

**AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY**

**IN**

**NORTH MACADAM URBAN RENEWAL AREA**

**PORTLAND STATE UNIVERSITY**

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THIS AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY (this "Agreement") is made as of April 3 2015, by and between the **CITY OF PORTLAND** (the "City"), a municipal corporation of the State of Oregon, acting by and through the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland ("PDC"), and **THE STATE OF OREGON, ACTING BY AND THROUGH PORTLAND STATE UNIVERSITY** ("PSU"). PDC and PSU are referred to jointly in this Agreement as "Parties" and individually as a "Party".

**RECITALS**

A. PDC is the duly authorized urban renewal agency of the City of Portland, Oregon, and administers the City's urban renewal plans;

B. Pursuant to the Charter of the City of Portland and ORS Chapter 457, the City adopted the North Macadam Urban Renewal Plan on August 11, 1999, by Ordinance No. 173651, (the "UR Plan"). The UR Plan established the North Macadam Urban Renewal Area ("URA") within which PDC will focus efforts to encourage private development, cure blight, and enhance economic development opportunities;

C. PSU, the progenitor of the University District amendment to the Central City Plan as approved on July 1, 1995 by the Portland City Council (the "Amendment"), is Oregon's largest university; a major provider of quality accessible higher education, nationally recognized for community engagement, graduate education, research, and international exchange; and a major employer and contributor to economic activity in Downtown Portland;

D. In November 2002, PSU and PDC formalized a partnership via an Intergovernmental Agreement, whereby they agreed to collaborate to promote development and vitality within the University District, including through the transfer of urban renewal funds in exchange for real property within the University District (Resolutions #5930 and #5938);

E. In June 2007, the Parties entered into an Intergovernmental Agreement ("IGA") setting forth general terms and conditions to cooperate in developing a long-term plan to guide PSU Projects; reflect the growth of PSU that occurred since the Amendment; and coordinate with related City

planning and development efforts, including the Central Portland Plan, assessment of the future of urban renewal in Downtown, and development of a regional economic development strategy;

F. In June 2010, PSU completed the University District Framework Plan which outlines the framework for future growth to realize its vision as a sustainable, urban research University;

G. In May 2012, the Portland City Council approved the Education District Urban Renewal Area by Ordinance No. 185327 to partner with PSU through a new urban renewal area focused on expanding PSU as a leading engine of economic growth and prosperity for the Portland region;

H. In May 2014, by Resolution No. 370372 as Amended, Portland City Council directed PDC to work to reduce impact of urban renewal on taxing jurisdictions while providing resources to meet the City's community development, economic and affordable housing goals, and support PSU, through a proposed package of urban renewal amendments, including closing the Education Urban Renewal Area and expanding the North Macadam Urban Renewal Area. See Exhibit A – Proposed Amended North Macadam Renewal Area

I. This Agreement will establish the parameters that will foster development or redevelopment efforts within an amended North Macadam Urban Renewal Area, and which amendment is anticipated to be acted upon by the Portland Development Commission, and City Council concurrent with consideration of this Agreement (“Proposed URA Amendment”);

J. The subjects of this Agreement are multi-year real estate developments or redevelopments (“Project” or “Projects” as shown in attached Exhibit B) intended to provide the City of Portland with a focused mechanism to redress blight in accord with and in furtherance of the amended North Macadam Urban Renewal Area Plan. The Projects will continue to advance the mutually beneficial relationships between the City, PDC and PSU. The Parties will incorporate mutual respect and partnership in all aspects of the Projects. The Projects will showcase and promote sustainability, community development and public engagement;

K. In general, and subject to the terms below, PSU shall take steps to prepare for and then to develop or redevelop real estate. In general and subject to the terms below, PDC shall contribute either real estate or funding associated with tax increment generated pursuant to ORS § 457 et al. Funding associated with the tax increment generated under ORS § 457 shall be referenced herein as “TIF”;

L. This Agreement documents a multi-faceted approach involving PDC and PSU in a cooperative undertaking to realize each party's objectives for the future development and use of property and occurrences of activities in the amended North Macadam Urban Renewal Area including the University District;

M. In this Agreement, PDC is acting in the capacity as an Urban Renewal Agency, focused on the improvement and revitalization of the general area of the proposed Projects through private development and for-profit uses;

N. PSU's objectives are to find opportunities to join with PDC in multi-use, multi-purpose Projects, where private enterprises (which will pay property taxes) can be encouraged to locate in conjunction with higher education facilities. This is consistent with PSU's mission of inter-relating with its urban environment, using that urban environment as an extension of PSU's academic environment;

O. The below-listed Projects present a wide array of project types both in their objectives and their financing. None of the Projects is exclusively oriented to achieving the specific objectives of PDC or PSU. Notwithstanding PSU's involvement or cooperation, there will be no Project which is undertaken or developed or used exclusively for educational purposes. This integration with private enterprise uses, will mean: (a) PSU will allow certain uses or locations in a Project that do not have any education purpose; (b) buildings or other improvements will not be 100% property tax exempt; (c) PDC will impose restrictions on the use of any property or funds it provides for a Project, so that PDC assets are committed uses that are not exclusively for education and will be so utilized for the useful life of the asset, as referenced in Section 2.1;

P. The parties acknowledge that without the limits placed upon PDC funds and PDC resources committed in this Agreement, PDC would not participate or fund the Projects.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

## AGREEMENT

### 1. DEFINED TERMS

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Agreement. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. Defined terms may be used in the singular or the plural as defined in the attached Exhibit C.

### 2. PROVISIONS OF GENERAL APPLICATION

- 2.1. **Non-Educational Use of PDC Contributions.** Where, pursuant to this Agreement, PDC is called upon to commit real estate, funds, other value or to forgive value then the execution of that commitment shall not be used by PSU exclusively for educational services, including support services and shall be accounted for by PDC consistent with the provisions of in Article XI, Section 11b(1) of the Oregon Constitution and ORS 310.060 . PDC can require, in addition to this Agreement, the execution of documentation by PSU confirming and restricting the ongoing use of such funds and/or property. More, specifically, the parties intend that no part of the funds or the value of the property provided by PDC shall be used exclusively for education purposes but rather will be incorporated into a project in conjunction with PSU funds in a way which preserves the use of those assets contributed by PDC for non-education purposes.
  
