

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 7024**

**AUTHORIZING AN EASEMENT AGREEMENT AND LOT LINE  
ADJUSTMENT AGREEMENT WITH STARTERRA, LLC, TO ACQUIRE AND  
CONVEY 3,240 SQUARE FEET OF REAL PROPERTY IN THE OREGON  
CONVENTION CENTER URBAN RENEWAL AREA**

**WHEREAS**, Portland Development Commission (“PDC”) is the owner of a 0.31-acre parcel, known as Block 47, which is located at the northwest corner of NE Martin Luther King, Jr., Boulevard and NE Holladay Street (the “PDC Property”);

**WHEREAS**, StarTerra, LLC, (“StarTerra”) owns or has the option to purchase 2.61 acres of property adjacent to the PDC Property (“the “StarTerra Property”) which has common lot lines with the northern and western boundaries of the PDC Property;

**WHEREAS**, StarTerra has entered into a Purchase and Sale Agreement with Rembold Companies (“Rembold”) for the purpose of conveying a portion of the StarTerra Property to Rembold to develop a six-story, mixed-use building with 186 residential units (“Block A Apartments”);

**WHEREAS**, StarTerra desires to adjust the PDC Property and StarTerra Property boundaries to facilitate the construction of a private street serving the Block A Apartments;

**WHEREAS**, the lot line adjustment will shift the northern lot line of the PDC Property approximately 36 feet to the south and the western lot line of the PDC Property approximately 28.42 feet to the west, resulting in PDC conveying 3,240 square feet of the PDC Property to StarTerra at the northern lot line, and PDC acquiring 3,240 square feet of the StarTerra property at the western lot line;

**WHEREAS**, StarTerra also desires an easement for the purpose of preparing and constructing the private street while the lot line adjustment is in process;

**WHEREAS**, the lot line adjustment and private street construction will be implemented at StarTerra’s sole expense; and


**WHEREAS**, PDC and StarTerra have negotiated an Easement Agreement and Lot Line Adjustment Agreement.

**NOW, THEREFORE, BE IT RESOLVED**, that the PDC Board of Commissioners authorizes the Executive Director to execute an Easement Agreement and Lot Line Adjustment Agreement containing terms substantially similar to those set forth in Exhibits A and B;

**BE IT FURTHER RESOLVED**, that the Executive Director may approve changes to the Easement Agreement and Lot Line Adjustment Agreement if such changes do not materially increase PDC's obligations or risks, as determined by the Executive Director in consultation with PDC's General Counsel; and

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

**Adopted by Portland Development Commission on September 13, 2013**



---

Gina Wiedrick, Recording Secretary

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 7024**

**EXHIBIT A**

**AUTHORIZING AN EASEMENT AGREEMENT AND LOT LINE  
ADJUSTMENT AGREEMENT WITH STARTERRA, LLC, TO ACQUIRE AND  
CONVEY 3,240 SQUARE FEET OF REAL PROPERTY IN THE OREGON  
CONVENTION CENTER URBAN RENEWAL AREA**

Exhibit A includes this cover page and contains 11 pages:

- Easement Agreement
  - Exhibit A: Property
  - Exhibit B: Easement Area, Legal Description
  - Exhibit C: Easement Area Map

After Recording Return To:

---

---

---

---

## EASEMENT AGREEMENT

**THIS EASEMENT AGREEMENT (“Agreement”)** is made and entered into as of September \_\_, 2013 (the “*Effective Date*”), 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**”) (“*Grantor*”) and **STARTERRA, LLC**, an Oregon limited liability company (“*Grantee*”). (Grantor and Grantee may be referred to herein each as a “*Party*” or, collectively, as “*Parties*”.)

### RECITALS

A. Grantor is the owner of certain real property located in Multnomah County, Oregon, more particularly described in the Exhibit “A” attached hereto (the “*Property*”).

B. Grantor desires to grant to Grantee construction and access easements with respect to a portion of the Property, which portion is more particularly described on the map attached as Exhibit “B” (the “*Easement Area*”).

