

DISPOSITION AND DEVELOPMENT AGREEMENT

between

THE CITY OF MILWAUKIE

and

BLACKROCK DEVELOPMENT & REAL ESTATE, LLC, OR ASSIGNS

6/26, 2020

DISPOSITION AND DEVELOPMENT AGREEMENT

This DISPOSITION AND DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered this 26 day of JUNE, 2020 (the “Effective Date”), by and between the CITY OF MILWAUKIE, a municipal corporation of the State of Oregon (the “City”), and BLACKROCK DEVELOPMENT & REAL ESTATE, LLC, an Oregon corporation, or its assignee (“Developer”). The City and Developer may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

A. The City purchased the real property located at 11100 SE McLoughlin Blvd, Milwaukie, Oregon for the purpose of redevelopment (the “Land”). The legal description of the Land is attached as Exhibit A-1. For purposes of this Agreement, the “Property” means the Land with the exception of a small portion located across a pond from the remainder of the Land. A depiction of the Property is attached as Exhibit A-2.

B. Milwaukie City Council Ordinance No. 2139 amended Chapter 3.15 REAL PROPERTY of the Municipal Code relating to the transfer or sale of city owned real property to another entity for redevelopment.

C. Resolution No. 38-2017 adopted on April 4, 2017 declared the Land surplus and authorized the Community Development Director to proceed with development solicitations.

D. The City issued a Request for Qualifications (the “RFQ”) soliciting responses from developer teams for the Property on April 21, 2017. The City convened an RFQ Selection Committee and Developer was selected from a field of nine responses for further negotiations, and the Milwaukie City Council adopted Resolution No. 80-2017 authorizing the City to move forward with exclusive negotiations on August 15, 2017. The City and Developer entered into an Exclusive Negotiating Agreement on January 30, 2018, which was amended by that certain Amendment No. 1 to Exclusive Negotiating Agreement on April 17, 2018, by that certain Amendment No. 2 to Exclusive Negotiating Agreement on July 17, 2019, and by that certain Amendment #3 to Exclusive Negotiating Agreement on November 7, 2019 (collectively, the “ENA”).

E. Developer is committed to using its best efforts to complete a project on the Property that will result in a minimum 5-story mixed-use building that maximizes land use entitlements and provides a gateway project to downtown Milwaukie, as required by the RFQ. Developer intends to build a 6-story building, with 201 dwelling units (of which a minimum of 23 bedrooms or 10 percent of total dwelling units will be dedicated as affordable under guidelines established by the United States Department of Housing and Urban Development to households that earn no more than eighty percent of the median household income for a period of at least thirty years), commercial space, and parking. The Project is referred to herein as Coho Point at Kellogg Creek or “Project.”

F. Absent City intervention, the expected development outcome would have been a 3-story mixed-use building with no income-restricted units.

G. The Parties acknowledge that the Project will require that Developer expend extraordinary costs due to the public benefits required to be incorporated in the Project by the City and the location of the site of the Project in a floodplain (the "Extraordinary Costs").

H. By entering into this Agreement, Developer desires to commit itself, subject to certain contingencies and contributions provided by the City as provided for herein, to acquire and develop the Property in accordance with the terms of the Agreement.

I. The City and Developer entered into a Term Sheet dated December 20, 2019 (the "Term Sheet"), setting forth the proposed terms for a disposition and development agreement. The City Council approved the Term Sheet on December 17, 2019, and authorized the City Manager to approve a disposition and development agreement consistent with the Term Sheet.

J. The City acknowledges that Developer has already expended significant sums to date in furtherance of the Project, which currently total approximately \$560,000, and has proceeded with architectural design of the Project to the point of 100% schematic design.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

DEFINITIONS

1. GENERAL TERMS OF CONVEYANCE.

1.1. Purchase and Sale.

1.1.1. Sale. The City agrees to sell and convey the Property to Developer, and Developer agrees to purchase the Property from the City, upon the terms and conditions set forth in this Agreement.

1.1.2. Conveyance of Property. Upon satisfaction of the Conditions Precedent to Conveyance provided in Section 8, and subject to the terms, covenants and conditions of this Agreement, the City will convey the Property to Developer by special warranty deed, as provided under Section 9.2.1 below. The City shall deliver possession of the Property to Developer concurrently with the conveyance of title. Developer shall accept title and possession on or before the dates established in the Schedule of Performance.

1.1.3. Limitations on Conveyance. The City's conveyance of title to the Property will be subject to certain development requirements as set forth in this Agreement.

1.1.4. Property. The Property that is the subject of this Agreement consists of the following: The land, together with: (a) all rights, privileges, licenses, and easements appurtenant to the Land owned by the City, including, without limitation, all minerals, oil, and gas on and under the Land, as well as development rights, air rights, water rights related to the land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial

use and enjoyment of the land; (b) all improvements, equipment, fixtures or other personal property of every kind located on the land, if any; and (c) any and all permits, warranties, development rights, intangible property and any other similar personal property assets owned by the City with respect to the Land and the improvements thereon.

1.2. **Escrow; No Earnest Money Deposit.** Within three (3) Business Days of the Effective Date, Developer shall open an escrow with First American Title Company, 200 SW Market Street, Suite 250, Portland, Oregon, 97201, Attn: Renee Moody, Escrow Officer (the "Title Company"). There will be no earnest money deposited with the Title Company, given the significant sums expended by Developer for the Project to date in reliance on the ENA and Term Sheet. The City is in agreement that no earnest money deposit is required, in recognition of the sums expended by Developer to date and Developer's satisfaction of the ENA terms, which required that Developer not pursue other development opportunities for mixed use or residential projects in the City of Milwaukie.

1.3. **Purchase Price.** The fair market value of the Property will be established by an appraisal, which shall assume that the Property will be developed as a mixed-use project, of which a minimum of 23 bedrooms or 10 percent of total dwelling units will be dedicated as affordable under guidelines established by the United States Department of Housing and Urban Development to households that earn no more than eighty percent of the median household income for a period of at least thirty years following the date of the issuance of the building permit on which the value is based. The appraisal shall be obtained from a MAI appraiser with at least five (5) years of experience appraising commercial real property who shall be mutually acceptable to the City and Developer. The City and Developer shall each be responsible for one-half of the cost of the appraisal (the "Purchase Price"). The Purchase Price for the Property shall be adjusted to Zero Dollars (\$0) in consideration of the Extraordinary Costs to be incurred by Developer to provide the public benefits of the Project as further detailed in Section 11.1 below.

1.4. **Title Review.**

1.4.1. Developer shall obtain from the Title Company a preliminary title report (the "Title Report") showing record title to the Property and all liens, claims, encumbrances, easements, rights-of-way, encroachments, reservations, restrictions, and all other matters of record affecting the Property, together with legible copies of all such matters, including vesting and exception instruments listed in the Title Report.

1.4.2. Developer shall have one hundred fifty (150) days from the Effective Date to review and object in writing to any matter shown in or revealed by the Title Report and an ALTA survey of the Land (the "Survey"), which Survey shall be obtained by Developer at Developer's expense (the "Title Review Period"). All such matters to which Developer so objects shall be "Non-Permitted Encumbrances." If no such objection notice is given by Developer during the Title Review Period, all matters reflected on the Title Report and Survey shall be "Permitted Encumbrances," except for judgment liens, construction liens, and other monetary liens against the Property (other than the liens for taxes and assessments which are not delinquent) (collectively, "Monetary Liens"). The City may, but shall not be obligated to, at its cost, cure, remove or insure around all Non-Permitted Encumbrances, and the City shall give Developer written notice of its intent thereof within fifteen (15) Business Days of the City's receipt of Developer's objection notice; provided, however, the City, at its cost shall be obligated to cure,

remove or insure around all Monetary Liens on or before Closing, whether or not Developer objects thereto during the Title Review Period. If the City chooses not to remove, cure or insure around all of the Non-Permitted Encumbrances, and timely written notice thereof is given to Developer, then Developer may either (a) terminate this Agreement by delivering notice to the City within fifteen (15) Business Days after receipt of the City's notice, in which event the Parties will have no further obligations under this Agreement; or (b) purchase the Property subject to the Non-Permitted Encumbrances (other than the Monetary Liens) in which event such Non-Permitted Encumbrances (other than the Monetary Liens) shall thereafter be Permitted Encumbrances.