- 2.2. **Availability of TIF Funding.** PDC funding will be dependent upon the availability of URA tax increment financing (TIF) pursuant to Oregon Revised Statue Chapter 457 and will be determined by the City Debt Management Office. Funding availability will be contingent upon tax collections and the completion of ad valorem tax-generating Projects within the URA that are identified by PDC as the highest priority. The priority of Projects to which PDC will dedicate TIF will be driven by a Project's anticipated ability to most efficiently generate new tax increment revenue within the URA in order to meet the need for resources within the URA. All anticipated expenditures of URA TIF under this Agreement are subject to the successful performance of the URA as modeled. URA modeling relies on Portland State University ("PSU"), Oregon Health Sciences University ("OHSU"), and ZRZ Realty Company Inc. ("ZRZ") proceeding according to schedule with the development of projects on their respective property that will, when finished, be taxable and that will generate TIF consistent with attached Exhibit D - Funding Strategy Plan.

- 2.3. TIF Eligibility.** The dedication of PDC value in any form - real estate, direct funding or forgiven payments – to a Project shall require PDC approval that such application of value is in accord with the provisions of Oregon Revised Statutes Chapter 457. The Projects envision PDC investments that are targeted to development of commercial and/or ground-floor retail space(s) to create an active ground floor experience.
- 2.4. Development Financing.** Portland Development Commission is uniquely able to access or to coordinate sources of development financing. Depending upon the particular requirements and conditions of a project, PDC may be able to offer or aid in accessing financing that is comparable to or superior to that which PSU, or a project development partner, is considering. Consequently, PSU and any development partner shall consult with PDC and provide PDC information at a time sufficiently early so as to determine if a PDC source of alternative financing may be available for a particular project under this agreement.
- 2.5. Anticipated IGAs.** The Projects will each require a more detailed, Project-specific intergovernmental agreement (“IGA”) or other legal agreement to complement this Agreement, including a separate City of Portland-PSU agreement for a joint commercial Project further detailed in Sections 3.1, 3.3. and 3.4
- 2.6. State Funding.** References in this Agreement to “State Funding” mean sufficient funds approved by the State legislature to augment other financial resources so as to make a particular Project financially feasible.
- 2.7. Intent to Implement.** In some instances the initiation of Projects described in this section are dependent upon market conditions, PSU needs, and PSU’s and PDC’s financial capabilities. Nevertheless, the Parties intend to advance each Project as soon as is practicable and as outlined in the Project Schedule, see Exhibit E, contemplated by this Agreement. In most instances the Parties agree to undertake those activities that would best advance a Project to readiness in terms of commitment to construction. Such activities may include but are not limited to programming, issuance of requests for proposals, evaluation and selection of proposals, funding, and design and permitting. A Party’s obligation to undertake a specific activity or obligation set forth in this Agreement may be contingent upon the occurrence of conditions; some of which may be outside the control of such Party. Although certain conditions are set forth in this Agreement, the Parties recognize that the activities contemplated in this Agreement could be subject to additional conditions not specified herein, including, but not limited to, commitment of funding resources such as matching requirements for state issued bonds, availability of staffing resources, successful completion of applicable procurement processes, obtainment of necessary approvals (e.g. state legislature and/or treasurer, governing bodies, and regulatory bodies, as applicable), legislative conditions, and availability of appropriate entitlements. Each Party shall take reasonable actions to satisfy such conditions precedent that are within its control. Neither Party, however, will be

responsible for the performance of an obligation that is subject to a condition precedent that, without fault or negligence of the Party to whom the obligation would apply, does not occur.

2.8. **“Commence Construction” or “Commencement of Construction”** and words of similar import shall mean the date on which PSU has begun, or has caused a partner, developer or contractor to begin mass excavation, major geotechnical, major utility, full lateral foundation or other major, related construction work on the Property that indicates PSU is committed to Project completion.

### 3. PROJECTS

3.1 **Graduate School of Education:** PSU has identified the new Graduate School of Education proposed to be sited at the Extended Studies Building (“XSB”) as a priority candidate for State funding. PSU has requested State funding for development. The City of Portland’s Office of Management and Finance (COP) and PSU have executed a Letter of Intent (LOI), attached as Exhibit F, indicating a desire on the part of COP to secure from PSU at least 30,000 square feet of commercial office space. It is the intent of PSU and COP that PSU will construct a new building, which may include a remodel of the existing XSB, to create a high density urban mixed-use office and classroom building for the purpose of PSU and COP cooperative partnership, occupancy and uses (Graduate School of Education Project).

3.1.1 **Site Location/Description:** The Graduate School of Education Project site is a half block located at SW Park Avenue and SW Mill Street described as:

Parcel 1:  
Tax Map: 1S 1E 4AD Tax Lot: 7200  
Address: 901-917 SW Mill St.

Parcel 2:  
Tax Map: 1S 1E 4AD Tax Lot: 7300  
Address: 1633 SW Park Ave.

3.1.2 **State Funding:** PSU has submitted the Project to the Higher Education Coordinating Commission with the intent of obtaining State Funding assistance. A decision on whether the Graduate School of Education Project will be granted such State funding is expected to be made in June 2015. The City and PSU are expected to enter into a more specific Project related IGA pursuant to that funding determination with an ownership agreement to follow.

3.1.3 **Approved State Funding Decision:** If State Funding is approved for the Graduate School of Education Project in June 2015 and other funds, such as matching requirements for state issued bonds, sufficient to complete the financing of the Project

are committed and available, then PSU shall undertake the following development activity:

**3.1.3.1** Commence construction design and permitting in 2016;

**3.1.3.2** Subject to diligent completion of design and obtaining all requisite permits, commence construction in 2017, with COP and State bond funds issued shortly thereafter; and

**3.1.3.3** Obtain occupancy permits and, subject to the City issuing necessary occupancy permits, make space available to COP by August 2018 in accord with the LOI.

**3.1.4 State Funding Decision:** If State Funding is not approved for the School of Education Project in July 2015 then PSU shall follow development activity as outlined in section 3.3.3.

**3.2 School of Business Administration:** The School of Business Administration Project is an improvement to property located at SW 6th and SW Harrison Street, which will include large scale renovations to approximately 97,000 gross square feet (GSF) of existing building currently housing the School of Business Administration, and the addition of approximately 38,000 GSF on the northwest corner of the site.

