

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6550

**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN
AMENDED AND RESTATED DISPOSITION AND
DEVELOPMENT AGREEMENT WITH ONE WATERFRONT
PLACE LLC AND MADRONA PARK LLC IN THE RIVER
DISTRICT URBAN RENEWAL AREA**

WHEREAS, The Amended and Restated Disposition and Development Agreement ("Amended DDA") supports the River District Urban Renewal Plan ("Plan") Goals And Objectives, specifically to maximize the potential for economic development and to promote development of commercial uses to create jobs and that parking facilities be developed to support new commercial development;

WHEREAS, the Project consists of three components: (1) a 250,000 square foot office building, (2) a 500 car space garage, and (3) a pedestrian bridge. The office building will accommodate an estimated 1,000 new jobs in the River District Urban Renewal Area ("River District URA") in a proposed Gold Leadership in Energy and Environmental Design ("LEED") certified building;

WHEREAS, the Portland Development Commission ("PDC") Board of Commissioners ("Board") approved seven separate Resolutions to allow for, among other things, certain design modifications and changes to the Schedule of Performance of the Original Disposition and Development Agreement to allow more time to market the Project, obtain construction financing, and negotiate substantive modifications to the Original DDA, including without limitation, changes to the scope of the Project;

WHEREAS, after substantial negotiations with One Waterfront Place LLC and Madrona Park LLC, the Amended DDA meets the Board's desire to incorporate substantive modifications to the DDA, as well as changes to the scope of the Project;

WHEREAS, the Original DDA required PDC to construct and own a 700 car space Parking Garage, that requirement is eliminated in the Amended DDA as it requires One Waterfront Place LLC to purchase land from PDC to construct and own at a minimum a 500 space car Parking Garage;

WHEREAS, the Amended DDA authorizes PDC to sell PDC owned property, contiguous to the One Waterfront LLC owned property, to One Waterfront LLC for use as a Parking Garage for the fair reuse value of \$2,000,000;

WHEREAS, the Amended DDA authorizes PDC to provide financial assistance to One Waterfront LLC in the form of a \$4,000,000 loan for the purchase and gap financing for the Parking Garage property, and this expenditure is included within the adopted budget and will not create a future unbudgeted obligation of PDC;

WHEREAS, PDC's limited investment will leverage, upon completion of construction, \$90 - \$115 million dollars of private investment generating property taxes over the next 10 years

of \$10,137,459 as well as the construction of the Marshall Street Bridge, a public infrastructure amenity; and

WHEREAS, the Amended DDA advances PDC's 2007-2012 Strategic Plan to develop new and innovative tools to finance the City's livability and development objective to invest in Portland's future revenue base, and to develop key public amenities that enhance community livability and economic vitality.

NOW, THEREFORE, BE IT RESOLVED that the PDC Board authorizes the Executive Director to execute the Amended and Restated Disposition and Development Agreement with One Waterfront Place LLC and Madrona Park LLC, substantially in the form of the draft attached hereto as Exhibit A; and

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

Adopted by the Portland Development Commission on January 9, 2008.



Renee A. Castilla, Recording Secretary

**FIRST AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT**

Among the

**CITY OF PORTLAND, OREGON, acting by and through
THE PORTLAND DEVELOPMENT COMMISSION,
the Urban Renewal Agency of the
City of Portland, Oregon**

and

**One Waterfront Place LLC,
An Oregon Limited Liability Company**

And

**Madrona Park, LLC,
An Oregon Limited Liability Company**

DATED: _____

THIS FIRST AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2008, by and among the CITY OF PORTLAND, OREGON, a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, as the duly designated Urban Renewal Agency of the City of Portland (which, together with any successor public agency designated by or pursuant to law, the "Agency"), One Waterfront Place LLC, an Oregon limited liability company, formerly known as 1201 Building LLC (the "Redeveloper") and Madrona Park LLC, an Oregon limited liability company ("Madrona Park LLC"). (Agency and Redeveloper individually referred to as "Party", and together as "Parties.") Madrona Park, LLC, joins in the execution of the Agreement solely to evidence its agreement and obligation to comply with the provisions of Sections 1.1, 1.4.4, 7.21, 7.32, 8.3, and 8.6 through 8.27 (to the extent applicable to Madrona Park, LLC)

RECITALS

A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, Agency has undertaken a program for the clearance and reconstruction of blighted areas in the City of Portland, Oregon (the "City") and, in this connection, there has been prepared and approved by Agency an urban renewal plan for the River District Urban Renewal Project (the "District") approved by the City Council of the City on October 21, 1998, (which plan may hereafter be further amended from time to time pursuant to law, is hereinafter referred to as the "Urban Renewal Plan"). A counterpart of the Urban Renewal Plan has been recorded in the Official Records of Multnomah County, Oregon and is incorporated herein by reference for all purposes.

B. In order to enable Agency to achieve the objectives of the Urban Renewal Plan, Agency has acquired, and made, and intends to continue to make, certain land available for redevelopment by private enterprise in accordance with the uses specified in the Urban Renewal Plan.

C. Redeveloper and Agency entered into a Disposition and Development Agreement on September 13, 2000, that provided for the redevelopment of the Building Site by Redeveloper and the Garage Site by Agency. Due to market forces outside the control of Agency and Redeveloper, the project as originally drafted became infeasible. Therefore the schedule of performance was extended seven times by Amendment Number 1, dated January 24, 2002, Amendment Number 2, dated December 5, 2002, Amendment Number 3, dated December 10, 2004, Amendment Number 4, dated June 14, 2006, Amendment Number 5, dated July 6, 2007, Amendment Number 6, dated July 11, 2007, and Amendment Number 7, dated November 14, 2007 ("Original DDA").

D. Under the Original DDA, Redeveloper purchased the Building Site shown on the Master Plan (Exhibit A, attached hereto) located along the southwest side of Northwest Naito Parkway, north of the Broadway Bridge, and immediately south of the Food Innovation Center

("FIC"). The Building Site is a portion of Lot 2 of the Union Station Subdivision, City of Portland, Multnomah County, Oregon (the "Building Site").

E. The Original DDA also contemplated Agency construction and ownership of a public parking structure located on the Garage Site, shown on the Master Plan. See Definition of Garage Site.