2. ACCESS; PROPERTY RECORDS; INSPECTION PERIOD.

2.1. **Due Diligence Materials.** Within fifteen (15) days of the Effective Date, the City will provide to Developer copies of all studies, reports, site analyses, engineers certificates, existing surveys, contracts, leases, licenses and permits with respect to the Property that the City has in its possession, or that it has access to, including: (a) title insurance policies; (b) surveys; (c) engineering and environmental reports, studies, surveys and analyses; (d) soil and geological reports and studies; and (e) other written documentation, information and reports related to real property taxes, zoning, use restrictions, road access and appurtenant easements (collectively, the "Due Diligence Materials"). Developer hereby acknowledges receipt of the Due Diligence Materials listed on Schedule 5.1 of the ENA.

2.2. **Due Diligence Period.**

2.2.1. Developer shall have twenty (20) months after the Effective Date of this Agreement (as extended, the "Due Diligence Period"), in which to conduct or have conducted, at its sole cost and expense, all tests (including geotechnical), audits and studies, including economic feasibility studies and any environmental assessments conforming to current ASTM standards satisfying the requirements of "all appropriate inquiries" under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601 et seq., and all such physical inspections and other investigations as Developer deems necessary or desirable in Developer's sole and absolute discretion, to enable Developer to approve all aspects of the Property (collectively, the "Inspections"), including, without limitation, the matters described in Sections 2.2 through 2.8.

2.2.2. Developer and its agents, representatives, consultants, and contractors may enter onto the Property to make such Inspections as Developer deems necessary or desirable, in Developer's sole and absolute discretion, to bring about the satisfaction of this condition, and the City shall reasonably cooperate with Developer to complete any and all such Inspections in a timely manner. If Developer approves its Inspections and the Property in accordance with Section 2.9 below, Developer and Developer's agents, representatives, consultants, and contractors shall still have the right to enter upon the Property to perform additional Inspections and otherwise evaluate and assess the Property for Developer's intended purposes following the expiration of the Due Diligence Period and up to the Closing or earlier termination of this Agreement; *provided, however*, that Developer shall no longer have the right to terminate this Agreement pursuant to Section 2.9 below. Developer shall not conduct any invasive testing on or of the Property without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Developer agrees to indemnify, defend

and hold the City harmless from, and against any claim or lien arising out of Developer's (or its agents', contractors' or consultants') Inspections and tests under this Section 2.2. Developer's obligations pursuant to the preceding sentence shall survive the Closing or termination of this Agreement. Within five Business Days of receipt of a written request from the City, Developer shall provide written evidence of commercial general liability insurance with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Developer shall cause contractors and consultants entering onto the Property on Developer's behalf to carry commercial general liability insurance with commercially reasonable limits based on the work to be performed by such contractor or consultant.

2.2.3. Notwithstanding anything to the contrary set forth in this Section 2 or in this Agreement, as determined by Developer in its sole and absolute discretion, Developer may extend the Due Diligence Period for up to two (2) consecutive sixty (60) day periods (or such longer periods of time as mutually agreed upon in writing by the Parties) by notifying the City in writing of Developer's intent to so extend the Due Diligence Period on or before 11:59 p.m. of the date on which the Due Diligence Period would expire but for Purchaser's extension.

2.3. **CLOMR; Wetlands Mitigation.** A portion of the Property is within the designated floodplain and contains wetlands. The redevelopment of the Property cannot occur without Developer obtaining a conditional letter of map revision ("CLOMR") from FEMA and satisfaction of wetlands requirements under all applicable laws and regulations, including, but not limited to, local regulations applicable to development in the floodplain, which may include relocation of the onsite wetlands to an offsite mitigation site. Developer will exercise diligent efforts to obtain the CLOMR prior to the expiration of the Due Diligence Period, as it may be extended. To the greatest extent practicable and authorized by law, the City shall provide Developer with land sufficient in location and size to satisfy the balanced cut and fill needed to offset the filling of wetlands on the Property. The City shall identify the parcels it will provide for such purposes before expiration of the Due Diligence Period, as it may be extended.

2.4. **City Events MOU.** Developer will work cooperatively and in good faith with the City to agree upon a Memorandum of Understanding ("City Events MOU") prior to the expiration of the Due Diligence Period, as it may be extended, to acknowledge the existence of and impact to the Development from events permitted, organized, or otherwise sanctioned or allowed by the City within the City's right-of-way adjacent to the Project, including, but not limited to, the Milwaukie Farmers Market ("City Events"). In the MOU, Developer will address how it intends to ensure that construction-related impacts to City Events, including, but not limited to, the Milwaukie Farmers Market, are minimized to the greatest extent possible and will agree to cooperate with and support the closure of the Adams Street right-of-way and Main Street to accommodate City Events during construction and into the future.

2.6. **Shared Parking Agreement.** Developer will work cooperatively with City to develop a shared parking agreement ("Shared Parking Agreement") for public use of 40 parking spaces constructed as part of the Project for weekday, daytime public parking. The Parties will execute a memorandum of the Shared Parking Agreement that shall be in a form that can be recorded in the real property records of Clackamas County and that ensures this obligation runs with the land and binds and inures to the benefit of the Parties and their respective successors and assigns.

2.7. Oregon Prevailing Wage Law.

2.7.1. Request for Determination. During the Due Diligence Period and as soon after the Effective Date as reasonably possible, the Parties will work collaboratively to submit this Agreement and other required or relevant documents to the Oregon Bureau of Labor and Industries (“BOLI”) for a determination letter (the “BOLI Determination Letter”) stating that ORS 279C.810—to 279C.870 and the administrative rules adopted thereunder (the “Oregon Prevailing Wage Laws”) do not apply to any portion of the development and construction of the Project.

2.7.2. Determination of Applicability of Oregon Prevailing Wage Laws. If the BOLI Determination Letter states that Oregon Prevailing Wage Laws apply to all or any portion of the Project, and that determination is not reversed following a request for reconsideration, or if neither Party requests reconsideration, then Developer may terminate this Agreement or the City may terminate this Agreement by written notice to Developer pursuant to Section 17. If neither party terminates this Agreement under this Section, and the Developer determines to proceed with the Project, Developer must demonstrate to the City’s reasonable satisfaction that sufficient financial capacity exists to complete the Project.

2.8. Land Use and Design Review Approvals. On or before expiration of the Due Diligence Period, as it may be extended, Developer shall obtain final, non-appealable land use and design review approval for the Project.

2.9. Due Diligence Notice. If Developer is satisfied with the Property, its Inspections, and all Due Diligence Materials, as determined by Developer in its sole and absolute discretion, then Developer shall so notify the City in writing, on or before 11:59 p.m. of the last day of the Due Diligence Period, as it may be extended. If Developer does not timely notify the City of Developer’s satisfaction with its Inspections, the Property and all Due Diligence Materials, this Agreement shall terminate. If Developer does timely notify the City of Developer’s satisfaction with its Inspections, the Property, and all Due Diligence Materials, the Parties shall proceed to Close the purchase and sale of the Property in accordance with the terms of this Agreement.