**3.2.1 Site Location/Description:** The School of Business Administration Project site is the full block located at SW 6<sup>th</sup> and SW Harrison Street described as:

Parcels 1 – 8:

Tax Maps: 1S 1E 04DA

Tax Lots: 5400, 5500, 5600, 5700, 5800, 5900, and 6000 Original Addresses: 631 SW Harrison St and 631 WI/ SW Harrison St

**3.2.2 TIF Funding.** As early as resources allow but not later than June 30, 2017 if resources are available, PDC will provide \$2 million in TIF funding to assist in PSU's renovation of the School of Business Administration Project via an IGA or alternative agreement form. PDC may transfer the funding directly to PSU or to a private development partner responsible for the construction or funding of not less than \$2 million in taxable, TIF-generating space.

**3.2.3 Plan.** The School of Business Administration Project shall include development consistent with PSU's 2010 University District Framework Plan, including creating an active ground floor use which engages with the public realm and adjacent University Plaza.

**3.2.4 Unused TIF.** If less than \$2 million is needed for the School of Business Administration Project then the unused aspect of that fund shall be allocated by PDC, in consultation with PSU, to other PSU/commercial related projects in the Urban Renewal Area.

**3.3 Jasmine Project:** This Project anticipates the development of a key property within the amended North Macadam Urban Renewal Area to foster an opportunity for a multi-use development by PSU, or PSU with a development partner. Such mixed-use development is anticipated to realize the highest and best use of the development potential as entitled at the time of development for PSU use and/or separate but complementary commercial use. The Project will promote an active ground-level, and pedestrian activity, including connections to PSU's campus and surrounding neighborhood, and create a varied and engaging public realm as outlined in the University District Framework Plan. This key location will exemplify the bridge between PSU and the greater city. Upon the execution of this Agreement PSU's rental rate for the property known as the PSU Carpool Lot under the existing lease shall be reduced to \$0. The property known as the Jasmine Block currently maintained by PDC will become the sole responsibility of PSU for maintenance, upkeep, payment of utilities, taxes, insurance, special assessments and any other obligations under an anticipated amended lease agreement.

**3.3.1 Site Location/Description:** The Jasmine Block consists of two separate properties known as the PSU Parking Lot and the Jasmine Restaurant:

Parcel 1: PSU Parking Lot:

Tax Map: 1S 1E 03CB Tax Lot: 2600

Site Address: 5th & SW Montgomery

Parcel 2: Jasmine Restaurant:

Tax Map: 1S 1E 03CB Tax Lot: 2800

Site Address: 401 SW Harrison

**3.3.2 Jasmine Project with Private Partner (Jasmine Private Option):** In the event that State funding for the Graduate School of Education Project is approved in June 2015 then PSU agrees to reprioritize its capital project list to advance the Jasmine Project by refining the Project concept to include: 1) a development program that achieve the highest and best use of development potential for academic or commercial uses and 2) development of commercial, office, retail or other space which is distinct from the educational uses that is taxable and of a size that reflects not less than the fair market value of the land contributed by PDC.

**3.3.2.1 Development Solicitation.** PSU shall collaborate with PDC to define a request for development concept and/or owner/developer(s) (RFP). The RFP shall be issued no later than December 2015. Pursuant to the RFP, PSU shall select a development concept by the spring of 2016 and enter into a

memorandum of understanding (MOU) with the partner(s), if any are selected.

- 3.3.2.2 Feasibility Assessment.** In 2016 PSU, in collaboration with PDC, shall assess the feasibility of proceeding with the Jasmine Project and elect whether to advance the Fourth/Lincoln Project in lieu of Jasmine in accord with section 3.4.8 below.
- 3.3.2.3 Submit for State Funding.** When PSU decides to proceed with the Jasmine Project, PSU shall seek State Funding for the Jasmine Project in the 2017 legislative session unless PSU identifies alternative funding sources for the PSU portion of the Project.
- 3.3.2.4 PDC Support.** PDC will provide non-financial assistance in structuring the disposition and transfer of the site to facilitate financing and development of the Project so as to provide as close to a market rate of return to PSU as possible and to add taxable value for generation of TIF revenue.
- 3.3.2.5 Successful State Funding.** If State Funding for the Jasmine Project is approved in July 2017 and other funds, such as matching requirements for state issued bonds, sufficient to complete the financing of the Project are committed and available, then PSU shall:
  - 3.3.2.5.1** Commence Project design in 2018;
  - 3.3.2.5.2** Subject to diligent completion of design and obtaining all requisite permits, commence Project construction no later than fall 2019; and
  - 3.3.2.5.3** Obtain occupancy permits for the Project in 2020.
- 3.3.2.6 Sale of Real Estate Rights to Support Development.** If State Funding is approved in 2017 then PDC will convey the right to develop the Project either pursuant to an IGA, or via another agreement form by:
  - 3.3.2.6.1 Direct Sale.** PDC may sell the Project site directly to PSU for a purchase price equal to the fair market value of the site. PSU shall at closing, satisfy the purchase price by tendering a promissory note payable to PDC reflecting an obligation equal to the purchase price. Said note shall be due on January 1, 2025 if the Project has not been constructed and occupancy permits obtained. Said note shall be forgivable upon PDC's confirmation

that a public benefit of equivalent value to the note obligation will be created. The commencement of construction of the Project prior to the due date of the note, including a TIF-generating element of value not less than the purchase price, shall be deemed an equivalent public benefit justifying forgiveness of the note. Subject to PSU obtaining all necessary approvals, (e.g. state legislature, and/or treasurer, governing bodies, and regulatory bodies as applicable), the note may be secured by a deed of trust on the Project.

**3.3.2.6.2 Appraisal.** As part of real estate title/rights sale or transfer, PDC shall contract for new appraisals for each parcel prior to transfer. PDC shall pay for the cost of such appraisals. The property is currently considered to be valued at approximately \$4 million.

**3.3.2.7 Post Transfer Obligations.** The transfer of title or rights to PSU or to another entity in support of PSU shall also be conditioned upon the following predevelopment and construction schedule which shall be reflected in the deed until such time as satisfied:

**3.3.2.7.1** PSU commencing construction design by the conclusion of 2018;

**3.3.2.7.2** Subject to the approval of State Funding, and the commitment of other funds, such as matching requirements for state issued bonds, sufficient to complete the financing of the Project and subject to the City issuing all requisite permits, PSU shall have commenced Project construction by fall 2019; and

**3.3.2.7.3** PSU obtaining occupancy permits for the Project by the end to 2020.

**3.3.2.8 Unsuccessful State Funding.** If State Funding is not approved in 2017 then PSU shall continue to seek State Funding for the Project in the next available legislative cycle and repeat such efforts until State Funding is approved during the Term of this Agreement. PDC shall transfer real estate rights in accord with section 3.3.2.6 above to support development following the successful approval of State Funding.

