

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 7219**

**APPROVING THE TERMS OF A SETTLEMENT AGREEMENT**

**WHEREAS**, on June 14, 2015, through Resolution No. 7131 and on February 10, 2016 through Resolution No. 7170, the Portland Development Commission (“PDC”) Board of Commissioners (“Board”) approved conveying a 0.72 acre parcel of PDC-owned property to Asian Health Services, Inc. (“AHSC”) for the purpose of developing a medical clinic, office space, and community meeting space (“Project”) in the Lents Town Center Urban Renewal Area;

**WHEREAS**, on the same dates, PDC approved providing AHSC with a Commercial Property Redevelopment Loan of \$4,900,000, to help provide partial financing for the AHSC Project;

**WHEREAS**, over the past year, AHSC has prepared a comprehensive design for their Project, which has generated broad community support;

**WHEREAS**, Acorn Foster LLC (“Acorn Foster”), the owner of the adjacent property (“the Acorn Foster Property”) has asserted that the proposed AHSC Project creates parking pressures on the Acorn Foster Property and is not permitted by certain Covenants, Conditions, and Restrictions (“CC&R”) recorded on the Acorn Foster Property and the AHSC Project property;

**WHEREAS**, PDC believes that the AHSC Project is consistent with the CC&R, but recognizes that there are parking pressures on both sites;

**WHEREAS**, PDC has negotiated a Settlement Agreement with Acorn Foster, subject to PDC Board approval, whereby i) the AHSC Project can proceed on schedule, ii) Acorn Foster will approve of the AHSC Project design, and iii) PDC will convey a small parcel of PDC-owned property upon which Acorn Foster can attempt to build additional parking spaces.

**NOW, THEREFORE, BE IT RESOLVED**, that the terms of the Settlement Agreement attached hereto as Exhibit A are hereby approved;

**BE IT FURTHER RESOLVED**, that the Executive Director is authorized to take all necessary actions to implement the Settlement Agreement, including but not limited to executing a deed to convey certain property referenced in the Settlement Agreement; and

**BE IT FURTHER RESOLVED**, that this resolution shall become effective immediately upon its adoption.

Adopted by the Portland Development Commission on November 9, 2016

A handwritten signature in cursive script, appearing to read "Anne Crispino-Taylor".

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Anne Crispino-Taylor, Recording Secretary

**SETTLEMENT AGREEMENT**

**SIGNATURE  
ORIGINAL**

DATED: October 14, 2016

BETWEEN: PORTLAND DEVELOPMENT COMMISSION  
The duly authorized urban renewal agency  
Of the City of Portland  
222 NW Fifth Avenue  
Portland, OR 97209-38123 ("PDC")

AND: ACORN FOSTER, LLC, an Oregon  
limited liability company  
6950 NE Campus Way  
Hillsboro, OR 97124 ("Acorn")

Acorn owns the real property described on attached Exhibit A (the "Acorn Property"). PDC owns the real property described on attached Exhibit B (the "PDC Property"). The PDC Property and the Acorn Property are adjacent. The Acorn Property and the PDC Property are subject to: (i) that Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Reciprocal Easements dated December 22, 2006, and (ii) that Amendment to Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Reciprocal Easements dated December 29, 2010 (collectively the "CCRs").

PDC intends to sell the PDC Property to Asian Health and Service Center, an Oregon nonprofit corporation, so that Asian Health and Service Center may develop a community health center facility on the PDC Property. A dispute has arisen between PDC and Acorn regarding whether Asian Health's proposed development is permissible under the CCRs (the "Dispute"). PDC and Acorn have agreed to resolve that dispute on the terms set forth in this Settlement Agreement (the "Agreement").

NOW THEREFORE, in consideration of the mutual promises of the parties set forth in this Agreement, and for other good and valid consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

**Section 1**     **Amendment of CCRs, Acorn Approved**

1.1     The parties agree to execute, deliver and record that Second Amendment to the CCRs attached as Exhibit C (the "Second Amendment") on the Closing Date defined below.