F. Agency and Redeveloper now desire to amend and restate the Original DDA to provide for, among other things, Redeveloper's ownership and redevelopment of the Garage Site into a parking structure available for use by the Building tenants and the general public and Agency construction of a Pedestrian Bridge to be owned by the City of Portland ("City") and jointly maintained by the City and Redeveloper.

G. Agency and Redeveloper acknowledge that the proposed plan of redevelopment provides for no public subsidies of the Project from the City or the Agency in the form of loans, write-downs, fee reductions or waivers, other than those expressly provided for herein.

H. Agency has concluded that the redevelopment of the Building and Garage Sites pursuant to this Agreement, and the fulfillment generally of this Agreement and the intentions set forth herein, are in the best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of the applicable state and federal laws and requirements under which the Urban Renewal Plan has been undertaken.

I. The parties hereto (singly, a "Party," and collectively, the "Parties") now desire to evidence their agreement regarding the foregoing.

AGREEMENT

Each of the Parties, in consideration of the premises and the agreements of the other Party set forth herein and other valuable consideration, the adequacy of which is hereby acknowledged, covenant and agree as follows:

DEFINITIONS

The following terms shall have the designated meanings for purposes of this Agreement:

1. "Affiliate" shall mean any entity owned by, controlled by or under common control with the designated Party.
2. "Agency Work" shall mean those matters that the Agency is required to perform pursuant to the terms of this Agreement.
3. "Agreement" shall mean this First Amended and Restated Disposition and Development Agreement and all Exhibits thereto.

4. "Building" shall mean the One Waterfront Place Office Building to be constructed upon the Building Site which will initially contain approximately 250,000 square feet of office space and site improvements, as more specifically set forth in the Master Plan and the Scope of Development, attached as Exhibit E.

5. "Building Site" shall mean that parcel currently owned by Madrona Park LLC, described as R508396 Tax ID 1N1E34BB-501.

6. "Cash Flow" shall mean that amount of revenue remaining from Net Operating Income after payment of the senior lender loan payments and all senior lender required reserves approved by Agency, which approval shall not be unreasonably withheld.

7. "Certificate of Completion" shall mean that certificate issued by Agency to Redeveloper pursuant to Section 3.7.3 upon the completion of the Project.

8. "City" shall mean the City of Portland, a municipal corporation of the State of Oregon.

9. "Closing Date" shall mean that date upon which the Closing, as described in Section 1.2 herein is completed.

10. "Commencement of Construction" shall mean the date excavation of the Building Site is commenced for construction of the Project after issuance of the excavation permit for the Project.

11. "Conceptual Plans" means the preliminary plans, site drawings and cost estimates for the Project

12. "Design Review Documents" means the detailed plans submitted to the City of Portland, Bureau of Planning (BOP), for Design Review in accordance with Title 33.825 of the Code of the City of Portland, including but not limited to:

- Architectural site plans showing all structures upon the site together with all connections to existing or proposed utilities, roads, sidewalks and alleys;
- A general landscaping concept plan;
- Elevations of the buildings to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials, of the building exteriors;
- A calculation of gross building areas, floor areas, height ratios and open spaces;
- A preliminary Exterior Finish Schedule;
- Proposed layouts for exterior signage, graphics, and exterior lighting;

- A description of servicing requirements, trash collection locations, loading docks and related functional areas.

13. "Environmental Standards" shall mean all federal, state and local environmental laws and ordinances ("Environmental Laws") and all rules and regulations promulgated thereunder, whether currently in effect or enacted or amended from time to time in the future including but not limited to RCRA (defined herein), CERCLA (defined herein), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act, and also including but not limited to any guidelines, levels and standards currently in effect or enacted or amended from time to time in the future by the applicable federal, state or local regulatory authority for addressing any contamination of any sort in soils.

14. "Final Construction Plans and Specifications" shall mean all plans and specifications required to complete the Project pursuant to the terms of this Agreement, which will have been approved by the Agency and the appropriate City agencies, including the Office of Planning and Development Review.

15. "Garage Site" shall mean that property currently owned by Agency described as 1N1E34BD 805; 1N1E34BB 502 Parcel 1 of Partition Plat 2001-69;

16. "Hazardous Substances" shall mean any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substances as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. ("CERCLA"), or any other Environmental Law, provided, however, that sawdust and any gases or substances produced by its decay shall not be deemed to be a Hazardous Substance for purposes of this Agreement.

17. "Master Plan" shall mean a master plan for the development of the Building and Garage Sites, a preliminary version of which is attached as Exhibit A. The Master Plan is being prepared by BOORA Architects, Portland, Oregon.

18. "Memorandum of Understanding" shall mean the Memorandum of Understanding between Agency and Redeveloper dated as of June 7, 2000, and any and all addendum or modifications thereto, if any.

19. "Net Operating Income" shall mean income after operating expenses have been deducted, but before deducting income taxes and financing expenses.

20. "Parking Structure" shall mean a parking garage with a minimum of 500 spaces to be constructed by Redeveloper on the Garage Site as more particularly set forth in the Master Plan and Scope of Development.

21. "Pedestrian Bridge" shall mean the public pedestrian bridge to be constructed by the Agency and more particularly described in Section 2.6 herein.

22. "Project" shall mean the real property comprising the Building Site and the Garage Site and the improvements thereon, including the Building and the Parking Structure and other improvements to be constructed by Redeveloper, including all appurtenant facilities contemplated herein to be constructed by Redeveloper, all as more particularly described in the Scope of Development.

23. "Recognized Environmental Conditions" means the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, ground water, or surface water of the property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws. The term is not intended to include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be de minimis are not recognized environmental conditions.

24. "Reimbursable Expenses" shall mean 1) the total amount of property taxes paid by Madrona Park LLC or Redeveloper for the Building Site during their respective ownership of the Building Site and LID and other (if any) assessments; 2) 70% of architectural, engineering, survey, plan check and permit fees, insurance premiums, legal fees, accounting fees, advertising and marketing fees and expenses, brokerage fees, geotechnical services, landscaping, signage consultant, energy consultant, acoustical consultant, water feature consultant, web hosting, mechanical and electrical consultant, and design review fees incurred by Madrona Park LLC and Redeveloper for the Project as of the date this Agreement is executed and as approved by Agency; 3) the original purchase price paid by Madrona Park LLC for the Building Site; and 4) 70% the amount of the BOORA architectural fees incurred as of the date Redeveloper provides notice of project infeasibility as described in Section 1.4.4 herein plus \$70,000.00. Redeveloper agrees to provide an accounting for Reimbursable Expenses and a copy of the BOORA contract within 30 days of execution of this Agreement.