**3.3.2.9 PDC Repurchase Rights.** Should transfer of the property occur and Project construction has not commenced by January 31, 2025, the parcel shall, at PDC's election be exclusively available to PDC for repurchase. This repurchase interest shall be reflected in a recording against title and may,

with PDC's approval, be made subordinate to the interests of intended developers or providers of financing for development. If PDC elects to exercise the right of repurchase under this provision then PDC shall pay PSU an amount equal to one half the amount of real estate appreciation between the date the property transferred to PSU and the date the property transferred back to PDC. An appraisal of the property shall be commissioned and paid for by PDC and PSU in equal shares so as to aid in the calculation of the repurchase payment.

**3.3.2.10 PSU Right of First Refusal.** As of June 30, 2025, should this Project not have moved forward as contemplated in the DDA, then before PDC may sell the property to a third party, PDC shall first offer the property to PSU for fair market value. PSU shall have 60 days during which to accept such offer. If PSU does not accept the offer within the 60-day period, PDC shall be free to pursue a third-party offer.

**3.3.3 Jasmine Project with Public Partner (Jasmine Public Option):** In the event that State Funding for the Graduate School of Education Project at the XSB property is not approved in July 2015, then PSU agrees to prioritize its capital improvement list to advance the Jasmine Project by refining the Project concept to include: 1) development of not less than 30,000 GSF of space for COP use to accommodate the terms of the LOI, 2) development of 50,000 to 100,000 square feet for academic uses and 3) the development of commercial, office, retail or other space which is taxable in a size that reflects not less than the value of the land contributed by PDC.

**3.3.3.1 Feasibility Assessment.** In 2016 PSU shall assesses the feasibility of proceeding with the Jasmine Project and elect whether to advance the Fourth/Lincoln Project in lieu of Jasmine in accord with section 3.4.8 below.

**3.3.3.2 Submit for State Funding.** When PSU decides to proceed with the Jasmine Project, PSU shall seek State Funding for the Jasmine Project in the 2017 legislative session unless PSU identifies alternative funding sources for the PSU portion of the Project.

**3.3.3.3 PDC Support.** PDC will provide non-financial assistance in structuring the disposition and transfer of the site to facilitate financing and development of the Project so as to provide as close to a market rate of return to PSU as possible and to add taxable value for generation of TIF revenue.

**3.3.3.4 Successful State Funding.** If State Funding for the Jasmine Project is approved in June 2017 and other funds, such as matching requirements for

state issued bonds, sufficient to complete the financing of the Project are committed and available, then PSU shall:

**3.3.3.4.1** Commence Project design in 2018;

**3.3.3.4.2** Subject to completion of design and obtaining all requisite permits, commence Project construction no later than fall 2019; and

**3.3.3.4.3** Obtain occupancy permits for the Project in 2020.

**3.3.3.5 Sale of Real Estate Rights to Support Development.** If State Funding is approved in 2017 then PDC will convey the right to develop the Project either pursuant to an IGA or via another agreement form by:

**3.3.3.5.1 Direct Sale.** PDC may sell the Project site directly to PSU for a purchase price equal to the fair market value of the site. PSU shall at closing, satisfy the purchase price by tendering a promissory note payable to PDC reflecting an obligation equal to the purchase price. Said note shall be due on January 1, 2025 if the Project has not been constructed and occupancy permits obtained. Said note shall be forgivable upon PDC's confirmation that a public benefit of equivalent value to the note obligation will be created. The commencement of construction of the Project prior to the due date of the note, including a TIF-generating element of value not less than the purchase price, shall be deemed an equivalent public benefit justifying forgiveness of the note. Subject to PSU obtaining all necessary approvals (e.g. state legislature and/or treasurer, governing bodies, and regulatory bodies, as applicable), the note may be secured by a deed of trust on the Project.

**3.3.3.5.2 Appraisal.** As part of real estate rights transfer, PDC shall contract for new appraisals for each parcel prior to transfer. PDC shall pay for the cost of such appraisals. The property is currently considered to be valued at approximately \$4 million.

**3.3.3.6 Post Transfer Obligations.** The transfer of title or rights to PSU or to another entity in support of PSU shall also be conditioned upon the following predevelopment and construction schedule which shall be reflected in the deed until such time as satisfied:



alone multi-use building or in conjunction with the adjacent PSU-owned “Art Building” property. The Fourth/Lincoln Project shall be developed in a manner consistent with PSU’s 2010 University District Framework Plan. The Project shall include a commercial/retail, taxable element of sufficient size so as to be consistent with the limitations set forth under section 2 of this agreement. It is contemplated within 60 days of execution of this DDA PDC, PSU and TriMet will enter into a Memorandum of Understanding (MOU) for the development of the property.

**3.4.1 Site Location/Description:** The Fourth /Lincoln Project is located on three adjacent parcels:

Parcel 1:

Tax Map: 1S 1E 04DD Tax Lot: 100  
Site Address: 2033 SW 4<sup>th</sup>

Parcel 2:

Tax Map: 1S 1E 04DD Tax Lot: 501  
Site Address: SW Lincoln Ave

Parcel 3:

Tax Map: 1S 1E 04DD Tax Lot: 400  
Site Address: 2032 SW 5<sup>th</sup> Ave

**3.4.2 Interim Uses:** For the period between 2014 and 2016, PSU and TriMet will jointly lead a process to identify temporary uses for the Budget properties, including, but not limited to, installation(s) of art exhibits. The 2014 through 2016 temporary uses shall complement the adjacent Portland-Milwaukie light rail station anticipated to open in fall 2015. PSU and TriMet will also jointly lead in an Identification and Funding Strategy of the Fourth and Lincoln site which will evaluate other longer-term interim uses and funding resources for a period ending no later than 2023. Phase 1 of the Identification and Funding Strategy will be to establish criteria for the interim uses by January 31, 2016. Subsequent interim uses may include a food cart pod or other such similar, temporary, activating improvements.