1.2     Acorn will not object to the proposed Asian Health and Service Center project (the "Asian Health Project"), provided that the Asian Health Project (a) reconfigures the parking lot with not less than 52 spaces, less any lost to accommodate a loading zone, (b) does not increase the floor area of the Asian Health Project to more than 29,000 square feet, (c) does not reduce the width of the existing twenty-four (24) foot wide driveway established pursuant to that recorded Reciprocal Access and Utility Easement Document No. 2006-236466, MCDR, providing ingress and egress to the Acorn Property and the PDC Property from S.E. Foster Road, and (d) the footprint of the Asian Health Project does not exceed 10,000 square feet. The approved site plan for the Acorn Project is described on Exhibits C-1 and C-2 attached to the Second Amendment.

1.3     Acorn agrees, for and on behalf of itself and its affiliates, successors and assigns, and its and their members, partners or shareholders, that none of them will, directly or indirectly, by or through any legal or administrative process or other means, oppose development of the Asian Health Project in the manner described in Sections 1.1 and 1.2.

1.4     Acorn agrees to cooperate with Asian Health and Service Center as reasonably requested in connection with development of the Asian Health Project, including, permitting the temporary closure (for one year during construction) of the drive aisle extending from SE 91st Avenue through the PDC Property, consent to which is hereby granted.

**Section 2**     **Property Conveyance**

2.1     PDC agrees to convey to Acorn that real property described in that Special Warranty Deed attached as Exhibit D (the "Deed"), free and clear of any monetary

encumbrances other than property taxes for periods after the conveyance, which property is adjacent to the Acorn Property and is defined as the "West PDC Tract", on the Closing Date defined below. Acorn, at its own cost and expense, may pursue creating any parking spaces on the West PDC Tract that it desires. PDC and its successors and assigns to the PDC Property will not directly or indirectly oppose any such parking plan seeking Land Use Approvals required to develop the West PDC Tract as a parking lot to serve the Acorn Property.

2.2 PDC makes no representations or warranties regarding the West PDC Tract, other than those set forth in the Deed, including but not limited to representations regarding the physical or environmental condition of the West PDC Tract, the land use regulations applicable to the West PDC Tract, the existence of encroachments or any other matter, or the suitability of the West PDC Tract for Acorn's intended use.

2.3 Acorn accepts the West PDC Tract in its AS IS condition, including all latent or patent defects.

2.4 PDC shall pay for an owner's title insurance policy in the amount of \$150,000 insuring title to the West PDC Tract in Acorn free and clear of any monetary encumbrances other than taxes for periods after the date of the conveyance.

2.5 For up to 24 months after the conveyance of the West PDC Tract to Acorn, at Acorn's request, PDC will purchase the West PDC Tract from Acorn for \$150,000 cash with the same title exceptions that existed when it was conveyed to Acorn.

### Section 3 Closing

3.1 The obligations of the parties set forth in this Agreement are conditioned upon the approval of this Agreement by the Board of Directors of PDC. Upon mutual execution of this Settlement Agreement, PDC intends to call a special meeting of the Board of Directors of PDC to request approval of the terms and conditions set forth in this Agreement and its execution and delivery by PDC. If the Board of Directors of PDC does not approve of this Agreement at such meeting, this Agreement shall automatically be null and void.

3.2 The closing of this settlement shall occur within three (3) business days after the Board of Directors of PDC approves this Agreement (the "Closing Date") at the offices of Ball Janik LLP, 101 SW Main, Suite 1100, Portland, Oregon. The closing shall consist of the following actions:

3.2.1 The parties shall execute an original of the Second Amendment and PDC shall record the executed Second Amendment.

3.2.2 PDC shall execute and deliver the Deed to Acorn.

#### Section 4 Authorization

4.1 Upon approval of this Agreement by the PDC Board of Directors, this Agreement and PDC's performance of its obligations under this Agreement will have been duly authorized by the Board of Directors of PDC.

4.2 Acorn represents and warrants to PDC that this Agreement and Acorn's performance of its obligations under this Agreement have been duly authorized by all of the members of Acorn by execution of a Memorandum of Action, a true copy of which has been provide to PDC.

#### Section 5 Reciprocal Covenant Not To Sue

Each party agrees not to institute any litigation or arbitration against the other party, and/or their affiliates, successors in interest, agents and assigns with respect to any legal or equitable claim arising out of or related to the Dispute, whether or not previously asserted, whether or not known or unknown, and any claim which could have been asserted arising out of or related to the Dispute (each a "Claim"). Each party hereby unconditionally waives, subject only to a party's performance of its other obligations in this Agreement, each and every Claim against the other party.