C. The Easement Area is adjacent to real property owned by Grantee as shown on the Easement Area map attached hereto as Exhibit “C”.

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

1. Grant of Temporary Construction and Access Easements. Grantor hereby grants to Grantee a nonexclusive easement (“*Construction Easement*”) over and across the Easement Area, for the sole purpose of preparing and constructing private road improvements and placing utility lines therein (collectively, the “*Private Road Improvements*”) during the Easement Period (as defined in Section 6 below). Grantor hereby grants to Grantee a nonexclusive access easement (“*Access Easement*”) over and across the Easement Area in order to complete the Private Road Improvements and for other general vehicular and pedestrian access over and across the private road of which the Easement Area is a part. The rights and obligations granted hereunder shall be for the sole benefit and burden of Grantee only (and its permitted assigns and successors) and shall run with the land unless and until terminated as provided herein. The Construction Easement and Access Easement are sometimes collectively referred to herein as “*Easements*”. Grantee shall pay all recording costs for recording this Agreement in the deed records of Multnomah County, Oregon.

2. Use and Maintenance of Easement Area. All construction and work on, under or around the Easement Area shall be done in accordance with the applicable codes of the City of

Portland and Multnomah County, Oregon, and the applicable state and federal laws, ordinances and regulations, and any and rules and regulations of governmental agencies having jurisdiction over construction of the Private Road Improvements. Grantee shall keep and maintain the Easement Area safe and secure to the maximum extent possible so as to minimize damage or injury to persons or property during the Easement Period. All maintenance and repair costs shall be promptly paid by Grantee, without any reimbursement obligation from Grantor. Grantee agrees to provide timely notice to Grantor of any significant maintenance, health, safety or liability issues arising in the Easement Area.

3. Private Road Improvements. All costs associated with private street design, permitting, and construction of the Private Road Improvements shall be paid by Grantee. Subject to Grantor's prior written approval of Grantor's plans for the Private Road Improvements, which approval shall not be unreasonably withheld, Grantor authorizes Grantee to commence construction of the Private Road Improvements on the Easement Area upon recordation of this Agreement along with plans for the Private Road Improvements approved by the City department with oversight for street improvements. Grantor shall cooperate and assist Grantee in obtaining any permits necessary for the Private Road Improvements at no cost to Grantor.

4. Restoration of Easement Area. Unless either the Lot Line Adjustment (defined in Section 5 below) shall have occurred or the Property shall have been sold to Grantee, then prior to the expiration of the Easement Period, Grantee shall have removed any and all equipment, vehicles, underground utility lines, and other personal property from the Easement Area, and shall have restored the Easement Area to a condition and in a manner that is reasonably satisfactory to Grantor. Grantor shall have the right to inspect the Easement Area for compliance with Grantee's restoration obligations. If in Grantor's reasonable discretion such restoration and repair is unsatisfactory, Grantee shall be deemed in default under this Agreement, and shall be required to pay Grantor for any costs or expenses incurred by Grantor in completing the restoration obligations of Grantee to Grantor's reasonable satisfaction.

5. Lot Line Adjustment. Grantor and Grantee have entered into that certain Lot Line Adjustment Agreement dated as of \_\_\_\_\_, 2013 (the "**LLA Agreement**") in connection with the adjustment of property lines adjacent to the Property in the manner described and as set forth in the LLA Agreement (the "**Lot Line Adjustment**"). The LLA Agreement provides for Grantee to reimburse Grantor for all costs and expenses associated with the preparation, review and negotiation of this Agreement, including, without limitation, Grantee's reasonable PDC staff and legal costs in the manner stated therein.

6. Term. The Easements granted hereunder for the Easement Area shall be effective as of the date of recording this Agreement and shall run with the land and continue in full force and effect unless otherwise terminated by the Lot Line Adjustment closing or sale of the Property to Grantee (the "**Easement Period**"). Upon the termination of this Agreement and the Easements granted hereby, the Parties shall execute any recordable documents as Grantor or Grantee deems reasonably necessary to extinguish this Agreement of record and the Parties shall have no further obligations under this Agreement, except for any provision that shall otherwise

survive this Agreement. Grantee shall pay all recording costs for recording such documents in the deed records of Multnomah County, Oregon.