3. NEW MATTERS. If, at any time prior to the Closing, any of the following occurs or arises (each, a “New Matter”): (a) the Title Company issues a supplement to the Title Report identifying any exception to title not previously disclosed by the Title Report (or a prior supplement thereto); (b) the City updates the Due Diligence Materials to reflect any matter (or any change in any matter) which was not previously disclosed therein (or in a prior update thereto); (c) any Hazardous Substances (defined in Section 4.1.4 below) have been introduced on or under the Property; or (d) Developer is notified of, or otherwise becomes aware of, any condition at, on or under the Property (whether involving Hazardous Substances or otherwise) which could not reasonably have been discovered by Developer during the Due Diligence Period; then, in any of such cases, Developer shall have fifteen (15) Business Days after being given written notice thereof or otherwise becoming aware of the New Matter (the “Evaluation Period”) within which to evaluate the New Matter and elect, in its sole and absolute discretion and as its sole and exclusive remedy, to terminate this Agreement by written notice delivered to the City on or prior to the Closing Date. If Developer elects to so terminate this Agreement, then the Parties will have no further obligations under this Agreement.

4. REPRESENTATIONS AND WARRANTIES.

4.1. **City Representations and Warranties.** To induce Developer to enter into and perform its obligations under this Agreement, the City hereby makes the following representations and warranties with respect to the Property, upon each of which Developer is entitled to rely and has relied, and each of which is true in all material respects as of the Effective Date and shall be true as of the Closing:

4.1.1. The City has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated by this Agreement.

4.1.2. Each of the individuals executing this Agreement on behalf of the City has full power and authority to execute and deliver this Agreement on behalf of the City.

4.1.3. This Agreement has been duly executed and delivered by the City and is a valid and binding obligation of the City, enforceable against the City in accordance with its terms.

4.1.4. Except as has been disclosed to Developer in the Due Diligence Reports, the City has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, released or produced Hazardous Substances on or under the Property, and no underground storage tanks exist on the Property, except in compliance with Environmental Laws currently in effect. The City has not received notice of the Release of any Hazardous Substances on the Property. "Hazardous Substances" means hazardous substances as defined in 42, U.S.C. Section 9601 et seq., 40 C.F.R. 261.3, and hazardous or toxic materials or substances, petroleum products, and any other substances, vapors, or materials regulated under any law, rule or regulation, or order of any governmental body relating to human health, safety, or the environment.

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

4.1.6. There is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending, or to the City's knowledge, threatened, with respect to the Property.

4.1.7. To the City's knowledge, during the City's ownership of the Property, the Property has been operated in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements, including all environmental laws, and the City has not received any notice stating that the Property is in violation thereof.

4.1.8. The City is the legal and beneficial fee simple titleholder to the Property, and the Property is free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, or judgments, except as disclosed by the Title Report.

4.1.9. There are no leases, licenses, occupancy agreements or service contracts that affect the Property that are not terminable at the Closing, and, except as disclosed in the Title Report, there are no options to purchase the Property or rights of first refusal to purchase the Property.

4.1.10. The City's existing infrastructure, including existing water, sanitary sewer and storm water lines, has sufficient capacity or will have sufficient capacity at Closing to accommodate Developer's Project.

4.1.11. Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein 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 the City is a party.

4.1.12. No representation or warranty of the City in this Section 4.1 contains any untrue statement of a material fact or omits a material fact necessary to make the representation or warranty not misleading.

4.2. Developer Representations and Warranties. The Developer hereby makes the following representations and warranties, upon each of which the City is entitled to rely and has relied, and each of which is true in all material respects on the Effective Date and shall be true as of the Closing.

4.2.1. Developer is a limited liability company duly formed and existing in the State of Oregon.

4.2.2. Developer has a Milwaukie Business license.

4.2.3. Developer has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated by this Agreement.

4.2.4. Each of the individuals executing this Agreement on behalf of Developer has full power and authority to execute and deliver this Agreement on behalf of Developer.

4.2.5. This Agreement has been duly executed and delivered by Developer and is a valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

4.2.6. Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein 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.

4.2.7. No representation or warranty of Developer in this Section 4.2 contains any untrue statement of a material fact or omits a material fact necessary to make the representation or warranty not misleading.

4.3. **Survival.** The Parties agree that all representations and warranties contained in this Section 4 shall survive the Closing for a period of twelve (12) months.

4.4. **Notification of Changes.** Prior to Closing, the Parties agree to notify each other immediately, in writing, if they discover that any representation or warranty, though believed to be true when made, is, in fact, not true, or if facts and circumstances underlying their respective representations or warranties, though true when made, have changed. The party receiving such written notification may either (a) terminate the Agreement, in which event the Parties will have no further obligation under this Agreement; or (b) proceed to close the purchase and sale of the Property as set forth in this Agreement, provided, however, that the notifying party cures such false, misleading or changed representation or warranty. In furtherance of the foregoing, if the representation and warranty set forth in Section 4.1.10 is untrue, the City, at no direct or indirect cost or expense to Developer, will upgrade the City's infrastructure as necessary to accommodate the Project.

4.5. **AS IS.** Subject to the City's representations and warranties made in this Agreement, Developer acknowledges that it and its representatives will fully inspect, investigate and familiarize themselves with the Property and all rights associated therewith, or will be provided with an adequate opportunity to do so, and that the Property is being purchased, if at all, by Developer in an "AS IS" condition and with all existing defects, as a result of such Inspections and investigations, and not in reliance on any agreement, understanding, condition, warranty (including, without limitation, warranties of habitability, merchantability or fitness for a particular purpose) or representation made by the City or any agent, employee or principal of the City or any other party (except as otherwise expressly provided in this Agreement) as to the condition of the Property and the rights associated therewith, or as to any other matter whatsoever.

5. **OFFSITE IMPROVEMENTS, UTILITIES, DEMOLITION.**

5.1. **Offsite Improvements.** Developer shall bear the costs for any on-site or off-site transportation improvements required by land use approvals for the Project and any dedications of right-of-way and/or improvements to the public right-of-way adjacent to the Property as required by land use approvals for the Project. This obligation includes, but is not limited to, any requirement for construction of the public sidewalk, public walkway or public plaza space along, adjacent to, or within the Adams Street right-of-way.

5.2. **Utility Service.** Developer shall bear the costs for any installation, connection, or upgrade of utilities necessary to serve the Property from the City's existing infrastructure and shall include separate water meters for the commercial and residential components of the Project as required by code.

5.3. **Demolition of Existing Structure.** Following Closing, Developer shall demolish the existing structure located at 11103 SE Main Street and will bear the full cost of demolition and disposal of the existing structure, which shall be conducted in accordance with all federal, state and local laws and regulations.

5.4. **Environmental Reporting.** During the term of the Agreement, Developer shall promptly provide to the City copies of any Hazardous Substance sampling and testing of the soil or groundwater performed on the Property.

6. DEVELOPMENT.

6.1. **Use of the Property.** Developer covenants and agrees for itself, its successors, and assigns to develop the Property in a manner consistent with the terms of this Agreement.

6.2. **Project Financing.** Developer will exercise commercially reasonable efforts to obtain all financing necessary to complete the Project, which will include, without limitation, the financing necessary to acquire the Property from City and to construct the Project upon the Property.

6.3. **Preliminary Review of Plans and Drawings by the City.**

6.3.1. City Review. The City Project Manager, or their designee, will be responsible for any review provided under this Section 6.3.

6.3.2. Scope of Development and Schedule of Performance. Developer will diligently pursue all work necessary to construct the Project. Developer and City agree that the Scope of Development and the Schedule of Performance set forth in Exhibit C provide the basis for this Agreement. The Construction Plans and Specifications shall be approved by the City Project Manager to confirm that the public benefits outlined in Section 11 of this Agreement are met and that they are consistent with the 100% schematic drawings approved by the City Manager prior to their submittal to the City for land use and/or building permit approval.

