Developer shall be responsible for all deductibles, self-insured retention's, and/or self-insurance.

10. CONTINUING COVENANTS SURVIVING TERMINATION OF AGREEMENT OR COMPLETION OF CONSTRUCTION

10.1 Surviving Sections. The following Sections of the Agreement shall survive and remain in effect notwithstanding issuance of the Certificate of Completion and termination of this Agreement: 4.4 (Subsurface, Surface and Building Conditions); 5.7 (Liens); 6.1.3 (Indemnification); 7 (Assignment and Transfer); 9 (Indemnity and Insurance); 10.2 (Covenants Running with the Land); 12 (Default and Remedies); 13 (Miscellaneous).

10.2 Covenants Running with the Land; Equitable Servitudes.

10.2.1 Developer covenants and agrees that it will use the Property and Project only for purposes consistent with this Agreement, including the Project Plan and Final Construction Documents.

10.2.2 Developer covenants and agrees that prior to the issuance of the Certificate of Completion, the City approval provisions contained in Section 5.2 of this Agreement shall survive any foreclosure or transfer of the Project by a deed in lieu of foreclosure or any other transfer of the Developer's interest in the Property or Project.

10.2.3 The Parties hereby declare and agree that the covenants set forth in this Section 10.2 shall be deemed covenants running with the land and equitable servitudes burdening Developer and Developer's interest in the land, the Ground Lease and the improvements and benefitting City's interest in the land and improvements. The covenants and equitable servitudes shall pass to and be binding upon the Developer's successors, including, without limitation, any Mortgagee, purchaser, grantee, or lessee of any portion of the Project and any other person or entity having any right or interest in the Project and upon the respective heirs, executors, administrators, devisees, designees, successors, and assigns of any Mortgagee, purchaser, grantee, or lessee of any portion of the Project and any other person or entity having any right or interest in the Project.

11. MORTGAGEE AND TAX CREDIT INVESTOR PROTECTION PROVISIONS

11.1 Remedies in Ground Lease. The remedies of Developer's Mortgagees and Tax Credit Investor shall be as set forth in the Ground Lease.

11.2 No Subordination. In no event shall City's fee interest in any part of the Property or its interest under the Ground Lease be subordinated to any of Developer's Project financing.

12. DEFAULT AND REMEDIES

12.1 Default and Cure.

12.1.1 Default by Developer.

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

ii. Developer shall also be in default under this Agreement if Developer makes an assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within ninety (90) days after appointment.

iii. Developer shall also be in default under this Agreement and City shall be irreparably harmed by such default, if Developer constructs or operates any portion of the Project in a manner materially inconsistent with Final Construction Documents and Technical Specifications.

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

12.2 City's Pre-Conveyance Remedies. If a Developer default (as described in Section 12.1.1) occurs before the leasehold interest in the Site is conveyed to Developer, City may, at its option: (i) terminate this Agreement by written notice to Developer, (ii) seek monetary damages against Developer, and/or (iii) specifically enforce the obligations of Developer under this Agreement. If City terminates this Agreement as provided in this Section 12.2, then Developer shall deliver to City within thirty (30) days after termination, copies of all Project market research, design documents, engineering documents, pro formas and financial projections prepared for Developer by unrelated third parties. City may use any of the foregoing documents in any manner that City deems appropriate. City shall pay no

compensation to Developer for the foregoing Project documents.

12.3 City's Post-Conveyance Remedies. If a Developer default (as described in Section 12.1.1) occurs after the leasehold interest in the Property is conveyed to Developer but prior to issuance of a Certificate of Completion, including but not limited to Developer's failure to complete the Project as required by this Agreement, then City shall have the remedies set forth in the Ground Lease.

12.4 Developer's Pre-Conveyance Remedies. If a City default (as described in Section 12.1.2) occurs before City conveys the Site to Developer, Developer may, at its option: (i) terminate this Agreement by written notice to City without waiving any cause of action Developer may have against City, (ii) specifically enforce the obligations of City under this Agreement, or (iii) seek monetary damages against City. Notwithstanding the preceding sentence, Developer shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from City in connection with City's default.

12.5 Developer's Post-Conveyance Remedies. If a City default (as described in Section 12.1.2) occurs after City conveys the Site to Developer, Developer may specifically enforce the obligations of City under this Agreement, or seek monetary damages against City. Notwithstanding the preceding sentence, Developer shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from City in connection with City's default.