7. Insurance; Indemnity; Security.

a. Grantee shall obtain, maintain, and keep during the Easement Period comprehensive general liability insurance written on an "occurrence" basis. Such insurance shall be in the amount of not less than \$1,000,000 combined single limit for liability with a \$2,000,000 aggregate insuring bodily and/or personal injury, including death and disease, and property damages; subject to reasonable increased coverage limits as requested by Grantor (but not more than once per calendar year). The Grantee's insurance shall be primary insurance and any insurance or self-insurance maintained by the City and/or PDC shall not contribute to it.

b. Grantee agrees prior to commencement of the performance hereunder to provide a Certificate of Insurance containing an endorsement specifically naming the City of Portland, the Portland Development Commission, its commissioners, officers, agents and employees as additional insureds. The certificate shall provide that coverage afforded shall not be canceled or amended without prior written notice to the PDC.

c. Grantee shall indemnify, hold harmless and at the PDC's request, defend the PDC and the City of Portland and each of their respective commissioners, officers, agents and employees from and against any and all liability or alleged liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or in connection with or incidental to Grantee's use of the Property or Easement Area, or error or omission of Grantee or anyone acting on behalf of Grantee in connection with or incidental to the Easements; provided however, that nothing herein shall be construed to require indemnification of PDC for liability attributable to the PDC's sole negligence. This provision shall survive the termination of this Agreement.

d. Grantee shall agree to keep the Easement Area as secure as possible from the unauthorized entry of other persons during the time of Easement Period. Grantee shall also assume all liability related to injury, death or disease to invitees, licensees, or trespassers in the Easement Area, except for liability attributable to the PDC's sole negligence.

e. Grantee is solely responsible for any theft, damage or destruction to any materials, equipment or any other property of Grantee, or anyone acting on behalf of Grantee, in connection with or incidental to the Easements.

8. Restrictions on Use and Hazardous Substances

a. In use of Easements, Grantee shall observe all rules, regulations, and laws now in effect by any municipality, county, state or federal authority having jurisdiction over the Property, as they relate to the use of the Easement Area. Grantee is solely responsible for obtaining any other permits or approvals as may be necessary for its use of the Easement Area. Furthermore, Grantee agrees to indemnify the PDC as provided above for any damages caused by the violation thereof of any permits or approvals that may otherwise be required. This provision shall survive the termination of this Agreement.

b. Grantee shall not allow any lien of any kind, type or description to be placed or imposed upon the Property.

c. Grantee shall not cause or permit to occur the use, generation, release, manufacture, handling, processing, storage, disposal or improper use of any hazardous substance, pollutant, or contaminant, on, under, or about the Easement Area or the transportation to or from the Easement Area of any hazardous substance. Prohibited hazardous substances are substances regulated under any environmental law or regulation now or hereafter enacted by any governmental federal, state or local authority. Grantee further agrees to indemnify PDC as provided above for any damages caused by the violation thereof of any permits or approvals that may otherwise be required. This provision shall survive the termination of this Agreement.

9. No Representations. Grantor has made no representation as to the present or future condition of the Property or the character or suitability of the Easement Area, and Grantee assumes all risks of damage to the Property and Easement Area.

10. Prior Easements. The Construction Easement and Access Easement are granted subject to all prior easements or encumbrances of record.

11. Attorney's Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonably incurred attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses incurred in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law. This provision shall survive the termination of this Agreement.