25. "Release" shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.

26. "Remainder Value" shall mean the appraised value of the Building Site at the time Redeveloper provides notice of project infeasibility minus: 1) the Reimbursable Expenses; and 2) reasonable, ordinary and necessary closing costs incurred by Agency and Redeveloper for Agency's repurchase of the Building Site.

27. "Schedule of Performance" shall mean the document attached hereto as Exhibit B.

28. "Scope of Development" shall mean the document attached as Exhibit E.

29. "Stabilization" shall mean three years from receiving Certificate of Occupancy from the City of Portland for the Parking Structure.

Other terms defined elsewhere herein shall have the meanings attributed to them herein.

1. **GENERAL TERMS OF CONVEYANCE**

1.1 **Closing of Building Site.** The Building Site was conveyed to Madrona Park, LLC, a wholly-owned affiliate of two Winkler companies, Winkler Family Holdings, Inc. and Winkler Development Corporation on September 19, 2000, recording No. 2000-130285 for an amount of \$1,546,804.00. The Building Site shall be conveyed to Redeveloper by Madrona Park, LLC, upon or before the conveyance of the Garage Site to Redeveloper by Agency. Notwithstanding the interim conveyance to Madrona Park LLC, the Redeveloper is, and remains, responsible for all Redeveloper obligations under this Agreement at all times and Madrona Park, LLC shall have no liability under this Agreement except as specifically assumed herein.

1.2 **Closing of Garage Site.**

1.2.1. Conveyance of Garage Site. Subject to the terms, covenants, and conditions of this Agreement, the Conveyance of the Garage Site to Redeveloper shall occur in an escrow Closing at the office of the Escrow Agent not later than January 15, 2010, as set forth in the Schedule of Performance, attached as Exhibit B.

1.2.2. Conveyance by Deed. Subject to satisfaction or waiver of the Conditions Precedent to Conveyance set forth in Section 1.4 hereof and upon Redeveloper's payment to Agency of the Purchase Price, at the Closing Agency will convey the Garage Site to the Redeveloper by Bargain and Sale Deed substantially in the form of the instrument attached hereto as Exhibit C. Such conveyance and title to the Garage Site shall be subject only to (i) conditions subsequent provided for in the Deed, and (ii) the exceptions to title as provided in Section 1.3.

1.2.3. Payment of Purchase Price. The Purchase Price for the Garage Site will be Two Million Dollars (\$2,000,000), and is based on an appraisal dated November 15, 2007 prepared by Integra Realty Resources. Redeveloper shall pay the Purchase Price by execution and delivery to Agency of a Promissory Note and Trust Deed to be negotiated and executed prior to conveyance of the Garage Site according to the terms provided in Section 4.

1.3 Title Review.

1.3.1 Within ten (10) days after the Effective Date, Agency will deliver to Developer a preliminary title report on the Garage Site and copies of all exception documents (the "Title Report"). Redeveloper will have twenty (20) days after

receiving the Title Report and complete and legible copies of all exception documents to notify Agency in writing if Redeveloper objects to any item in the Title Report. Those items to which Redeveloper does not object (including those provided in the Deed) are the "Permitted Exceptions". If Redeveloper objects to any item, then Agency shall have twenty (20) days after receiving Redeveloper's written objection to notify Redeveloper in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If Agency does not give its response to Redeveloper's objections within the twenty (20) day time period or if Agency refuses to remove any such objected to exceptions, Redeveloper shall have twenty (20) days to terminate this Agreement by written notice to Agency. If this Agreement is not terminated in accordance with the preceding sentence, the Permitted Exceptions together with the exceptions, if any, that Redeveloper originally objected to and that Agency refused to remove or failed to respond to will be deemed the "Final Permitted Exceptions".

1.3.2 Redeveloper may obtain an update to the Title Report at anytime prior to the Closing. Redeveloper shall promptly give to Agency a copy of any updated Title Report. Redeveloper shall give Agency notice, in writing, of any objections to the exceptions (that are not Permitted Exceptions) to title that appear on the updated Title Report. Within ten (10) days of Redeveloper's written notice to Agency described in the preceding sentence, Agency shall notify Redeveloper in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If Agency refuses to remove any such objected to exceptions, Redeveloper may terminate this Agreement, by written notice to Agency, or Close subject to same. Any exceptions that Redeveloper accepts at Closing are the "Final Permitted Exceptions".

1.4 Conditions Precedent to Purchase and Conveyance.

1.4.1 Itemization of Conditions. Redeveloper's and Agency's respective obligations to close this transaction are subject to the satisfaction of the following conditions precedent:

(a) To the Satisfaction of Both Agency and Redeveloper.

- (i) A written acknowledgment that the Redeveloper and the owner of the FIC Property, if required, shall enter into a reciprocal access, easement and operating agreement ("REA") with respect to easements for and operations of separate and common facilities; easements for access to and through the Building Site, the property upon which the FIC is located and the Public Parking Structure; landscaping; security; maintenance; insurance and related issues prior to the Commencement of Construction.

- (ii) Agency shall have designed the Pedestrian Bridge, obtained all necessary easements and executed a construction contract for the construction of the Pedestrian Bridge for a total Pedestrian Bridge project cost (hard and soft costs) not to exceed \$4.5 million dollars less amount estimated by Agency required to reimburse Redeveloper for other Agency improvements described in Section 2.6.1 and 2.6.2.
- (iii) The Final Construction Plans and Specifications for the Building, Garage and Pedestrian Bridge have been approved by all required governmental entities and agencies, including Agency pursuant to Section 3.2 hereof.
- (iv) All land use approvals and permits for the Building, Garage and Pedestrian Bridge and required by Title 33 of the Code of the City of Portland have been secured and no appeal of any required approval or permit has been filed, and the time for any such appeal has expired. If an appeal was filed, it has been finally resolved.
- (v) The City of Portland Bureau of Development Services (“BDS”) is ready to issue building permits that are required to construct the Building, Garage and Pedestrian Bridge, subject only to Redeveloper’s ownership of the Garage Site.
- (vi) Redeveloper has demonstrated financial feasibility for the Project, consistent with the Project Budget, by providing to Agency: (a) copies of binding commitment letters from private lenders for the construction financing for the Project, (b) copies of binding commitment letters from private lenders for the permanent financing for the Project after completion of construction and required lease-up as may be required by the private lender, and (c) commitments from public funding sources, including the approval by the Commission, if necessary, and the Agency Loan Committee of the terms and conditions of the Agency Loan for the construction of the Project.
- (vii) Agency and Redeveloper shall have negotiated and be ready to execute loan documents for the Agency Loan;
- (viii) Agency and Redeveloper shall have executed a Pedestrian Bridge Maintenance Agreement providing for long-term maintenance of the Pedestrian Bridge satisfactory to all parties, including those provisions as provided in Section 2.6.3.
- (ix) The Building Site shall have been conveyed to Redeveloper.