**3.4.3 Development Solicitation:** Beginning in approximately 2019, PSU shall initiate stakeholder outreach so as to gain a broader set of views and any desired PSU use that may influence permanent design and development of the site and/or to support future development of the PSU campus in alignment with the University Framework Plan. By 2020, PSU shall identify PSU and/or commercial uses for redevelopment of the TriMet properties and whether to incorporate concurrent redevelopment of PSU owned adjacent properties. In turn, subject to the execution of a partnership agreement as described in section 3.4.4 below, PSU shall issue a Request for Proposals seeking a partner to pursue the Fourth/Lincoln Project by June 2021 with selection occurring by January 2022.

**3.4.4 Potential PDC Purchase:** PDC shall use best efforts to secure the ownership and development rights for the Project from TriMet by way of a partnership agreement by 2021. The partnership agreement shall guide development of the property in concert with PSU. If PDC cannot secure development and ownership rights from TriMet by January 2024, then PDC will make available URA TIF in the amount of the fair market value of the property for purchase of the property under the partnership agreement. PDC may transfer the funding directly to PSU, to TriMet or to a private development partner responsible for the construction or funding. PSU shall be obligated to construct on the Fourth/Lincoln Project taxable, TIF-generating space of not less than the value of the URA TIF committed by PDC to purchase the property. If a purchase of the Fourth/Lincoln property is not possible, PDC will make no more than \$2M available to PSU for use in another project which shall also obligate PSU to construct taxable, TIF-generating space in that other project of not less than the value of the URA TIF committed by PDC.

**3.4.5** PDC will convey the right to develop the Fourth/Lincoln Project either pursuant to an IGA or via another agreement form by:

**3.4.5.1 Direct Sale.** PDC may sell the fee simple Project site directly to PSU for a purchase price equal to the market value of the site. PSU shall at closing, satisfy the purchase price by tendering a promissory note payable to PDC reflecting an obligation equal to the purchase price. Said note shall be due on January 1, 2025 if the Project has not been constructed. Said note shall be forgivable upon PDC's confirmation that a public benefit of equivalent value to the note obligation will be created. The commencement of construction of the Project prior to the due date of the note, including a TIF-generating element of value not less than the purchase price, shall be deemed an equivalent public benefit justifying forgiveness of the note. Subject to PSU obtaining all necessary approvals, (e.g. state legislature and/or treasurers, governing bodies, as applicable) the note may be secured by a deed of trust on the Project;

**3.4.5.2 Appraisal.** As part of real estate rights transfer, PDC shall contract for an appraisal of the Project site prior to transfer. PDC shall pay for the cost of such appraisals.

**3.4.6 Post Transfer Obligations.** The transfer of title or rights to PSU or to another entity in support of PSU, shall also be conditioned upon the following predevelopment and construction schedule which shall be reflected in the deed until such time as the obligation is satisfied:

**3.4.6.1** Development design shall be completed in 2023.

**3.4.6.2** PSU shall commence construction by January 31, 2024.

**3.4.6.3** PSU shall obtain occupancy permits by the fall of 2026.

**3.4.7 PDC Repurchase Rights.** Should transfer of the Fourth/Lincoln property occur and construction has not commenced by June 30, 2024, the parcel shall be exclusively available to PDC for repurchase. This repurchase interest shall be reflected in a recording against title and may, with PDC's approval, be made subordinate to the interests of intended developers or providers of financing for development. If PDC elects to exercise the right of repurchase under this provision then PDC shall pay PSU an amount equal to one half the amount of appreciation between date the property transferred to PSU and date the property transferred back to PDC. An appraisal of the property shall be commissioned and paid for evenly between PDC and PSU to aid in the calculation of the repurchase payment.

**3.4.8 PSU Right of First Refusal.** As of June 30, 2025, should this Project not have moved forward as contemplated in the DDA, then before PDC may sell the property to a third party, PDC shall first offer the property to PSU for fair market value. PSU shall have 60 days during which to accept such offer. If PSU does not accept the offer within the 60-day period, PDC shall be free to pursue a third-party offer.

**3.4.9 Project In Lieu.** If, following feasibility assessments of the Jasmine Project in 2016, PSU determines that the Fourth/Lincoln Project would compete better for State Funding or could attract a preferable development scenario, and then PSU may advance the Fourth/Lincoln Project in lieu of the Jasmine Project. If Fourth/Lincoln is advanced in lieu of the Jasmine then the Fourth/Lincoln Project may include a 30,000 square foot space to accommodate the COP pursuant to the terms of the LOI (i.e., 30,000 square feet for COP is not being designed into a development of the Graduate School of Education Project nor into the Jasmine Project). If PSU elects to advance the Fourth/Lincoln Project in lieu of the Jasmine Project then PSU shall adhere to the schedule for the Jasmine Project set forth above in Sections 3.3.3.1-3.3.3.4. If the Fourth/Lincoln Project is advanced in lieu of Jasmine then the Parties shall confer to discuss what alternative activity would be appropriate for the Jasmine Project site.

**3.5 University Place Project.** This Project will support the redevelopment of the 3.86-acre property at 310 SW Lincoln known as University Place (the "University Place Project"). PSU wishes to attract a development partner interested in a dense, mixed use development of the site that meets PSU's priorities and supports the growth of PSU and the University District pursuant to the objectives outlined in the University District Framework Plan and aligning

with City and PDC's UR Plan and other policy priorities. The University Place Project shall provide a higher density of mixed uses than exists at the time of execution of this Agreement including new housing and commercial uses adjacent to the Portland-Milwaukie light rail alignment. The Project is intended to create taxable real estate assessed value, in as much as is feasible for the purposes of serving shared interests, and that will help support the goals of the North Macadam Urban Renewal Area.

**3.5.1 Site Location/Description: University Place Project**

**Parcel 1:**

Tax Map: 1S 1E 03CC Tax Lot: 800

Site Address: 310 SW Lincoln

**3.5.2 Termination of the Agreement for Disposition and Development of Doubletree Hotel Property (PDC-PSU Doubletree DDA):** Upon execution of this Agreement the PDC-PSU Doubletree DDA entered into between PDC and PSU on February 26, 2004 pursuant to PDC Resolution No. 6083 is terminated without further action required by either Party. With termination of the PDC-PSU Doubletree DDA, PSU shall be relieved of all obligations thereunder, including, without limitation, the Payment in Lieu of Taxes (PILOT) payment obligations associated with the University Place site. Specifically, PSU will be relieved of its PILOT payment obligations starting in the year 2015 and continuing through year 15 (2019), which are identified as years 11 through 15 in Exhibit F of the PDC-PSU Doubletree DDA. Any payment made within the fiscal year in which the PDC-PSU Doubletree DDA is terminated will be reimbursed to PSU or remain uncashed by PDC. The Parties agree that anticipated reimbursements and termination of the PILOT payments on the Project represents a combined value of approximately \$1.8 million, however it is acknowledged that the termination of the PILOT will result in PSU being responsible for a to-be-determined amount of annual property taxes associated with private uses on the site. The cancellation of the PILOT obligation shall be deemed a PDC contribution of \$1.8 million in TIF to the Project at the time of construction.