6.3.3. Changes to Approved Drawings. If Developer elects to substantially change any drawings or plans after approval by the City Project Manager, Developer shall promptly submit the proposed changes to the City Project Manager for approval. A substantial change shall mean any change that would, as determined by the City Project Manager, have a material impact on the function, appearance or cost of the Project. If needed, any separate or additional administrative approval required by the City under City Code because of a substantial change shall be sought only after the City Project Manager has approved the proposed change.

6.3.4. Community Outreach. The City Project Manager, or their designee, and the Developer will coordinate on any further community outreach efforts regarding the Project, if Developer elects to conduct further outreach efforts. Developer will coordinate with the City Project Manager on its response to all community issues and concerns expressed with regard to the Project. Developer will coordinate with the City Project Manager in advance of any additional community outreach and provide the City with an opportunity to be recognized on any press release, media outreach, or publicity concerning the Project.

6.4. Diligent Completion.

6.4.1. Subject to the terms and conditions of this Agreement, Developer covenants to diligently complete the Project in substantial conformance with the approved Construction Plans and Specifications and to comply with the Schedule of Performance subject to events beyond its control as described in Section 17.2.

6.4.2. The City Project Manager may attend Project meetings from time to time. After Closing, upon the City's request, Developer shall provide the City with status reports concerning the progress of the Project, including, but not limited to, information concerning the design, financing and construction of the Project. The City shall not request nor shall Developer be obligated to provide such progress reports more frequently than quarterly.

7. CITY COVENANTS. The City hereby covenants and agrees that between the Effective Date and Closing, the City, at no cost to Developer, shall: (a) ensure that the Property is maintained in a manner consistent with current practices; (b) maintain reasonable and customary levels of liability and property insurance; (c) not create or acquiesce in the creation of liens or other exceptions to title other than the Permitted Encumbrances; (d) not lease, license, transfer, option, or convey its interest in the Property or any portion thereof nor any right therein, nor shall the City enter into or solicit any agreement granting to any person or entity any option to purchase or rights with respect to the Property or any part thereof; (e) not voluntarily take any action to render any of the representations or warranties of the City set forth in Section 4.1 materially incorrect or untrue; (f) enter into any maintenance, management or service agreement that will remain in force and effect after the Closing Date; and (g) cause the Property to be a separate legal parcel of record, as shown in Exhibit A-2.

8. CONDITIONS PRECEDENT TO CONVEYANCE.

8.1. **Developer's Conditions Precedent.** Developer's obligation to Close under this Agreement is subject to the satisfaction of, or Developer's express written waiver of, the following conditions on or before the Closing. Developer may terminate this Agreement at any time if the following conditions precedent have not been satisfied or, in Developer's sole discretion, expressly waived in writing by Developer prior to Closing:

8.1.1. The City is not in default under 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 the City under this Agreement.

8.1.2. The City shall have fulfilled all obligations under this Agreement, including, without limitation, causing the Property to be a separate legal parcel of record, and the representations and warranties made by the City in Section 4.1 hereof shall have been true and correct in all material respects as of the Effective Date and shall be true and correct in all material respects on and as of the Closing.

8.1.3. No material adverse changes in the physical or legal condition of the Property shall have occurred.

8.1.4. At the Closing, unless waived by Developer, the Title Company shall be irrevocably committed to issue to Developer a 2006 ALTA Extended Owner's policy of title insurance in the amount of the Purchase Price subject only to Permitted Encumbrances (the "Title Policy").

8.1.5. Developer shall have obtained a CLOMR from FEMA.

8.1.6. To the greatest extent practicable and allowed by law, the City shall have identified land owned by the City (other than the Property) to accommodate Developer's obligation for balanced cut and fill required by any regulatory agency. Once determined, the Parties shall agree on the form of an easement to Developer for the land and associated cut and/or fill identified by the City (the "Easement").

8.1.7. Developer shall have reached an agreement with the City on the form of a City Events MOU.

8.1.8. The Parties shall have obtained a Final Determination Letter (as defined in Section 2.7) indicating that Prevailing Wage Requirements (as defined in Section 2.7) do not apply to the Project.

8.1.9. The Developer shall have obtained final, non-appealable land use and design review approval for the Project satisfactory to Developer in Developer's sole discretion.

8.1.10. The Parties shall have agreed on performance timelines for the commencement and completion of construction for the Project.

8.1.11. Developer shall be satisfied (in its sole discretion) with the financial feasibility of the Project, including, without limitations the value of incentives under Section 11.3 below, and shall have obtained a commitment from a lender for financing on terms satisfactory to Developer in its sole discretion.

8.1.13. The Parties have agreed on the terms of the Shared Parking Agreement.

8.1.13. The Parties have agreed on the terms of an affordability covenant to be recorded in the real property records of Clackamas County outlining the Developer's obligations to designate, monitor, and maintain the affordable housing requirements set forth in Section 11.1.1 of this Agreement and ensuring that such requirements run with and burden the Property for a period of not less the thirty (30) years, and are binding on any subsequent purchaser, grantee, owner, or lessee, and any other person or entity having any right, title or interest in the Property, and upon their respective heirs, executors, administrators, devisees, successors and assigns (the "Affordability Covenant").

8.2. **The City's Conditions Precedent.** The City's obligation to Close under this Agreement is subject to the satisfaction of, or the City's express written waiver of, the following conditions on or before the Closing. The City may terminate this Agreement at any time if the following conditions precedent have not been satisfied or, in the City's sole discretion, expressly waived in writing by the City prior to Closing:

8.2.1. Developer is not in default under 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 under this Agreement.

8.2.2. The full Construction Plan Set and Specifications for the Project shall have been approved by the City Project Manager pursuant to Section 6.3.

8.2.3. Developer shall have demonstrated to the City's reasonable satisfaction the financial feasibility of the Project and Developer's financial capacity to complete the Project.

8.2.4. The Parties have agreed on the terms of the Affordability Covenant.

8.2.6. Developer shall have reached an agreement with the City on the form of a City Events MOU.

8.2.7. The Parties have agreed on the terms of the Shared Parking Agreement.

8.2.8. Developer shall have fulfilled all obligations under this Agreement and the representations and warranties made by Developer in Section 4.2 shall have been true and correct in all material respects as of the Effective Date and shall be true and correct in all material respects on and as of the Closing.

8.2.9. The Parties shall have agreed on performance timelines as noted in Exhibit C.

8.2.10. The Developer shall have obtained final, non-appealable land use approval of the Project in substantially the form as shown in the documents approved by the City Project Manager as set forth in Section 6.3.

8.3. Elections Upon Non-Satisfaction of Conditions. If any condition in this Section 8 is not fulfilled to the satisfaction of the benefited Party or Parties as of the Closing Date (as extended, or such later date, if any below), then such benefited Party or Parties may elect as follows:

8.3.1. To terminate this Agreement by and effective upon written notice delivered to the other Party on or before the Closing Date; or

8.3.2. To waive in writing the benefit of that condition and proceed to close in accordance with the terms hereof.

Notwithstanding anything to the contrary set forth in this Agreement, consummation of the Closing under this Agreement shall be deemed a waiver by both Parties of all conditions precedent to Closing.

8.4. 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 the 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. 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.