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

12.7 Unavoidable Delay.

12.7.1 Neither Party 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 and beyond the Party's control, and without the Party's fault or negligence, such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, strike, malicious mischief, explosion, or inability to secure necessary labor, materials or tools ("Unavoidable Delay").

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

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

performance of an obligation be extended for more than 180 days in the aggregate without written agreement by both Parties.

12.8 Arbitration.

Any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this Agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

13. MISCELLANEOUS PROVISIONS

13.1 Recording of Memorandum of Agreement. City shall record a memorandum of this Agreement ("Memorandum of Agreement") in form reasonably acceptable to both Parties within ten (10) days after the Effective Date.

13.2 Discrimination. Developer, for itself and its successor and assigns, agrees that, during the construction of the Project, Developer 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.

13.3 Notices. Any notice under this Agreement by either Party to the other shall be delivered to the addresses for such Party set forth below and shall be deemed given and delivered (a) forty-eight (48) hours after being sent by certified U.S. mail, postage prepaid, return receipt requested, (b) when received if personally delivered or delivered by nationally-recognized overnight delivery service, or (c) if sent by e-mail or other form of electronic transmission, with receipt of written confirmation from the recipient that such transmission has been received.

If to Developer:

Northwest Housing Alternatives, Inc.
2316 SE Willard Street
Milwaukie, OR 97222
Attn: Tigard Senior Housing

with a copy to:

Kantor Taylor PC
1200 Fifth Avenue, Suite 1910
Seattle, WA 98101
Attn: Andrea Y. Sato

If to City:

City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223
Attn: Sean Farrelly

with a copy to:

City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223
Attn: Shelby Rihala

and a copy to:

Dunn Carney LLP
851 SW Sixth Avenue, Suite 1500
Portland, OR 97204
Attn: Susan C. Glen

Either Party may, from time to time, change the persons and/or addresses to which notices to such Party shall be delivered by delivering notice of such change to the other Party in the manner set forth above.

13.4 Merger. None of the provisions of this Agreement are intended to or shall be merged by reason of any ground lease transferring an interest in the Property from City to Developer or any successor in interest, and any such ground lease shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

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

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

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

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

13.9 Governing Law, Venue, Consent to Jurisdiction. This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Subject to Section 12.8, any

action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Washington County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.

13.10 Calculation of Time. Unless otherwise expressly provided 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.

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

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

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

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

13.15 Amendment. Any amendment or modification to this Agreement must be made in writing and executed by all Parties, with the approval of the governing body of the City, if required. This includes, but is not limited to, modification of the date for completion of construction of the Project as set forth in the Development Timeline, modifications regarding the development or improvement of any other portions of the Property by Developer pursuant to this Agreement, and any modification of the uses described in Section 8. Any modifications to this Agreement made without the approval of the City Council must include an acknowledgement by the City Attorney that such approval is not necessary.

13.16 Successors and Assigns. Subject to the provisions of Section 7, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.

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

13.18 Non-waiver of Government Rights. Unless and except as otherwise expressly set forth in this Agreement, by making this Agreement and entering into the Ground Lease, City is specifically not obligating the City, or any agency or department of the City, with respect to any discretionary action relating to development or operation of the Project, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals that are

or may be required.

13.19 Time of Essence. Time is of the essence of this Agreement.

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

13.21 No Broker or Commission. Each Party represents and warrants to the other that it has not used or engaged a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person or entity asserts a claim for a broker's commission or finder's fee against a Party to this Agreement, Developer shall indemnify, hold harmless, and defend City from and against any such claim if based on any action, agreement, or representations made by Developer; and City shall indemnify, hold harmless, and defend Developer from and against any such claim if based on any action, agreement, or representations made by City.

13.22 Oregon Public Records Law. Developer acknowledges that information provided to the City is subject to the Oregon Public Records Law (ORS 192.410 to 192.505).

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

13.24 URA Provisions. City acknowledges that Developer may receive federal funds for its development of the Project and that such funds require the Developer to comply with the terms of the Uniform Relocation Act ("URA"), provided, however, all expense of complying with the URA shall be Tenant's responsibility at Tenant's expense. City further acknowledges that the Rent under the Ground Lease does not exceed a fair market rent and that Developer has no rights or power of domain to acquire the Property by condemnation.