12. Notice. All notices or demands with respect to this Agreement shall be given by hand delivery, certified or registered mail (or regular mail, if to a post office box), or a reputable overnight courier addressed to the other party at its address as shown below, and shall be effective upon the earlier of actual receipt and acceptance of such mailing by the addressee or three (3) days following deposit in the U.S. mail. Initially, the addresses for notices are:

Grantee: StarTerra, LLC  
Attn: Barry Schlesinger  
Suite 1221  
610 SW Alder Street  
Portland, OR 97205

Grantor: Portland Development Commission  

---

Real Estate Section  
222 SW Fifth Avenue

Portland, OR 97209  
Tel: 503-823-3200  
Fax: 503-823-3368

13. No Third Party Beneficiaries; Assignment. This Agreement being for the benefit only of Parties and in the case of Grantee, its assignees or successors in interest, including without limitation, BIT Investment Sixty-Nine, LLC, a Delaware limited liability company. Grantee shall have no right to assign any right or obligation hereunder, without the prior written consent of Grantor, except to an assignee controlled by or under common control with Grantee and provided further that Grantor shall receive prior written notice of any proposed assignment. Any assignment permitted hereunder shall not cause to release assignor from its obligations under this Agreement. Any attempted assignment, other than as provided, shall be void and of no force or effect. Without limiting this Section 13, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

14. Expenses; Remedies. Grantee agrees to pay any necessary expenses of surveying the Easement Area and the Property described in this Agreement as well as the expense of recording this Agreement. In the event of any breach or other non-compliance of any provision of this Declaration, the parties shall have every remedy available under applicable state and federal law. Any Party who does not timely reimburse another Party for the costs of work to be performed as stated herein, within 30 days after receipt of a reimbursement request and reasonable supporting documentation, shall additionally be liable for costs of compelling such reimbursement, including without limitation court costs, consultants' fees, engineers' fees, attorneys' fees, and interest at the highest rate allowed by applicable law.

15. Applicable Law. This Agreement shall be interpreted according to the laws of the State of Oregon and venue of any action predicated on this Agreement shall be in the Circuit Court of the State of Oregon, in and for Multnomah County.

16. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by all the parties hereto. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. Counterparts. The fax or email transmission of any signed document including this Agreement shall be the same as delivery of an original. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Agreement.

*[Signatures on following page]*



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

**GRANTEE:**

STARTERRA, LLC,  
an Oregon limited liability company

By: BPM Crossing LLC, its manager

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

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

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

**GRANTOR:**

**CITY OF PORTLAND**, a municipal corporation in the State of Oregon, acting by and through the **PORTLAND DEVELOPMENT COMMISSION** as the duly designated Urban Renewal Agency of the City of Portland.

By: \_\_\_\_\_  
Patrick Quinton, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel

[Add notary acknowledgments]

**EXHIBIT A**  
**PROPERTY**

**EXHIBIT B**

**EASEMENT AREA**

**Legal Description**

**EXHIBIT C**  
**EASEMENT AREA MAP**

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**RESOLUTION NO. 7024**

**EXHIBIT B**

**AUTHORIZING AN EASEMENT AGREEMENT AND LOT LINE  
ADJUSTMENT AGREEMENT WITH STARTERRA, LLC, TO ACQUIRE AND  
CONVEY 3,240 SQUARE FEET OF REAL PROPERTY IN THE OREGON  
CONVENTION CENTER URBAN RENEWAL AREA**

Exhibit B includes this cover page and contains 16 pages:

- Lot Line Adjustment Agreement
  - Exhibit A: PDC Property
  - Exhibit B: StarTerra Property
  - Exhibit C: Lot Line Adjustments Map
  - Exhibit D: Revised Legal Description for PDC Property
  - Exhibit E: Revised Legal Description for StarTerra Property
  - Exhibit F: StarTerra Deed
  - Exhibit G: PDC Deed

## LOT LINE ADJUSTMENT AGREEMENT

THIS LOT LINE ADJUSTMENT AGREEMENT (“Agreement”) is made and entered into as of \_\_\_\_\_, 2013 (“Effective Date”) by and between the City of Portland, 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 STARTERRA, LLC, an Oregon limited liability company (“StarTerra”).

### RECITALS

A. PDC is the owner in fee title of certain real property commonly described in Exhibit A attached hereto (the “PDC Property”).