9. CLOSING.

9.1. **Closing.** The consummation of the purchase and sale of the Property in accordance with the terms of this Agreement (the "Closing" or "Close") shall occur, except as provided otherwise below, on a date selected by both Parties, which date shall be no later than ninety (90) days after the expiration of the Due Diligence Period (as it may be extended pursuant to the provisions in this Section below, the "Closing Date"); *provided, however*, that each of the conditions precedent set forth in Section 8 of this Agreement have been satisfied or expressly waived in writing by Developer or the City, as applicable. Notwithstanding the foregoing, Developer or the City, in each Party's sole and absolute discretion, may extend the Closing Date for up to two (2) consecutive sixty (60) day periods by notifying the other Party in writing of such Party's intent to so extend the Closing Date on or before 11:59 p.m. of the then-applicable Closing Date. The Closing shall occur through escrow at the Title Company. Notwithstanding the foregoing, if any New Matter arises ten (10) or fewer Business Days prior to the then-scheduled Closing Date, the Closing Date shall be extended ten (10) Business Days. At the Closing, Developer and the City shall make the deliveries, take the actions required, and pay the costs as set forth in this Section 9.

9.2. **Deposits and Deliveries By City.** The City shall deposit or cause to be deposited into escrow with the Title Company, or deliver directly to Developer outside of escrow, on or before the Closing Date, the following documents duly executed and acknowledged as required:

9.2.1. A special warranty deed conveying fee simple title to the Property to Developer, subject only to the Permitted Encumbrances (the "Deed");

9.2.2. An assignment of intangibles in a form reasonably acceptable to Developer and the City;

9.2.3. An executed counterpart of the Easement;

9.2.4. An executed counterpart of the City Events MOU;

9.2.5. An executed counterpart of the Affordability Covenant;

9.2.6. An executed counterpart of the Memorandum of this Agreement in the form attached hereto as Exhibit D;

9.2.7. An Affidavit of Non-Foreign Status and any affidavit, certification or other document required by Developer or the Title Company to confirm that the City is exempt from the tax withholding requirements on real property interest transfers under ORS 314.258;

9.2.8. The City's written escrow instructions to close escrow in accordance with the terms of this Agreement, and the City's executed settlement statement as prepared by the Title Company and approved by the City; and

9.2.9. Such other documents, resolutions, consents and affidavits reasonably necessary or advisable to effect the valid consummation of the transaction evidenced by this Agreement, including customary title affidavits and deliveries required by the Title Company in order to issue the Title Policy.

9.3. **Deposits and Deliveries By Developer.** Developer shall deposit or cause to be deposited into escrow with the Title Company, or deliver directly to the City outside of escrow, on or before the Closing Date, each of the following documents duly executed and acknowledged as required and funds:

9.3.1. Cash, wire transfer, cashier's check, or other immediately available funds, which shall equal the Purchase Price and Developer's share of the Closing costs and prorations under Section 9.4;

9.3.3. An executed counterpart of the Easement;

9.3.4. An executed counterpart of the City Events MOU;

9.3.5. An executed counterpart of the Affordability Covenant;

9.3.6. An executed counterpart of the Memorandum of this Agreement in the form attached hereto as Exhibit D; and

9.3.7. Developer's written escrow instructions to close escrow in accordance with the terms of this Agreement, and Developer's executed settlement statement as prepared by the Title Company and approved by Developer.

9.4. **Prorations and Costs**

9.4.1. Closing Costs. The City shall pay: (a) the cost of the Title Policy, as defined below (except the cost of extended coverage or endorsements); (b) the cost of recording any instruments (other than the Deed) required to deliver title to Developer as required under this Agreement; (c) any applicable transfer taxes; and (d) one-half (1/2) of the Title Company's escrow fee. Developer shall pay: (i) the cost of recording the Deed; (ii) the cost of the Title Policy in excess of the cost of ALTA standard owner's coverage, and any endorsements to the Title Policy required by Developer; and (iii) one-half (1/2) of the Title Company's escrow fee.

9.4.2. Prorations. Current non-delinquent real property taxes and assessments and utilities charges shall be pro-rated as of the Closing Date, with the City responsible for all assessments and charges with respect to the period prior to and including the Closing Date and Developer being responsible for assessments and charges with respect to the period after the Closing Date. The City shall be responsible for any deferred taxes or roll-back taxes. The City and Developer hereby agree that if any of the aforesaid prorations cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date, and either Party owing the other Party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other Party.

9.4.3. Utilities. The City shall cause all meters for electricity and other utilities, if any, at the Property to be read on the Closing Date, and the City shall pay all charges for such utility charges that 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.

9.4.4. Other Prorations and Costs. Except as otherwise provided herein, all other items to be prorated, including rents, operating expenses, revenues, and other income, if any, shall be prorated as of the Closing Date. For the purpose of calculating prorations, the Developer shall be deemed to be entitled to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date. Developer and the City shall each pay their own legal and professional fees of other consultants incurred by Developer and the City, respectively.

10. ASSIGNMENT AND TRANSFER PROVISIONS.

10.1. **Restrictions on Transfer of the Property and Assignment of the Agreement.** Except as provided in this Section 10.1. and in Section 0, Developer shall not partially or wholly transfer Developer's interest in this Agreement without the prior written approval of the City, which may be withheld in the City's reasonable discretion.

10.2. **Approved Transfers.** Notwithstanding Section 0 above, and provided that Developer provides the City with copies of all agreements related to the transfer, the City hereby consents to 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 any entity in which the day-to-day operations are ultimately controlled, either directly or indirectly, by Dr. Farid Bolouri through ownership, voting or contractual management rights.

11. PUBLIC BENEFITS; FINANCIAL INCENTIVES.

11.1. **Public Benefit Obligations of Developer.** The Project will provide substantial public benefits including:

11.1.1. Affordable Housing. A minimum of 23 bedrooms or 10 percent of total dwelling units will be restricted to households earning no more than eighty percent (80%) of the area median income or less for a period of no less than thirty (30) years.

11.1.2. Parking. The Project will provide additional needed public parking for the downtown by providing access to 40 of the constructed parking spaces for weekday, daytime public parking.

11.1.3. Walkway. The Project will provide a new landscaped public walkway from Adams Street to McLoughlin Boulevard that will significantly enhance the pedestrian environment.

11.1.4. Retaining Wall. The Project will provide a new retaining wall at the Adams Street right-of-way that will also support the public's access to a planned future public multi-use path underneath Highway 99.

11.1.5. Landscaped Area. The Project will provide a landscaped area south of the building on the Adams Street right-of-way that will be coordinated with the City's planning for Dogwood Park.

11.1.6. Path to Net Zero. The Project will be enrolled in the Energy Trust of Oregon's Path to Net Zero program and Developer will make best efforts to include strategies to reduce the building carbon emissions including but not limited to consideration of photovoltaic systems.

11.2. **Extraordinary Costs**. The extraordinary costs ("Extraordinary Costs") associated with the public benefits set forth in Section 11.1 above and the challenging site conditions include (i) special engineering, permitting and other expenses related to development of the Property in a floodplain (including obtaining a CLOMR, filling the wetlands on the Property, and any required balanced cut and fill on one or more parcels of land owned by the City (other than the Property); (ii) additional costs of design and engineering for constructing a 5-story building as required by the RFQ, rather than the 3-story building allowed by current zoning; (iii) special engineering, design, permitting and construction costs associated with building the Project on the soft soils present at the Property; (iv) the costs of designing, permitting and constructing an elevator and lobby from ground level to the subsurface parking to serve the public pursuant to the Shared Parking Agreement, which is being required by the City through negotiations; (v) the costs of the Project being designed and built to comply with the City's Path to Net Zero program; and (vi) the costs of designing, permitting and constructing a retaining wall on the bank of Kellogg Creek to support a future multiuse path underneath Highway 99, and the public accessway and adjoining landscaping from Adams Street and across the Property to McLoughlin Boulevard. The current estimated total of the Extraordinary Costs is approximately \$4,000,000.00.