(b) To Redeveloper's Satisfaction.

- (i) Redeveloper shall have determined that Agency has fee simple title to the Garage Site, subject only to the Permitted Exceptions;
- (ii) A firm commitment satisfactory to Redeveloper shall have been issued by Chicago Title Insurance Company ("Escrow Agent") to the effect that it will issue to Redeveloper an Owner's standard Title Insurance Policy in the amount of the Purchase Price, in the form specified in Section 1.5 covering the Garage Site, subject only to the Permitted Exceptions; and
- (iii) Agency shall not be in default under any material term or condition of this Agreement. Agency represents to Redeveloper that as of the date hereof, and as of the date of Closing, there are no defaults by Agency under this Agreement or events, which with the passage of time would constitute a default of Agency under this Agreement.
- (iv) Redeveloper shall have confirmed in writing that it is satisfied with the results of its inspection of the environmental condition of the Garage Site.

(c) To Agency's Satisfaction.

- (i) Redeveloper is a limited liability company duly organized, existing and in good standing in Oregon and has full authority to enter into and perform this Agreement.
- (ii) The Purchase Price in the form of a Note and Trust Deed shall have been tendered to Escrow Agent.
- (iii) Redeveloper shall not be in default under any material term or condition of this Agreement. Redeveloper represents to Agency that there are no defaults of Redeveloper under this Agreement or events, which with the passage of time would constitute a default of Redeveloper under this Agreement.
- (iv) Redeveloper shall have either 1) obtained a predetermination letter from the Oregon Bureau of Labor and Industry ("BOLI") exempting the Building from application of the Prevailing Wage Laws as further described in Section 3.3 or 2) agreed in writing to comply with the Prevailing Wage Laws for all components of the Project.

1.4.2 Itemization of Elections Upon Nonoccurrence of Conditions. If any of the conditions stated in Section 1.4.1 remain unfulfilled to the satisfaction of the benefited Party or Parties on the date scheduled for Closing (the "Termination Date"), then such benefited Party or Parties may elect to:

- (a) Terminate this Agreement, which termination shall become effective sixty (60) days after the notice of termination is issued unless, prior to the expiration of such sixty (60) day period, the other Party causes such condition or conditions to be fulfilled to the satisfaction of the benefited Parties. If so terminated, within 90 days of obtaining an appraisal for the Building Site, Agency may elect to repurchase the Building Site for the Repurchase Price. The Repurchase Price shall be defined as the sum of the Reimbursable Expenses plus 50% of the Remainder Value so long as the appraised value exceeds the Reimbursable Expenses. In the even the appraised value of the Building Site is less than the Reimbursable Expenses, the Repurchase Price shall be the appraised value; or
- (b) Waive any conditions precedent to its obligation to perform under this Agreement and proceed in accordance with the terms hereof; or
- (c) Extend the Termination Date by which the other Party may satisfy the applicable condition, if capable of satisfaction by the other Party, and if the other Party agrees to such extension.

1.4.3 Failure to Make Written Election. Subject to Section 1.4.2(a), if, on or before the Termination Date, a benefited Party does not notify the other Party in writing of its election to either terminate this Agreement or extend the time within which the other Party may perform, as the case may be, such benefited Party will be deemed to have waived the applicable condition precedent.

1.4.4 Agency Right of Repurchase if Project is Infeasible. Prior to Closing and on or before January 15, 2010, Redeveloper may deliver written notice to Agency stating that the Project is not feasible in Redeveloper's sole judgment. If Redeveloper delivers notice that the Project is infeasible, Redeveloper shall have no obligation to proceed with the project under this agreement, and Agency shall obtain an appraisal for the Building Site. Upon receipt of the appraisal, Agency shall then have 90 business days to exercise the right to repurchase the Building Site for the Repurchase Price as defined in Section 1.4.2. Alternatively, Agency may choose to not exercise such right, determine that all terms of this Agreement are null and void, and record a certificate releasing the Building Site from this Agreement and obligations under the deed conveying the Building Site to Madrona Park, LLC.

1.4.5 Title Insurance, Survey, Property Taxes and Closing Costs. Agency, at its expense, shall provide Redeveloper with a standard coverage Owner's Policy of Title

Insurance, Form B-1987, issued by Escrow Agent, covering the Garage Site insuring Redeveloper with coverage in the amount of the Purchase Price free and clear of encumbrances except the Permitted Exceptions. Redeveloper, at its option and its expense, may elect to obtain an ALTA extended coverage policy and additional endorsements under such policy of title insurance and Agency agrees to execute any affidavits or other documents required by the Escrow Agent to enable Redeveloper to obtain such coverage. If Redeveloper requests an ALTA policy, Redeveloper shall pay the cost of preparing a survey in form suitable to support issuance of an ALTA Owner Extended Coverage Title Policy. Redeveloper will pay recording costs for recording a Memorandum of this Agreement, the Deed, and any other documents required by Redeveloper to be recorded. Real property taxes, if any, for the year in which Closing occurs shall be prorated as of the Closing Date. Agency shall pay only the annual payments due through the Closing Date for any special assessments that have been, or may be, paid in annual installments. Each Party shall pay one-half (1/2) of any escrow fees charged by Escrow Agent.

2. PREPARATION OF REAL PROPERTY FOR REDEVELOPMENT

2.1. Utility Service. Redeveloper is responsible for the cost of connection of all of Redeveloper's improvements to be constructed on the Building Site to City water, sewer and storm sewer mains, and other public and private utilities. Redeveloper will pay Agency \$40,000 prior to connecting to the major storm water line on the southwest border of the Building Site which serves the Building Site and adjacent properties, as reimbursement of Agency's cost of installing that portion of said line in 1998.