B. StarTerra is the owner in fee title of certain real property described in Exhibit B attached hereto (the “StarTerra Property”).

C. StarTerra and PDC have agreed to adjust the property lines between the PDC Property and the StarTerra Property as shown on Exhibit C attached in order to accommodate StarTerra’s private road improvement work. The property line being adjusted on the north side of the PDC Property is depicted in Exhibit C as “A - PDC to StarTerra 3,240 SF” and will be deeded to StarTerra by PDC as described herein (the “PDC to StarTerra Conveyance”). The property line being adjusted on the west side of the PDC Property is depicted in Exhibit C attached as “B – StarTerra to PDC 3,240 SF” and will be deeded to PDC by StarTerra as described herein (the “StarTerra to PDC Conveyance”). The StarTerra to PDC Conveyance and the PDC to StarTerra Conveyance are sometimes referred to herein collectively as the “Lot Line Adjustments”.

D. It is the intent of StarTerra and PDC that after the Lot Line Adjustments are completed, the area of the PDC Property after the Lot Line Adjustments will be no smaller than the existing PDC Property as of the Effective Date and that the private street being completed by StarTerra will be entirely on StarTerra property or property previously owned by StarTerra.

E. StarTerra will retain KC Development (the “Surveyor”) to perform a survey of the Lot Line Adjustments (the “Survey”) and such Survey will be submitted to the Multnomah County Surveyor’s Office as a Record of Survey for filing as required under Oregon law for a property line adjustment. Prior to the Survey submittal, an Application for Property Line Adjustment (the “Application”) will be submitted to the City of Portland Bureau of Development Services (“BDS”) by the Surveyor.

F. Contemporaneously with this Agreement, StarTerra and PDC are entering into an Easement Agreement to provide an easement for StarTerra to construct a private road on the PDC to StarTerra Conveyance area and for an access easement (the “Easement Agreement”). The Easement Agreement shall terminate upon recording of the deeds for the Lot Line Adjustments.

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

1. Lot Line Adjustments. By this Agreement, it is the intention of the parties to provide for certain property line adjustments of the StarTerra Property and of the PDC Property as shown on Exhibit C attached in accordance with the Survey and the Application. The parties hereto acknowledge, confirm and agree that the boundary lines separating the PDC Property and the StarTerra Property are as set forth on the Survey. The adjusted property lines are further fixed by the legal descriptions for the PDC Property and the StarTerra Property as set forth on Exhibit D and Exhibit E respectively attached hereto which reflect the legal descriptions of such properties after the adjustments described above (the "Revised Legal Descriptions"). All parties acknowledge and agree that the Survey and the Revised Legal Descriptions describe will be the true and correct boundary lines after recording of the PDC to StarTerra Conveyance and the StarTerra to PDC Conveyance. StarTerra shall obtain and complete, and then provide copies of, the Survey and Application to PDC for its approval prior to filing same with BDS, which approval shall not be unreasonably withheld or delayed. At StarTerra's election, the Lot Line Adjustments may occur by means of a Section 1031 exchange and PDC shall cooperate in this regard at no cost to PDC.

2. Agreement to Convey by StarTerra. After completion of the Survey and BDS approval of the Application, StarTerra shall convey to PDC the StarTerra to PDC Conveyance by recording the deed attached hereto as Exhibit F (the "StarTerra Deed").

3. Agreement to Convey by PDC. After completion of the Survey and BDS approval of the Application, PDC shall convey to StarTerra the PDC to StarTerra Conveyance by recording the deed attached hereto as Exhibit G (the "PDC Deed"). Upon approval by BDS of the Application and on or before recording of the PDC Deed, StarTerra shall pay PDC an amount equal to any reduction in value to the PDC Property associated with Lot Line Adjustments if the Appraisal (defined below) indicates a reduction in value of the PDC Property.