11.3. **Form of Public Incentives**. In consideration of the Extraordinary Costs to be incurred by Developer to provide the public benefits set forth in Section 11.1, the City has agreed to provide certain incentives, as follows:

11.3.1. Land Value Write Down. The City has agreed to write down the purchase price of the property to be paid by Developer to Zero Dollars (\$0) to account for a diminishment in value resulting from requirements imposed by the City for increased density and affordable housing and the Extraordinary Costs provided in Section 11.2.

11.3.2. Construction Excise Tax Exemption. The Project will be exempt from the City's construction excise tax ("CET") if the Project meets the criteria set forth in the CET ordinance in effect at the time an application for exemption is filed.

11.3.3. Property Tax Abatement. Upon satisfactory application to and approval by the City to the City's Vertical Housing Tax Abatement Zone Program, the Project shall receive a 10-year exemption from property tax assessments for up to 80% of the value of the improvements in the Project and for an exemption for a portion of the value of the land (which exemption for the land value depends on the number of affordable housing units in the Project).

11.3.4. Energy Incentives. The City Project Manager will support Developer in securing incentives through the Energy Trust of Oregon Path to Net Zero program, and will work with other utility providers such as Portland General Electric to help support incentives for the Project.

11.3.5. Additional Support. The City Project Manager will provide support to Developer on seeking other public funds or providing information and support to Developer for grants and other financial sources, including, without limitation, a grant from Metro for the inclusion of affordable housing units in the Project.

12. DEFAULT AND REMEDIES

12.1. **Default by Developer.**

12.1.1. Default. 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 the City specifying the breach. In the case of a breach that cannot reasonably 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 the City and thereafter diligently pursue such cure to completion.

12.1.2. City's Remedies. In the event of a Developer default under this Agreement that is not timely cured, the City, as its sole and exclusive remedy, may terminate this Agreement by written notice to Developer.

12.2. **Default by the City**. If the City fails to perform its obligations under this Agreement within thirty (30) days after Developer provides written notice of such failure to the City, or, in the case of an obligation that cannot reasonably be performed within a period of thirty (30) days after receipt of notice, the City shall be in default under this Agreement if City does initiate performance within thirty (30) days, or the City fails to Close the sale of the Property pursuant to this Agreement for any reason other than Developer's failure to perform its obligations hereunder, then Developer may (a) enforce this Agreement by specific performance, or (b) terminate this Agreement by notifying the City thereof, in which case Developer shall recover from the City all damages occasioned by such failure. Nothing in this Section shall limit Developer's rights to indemnity or other remedies in the event of a breach of any representation or warranty of the City set forth in this Agreement.

13. CASUALTY AND CONDEMNATION. If, before Closing, all or any part of the Property is damaged or destroyed, or becomes subject to condemnation or eminent domain proceedings, then the City shall promptly notify Developer thereof in writing, and Developer shall have thirty (30) days from receipt of such written notice to elect whether to (a) terminate this Agreement, in which event the Earnest Money will be refunded to Developer and neither Party will have any further obligation under this Agreement; or (b) proceed to Closing pursuant to the terms of this Agreement, in which event the City shall assign to Developer all of the City's right to any proceeds from insurance or any condemnation award in respect of such damage or condemnation.

14. ENTITLEMENTS. So long as this Agreement remains in effect, and subject to the provisions of this Section 14, Developer, at its expense, may pursue and work to obtain all necessary approvals for developing the Property in such manner as Developer shall deem appropriate in Developer's sole discretion. The City agrees that 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 plat, permit, rezoning, change in comprehensive plan, designation, variance or conditional use request, binding site plan, subdivision, local improvement district or other approval which may be required as part of Developer's planned development of the Property; *provided, however,* that such approvals shall (i) not be binding on or effective as to the Property until the Closing Date, or (ii) be capable of being withdrawn if Closing does not occur. The City, at no cost, expense or liability (actual or contingent) to the City, shall reasonably cooperate with 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 required by Developer.

15. NO BROKERS. Developer and the City hereby acknowledge that no broker's commission or finder's fee is payable with regard to the transaction contemplated by this Agreement. Each of Developer and the City (each, an "Indemnitor") agrees to the fullest extent permitted by law to defend with counsel reasonably satisfactory to the other Party and indemnify the other Party from and against all liability, claims, actions, causes of action, suits, demands, damages, or costs of any kind arising from or connected with any broker's or finder's fee or commission or charge claimed to be due any person arising from the Indemnitor's conduct with respect to this Agreement and the transaction contemplated herein. This obligation shall survive and be enforceable following the Closing or termination of this Agreement.

16. CERTIFICATE OF COMPLETION.

16.1. **When Developer is Entitled to Certificate of Completion.** Provided Developer is not then in default of this Agreement, upon substantial completion of the Project as described in this Section 16 on or before the date for completion of the construction set forth in the Schedule of Performance and provided Developer is not in default under this Agreement after the lapse of any applicable notice and cure period, the City will furnish Developer with a Certificate of Completion for the Project substantially in the form set forth in Exhibit E ("Certificate of Completion") hereto.

16.2. **Substantial Completion.** The Project will be deemed to be substantially complete when:

- (i) The City reasonably determines that the construction of all buildings in the Project are complete to the extent set forth in the Construction Plans and Specifications previously approved by the City and punch-list items that do not materially affect the use of the Project for the purposes intended under this Agreement are approved by the City;
- (ii) Any other improvements and remediation required by the terms of the Agreement to have been completed at the time of the Project is complete have been completed in all material respects;

- (iii) The City of Milwaukie has issued a temporary or permanent Certificate of Occupancy with respect to the all buildings in the Project; and
- (iv) The Parties have executed and recorded a memorandum of the Shared Parking Agreement.
- (v) The Parties have executed and recorded the Affordability Covenant.

16.3. **Form and Effect of the Certificate of Completion.** A Certificate of Completion shall be substantially in the form of Exhibit E and in a form that can be recorded in the real property records of Clackamas County. The Certificate of Completion shall provide for termination of obligations under this Agreement and limitation of remedies of the City as expressly provided for in the Certificate of Completion and shall state which terms and conditions of this Agreement are of no further force and effect. The Parties acknowledge that documentation for Project completion and specifically the Certificate of Completion issued under this Agreement, is different from and in addition to the completion notice issued under the AIA Form of Certificate of Completion.

16.4. **Procedure Where the City Refuses to Issue.** If the City refuses or fails to provide a Certificate of Completion in accordance with this Section 16, then the City, within thirty (30) days after written request by Developer for such Certificate of Completion, shall provide Developer with a written statement indicating in detail in what respects Developer has failed to complete the Project in accordance with the provisions of this Section 16 or is otherwise in default of this Agreement and what measures or acts Developer must take or perform to obtain such Certificate of Completion. The City's failure to furnish Developer with such detailed written statement within such thirty (30) day period shall be deemed the City's approval of Developer's request for the Certificate of Completion.

17. MISCELLANEOUS PROVISIONS

17.1. **Notice.** Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered on the earlier of actual delivery or refusal to accept delivery thereof if sent by one of the following means with all applicable delivery and postage charges prepaid: (a) registered or certified U.S. mail, postage prepaid, return receipt requested; (b) personal delivery; (c) nationally recognized overnight courier service (e.g., Federal Express); or (d) if simultaneously delivered by another means allowed hereunder, email, with receipt of confirmation that such transmission has been received.

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

BlackRock Development & Real Estate, LLC
8191 N. Lombard, Suite 113
Portland, OR 97203
Attn: Dr. Farid Bolouri
Email: afbolouri@gmail.com

With a copy to:

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

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

Ann Ober, City Manager
City of Milwaukie
10722 SE Main St
Milwaukie, OR 97222
Email: OberA@milwaukieoregon.gov

With a copy to:

City Attorney
City of Milwaukie
10722 SE Main St
Milwaukie, OR 97222
Email: GerickeJ@milwaukieoregon.gov

A Party may change its address for notices by written notice given to the other Party in accordance with this Section 17.1. Notices may be given by counsel to a Party on behalf of such Party.