To the best of Agency's knowledge, there are no public or private utilities within the vacated street areas or elsewhere on the Building Site except those located in the Easement Area, which was recorded in Multnomah County on September 4, 1997 (No. 97135201). However, notwithstanding the paragraph above, and except for those utilities in the easement area located on the Building Site, Agency agrees it will assume responsibility for the relocation of any utilities that may be discovered on the Building Site that interfere with Redeveloper's intended use of the Building Site. In such case, Agency shall cause said relocation to occur at no cost to Redeveloper. Redeveloper is responsible, at its sole expense, for relocation or adjustment of any utilities existing on the Garage Site that is necessary for development of the Project.

2.2. Subsurface, Surface and Building Conditions. Except as otherwise provided in this Agreement, the Agency shall transfer the Garage Site in "AS IS" condition. The Agency makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Garage Site for any improvements to be constructed by the Redeveloper, and the Redeveloper warrants that it has not relied on any representations or warranties, if any, made by the Agency as to the suitability of the soil conditions or any of the conditions of the Garage Site for any improvements to be constructed by the Redeveloper. Redeveloper agrees that the Agency will not be liable for any loss, cost or

damage which may be caused or incurred by Redeveloper by reason of any such conditions.

2.3. Environmental Conditions.

2.3.1. Environmental Due Diligence Reports. Within ten (10) days of executing this Agreement, Agency shall provide the Redeveloper with all Environmental Due Diligence Reports for the Building and Garage sites that were either completed by Agency or are in Agency's possession or control and completed by others as of the date of this Agreement,

2.3.2. Phase 1 Environmental Assessment. Within ninety (90) days prior to Closing, Agency shall undertake a phase one environmental assessment in conformance with ASTM E 1527-05 process in compliance with EPA All Appropriate Inquiries (40 CFR Part 312) and shall provide Redeveloper with a copy of the report.

2.3.3. Remaining Recognized Environmental Conditions. Agency acknowledges that certain Recognized Environmental Conditions remain on the Garage Site as set forth in a State of Oregon, Department of Environmental Quality ("DEQ") Record of Decision, dated August 1998 ("ROD") and Remedial Action Plan dated February 1998 ("RAP") including contaminated soils to a depth of approximately five feet.

2.3.4. DEQ Voluntary Cleanup Program. Agency has enrolled the Garage and Building Sites into a DEQ Voluntary Cleanup Program as set forth in the DEQ letter agreement dated November 1996. Pursuant to the Remedial Investigation and Feasibility Study performed in 1997 under the Voluntary Cleanup Program, a DEQ Record of Decision, dated August 1998 ("ROD") and Remedial Action Plan dated February 1998 ("RAP") were prepared and govern cleanup and redevelopment of the Garage and Building Sites.

2.3.5. Environmental Remedial Actions. In order to comply with the ROD and RAP and to facilitate execution of an Easement and Equitable Servitude and the issuance of a No Further Action Letter by DEQ for the Building and Garage Sites, the Parties agree to the following:

(a) Redeveloper will comply, from and after Closing with respect to the Garage Site, in all respects with the ROD and RAP including but not limited to designing and constructing institutional controls and performing other environmental remedial actions on the Building and Garage Sites;

(b) Agency, at its expense, will engage the services of an environmental consultant who, among other things, will make recommendations to Redeveloper on engineering controls, prepare a contaminated media management plan, monitor construction and placement of institutional

controls and prepare a closure report documenting whether all environmental remediation actions were completed according to the ROD and RAP;

(c) Agency, at its expense, will reimburse for DEQ staff to monitor the implementation of institutional controls and other environmental remedial actions on the Building and Garage Sites;

(d) Redeveloper and Redeveloper's contractors and agents shall cooperate with Agency, DEQ, OSHA and others regarding all environmental issues during design and construction;

(e) Upon completion of all environmental cleanup actions on the Building and Garage site including installation of any environmental institutional controls and DEQ approval of the closure report, Agency will facilitate and Redeveloper shall execute an Easement and Equitable Servitude with DEQ addressing maintenance of the cap, land use changes, and other necessary engineering or institutional controls;

(f) Upon recording of the Easement and Equitable Servitude, Agency and Redeveloper shall request issuance of a No Further Action Letter from DEQ for the Building and Garage site; and

(g) Redeveloper shall be solely responsible for all cap maintenance and other long term environmental obligations after recordation of the Easement and Equitable Servitude..

2.3.6. Reimbursement for Costs. Until recordation of the Easement and Equitable Servitude, Agency assumes financial responsibility for reimbursing Redeveloper for all Incremental Costs associated with the environmental condition of the Building Site and Garage Site, which reimbursement shall be limited to the extent that 1) Agency receives payment for said Incremental Costs from the previous owner of the Building and Garage Sites; and 2) the environmental conditions existed as of the date the Agency acquired the Building Site and Garage Site. "Environmental conditions" include the presence or absence of Hazardous Substances in or on the Building Site and/or Garage Site, and the violation of or compliance with all Environmental Standards.

(a) "Incremental costs" shall include all costs that would not otherwise be incurred but for the environmental condition of the Garage Site and the Building Site at the time the Building and Garage Sites were conveyed to the Agency. For purposes of defining "incremental costs," Agency will reimburse for actual invoiced costs for: soil off-haul and disposal; environmental testing of materials (including soil and groundwater); environmentally required materials and equipment such as demarcation fabric; worker training; other environmental costs that would otherwise *not* be part of normal construction

such as washing or changing facilities. Incremental environmental costs will *not* include: clothing or cleaning of worker clothing; labor inefficiencies; construction staging materials (e.g. rocking all or a portion of the site, whether serving as an environmental cap or not); management of soils piles; dust control; track-out control; and general overhead.

(b) The removal of excavated materials from the Building and Garage Sites shall be kept to an absolute minimum, and no unnecessary excavation for development will be allowed.

2.3.7. **Responsibility and Liability.** Except as specifically agreed to above, Agency shall have no further responsibility for any environmental conditions, performing any environmental due diligence, reimbursement of any cleanup costs, or obligation to comply with the DEQ or other environmental requirements on the Building and Garage site. The parties are individually responsible for any environmental conditions that were caused or may have been caused during their respective term of ownership.