4. Appraisal. For the sole purpose of determining whether there will be any difference in value to the PDC Property after the Lot Line Adjustments are completed, PDC shall obtain an appraisal of the PDC Property (the "Appraisal") within thirty (30) days from the Effective Date and shall promptly provide a copy of same to StarTerra after completion of the Appraisal. StarTerra and PDC will cooperate in giving instructions to the appraiser in this regard.

5. Cost and Expenses. StarTerra shall pay all of PDC's costs up to a total of \$50,000 for reasonable PDC staff time and third-party costs associated with Lot Line Adjustments and with the Easement Agreement, including the Appraisal, all recording costs, escrow and title insurance fees (if any), environmental analysis and review, and any reasonable legal fees for the review and negotiation of this Agreement, the Easement Agreement and related documents (the "PDC Expenses"). PDC shall not be responsible for any costs associated with Survey or the Application. Within ten (10) days from the Effective Date, StarTerra shall pay to PDC the sum of \$25,000 as a retainer to be used for the PDC Expenses (the "Retainer"). PDC shall hold the Retainer in trust until it has incurred PDC Expenses and delivered written notice to StarTerra describing the PDC Expenses that PDC has incurred and for which PDC intends use the Retainer to pay for such PDC Expenses. PDC shall return any unspent Retainer to StarTerra within thirty (30) days of completion of the Lot Line Adjustments or earlier termination of this Agreement as provided herein. If the PDC Expenses exceed the amount of the Retainer (but not amounts over



a total of \$50,000), PDC shall notify StarTerra of the need to increase the Retainer amount with a budget of and reason for any expected increase of PDC Expenses above the Retainer amount. StarTerra shall pay such additional retainer amount to PDC within ten (10) days after receipt of demand from PDC. This provision shall survive the termination of this Agreement.

6. Environmental. PDC and StarTerra agree to work together to ensure that the Lot Line Adjustments once completed will not result in PDC taking ownership of environmentally contaminated property and StarTerra agrees not to complete the Lot Line Adjustments until PDC has completed its environmental review which shall happen within ninety (90) days from the Effective Date or the date StarTerra notifies PDC it has completed demolition of the existing building on the StarTerra Property, whichever is later. StarTerra shall reimburse PDC for its reasonably incurred costs of environmental investigations of the property covered by the StarTerra Deed, including third-party legal review regarding such environmental investigations, in the manner described in Section 5 herein. No later than forty-five (45) days from the Effective Date or the date StarTerra notifies PDC it has completed demolition of the existing building on the StarTerra Property, whichever is later, PDC shall obtain a Phase I Environmental Site Assessment (“ESA”) of the property covered by the StarTerra Deed and shall deliver a copy of the ESA to StarTerra. If the ESA identifies any recognized environmental conditions (“RECs”) and affirmatively recommends that further action be undertaken with respect to the RECs, then within thirty (30) days from completion of the ESA, PDC may elect to obtain a focused Phase II ESA (or equivalent analysis as reasonably determined by PDC upon its review of the ESA) and shall deliver a copy of the proposed Phase II ESA to StarTerra. If the Phase II identifies any remedial actions required to address the RECs, StarTerra agrees to either complete the remedial actions and required coordination with Oregon DEQ to PDC’s reasonable satisfaction prior to completing the Lot Line Adjustments or to deliver written notice to PDC that StarTerra does not want to complete the remedial actions in which case this Agreement and the rights and obligations of the parties hereunder shall automatically terminate upon delivery of such written notice by StarTerra.

7. Landscaping. Prior to completing the Lot Line Adjustments, StarTerra shall landscape the property described in the StarTerra Deed to be substantially similar to the landscaping on the existing PDC Property, including, without limitation, irrigation improvements. StarTerra shall pay all such landscaping costs. StarTerra shall coordinate with PDC on the preparation of a landscaping plan for such landscaping, shall provide a landscaping plan to PDC within 90 days from the Effective Date, and shall obtain PDC’s written approval (which shall not be unreasonably withheld) of its landscaping plan prior to commencing the landscaping work. In the event StarTerra does not provide a landscaping plan that is acceptable to and approved by PDC within 120 days of the Effective Date, PDC shall commence design and installation of landscaping at StarTerra expense and StarTerra shall pay such expenses within ten (10) ( days after receipt of written documentation from PDC of such costs, including, without limitation, landscape design costs, costs of construction and installation of plants, irrigation and other landscaping improvements on the property described in the StarTerra Deed (the “Landscape Work”). StarTerra’s obligation to pay for and complete the Landscape Work shall survive the execution and recording of the PDC Deed and StarTerra Deed. StarTerra and PDC agree to cease the Landscape Work if, by January 31, 2014, the PDC Property has been acquired.