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

CITY:

CITY OF TIGARD

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

DEVELOPER:

NORTHWEST HOUSING ALTERNATIVES, INC.,
an Oregon nonprofit corporation

By: _____

Name: _____

Title: _____

EXHIBITS

Exhibit A	Definitions
Exhibit B	Legal Description of the Property and Description of the Site
Exhibit C	Form of Ground Lease
Exhibit D	Development Budget
Exhibit E	Development Timeline
Exhibit F	Project Plan
Exhibit G	Form of Certificate of Completion
Exhibit H	Due Diligence Reports

EXHIBIT A

DEFINITIONS

The following words and phrases have the designated meanings in this Agreement:

1. **"Agreement"** means this Disposition and Development Agreement, including all attached Exhibits.
2. **"Certificate of Completion"** means a certificate issued or to be issued by City to Developer pursuant to Section 5.8 of this Agreement.
3. **"City"** means the municipal corporation of the City of Tigard, Oregon.
4. **"City Staff"** means the Project Manager, Sean Farrelly, or such other individual City employed staff person as identified by the City by written notice to the Developer.
5. **"City's knowledge"** means the actual current knowledge of a management employee of City currently engaged in and responsible for acquisition, management, or disposition of the Property for the City, without any duty of inquiry or investigation.
6. **"Closing"** means the transfer of the Site to Developer by City by execution of the Ground Lease recording of a memorandum of the Ground Lease in the Official Records of Washington County, Oregon.
7. **"Closing Date"** means the date on which the Ground Lease from City to Developer is executed and a memorandum of the Ground Lease recorded in the Official Records of Washington County, Oregon.
8. **"Construction Documents and Technical Specifications"** means documents, based upon the Design Development Drawings, that set forth in detail the requirements for construction of the Project pursuant to the terms of this Agreement. Construction Documents and Technical Specifications shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project.
9. **"Conveyance"** means the transfer of a leasehold interest in the Site by City to Developer.
10. **"DEQ"** means the Oregon Department of Environmental Quality.
11. **"Developer"** means Northwest Housing Alternatives, Inc.
12. **"Development Budget"** means the summary financial analysis for the Project set forth in Exhibit E. The Development Budget represents the estimated sources and uses of funds, cash flow and Project costs as of the Effective Date.
13. **"Development Timeline"** means the schedule by which construction and development of the Project will occur, attached hereto as Exhibit E.
14. **"Due Diligence Reports"** means the Environmental Due Diligence Reports and other reports and due diligence materials provided by City to Developer listed in Exhibit H.

15. **“Effective Date”** means the date stated in the first paragraph of this Agreement.
16. **“Environmental Conditions”** means the physical condition of the Property as measured by the standards of the Environmental Laws. Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.
17. **“Environmental Laws”** means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Property or the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (as defined in the definition of Hazardous Substance, below), CERCLA (defined in the definition of Hazardous Substance, below), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
18. **“Environmental Due Diligence Reports”** means reports of investigations performed as part of environmental due diligence, that City has completed or City has in its possession, completed by others, listed in Exhibit H.
19. **“Final Development Budget”** means the updated and revised estimated sources and uses of funds, cash flow, and Development Budget, submitted by Developer to City prior to Closing.
20. **“General Contractor”** means the general contractor selected by the Developer, licensed in the State of Oregon and approved by City, in its reasonable discretion.
21. **“Ground Lease”** means that certain ground lease to be entered into between Developer and the City for the Site.
22. **“Hazardous Substance”** means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. (“CERCLA”), or any other Environmental Laws.
23. **“Infrastructure”** means public streets, sidewalks, alleys, and driveway approaches, connections to garages, planting street trees and grass in planting strips, stormwater mitigation, street and parking lot lighting, construction and connection of the Project to abutting potable water and sewer and storm sewer mains, connecting the Project to gas and electric and other necessary utility services, and all permitting for any of the above as further described in the Project Plan set forth in Exhibit F.
24. **“Laws”** means all applicable laws, rules, regulations, ordinances and other governmental requirements.

“Mortgagee” means the holder of any mortgage or the beneficiary of any trust deed encumbering Developer’s leasehold interest in the Site, together with any successor or assignee of such holder. The term “Mortgagee” shall include any Mortgagee as owner of the Site or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but shall

not include (a) any other party who thereafter obtains title to the Site or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee.

25. "Notice" means any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by the Oregon Department of Environmental Quality ("DEQ"), the United States Environmental Protection Agency, City, or other federal, state or local authority or any other government having jurisdiction with respect to the Property.

26. "Party" or "Parties" means City and Developer, jointly or severally.

27. "Schematic Design Documents" means site drawings for the Project including schematic, massing, feasibility and preliminary cost estimates for the Project.