2.3.8. **Indemnification.** Except as specifically agreed to above, Redeveloper shall be responsible for compliance with all Environmental Laws with respect to the Property, its business and the operation of the Project from and after Closing. Developer shall promptly report to DEQ any Release of Hazardous Substances on the Property. Developer shall defend (at Agency's request), indemnify and hold harmless Agency, its successors and assigns, against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by Agency, its successors or assigns, or asserted against Agency, its successors or assigns, by any other party or parties, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Redeveloper. The indemnity set forth in this Section 2 shall survive the issuance of the Certificate of Completion. The foregoing indemnity does not limit any rights of contribution that the parties may have against others under applicable law or agreement. The indemnity is intended only as an allocation of responsibility between the parties to this Agreement.

2.4. **Dedication of Right of Way for Sidewalks and Other Public Access.** Redeveloper shall provide easements for public access in and through the Project as may be required by the City or the Agency from time to time in conformance with approved Drawings and the Master Plan, including but not limited to a public easement for pedestrian access along the rail corridor and a public easement through the plaza between the Parking Structure and the Building connecting the Pedestrian Bridge to Naito Parkway (as generally depicted on the Master Plan). All public easements shall be transferred at no cost to the City. Redeveloper shall provide, or allow, any other private utility easements in or through the Building and

Garage Sites as may be required for development of the Building and Garage Sites as provided herein.

2.5. Permits. Redeveloper will obtain all governmental approvals necessary for the construction of the Project improvements as described in the Scope of Development, Agency covenants to use its best efforts in assisting Redeveloper in obtaining its required permits and approvals. Redeveloper acknowledges that approval of and/or assistance by the Agency in obtaining permits does not bind the City to issue said permits nor does it constitute a representation by the Agency that the necessary permits will be issued by the City. Agency shall, in no way, be responsible for securing these permits or approvals, nor shall it be liable, in any way, for failure in securing any permits or approvals

2.6. Agency Improvements.

2.6.1. Pedestrian Improvements Along Railroad Tracks. Subject to the terms and conditions of Section 2.6.4, Redeveloper shall construct and Agency shall finance the construction of a fence and pedestrian walkway along the railroad tracks abutting the Building and Garage Sites. The final scope and design of these improvements shall be completed consistent with the existing fence and walkway along the FIC Property.

2.6.2. Naito Parkway Traffic Signal. Subject to the approval of the City of Portland, Office of Transportation, Redeveloper shall include in the Project the installation of a four-way traffic signal at the primary entrance to the Project on Naito Parkway. Redeveloper shall cause the installation of the signal and Redeveloper and Agency shall share equally in the cost of said signal and its installation.

2.6.3. Pedestrian Bridge. Agency shall finance, obtain permits for and construct a pedestrian bridge, according to the terms described in this Section 2.6.3 and as shown in Exhibit A. The Pedestrian Bridge will connect the River District to the Willamette River and to the Willamette River Greenway Trail through the easement on Redeveloper property between the Office building and Parking Structure.

(a) Agency anticipates transferring ownership of the Pedestrian Bridge to the City of Portland.

(b) Prior to conveyance of the Garage Site, Redeveloper and Agency will negotiate a Pedestrian Bridge Maintenance Agreement providing for long term maintenance of the Pedestrian Bridge. Redeveloper acknowledges that in no case shall Agency pay any maintenance costs from TIF sources for the Pedestrian Bridge and that Agency will actively pursue City ownership of the Pedestrian Bridge. The provisions of the Pedestrian Bridge Maintenance Agreement will survive any such transfer of ownership and Agency maintenance responsibilities to City,

(c) Agency shall fund the construction of the Pedestrian Bridge;

(d) Agency, as owner, shall have final decision-making authority regarding the design and construction of the Pedestrian Bridge subject to the concurrence of Redeveloper as to the design and construction of the improvements on Redeveloper's property which shall not be unreasonably withheld or delayed. Accordingly, Agency shall determine the final design of the Pedestrian Bridge, but shall share design drawings with Redeveloper to maximize compatibility with the Building and Parking Structure's design and redevelopment objectives; and

(e) Agency shall complete Pedestrian Bridge on or before the issuance of a Certificate of Occupancy for the Project.

2.6.4 Terms and Conditions of Agency Improvements. As to all the improvements described in this Section 2.6, Agency shall:

(a) Consult with Redeveloper regarding the final design of each improvement;

(b) Assist in the preparation and processing of any governmental approvals necessary for the improvement, including City land use approvals;

(c) Use its best efforts to obtain funding for each improvement, and undertake and complete the improvements for which it obtains funding; and

(d) Agency shall complete Agency Improvements according to the Schedule of Performance, as defined herein.

2.7. Diligent Completion. Subject to the terms and conditions of this Agreement, including satisfaction or waiver of all conditions precedent to conveyance of the Garage Site, Agency covenants to complete development of improvements for which it is responsible under this Section 2 in accordance with the Master Plan and final construction plans, and to comply with the Schedule of Performance, subject to Section 7.10, Force Majeure.

2.8. Inspection of Records. Agency shall be allowed complete right of inspection of all accounting records, reports and statements prepared by Redeveloper in connection with its purchase, lease, redevelopment and use of the Garage Site, and such information as will enable the Agency to determine Redeveloper's compliance with the terms of this Agreement. Any information provided to the Agency by or on behalf of Redeveloper that is proprietary shall remain confidential to the extent allowed by the Oregon Public Records Law.

3. REDEVELOPMENT

3.1 Project Completion; Project Financing

3.1.1 Project Completion. Subject to the terms and conditions of this Agreement, the Redeveloper covenants to complete the redevelopment of the Building and Garage Sites through the construction of improvements thereon, in accordance with the Scope of Development attached as Exhibit E and Final Construction Plans and Specifications, and to comply with the Schedule of Performance, subject to Section 7.10, Force Majeure. Redeveloper shall complete development of the Project no later than the date for completion of construction set forth in the Schedule of Performance. Redeveloper agrees to keep Agency informed of its progress with respect to development of the Project during construction, with periodic reports to be issued no less frequently than once a month until Agency issues the Certificates of Completion for the Project.

3.1.2. Project Financing. Except as described in Sections 2 and 4 hereof, Redeveloper will be responsible for obtaining all funds and financing necessary to acquire the Garage Site and construct and operate the Project. The Parties anticipate that the Project financing will be structured generally as shown in the Project Budget, attached as Exhibit F. The parties acknowledge and agree that the Project Budget is only a projection and that a number of factors may change this projection including interest rates, lender requirements, market shifts, and the soft and hard development costs.