8. Title; Access Easement for PDC. The StarTerra Deed and the PDC Deed each shall be conveyed free and clear of all liens, encumbrances, restrictions, easement, or defects except for the exceptions stated in the title report issued by Chicago Title Insurance Company dated \_\_\_\_\_, 2013 (the "Title Report") and approved by PDC as provided herein (the "Permitted Exceptions"); provided, however, that PDC shall reserve in the PDC Deed a perpetual, nonexclusive vehicular and pedestrian access easement over the PDC to StarTerra Conveyance and StarTerra shall include in the StarTerra Deed a grant to PDC of a perpetual, nonexclusive vehicular and pedestrian easement over the private road improvements on the StarTerra Property for access to and from the PDC Property to Martin Luther King, Jr. Boulevard, including along the northern boundary of the StarTerra to PDC Conveyance area. The easements shall permit PDC or its successors and assigns to construct a curb cut and driveway serving the PDC Property from the private road improvements at a location to be determined exclusively by PDC along the post lot line adjustment northern property boundary, and shall place no restrictions on the removal of on-street parking from the private road improvements necessary for construction of the curb cut and driveway. StarTerra shall cause the Title Report to be delivered to PDC within fifteen (15) days after the Effective Date for PDC's written approval of same within fifteen (15) days after receipt of such title report.

9. Term. The Lot Line Adjustments shall be completed by StarTerra within six (6) months from the Effective Date. In the event StarTerra does not complete the Lot Line Adjustments within such six-month period, then StarTerra agrees to do either of the following, as elected by PDC in its sole discretion by PDC's written notice to StarTerra: (a) compensate PDC in cash for the diminution in value to the PDC Property as a result of PDC granting the access easement in the Easement Agreement, including, without limitation, any resulting loss of development potential, or (2) purchase the entire Property in cash at fair market value without a reduction in value for the impact of the Easement Agreement. The value of the compensation or purchase price shall be determined by the appraiser hired to perform the Appraisal. Such conveyance shall be AS IS, WHERE IS, shall be subject to all encumbrances of record and shall be made without any representations or warranties by PDC, except those in the warranty deed. StarTerra shall complete such purchase within 30 days after expiration of the 6-month period. If StarTerra or its assignees purchases the PDC Property, the access easements described in Section 8 shall automatically terminate upon the conveyance of the PDC Property to StarTerra or its assigns.

10. Property Access. PDC and StarTerra shall permit each other and their agents, representatives, and contractors (collectively, "Agents"), at each party's sole expense and risk, to enter onto the other party's property at all reasonable times after reasonable prior notice for the sole purpose of completing the Survey and Lot Line Adjustments and any environmental investigations or reviews affecting the Lot Line Adjustments. StarTerra shall enter into a Permit of Entry in the typical form from PDC prior to any entry into the PDC Property. Each party shall indemnify, hold harmless, and defend the other from all claims, liens, costs, and expenses, including reasonable attorneys' fees and experts' fees, but only to the extent arising from or relating to such party's entry onto the other party's property. This Agreement to indemnify, hold harmless, and defend shall survive the Lot Line Adjustments or any termination of this Agreement.

11. Attorney's Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonably incurred attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses incurred in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law. This provision shall survive the termination of this Agreement.