**3.5.3 Development Intent:** The Parties shall cooperate to establish a development plan including the establishment of a schedule that will expeditiously advance the implementation of a more intensive use of the University Place Project as identified during the Lincoln Station transit oriented development analysis and process, including the possibility of phasing development, with PDC's approval to wit:

**3.5.3.1 Request for Development Proposal:** PSU shall issue a Request for Proposal (RFP) no later than June 2015. PDC shall review and comment on the RFP prior to release.

- 3.5.3.2 PDC Assistance.** PDC will provide assistance in structuring the financing, development and ownership of the Project, which, subject to PDC and PSU approval, may include the disposition of all or portions of the site, a long-term ground lease with a developer, and/or other partnership options that will provide a market rate of return to PSU and adds taxable value for generation of TIF revenue.
- 3.5.3.3 Design/Permitting.** PSU or a PSU partner shall conduct any required predevelopment activity such as master planning and shall award a contract to the selected development partner in 2016, unless PSU and PDC agree that a development partner is not needed in order to develop the site. Subject to 1) approval of State Funding, if sought, and the commitment and availability of all necessary financing resources, such as matching requirements for state issued bonds, and 2) issuance of all requisite permits by the City, PSU or a PSU partner shall complete all design and permitting by December 1, 2018.
- 3.5.3.4 Construction.** Subject to 1) approval of State Funding, if sought, and the commitment and availability of all necessary financing resources, such as matching requirements for state issued bonds, and 2) issuance of all requisite permits by the City, PSU shall commence construction, or require the selected developer to commence construction, no later than May 2019 and obtain occupancy permits by the summer of 2021.
- 3.5.3.5 Affordable Housing.** PSU agrees as follows:
- 3.5.3.5.1** Within this section the reference to PSU shall mean PSU or its development partner.
- 3.5.3.5.2** As soon as PSU develops concept plans for any building on the University Place Project that includes housing (not including student housing) PSU shall provide notice, consistent with the notice requirements set forth herein, to Portland Housing Bureau and PDC of such development plans (“Housing Notice”).
- 3.5.3.5.3** During the next thirty (30) days following Housing Notice, PHB, PDC and PSU shall meet to discuss the proposed development plans and discuss whether PHB may desire to participate in the housing project by providing Affordable Housing assistance and whether PHB might anticipate a reasonably likelihood to have available funds in PHB’s budget to participate in the project at some level. If PHB determines it does not wish to, or is not able

to, participate in the project, PHB shall provide notice to PSU and PDC and shall no longer assert an interest in the project.

**3.5.3.5.4** Over the next 120 days, if PHB has indicated a desire to participate in the housing project: i) PHB shall seek to obtain formal budget authority to encumber a specified level of funding for the project, ii) PHB shall negotiate with PSU to establish the level of subsidy appropriate for the project, as defined below, and iii) negotiate with PSU the level of participation in the project (e.g. the number of units that will be, with PHB subsidy, required to attain Affordable Housing). If at any time during the 120 day period, PHB determines that it will be unable to obtain funding for the project, it shall immediately notify PSU and PDC, and have no interest with regard to the project. If PHB is, during such 120 day period, able to confirm that a specified level of funding has been encumbered for the project, PSU shall be obligated to provide Affordable Housing units (provided that in no event shall the number of units exceed 20% of the total housing units planned for the project), and PHB shall be obligated to provide a subsidy as follows: The subsidy will be provided and allocated on a per unit basis in an amount and on terms reasonably equivalent to Affordable Housing projects in the same or comparable neighborhoods in Portland. These obligations shall be memorialized during this period by a written agreement reasonably negotiated between the parties.

**3.5.3.5.5** If, within the 120-day period, PSU identifies a negative financial feasibility impact associated with an intended Affordable Housing subsidy on a project then PSU shall in good faith work with PHB and PDC to develop a solution that could make units available at below market rates.

**3.5.3.5.6** As used in this Section, "Affordable Housing" means rental units that are rented to and are occupied by households earning up to 60% of the area median family income ("MFI") as determined by the United States Department of Housing and Urban Development ("HUD") or ownership units that are sold to and occupied by households earning up to 100% MFI as determined by HUD.

**3.5.3.5.7** In the event that PHB determines that adequate funding for Affordable Housing within the project cannot be obtained or

encumbered, PSU will coordinate with PHB to identify other funding sources or programs that could make units available at below market rates. PSU shall in good faith seek to pursue other affordable housing funding for the project that the parties mutually identify as reasonably viable financing options but is not obligated to provide below market rate units unless adequate funding or programs are identified.

**3.5.3.5.8** The rights and obligations of this section shall be reflected in a Memorandum to be recorded on the University Place Project. At the latest, said Memorandum shall be recorded on title at the time PDC and PSU enter into an IGA or other agreement to commit PDC TIF to the Project pursuant to this Section. If, at an earlier point in time, PSU intends to subdivide the Project site or convey an interest to any other party the Memorandum shall be recorded prior to such action. PDC shall release said Memorandum in the event that no TIF funds made available by PDC are employed on the Project.

**3.5.4 PDC Support.** In addition to the \$1.8 million investment by PDC associated with cancellation of PILOT, PDC shall also make available funds as soon as possible subject to the constraints noted in this Agreement and as detailed below.

**3.5.4.1** Should PSU or a development partner meet the timeline as described in section 3.5.3 and the Project result in a taxable real estate assessed value of not less than \$66 million, PDC shall make available up to \$13 million between 2019 and 2020 to PSU or a development partner;

**3.5.4.2** Should the Project meet the timeline and result in taxable assessed value of less than \$66,000,000 but more than \$14.8 million, PSU will provide notice to PDC no later than November 1, 2017 of that estimated assessed value. Upon receipt of that notice, and following PDC verification of the estimated assessed value, PDC shall make available to PSU or a development partner a reduced but proportionate amount of funding that is equal to the ratio of 66/14.8. (As an example, in the case of an estimated assessed value of \$50M, PDC would make available funding in the approximate amount of \$11.2M:  $66/14.8=4.56$ ;  $50/4.56=11.2$ )

**3.5.4.3** Should the intended Project generate taxable real estate assessed value less than \$14.8M, then PDC shall make available \$13 million in funding between 2023 and 2024. PDC may transfer the funding directly to PSU or to a private development partner responsible for the construction. Under

this section PSU shall ensure that not less than \$14.8 million in taxable, TIF generating space is generated at the Project.