3.2 Plans, Drawings and Agency Design Review and Approval.

3.2.1 Agency Design Review and Approval, in General. Redeveloper has prepared 95% construction documents for the Building and Parking Structure which Agency has approved. The construction documents for both buildings are required to be modified to bring them into conformance with the current building codes and LEED certification requirements. In addition, the construction documents for the Parking Structure will require modification to meet the reduced scope. Redeveloper shall prepare Design Review Documents, and Final Construction Plans and Specifications and submit them to Agency for review and approval as discussed below and in accordance with the Schedule of Performance. Review meetings with the design team and Agency representatives are encouraged to facilitate the review and approval process. For purposes of this Agreement, Agency's approval of the Drawings listed in Section 3.2.3 will be evidenced by the written approval of the Director of Development upon recommendation of the Agency Project Manager. Agency approval of Design Review Documents must be obtained prior to submission for City Design Review. All plans and specifications referred to in this Section 3.2 are referred to herein as the "Drawings".

3.2.2 Standards for Agency Design Review and Approval. Agency will not unreasonably withhold its approval of any Drawings for the Project that, in Agency's opinion, adequately address the following design objectives:

(a) Urban and Pedestrian Environment. The Project should be designed to foster active pedestrian environments along Naito Parkway and along Pedestrian Bridge easement area that enhance the level of commercial activity. The Project should create an urban environment that feels safe and friendly to pedestrians, with window glass that is transparent and non-reflective, and with landscape improvements and storefront entries located on the street.

(b) Neighborhood Compatibility. The Project should be designed such that the buildings, site improvements, and landscaping build pride, reflect neighborhood character, and show commitment to the cultural and architectural heritage of the neighborhood. Designs and materials should be complementary to and compatible with the surrounding area building forms, incorporating high-quality, durable materials and colors. Designs and materials should include the use of brick along with simple, rectangular forms that have a vertical emphasis.

(c) Green Building Principles. The Project should be designed to achieve LEED Gold Certification, incorporating green building, energy efficiency and sustainability practices and designs.

3.2.3 Limitations on Review of Design. Agency's review and approval of Drawings will occur in stages and approvals will be progressive in nature, but limited to the following elements:

(a) Final Design Review Documents. Elements, including green building elements, Final Design Review Application and Narrative, Design Review Material and Color Samples and any other documents submitted with the Project's Design Review Application,; and

(b) Final Construction Plans and Specifications. Elements, including green building elements, Final Construction Plans and Specifications Cost Estimate, and material and color samples, depicted in the Final Construction Plans and Specifications that were not approved, that were not at a level of detail to be approved, or that are not in conformance with the approved Final Design Review Documents as approved by the Design Review Commission.

3.2.4 Changes in Approved Drawings. If Redeveloper wants to substantially change any Drawings after approval by Agency or the City, including design build changes and bidder design features, Redeveloper shall submit the proposed changes to Agency for approval. A substantial change shall mean any change that would have

a material impact on the function, appearance or cost of the Project. Redeveloper acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals shall be sought after Agency has approved the changes. Agency shall assist Redeveloper throughout any City or Agency design review process of the appropriate bureaus or agencies within the City, but Agency does not represent or warrant that its assistance will guarantee approval.

3.2.5 Project Rendering. Redeveloper will provide Agency with at least one color rendering of the Project at the time the Project is submitted for City Design Review.

3.2.6 Agency Design Review Process.

(a) Agency Staff Review of Design. Agency and Redeveloper acknowledge that the Schedule of Performance for the Project requires expeditious review and response from Agency and responsiveness and cooperation from Redeveloper and its design team in connection with the design review process. The parties agree that efficient communication between all concerned is necessary to resolve design issues in a timely manner. Agency staff may attend regularly scheduled design meetings for the Project on a schedule mutually agreeable to Agency staff and Redeveloper. The Agency Project Manager will meet with Redeveloper and its design team regularly as scheduled by the Parties, or upon the request of either Party to the other, to review progress on the resolution of design and related issues. The scope of Agency's review will be consistent with Sections 3.2.2 and 3.2.3 of this Agreement.

(b) Agency Design Advisor. Agency may retain the services of an architect to serve as the design advisor to the Agency Project Manager for the Project. The role of the design advisor is to review the design of the Project, to present the design to the Agency Design Task Force as needed, and to advise the Agency Project Manager as to design considerations consistent with this Agreement. These reviews will take into consideration building codes and other governmental regulations but will not include any analysis of compliance with same. The Agency Director of Development may designate additional or substitute Agency design advisors without amendment to this Agreement.

(c) Community Input. Agency and the Redeveloper have coordinated on outreach efforts regarding the Project and its design. It is expected that if Redeveloper changes the design of the Project in a material way from that presented to the City of Portland Design Review Committee, and the Pearl District Neighborhood Association, Redeveloper will present the revised Project design to the foregoing groups for their input and advice.

3.3 Prevailing Wage Laws. The Prevailing Wage Laws (ORS 279C 800 to 279C 870 and the related regulations) require, among other things, the payment of prevailing wage rates on “public works” projects, as that term is defined in ORS 279C.800(5) and OAR 839-016-0004. The Prevailing Wage Laws provide for civil penalties and causes of action, specifically under ORS 279C.850 and ORS 279C.870. Recognizing that the Building will be developed exclusively through private financing, Redeveloper, at its own expense, shall determine whether the Prevailing Wage Laws apply to the Building by seeking a predetermination letter from the Oregon Bureau of Labor and Industry (“BOLI”). Further, Redeveloper shall indemnify and hold Agency harmless from any claims, damages, loss, liability or expenses (including attorney fees) that arise out of or relate to any non-compliance with Prevailing Wage Laws. The Redeveloper shall comply with the Prevailing Wage Laws, including record keeping and reporting, for the Garage Structure.

3.4 Inspection and Property Access.

3.4.1 Before Conveyance of Garage Site. Before Closing, Agency may allow Redeveloper and Redeveloper’s employees, agents and consultants to enter upon the Garage Site pursuant to a written permit of entry.

3.4.2 After Conveyance of Garage Site. After Closing, during construction of the Project, and until the Certificate of Completion is issued for the Project, Redeveloper’s work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of Agency. Agency agrees not to interfere with the work occurring on the Building and Garage Sites.