12. Notice. All notices or demands with respect to this Agreement shall be given by hand delivery, certified or registered mail (or regular mail, if to a post office box), or a reputable overnight courier addressed to the other party at its address as shown below, and shall be effective upon the earlier of actual receipt and acceptance of such mailing by the addressee or three (3) days following deposit in the U.S. mail. Initially, the addresses for notices are:

StarTerra: StarTerra, LLC  
Attn: Barry Schlesinger  
Suite 1221  
610 SW Alder Street  
Portland, OR 97205

PDC: Portland Development Commission  

---

Real Estate Section  
222 NW Fifth Avenue  
Portland, OR 97209  
Tel: 503-823-3200  
Fax: 503-823-3368

13. No Third Party Beneficiaries; Assignment. This Agreement being for the benefit only of parties and in the case of StarTerra, its assignees or successors in interest, including without limitation, BIT Investment Sixty-Nine, LLC, a Delaware limited liability company. StarTerra shall have no right to assign any right or obligation hereunder, without the prior written consent of PDC, except to an assignee controlled by or under common control with StarTerra and provided further that PDC shall receive prior written notice of any proposed assignment. Any assignment permitted hereunder shall not cause to release assignor from its obligations under this Agreement. Any attempted assignment, other than as provided, shall be void and of no force or effect. Without limiting this Section 13, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

14. Remedies. In the event of any breach or other non-compliance of any provision of this Agreement, the parties shall have every remedy available under applicable state and federal law. Any Party who does not timely reimburse another Party for the costs of work to be performed as stated herein, within 30 days after receipt of a reimbursement request and reasonable supporting documentation, shall additionally be liable for costs of compelling such

reimbursement, including without limitation court costs, consultants' fees, engineers' fees, attorneys' fees, and interest at the highest rate allowed by applicable law.

15. Applicable Law. This Agreement shall be interpreted according to the laws of the State of Oregon and venue of any action predicated on this Agreement shall be in the Circuit Court of the State of Oregon, in and for Multnomah County.

16. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by all the parties hereto. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. Counterparts. The fax or email transmission of any signed document including this Agreement shall be the same as delivery of an original. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Agreement.

18. Exhibits. The following exhibits are attached to this Agreement and incorporated within this Agreement: Exhibit A: PDC Property; Exhibit B: StarTerra Property; Exhibit C: Lot Line Adjustments Map; Exhibit D: Revised Legal Description for PDC Property; Exhibit E: Revised Legal Description for StarTerra Property; Exhibit F: StarTerra Deed; Exhibit G: PDC Deed.

19. Statutory Land Use Disclaimer for Oregon. 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, AND 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, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855,  
OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

*[Signatures on following page]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**STARTERRA:**

STARTERRA, LLC,  
an Oregon limited liability company

By: BPM Crossing LLC, its manager

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

**PDC:**

CITY OF PORTLAND, a municipal corporation in the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION as the duly designated Urban Renewal Agency of the City of Portland.

By: \_\_\_\_\_  
Patrick Quinton, Executive Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Legal Counsel

**EXHIBIT A**  
**PDC Property**

**EXHIBIT B**

**StarTerra Property**



**EXHIBIT C**

**Lot Line Adjustments Map**

**EXHIBIT D**

**Revised Legal Description for PDC Property**

**EXHIBIT E**

**Revised Legal Description for StarTerra Property**

**EXHIBIT F**  
**StarTerra Deed**

**EXHIBIT G**

**PDC Deed**

**RESOLUTION NO. 7024**

**RESOLUTION TITLE:**

AUTHORIZING AN EASEMENT AGREEMENT AND LOT LINE ADJUSTMENT AGREEMENT WITH STARTERRA, LLC, TO ACQUIRE AND CONVEY 3,240 SQUARE FEET OF REAL PROPERTY IN THE OREGON CONVENTION CENTER URBAN RENEWAL AREA


Adopted by the Portland Development Commission on September 13, 2013

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Commissioner Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Aneshka Dickson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Acting Chair John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Steven Straus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Charles Wilhoite	<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.*

	<p><b>Date:</b></p> <p>September 16, 2013</p>
<p><b>Gina Wiedrick, Recording Secretary</b></p>	