**3.5.5 Unused TIF.** If less than \$13 million is needed for the University Place Project then the unused residual shall be allocated by PDC, in consultation with PSU, to other taxable, TIF-generating, PSU-related Projects in the URA under similar taxable, TIF generating obligations and schedule as Section 3.5.4 above.

**3.5.6 Failure to Construct.** If, for whatever reason, commencement of construction has not begun on the University Place Project by fall 2022, or an alternative Project or Projects has not commenced construction by spring of 2020, PDC shall no longer be obligated to provide \$13 million in funding to PSU.

**3.6 Fourth Avenue Building:** The Fourth Avenue Project, located at the 1900 SW 4th Avenue Building, provides PSU the opportunity to develop commercial space within the same building as PSU currently houses part of its Maseeh College of Engineering and Computer Science. The Fourth Avenue Project involves the renovation and possible expansion of the building to provide new research, commercialization or other commercial uses linked to PSU's incubator activities.

**3.6.1 Site Location/Description: Fourth Avenue Building Project**

Parcel 1: Condo Units 1, 2 and 3

Tax Map: 1S1E03CB 90000

Site Address: 1900 SW 4<sup>th</sup> Avenue

**3.6.2 PDC Support.** As early as possible, should additional resources be available, but not later than June 30, 2025, PDC will provide at least \$2 million in TIF funding to assist in the renovation of the Fourth Avenue Building via an IGA or alternative agreement form.

**3.6.3 Unused TIF.** If less than \$2 million is needed for commercial renovation of the Fourth Avenue Project then the unused aspect of that fund shall be allocated by PDC, in consultation with PSU, to other PSU related Projects in the Urban Renewal Area. PDC may transfer the funding directly to PSU or to a private development partner responsible for the construction or funding of not less than \$2 million in taxable, TIF-generating space.

**4 POLICIES AND PROGRAMS.** The following PDC policies shall be applicable to the Projects:

**4.1 PDC's Business and Workforce Equity Policy.** (See Exhibit G) PDC has adopted a Business and Workforce Equity Policy to ensure fair and equitable opportunities to Portland's diverse populations, promote prosperity in all segments of Portland's diverse communities, foster economic growth, and expand competition in the market. The Business and Workforce Equity Policy is comprised of two (2) separate and distinct programs:

PDC has determined that the application of PDC resources to the Projects is subject to both the Business Equity Program and the Workforce Equity Program as follows:

**4.1.1 Business Equity Program Specifications.** PSU shall or shall compel a development partner to comply with the provisions of the specifications made a part hereof in Exhibit H.

**4.1.2 Workforce Equity Program Specifications.** PSU shall or shall compel a development partner to comply with the provisions of the Workforce Equity Program specifications made a part hereof in Exhibit I.

**4.2 PDC's Green Building Policy.** PSU shall or shall compel a development partner to comply with the provisions of the Green Building specifications made a part hereof in Exhibit J.

**4.3 PDC's EEO Certification.** PSU shall or shall compel a development partner to comply with the City's EEO Certification Program – Portland City Code provision 3.100.041.

**4.4 Prevailing Wage.** It is likely that most of the Projects or major elements of the Projects contemplated in this Agreement will be subject to prevailing wage requirements, either under PSU guidelines or pursuant to ORS 279C.800(6)(a)(A) or federal law. When a Project reaches preliminary design stage the Parties shall convene to determine whether that Project is subject to prevailing wage requirements and how those requirements will be satisfied.

**4.5 RACC's 2% for the Arts.** It is possible that the City's 2 percent for the Arts Policy may apply to one or more elements of the anticipated Projects. When a Project reaches preliminary design stage the Parties shall convene to determine whether public uses, funding levels or other factors will trigger the policy. If PDC deems the policy applicable then the PDC shall communicate the impact, if any, that the policy may have on release of PDC funds. The 2 percent for the Arts Policy is made a part hereof in Exhibit K.

**4.6** PSU shall be subject to the provisions of the policies noted above that have been adopted by PDC at the time a Project IGA is signed.

**5 MISCELANEOUS.**

- 5.1 No Assignment.** PSU shall not partially or wholly dispose of or agree to dispose of PSU's interest in this Agreement or the Property without the prior written approval of the PDC. PDC may require as conditions to such approval that the transfer is not in violation of other provisions of this Agreement.
- 5.2 Notice.** Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail; postage prepaid, return receipt requested, or (b) when received if personally delivered, and:

In the case of a notice to PSU, addressed as follows:

Portland State University  
Jason Franklin, Director of Campus Planning & Design  
PO Box 751 (mailing address)  
Portland, OR 97207

1600 SW 4<sup>th</sup> Ave #340 (physical address)  
Portland, OR 97201

With a copy to:

Portland State University  
Office of General Counsel  
PO Box 751 (mailing address)  
Portland, OR 97207

1600 SW 4<sup>th</sup> Ave #810 (physical address)  
Portland, OR 97201

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

Portland Development Commission  
Irene Bowers  
222 NW Fifth Avenue  
Portland, Oregon 97209

With a copy to:

Portland Development Commission  
General Counsel  
222 NW Fifth Avenue  
Portland, Oregon 97209

## **5.3 DEFAULT; REMEDIES**

### **5.3.1 PDC's Remedies**

**5.3.1.1 PSU Defaults.** PDC may assert a Minor PSU Default or a Major PSU Default.

**5.3.1.1.1** A Minor PSU Default is the failure to accomplish a task set forth in this agreement that is a prelude to development. Specifically, a PSU Minor Default occurs for failure to comply with the following sections:

Jasmine with Private Partner

3.3.2.1 Development Solicitation

3.3.2.2 Feasibility Assessment

3.3.2.3 Submit for State Funding

3.3.2.5.1 Commence Design

Jasmine with Public Partner

3.3.3.1 Feasibility Assessment

3.3.3.2 Submit for State Funding

3.3.3.4.1 Commence Design

Fourth/Lincoln

3.4.3 Development Solicitation

3.4.6.1 Complete Design

3.4.9 In Lieu

University Place

3.5.3.1 Request for Proposal

3.5.3.3 Design/Permitting

**5.3.1.1.2** A Major PSU Default is the failure to commence construction or complete a Project by a specified date or time frame as prescribed in this Agreement (A Major Default may only be associated with the following Projects: Jasmine, Fourth and Lincoln, and University Place or an alternative to University Place).