17.2. **Force Majeure.** If performance by a party of any portion of this Agreement is made impossible or impracticable by any prevention, delay, or stoppage caused by governmental approvals, governmental shelter in place orders, quarantine, war, acts of terrorism, strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes for those items, governmental actions, civil commotions, fire or other casualty, or other causes beyond the reasonable control of such party, performance by such party for a period equal to the period of that prevention, delay, or stoppage is excused.

17.3. **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.

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

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

17.6. **OFAC.** Each of the City and Developer represent and warrant to one another that is not and shall not become a person or entity with whom the other Party is restricted from doing business under any current or future regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including, but not limited to, those named on OFAC’s Specially Designated and Blocked Persons list) or under any current or future statute, executive order (including, but not limited to, the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transaction or be otherwise associated with such persons or entities.

17.7. **Attorneys’ 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 or non-defaulting Party shall be entitled to recover from the losing or defaulting Party its reasonable attorneys’, paralegals’, accountants’, and other experts’ fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge 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 U.S. Bankruptcy Court, including those related to issues unique to bankruptcy law.

17.8. **Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. 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 Clackamas 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.

17.9. **Calculation of Time.** Unless a time period provided in this Agreement is specifically limited to business days, 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 (each, a “Business Day,” and collectively, “Business Days”).

17.10. **Construction.** In construing this Agreement, (a) 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, (b) the term “including” means including without limitation and (c) the term “shall” means mandatory and imperative.

17.11. **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.

17.12. **Entire Agreement.** This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter.

17.13. **Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties, with the approval of the City Manager.

17.14. **Successors and Assigns.** Subject to Section 10, 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.

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

17.16. **Approval by the City Manager.** Except as provided for elsewhere in this Agreement, whenever consent or approval by the City is required under the terms of this Agreement, all such consents or approvals shall be given by the City Manager or his or her designee in writing.

17.17. **Time of Essence.** Time is of the essence of this Agreement. However, if either Party fails to fulfill an obligation under this Agreement, such Party shall not be deemed to be in default until notice of such failure has been given in accordance with Section 12 and any applicable cure period has passed without cure of the failure.

17.18. **No Third-Party Beneficiary Rights.** No person other than a Party is an intended beneficiary of this Agreement, and no person other than a Party shall have any right to enforce any term of this Agreement.

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

17.20. **STATUTORY WARNING.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, 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.

(Remainder of page intentionally left blank; signatures appear on the following page)

The Parties have executed this Agreement in multiple counterparts as of the Effective Date.


CITY: **CITY OF MILWAUKIE**, an Oregon municipal corporation

By: 
Ann Ober, City Manager

APPROVED AS TO FORM:

City Attorney

DEVELOPER: **BLACKROCK DEVELOPMENT & REAL ESTATE, LLC**,
an Oregon limited liability company

By: 
Printed Name: FARID BILOUMI
Its: Principle

Exhibits:

- Exhibit A-1: Legal Description of the Land
- Exhibit A-2: Depiction of the Land
- Exhibit B: Scope of Development
- EXHIBIT C: Schedule of Performance
- EXHIBIT D: Memorandum of Agreement
- EXHIBIT E: Certificate of Completion

EXHIBIT A-1

LEGAL DESCRIPTION OF THE LAND

PARCEL I:

LOTS 1, 2 AND 3, BLOCK 38, ACCORDING TO THE DULY FILED PLAT OF MILWAUKIE, IN THE CITY OF MILWAUKIE, FILED AUGUST 29, 1865 IN PLAT E, PAGE 108 AND 109, RECORDS OF THE COUNTY OF CLACKAMAS AND THE STATE OF OREGON, EXCEPTING THEREFROM THE WESTERLY 15 FEET.

PARCEL II:

TRACT I: THE WESTERLY 15 FEET OF LOTS 1, 2 AND 3, BLOCK 38, ACCORDING TO THE DULY FILED PLAT OF MILWAUKIE, IN THE CITY OF MILWAUKIE, FILED AUGUST 29, 1865 IN PLAT BOOK E, PAGE 108 AND 109, RECORDS OF THE COUNTY OF CLACKAMAS AND STATE OF OREGON.

TOGETHER WITH THE EASTERLY ONE-HALF OF THE VACATED ALLEY ADJACENT THERETO ON THE WEST.

TRACT II: PART OF BLOCK 38, ACCORDING TO THE DULY FILED PLAT OF MILWAUKIE, IN THE CITY OF MILWAUKIE, FILED AUGUST 29, 1865 IN PLAT BOOK E, PAGES 108 AND 109, RECORDS OF THE COUNTY OF CLACKAMAS AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK; THENCE SOUTH ALONG THE WEST LINE OF SAID BLOCK 200 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID BLOCK; THENCE EAST ALONG THE SOUTH LINE OF SAID BLOCK 105 FEET, MORE OR LESS, TO THE CENTERLINE OF VACATED ALLEY ORIGINALLY RUNNING THROUGH THE MIDDLE OF SAID BLOCK; THENCE NORTH ALONG SAID CENTERLINE TO THE INTERSECTION OF SAID CENTERLINE WITH THE WESTERLY EXTENSION OF THE SOUTH LINE OF LOT 2 OF SAID BLOCK; THENCE EAST 20 FEET, MORE OR LESS, TO THE SOUTH CORNER OF THAT PART OF SAID LOT 2 DESCRIBED IN DEED TO JAMES F. HUNT ET UX RECORDED IN DEED BOOK 627 AT PAGE 176; THENCE NORTH TO THE NORTHWEST CORNER OF SAID HUNT TRACT; THENCE WEST ALONG THE NORTH LINE OF SAID LOT 2 AND THE WESTERLY EXTENSION THEREOF 20 FEET, MORE OR LESS, TO SAID CENTERLINE; THENCE NORTH ALONG SAID CENTERLINE TO THE SOUTH LINE OF THE TRACT DESCRIBED IN DEED TO CHARLES E. LAPHAM ET UX RECORDED IN DEED BOOK 460 AT PAGE 515; THENCE WEST 5 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID LAPHAM TRACT, THENCE NORTH ALONG THE WEST LINE OF SAID LAPHAM TRACT AND THE NORTHERLY EXTENSION THEREOF TO THE NORTH LINE OF SAID BLOCK; THENCE WEST ALONG THE NORTH LINE OF SAID BLOCK TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE RIGHT, TITLE OR INTEREST CONVEYED TO THE CITY OF MILWAUKIE IN AND TO THE NORTH 2.5 FEET THEREOF AS SET FORTH IN DEED RECORDED IN DEED BOOK 409 AT PAGE 154, CLACKAMAS COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION LYING EASTERLY OF THE CENTERLINE OF THE VACATED ALLEY ORIGINALLY RUNNING IN THE NORTHWESTERLY-SOUTHEASTERLY DIRECTION THROUGH SAID BLOCK 38.

{00964166;11}

EXHIBIT A-1

PAGE 26 - Disposition and Development Agreement – Milwaukie

EXHIBIT A-2

DEPICTION OF THE LAND

[attached]

{00964166;11}

EXHIBIT A-2

PAGE 27 - Disposition and Development Agreement – Milwaukie



Data Resource Center/Metro

The information depicted on this map is for general reference only. The City of Milwaukee does not accept any responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product.