28. "Project" means the Site, the new improvements to be constructed by Developer on the Site, and any new improvements or modification of existing improvements on the remainder of the Property to be constructed by Developer, all as described in the Project Plan set forth in Exhibit F.

29. "Project Architect" means the architect selected by the Developer, and licensed to practice in the State of Oregon and approved by City Staff in its reasonable discretion.

30. "Project Plan" means the description of the improvements to be built comprising the Project, attached hereto as Exhibit F.

31. "Property" means the real property located at 8815 SW O'Mara Street, Tigard, Oregon, more particularly described in Exhibit B.

32. "Recognized Environmental Conditions" means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Property or into the ground, ground water, or surface water of the Property, whether or not the Release is in compliance with applicable law.

33. "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.

34. "Site" has the meaning set forth in the Recitals.

35. "Tax Credit Investor" means the limited partner or investor member in the limited partners or limited liability company to be formed by Developer to acquire, construct and operate the Project.

36. "Title Company" means Chicago Title Insurance Company, located at 1211 SW Fifth Avenue, Suite 2130, Portland, Oregon 97204.

37. "Title Report" means preliminary title commitment No. [____], dated [____], 2020, issued by the Title Company.

38. “Unforeseen Environmental Conditions” means the presence of a Hazardous Substance on the Property that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by the Oregon Department of Environmental Quality.

EXHIBIT B

**LEGAL DESCRIPTION OF THE PROPERTY
AND POSSIBLE GENERAL CONFIGURATION OF THE SITE**

EXHIBIT C
FORM OF GROUND LEASE

EXHIBIT D
DEVELOPMENT BUDGET

EXHIBIT E

DEVELOPMENT TIMELINE

Execution of Ground Lease and Closing of Construction Financing to occur: on or before March 30th, 2023 (intended to allow Developer the ability to seek funding through two Oregon Housing and Community Services competitive funding cycles).

Substantial Completion of Construction to occur: within 24 months after the Commencement Date of the Ground Lease

EXHIBIT F

PROJECT PLAN

[INSERT SCOPE OF DEVELOPMENT]

EXHIBIT G

FORM OF CERTIFICATE OF COMPLETION

After recording return to:

CERTIFICATE OF COMPLETION

The CITY OF TIGARD, a municipal corporation of the State of Oregon ("City"), hereby determines that NORTHWEST HOUSING ALTERNATIVES, INC., an Oregon limited liability company ("Developer"), has substantially completed construction of the Project as described in the DISPOSITION AND DEVELOPMENT AGREEMENT dated _____, 20__ (the "Agreement"). Capitalized terms used herein without definition shall have the meaning ascribed to them in the Agreement.

Pursuant to Section 5.8.1 of the Agreement, City hereby determines, for purposes of the Agreement, that:

- (i) the Project is substantially complete according to the Final Construction Drawings and Technical Specifications;
- (ii) Developer has completed the environmental remediation and abatement on the Property, if any, required of Developer under Section 6 of the Agreement, and
- (iii) the City has issued a Certificate of Occupancy with respect to the Project.

This Certificate of Completion constitutes a determination that, for purposes of the Agreement only, the obligations of Developer as to the construction of the Project have been satisfied, and that such obligations shall cease and become of no further effect, except as otherwise provided in this Certificate of Completion.

Further,

- (1) The following Sections of the Agreement shall survive and remain in effect, notwithstanding issuance of this Certificate of Completion ("Surviving Sections"): 4.4 (Subsurface, Surface and Building Conditions); 5.7 (Liens); 6.1.3 (Indemnification); 7 (Assignment and Transfer); 9 (Indemnity and Insurance); 10.2 (Covenants Running with the Land); 12 (Default and Remedies); 13 (Miscellaneous)
- (2) Other than its right to enforce the Surviving Sections, City shall hereafter be entitled to exercise no rights or remedies under the Agreement that it may otherwise have been entitled to exercise with respect to the construction of the Project or as a result of the breach of any provisions of the Agreement relating to construction of the Project.

This Certificate of Completion applies only to City's rights and remedies under the Agreement. It does not apply in any way to City's rights and remedies under the Ground Lease or its rights and authority in any other capacity.

IN WITNESS WHEREOF, City has caused this instrument to be executed this ____ day of _____, 20__.

CITY OF TIGARD,

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of Washington)

This instrument was acknowledged before me on _____, 20__, by _____, the _____ of the CITY OF TIGARD.

Notary Public for
My commission expires: _____

EXHIBIT H
DUE DILIGENCE REPORTS