**5.3.1.2 PDC Remedies.** The following remedies are PDC's sole remedies for a Minor PSU Default or Major PSU Default:

**5.3.1.2.1** Upon a Minor PSU Default PDC shall provide PSU a written notification of default within thirty (30) days of default. PSU shall provide a written response to PDC within thirty (30) days explaining the corrective actions that shall be taken to remedy the default. If PSU does not accomplish the described remedies within ninety (90) days of the date of default or by a later date specified in the response or, in the case of a default that cannot with due diligence be cured within a period of ninety (90) days, PSU does not commence the cure of the default within ninety (90) days after PSU receives written notice from PDC and thereafter diligently prosecutes to completion such cure, then PDC may no longer reserve TIF funds for the Projects under this Agreement in accord with the schedule in Exhibit E. PDC may, at its election, identify and fund other taxable, TIF generating Projects that are likely to generate a similar or greater amount of taxable value as anticipated under Exhibit D. While this remedy is not intended to relieve PDC of all obligations to fund Projects the effect of this section may be to significantly delay the availability of funds for PSU or limit the amount of funds that will be available.

**5.3.1.2.2** PDC's remedy for a Major PSU Default under this Agreement is prescribed within the particular Project section of this Agreement. No remedy is associated with the School of Business Administration Project and the Fourth Avenue Project.

**5.4 Force Majeure.** Neither a Party nor Party's successor in interest shall be considered in breach of or in default with respect to any obligation created hereunder or progress in respect thereto if the delay in performance of such obligations (the "Unavoidable Delay") is due to causes that are beyond its control, and without its fault or negligence, including but not limited to (a) acts of God, acts of the public enemy, acts of the government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, and riot or (b) inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, delay in the issuance of necessary permits for the Project, malicious mischief, condemnation action delays of litigation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar events and/or occurrences beyond the control of such Party. It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for

performance of the obligations of PDC or PSU, as the case may be, shall be extended for the period of the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section shall, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and the estimated time of correction.

**5.5 Dispute Resolution.** PSU and PDC agree that for disputes arising pursuant to this Agreement that they will confer and attempt to resolve their disputes. If the parties are unable to resolve the dispute in question, the Parties shall further confer as to whether mediation or arbitration (“alternative dispute mechanism”) is appropriate to resolve the dispute. In the absence of agreement on use an alternative dispute mechanism, either party may seek legal recourse through the state courts in Multnomah County, Oregon.

**5.6 Counterparts.** To facilitate execution of this Agreement, this Agreement may be executed in multiple counterparts, each of which, when assembled to include an original or faxed signature for each party contemplates to sign this Agreement, will constitute a complete and fully executed agreement. All such fully executed original or faxed counterparts will collectively constitute a single agreement.

**5.7 Pending Litigation.**

**5.7.1** The case of *McGuire et al v. City of Portland, Portland Development Commission and Portland State University*, Case No. 5226 (the “Case”), is currently pending in the Oregon Tax Court. In this litigation, plaintiffs are seeking a declaration that Article XI, Section 11b of the Oregon Constitution and ORS 310.060 apply to some or all of the projects contemplated under this Agreement and that certain value be characterized as used for “education.”

**5.7.2** While the Case is pending or under appeal PDC shall not be obligated to make payments or to transfer real estate value to PSU under this Agreement nor shall PSU be obligated to accept payments or real estate from PDC and PSU shall not be obligated to undertake project-related activities.

**5.7.3** Should the Oregon courts determine that some or all of the projects under this Agreement are subject to Article XI, Section 11b of the Oregon Constitution and ORS 310.060, and that fulfilment of the terms of the Agreement would necessitate characterization of value conveyed by PDC to PSU as educational, then this Agreement may, at the election of either PDC or PSU, terminate. PDC may elect to fulfill provisions of this Agreement following a court determination if fulfillment thereof will not generate a need to characterize the expenditure as education. In the event that part or all of the Agreement is terminated as a result of a court determination under this section then PDC agrees to enter into negotiations with PSU

to explore and identify potential alternative resources and mechanisms to achieve the goals of this Agreement.

- 5.7.4** To support this purpose, all funds or the value of property or resources provided by PDC for a project shall be tracked by PSU. PSU shall establish an accounting system for such purposes. PDC may require, in addition to this Agreement, the execution of documentation by PSU confirming and restricting the ongoing use of such funds and/or property to uses that do not generate a need to characterize such value as educational under Article XI, Section 11b(1) of the Oregon Constitution and ORS 310.060. PSU agrees that PDC shall have full enforcement rights concerning PSU's adherence to such restricted use of PDC-contributed funds or property.
- 5.8 Amendments and Modifications.** Any modifications to this Agreement shall be made in writing and executed by all Parties, and approved by the PDC Commission, if required. Notwithstanding this general requirement, the PDC Executive Director may approve minor modifications to this Agreement without Commission approval.
- 5.9 Entire Agreement.** While this Agreement anticipates subsequent instruments to facilitate particular Projects, this Agreement and the attachments hereto are the entire agreement between the Parties as of the time of execution. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations made by either Party, implied or express, other than those contained in this Agreement.
- 5.10 Choice of Law.** Oregon law shall govern this Agreement.
- 5.11 Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.
- 5.12 Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.
- 5.13 Legal Purpose.** PSU agrees that it shall use the Property solely for lawful purposes.
- 5.14 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.

**5.15 Entire Agreement.** This Agreement and the attachments hereto are the entire agreement between the Parties. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations made by either Party, implied or express, other than those contained in this Agreement.

**5.16 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 PDC or PSU 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.

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

PORTLAND DEVELOPMENT COMMISSION


By:   
Patrick Quinton, Executive Director

Approved as to form:

Office of General Counsel

By:   
Eric Iverson, General Counsel

STATE OF OREGON, acting by and through the State Board of Higher Education on behalf of Portland State University

By:   
Wim Wiewel, President  
Dated: 4/2/15