#### Section 6 Acorn's Obligation to Not Object

Acorn acknowledges that any future development of the PDC Property will require certain land use approvals under Title 33 of the Portland Municipal Code (the "Land Use Approvals"). Acorn agrees that it will not directly or indirectly (through members in Acorn

or persons acting at the direction or on behalf of Acorn or members in Acorn), object to any Land Use Approvals applied for by a grantee or ground lessee of the PDC Property or appeal the Land Use Approvals, unless the Land Use Approvals allow a development or improvements that are in violation of the CCRs as amended by the Second Amendment. Acorn agrees that the opposition submitted by Acorn by means of that certain email from John Skourtes to Benjamin Nielson, City of Portland City Planner, dated September 6, 2016, is hereby withdrawn.

Section 7 PDC's Obligation to Not Object

PDC acknowledges that any future development of the PDC West Tract may require certain land use approvals under Title 33 of the Portland Municipal Code. PDC agrees that it will not directly or indirectly (through its board members or staff or any other persons acting at the direction or on behalf of PDC), object to any Land Use Approvals applied for by Acorn in respect to the PDC West Tract or appeal the Land Use Approvals that may be granted to PDC, or object to curb cuts for such future development.

Section 8 Parking Controls

Each of PDC, and its successors, agents and assigns, and Acorn, and its successors, agents, and assigns, agree to post signage on its respective property limiting parking to its respective customers, patrons, and guests. Such signage will indicate that violators will be towed at the violator's expense. Each of PDC and Acorn will enforce its own parking notifications.

Section 9 Construction Barriers

Construction barriers will be installed on PDC Property during construction of any new buildings thereon (presumably, the Asian Health and Service Center building) so there will be no adverse impact on access to Acorn's Property parking areas from S.E. Foster Road or S.E. Reedway, and no intrusion of construction vehicles or materials onto Acorn's Property or any other interference with business operations on Acorn's Property.

Section 10 General Provisions

10.1 Default, Remedies. In the event that a party breaches its obligation set forth in this Agreement, then the other party shall be entitled to all legal and equitable remedies, including the remedy provided in the Deed.

10.2 Attorney's Fees

10.2.1 Each party acknowledges that it has no claim against the other party for attorney's fees included prior to the date of this Agreement, pursuant to Section 7(e) of the CCRs or otherwise.

10.2.2 In the event of a breach by a party of its obligations under this Agreement and subsequent litigation or arbitration on account of such claimed breach, the prevailing party, as determined by the court or arbitrator, shall be awarded its attorneys' fees, paralegal fees, witness costs, and court costs as determined by the court or arbitrator.

10.3 Amendment

This Agreement may only be modified or amended by a written agreement signed by both parties.

10.4 Complete Agreement

This Agreement constitutes the complete agreement of the parties with respect to the matters covered by this Agreement and supersedes and replaces all prior written or oral agreements on the same matters.

10.5 Exhibits

All exhibits attached to this Agreement are incorporated into the terms of this Agreement as if fully incorporated where such exhibits are referenced.

10.6 Governing Law

This Agreement is governed by the law of the State of Oregon.

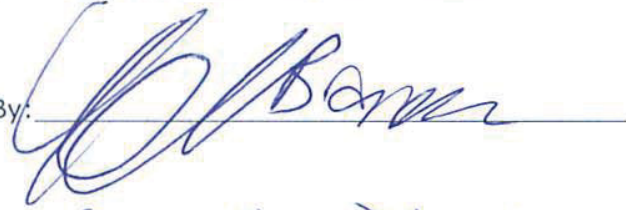


IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective on the date forth above.

PDC:

PORTLAND DEVELOPMENT COMMISSION

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



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

Executive Director  
SFB

Acorn:

ACORN FOSTER, LLC, an Oregon limited liability company

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



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

MGR

**EXHIBIT B**  
**PDC PROPERTY**

**Exhibit "B"**  
**LEGAL DESCRIPTION**  
(Continued)

**NEW PARCEL 2 - ADJUSTED TAX LOT 8000 AND TAX LOTS 8200, 8300, 8500, 8600 AND 8700**

**A.**

A tract of land situated in the Southwest one quarter of Section 16, Township 1 South, Range 2 East of the Willamette Meridian in the City of Portland, County of Multnomah and State of Oregon, said tract being a portion of Lots 8 and 13, Block 3 of the duly recorded plat of BERNHARDT PARK, more particularly described as follows:

Beginning at a point in the West line of Lot "O" of the duly recorded plat of Carlyle Addition at a point that is South 01°37'26" West a distance of 3.00 feet from the Northwest corner of said Lot "O"; thence South 01°37'26" West along the West line of Lots "O" and "N", a distance of 97.00 feet to the Northwest corner of Lot "M" of said Carlyle Addition; thence North 86°39'02" West along the Westerly extension of said North line a distance of 10.00 feet to a point; thence South 01°37'26" West, parallel with the West line of Carlyle Addition a distance of 99.66 feet to a point in the North line of that tract denoted as Parcel II, conveyed to the City of Portland for right of way purposes and recorded October 5, 2001, as Document No. 2001-158483, Multnomah County Deed Records; thence North 62°49'26" West along said North line a distance of 8.09 feet; thence North 66°06'44" West along said North line a distance of 86.17 feet; thence North 65°24'30" West along said North line a distance of 29.83 feet to a point; thence North 24°35'30" East, at right angles to the North line of S.B. Foster Road, a distance of 163.36 feet to a point on the North line of the South 34.50 feet of Lot 13, Block 3, Bernhardt Park; thence South 86°39'02" East along said North line a distance of 60.79 feet to the point of beginning.

**B.**

Lot "M", CARLYLE ADDITION, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH that portion of the Easterly 10 feet of Lot 8, Block 3, BERNHARDT PARK, a recorded plat lying adjacent and West of the West line of aforesaid Lot "M", CARLYLE ADDITION, as cut off by the Westerly extension of the North and South lot lines of said Lot "M".

EXCEPTING THEREFROM that portion of said Lot "M" conveyed to the City of Portland by Deed for right-of-way purposes, recorded October 5, 2001, Recorder's Fee No. 2001-158483, Multnomah County Records.

**C.**

Lot "N", CARLYLE ADDITION, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM that portion of said Lot "N" conveyed to the City of Portland by Deed for right-of-way purposes, recorded October 5, 2001, Recorder's Fee No. 2001-158483, Multnomah County Records.

**D.**

**LEGAL DESCRIPTION**  
(Continued)

A tract of land in the Southwest one-quarter of Section 16, Township 1 South, Range 2 East, Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, said tract of land being a portion of Lot "O" of the duly recorded plat of CARLYLE ADDITION, said tract of land being more particularly described as follows:

The South 47.00 feet of said Lot "O", CARLYLE ADDITION, EXCEPT that portion lying within Parcel III of the Deed for Right-of-Way purposes conveyed to the City of Portland by Document No. 2001-158483, recorded October 5, 2001.

B.

Lot "L" and the West 10.4 feet of Lot "K", CARLYLE ADDITION, in the City of Portland, County of Multnomah and State of Oregon;

EXCEPTING THEREFROM that portion of said Lots "L" and "K" conveyed to the City of Portland by Deed for right-of-way purposes, recorded October 5, 2001, Recorder's Fee No. 2001-158483, Multnomah County Records.

F.

The East 10 feet of Lot 8, Block 3, BEHNHARDT PARK, in the City of Portland, County of Multnomah and State of Oregon, lying adjacent and West of the West line of Lot "L", Carlyle Addition, as cut off by the Westerly extension of the North and South lot lines of said Lot "L";

EXCEPTING THEREFROM that portion of said Lot 8, conveyed to the City of Portland by Deed for right-of-way purposes, recorded October 5, 2001, Recorder's Fee No. 2001-158483, Multnomah County Records.

**PARCEL 3 - AN EASEMENT PARCEL**

An easement for access, being 24 feet wide, the centerline of said easement to run between Parcel 1 B and Parcel 2 A above and as shown on the Property Line Adjustment Application which was recorded April 28, 2006, as Recorder's Fee No. 2006-078262.

**RESOLUTION NO. 7219**

**RESOLUTION TITLE:**

APPROVING THE TERMS OF A SETTLEMENT AGREEMENT


Adopted by the Portland Development Commission on November 9, 2016

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Tom Kelly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Mark Edlen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Alisha Moreland-Capuia MD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner William Myers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Gustavo J. Cruz, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

**CERTIFICATION**

**The undersigned hereby certifies that:**

*The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and as duly recorded in the official minutes of the meeting.*

	<b>Date:</b>  November 10, 2016
<b>Anne Crispino-Taylor, Recording Secretary</b>	