1 inch = 50 feet



Milwaukee Planning Dept.
Data: City of Milwaukee GIS;
Metro RLIS
Date: 6/19/2020
Author: Planning Staff

Site Map Coho Site

EXHIBIT B

SCOPE OF DEVELOPMENT

The Developer shall construct a project with the following characteristics:

1. 5-6 Story mixed use building
2. 201 housing units including a minimum of 23 bedrooms or 10 percent of total dwelling units that are income restricted to households earning 80% of the median family income as defined by HUD
3. Ground floor retail space
4. Structured parking of which 40 spaces will be available for weekday, daytime public parking .
5. Public sidewalk and public place space on southern facing side of the building

EXHIBIT C

SCHEDULE OF PERFORMANCE

[attached]

Coho Project Schedule				2019				2020				2021				2022				2023							
				Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4				
DESIGN	START DATE	END DATE	DURATION (WORKING DAYS)																								
DESIGN																											
SCHEMATIC DESIGN (17 weeks)																											
Community Outreach	01/02/19	04/30/19	85d																								
100% SD Set	03/04/19	04/02/19	21d																								
DDA Terms	04/30/19	04/30/19	0																								
DESIGN DEVELOPMENT (16 weeks)																											
50% DD Set	07/06/20	10/23/20	80d																								
Land Use Submittal	08/31/20	08/31/20	0																								
100% DD Set	08/31/20	08/31/20	0																								
	10/23/20	10/23/20	0																								
CONSTRUCTION DOCUMENTS (22 weeks)																											
75% CD Set (Permit Set)	10/26/20	03/26/21	110d																								
100% CD Set	10/26/20	02/17/21	83d																								
	02/18/21	03/26/21	27d																								
CONSTRUCTION																											
100% SD Pricing	05/01/19	05/28/19	20d																								
100% DD Pricing	10/23/20	11/12/20	15d																								
CD Pricing/Contracting	03/29/21	04/23/21	20d																								
Construction (16 mo)	09/23/21	01/18/23	69w																								
AGENCY REVIEW																											
Building Permit Review	02/18/21	05/06/21	56d																								
Land Use for TIS																											
Land Use Review for Building	08/31/20	03/26/21	150d																								
*DDA Approval																											
WETLAND/FEMA																											
Wetland Delineation and Report	01/07/19	02/15/19	30d																								
DSL/Corp Permit	08/31/20	01/25/21	106d																								
GLMOR (Previous Version - no LU Review)	08/31/20	02/24/21	128d																								
CLOMR (Standard Track)	03/29/21	09/22/21	128d																								

EXHIBIT D

MEMORANDUM OF AGREEMENT

[attached]

After recording return to:
City of Milwaukie
Attn: Ann Ober, City Manager
10722 SE Main St.
Milwaukie, OR 97222

Memorandum of Agreement

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (this "Memorandum") shall serve as notice to all persons that the CITY OF MILWAUKIE (the "City"), a municipal corporation of the State of Oregon, with an address of 10722 SE Main St., Milwaukie, Oregon 97222, and BLACKROCK DEVELOPMENT & REAL ESTATE, LLC, an Oregon limited liability company, (together, "Developer") with an address of 8191 N. Lombard, Suite 114., Portland, Oregon 97203, entered into a Disposition and Development Agreement dated as of June 26, 2020 ("Agreement") relating to the real property located in the City of Milwaukie, Clackamas County, Oregon, as more particularly described in Exhibit A attached hereto (the "Property").

Among other things, the Agreement requires the City to convey the Property to Developer upon the satisfaction of certain conditions precedent and requires Developer to construct and complete certain infrastructure and project improvements on the Property, all as more particularly set forth in the Agreement. The City and Developer declare and agree that these covenants described in this paragraph are covenants running with the land and shall pass to and be binding on Developer's successors in title, including, without limitation, any mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property and upon the respective heirs, executors, administrators, devisees, designees, successors, and assigns of any mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property.

After a Certificate of Completion is recorded as to the Project, the City shall thereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the Agreement with respect to the construction of the Project, or as a result of a default in or breach of any provisions of the Agreement by Developer, or by any successors in interest or assigns of Developer, except for those surviving sections described in the Certificate of Completion, if any. .

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

[signatures on following pages]

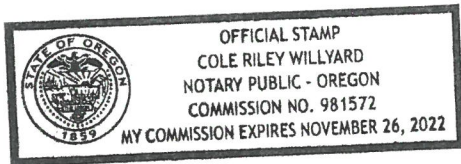
DEVELOPER:

BLACKROCK DEVELOPMENT & REAL ESTATE, LLC,
an Oregon limited liability company

By: [Signature]
Its: Farid Bolouri, Principal

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this 26th day of June, 2020 by Farid Bolouri as the Managing member of Blackrock Development & Real Estate, LLC, an Oregon limited liability company.



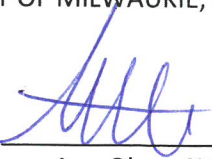
[Signature]
Notary Public for Oregon
My commission expires: 11-26-2022

[signatures continue on following page]

CITY:

CITY OF MILWAUKIE, an Oregon municipal corporation

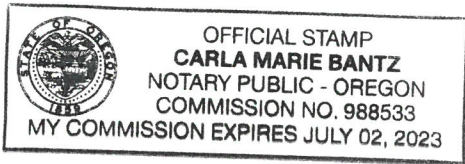
By:



Ann Ober, City Manager

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me this 1st day of July, 2020, by Ann Ober, as the City Manager of the City of Milwaukie, an Oregon municipal corporation.



NOTARY PUBLIC FOR OREGON

My commission Expires: 7-2-2023

EXHIBIT A TO MEMORANDUM OF AGREEMENT

Legal Description of Property

{00964166;11}

EXHIBIT E

CERTIFICATE OF COMPLETION

[attached]

{00964166;11}

CERTIFICATE OF COMPLETION

The **CITY OF MILWAUKIE** (the "City"), a municipal corporation of the State of Oregon, hereby certifies that **BLACKROCK DEVELOPMENT & REAL ESTATE, LLC**, an Oregon limited liability company, ("Developer") has satisfactorily completed construction of the Coho at Kellogg Creek Project as described in the Disposition and Development Agreement dated _____, 2020 between the City and Developer, including subsequent amendments, of which a memorandum was recorded in the Records of Clackamas County, Oregon as Document No. _____, on _____, 20____, (which together are herein called the "DDA") encompassing the property legally described in Exhibit A.

Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 16 of the DDA, the City hereby certifies that, without limitation:

- (i) The construction of all buildings in the Project are completed to the extent set forth in the Construction Plans and Specifications previously approved by the City;
- (ii) The City of Milwaukie has issued a Certificate of Occupancy with respect to the all buildings in the Project; and
- (iii) Any other improvements required by the terms of the DDA to have been completed at the time of the Project is complete have been completed in all material respects.

This Certificate of Completion is and shall be a conclusive determination of the satisfaction of all of the agreements, covenants and conditions contained in the DDA with respect to the obligations of Developer, its successors and assigns, as to the construction of the Project, and such obligations are hereby terminated. Any party acquiring or leasing any portion of the Project shall not (because of such purchase or lease) have any obligation under the DDA with respect to the construction of the Project.

IN WITNESS WHEREOF, PHB has caused this instrument to be executed this ____ day of _____, 202__.

CITY OF MILWAUKIE, an Oregon municipal corporation

By: _____
Ann Ober, City Manager

STATE OF OREGON }
 } ss.
County of Clackamas }

This instrument was acknowledged before me this ____ day of _____, 202__, by Ann Ober, City Manager of the City of Milwaukie, an Oregon municipal corporation.

NOTARY PUBLIC FOR OREGON
My commission Expires: _____

EXHIBIT A TO CERTIFICATE OF COMPLETION

Legal Description

{00964166;11}