3.5 Staging Area. Agency agrees to help coordinate the location and use of a construction staging area for the Project. The parties understand and agree that Agency is not obligated to provide staging area on lands owned by the Agency unless the Agency finds that surplus land is available and the use as a staging area does not detract from other adjacent uses. This includes the provision of a staging site(s) on Agency property if the use of such site(s) does not interfere with other Commission-related activities.

3.6 Safety Matters and Indemnification. Redeveloper shall:

3.6.1 Safety. Comply with all safety laws and take all safety measures necessary to protect its employees, and Agency’s employees, agents, contractors, subcontractors, licensees and invitees, and the personal property and improvements of each, from injury or damage caused by or resulting from the performance of its construction.

3.6.2 Liability Claims. Indemnify, defend (at Agency’s request) and hold Agency harmless from all claims, costs, expenses and liabilities arising from the death of, or accident, injury, loss or damage whatsoever caused to, any person or to the Building and/or Garage Sites of any person as occurs in the process of the construction work, except for those caused solely by the negligence or intentional acts of Agency.

3.6.3 Indemnity from Liens. Indemnify, defend (at Agency's request) and hold Agency harmless from and against all mechanics', materialmen's, laborers' and other construction liens and all costs, expenses and liabilities arising from construction performed by or at the request of Redeveloper or Redeveloper's contractors or agents on the except to the extent caused in connection with a default by Agency under this Agreement or any agreement referenced herein.

3.7 Liens. If any statutory lien shall be filed, prior to Agency's issuance of the Certificate of Completion, against any portion of the Building and Garage Sites or the Project by reason of labor, services or materials supplied to or at the request of Redeveloper or in connection with any construction on the Project, Redeveloper shall, within thirty (30) days after the filing thereof, take whatever action is reasonably necessary and proper (including posting a bond or a cash deposit and taking such further action as may be required by the Oregon Construction Lien Law), to discharge the same of record so that the Building and Garage Sites and the Project shall thereafter be entirely free of the lien. Alternatively, Redeveloper may elect to leave the lien of record and to contest its validity, amount or applicability by appropriate legal proceedings, but only if Redeveloper shall, within the 30-day period following the filing of the lien, furnish an indemnity against such lien in an amount and form satisfactory to induce the title insurance company which insured title to the Building and Garage Sites to insure over such lien or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such lien provided, further, that in such event, (i) Redeveloper shall indemnify and hold harmless Agency from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such lien except to the extent caused in connection with a default by Agency under this Agreement or any agreement referenced herein, and (ii) in the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Redeveloper, Redeveloper shall within ten (10) Business Days thereafter cause the lien to be discharged of record.

3.8 Certificate of Completion.

3.8.1 When Redeveloper is Entitled to Certificate of Completion. Upon substantial completion of the Project as described in this Section 3.8 on or before the date for completion of the construction set forth in the Schedule of Performance and provided Redeveloper is not in default under this Agreement, Agency will furnish Redeveloper with a Certificate of Completion for the Project, substantially in the form of Exhibit I. The Project will be deemed to be substantially complete when (i) Agency determines that the Project has been completed according to the Final Construction Plans and Specifications, except for punch-list items that do not materially affect the use of the Project for the purposes intended under this Agreement, (ii) the City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project, and (iii) Agency determines that any other improvements required by the terms of this

Agreement to have been completed at the time the Project is complete are complete in all material respects.

3.8.2 **Meaning and Effect of the Certificates of Completion.** The Certificate of Completion shall provide for termination of obligations under this Agreement and limitation of remedies of Agency as expressly provided for in the Certificate of Completion.

3.8.3 **Form of Certificate of Completion; Procedure Where Agency Refuses to Issue.** A Certificate of Completion shall be in a form that can be recorded in the real property records of Multnomah County. At Redeveloper's request, the Certificate of Completion for the Project shall state which terms and conditions of this Agreement are of no further force and effect. If Agency refuses or fails to provide a Certificate of Completion in accordance with this section, then Agency, within fifteen (15) days after written request by Redeveloper for such Certificate of Completion, shall provide Redeveloper with a written statement indicating in detail in what respects Redeveloper has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts Redeveloper must take or perform to obtain such Certificate of Completion. Agency's failure to furnish Redeveloper with such detailed written statement within such fifteen (15) day period shall be deemed Agency's approval of Redeveloper's request for the Certificate of Completion.

4. **STATION PLACE GARAGE SPACES; PROJECT FINANCING.**

4.1. **Station Place Garage Spaces.** Subject to bond covenants and execution of a Parking Agreement between Agency and Redeveloper, Agency shall make available to Redeveloper up to 150 spaces that will be reserved, unmarked and undesignated in the Station Place Garage, at then current monthly rate. The Parking Agreement will be for a term of ten years and will require a reassessment by both parties after five years. The parties agree to exercise diligence and good faith in the negotiation of the Parking Agreement.

4.2. Agency shall make the spaces available for a minimum of ten (10) years after the Certificate of Completion from the City of Portland for the Office Building. Redeveloper shall make monthly payment for such spaces shall be made by Redeveloper to Agency, or a manager of the Parking Garage designated by Agency, with payment due not later than the 20th of the month prior to the month for which Redeveloper makes the payment. Redeveloper will include a statement of the number of parking passes it is requesting at the time of each monthly payment. The parking manager will deliver the requested parking passes to Redeveloper as soon as reasonably possible after payment is received, but not later than the 28th of the month in which payment is received.

4.3. **Project Financing.** Subject to Agency's related obligations under the Agreement, Redeveloper will obtain all construction and permanent financing necessary to complete

the Project. Subject to the approval of the Agency's Loan Committee, Agency shall provide a portion of the construction and permanent financing for the Project in the form of an loan to finance (a) the Purchase Price; and (b) that portion of the Garage that requires funding after maximizing equity and private financing, terms of which are described in this Section 4.3 ("PDC Loan"). Additional terms will be negotiated for loan documents and approved by the Agency's Loan Committee as a condition precedent to conveyance of the Garage Site, as provided in Section 1.4 herein. Any subsequent loan documents must materially conform to the provisions provided herein, unless otherwise approved by the Agency board and Redeveloper.

4.3.1. PDC Loan Terms. Agency shall provide a PDC Loan in the full amount of the Purchase Price plus an additional four million dollars for a total loan amount not to exceed six million dollars , according to the following terms:

- a) Interest Rate: 2% simple interest accruing from first disbursement;
- b) Term: 18 month construction period with six month extension, converting to 15 year permanent loan period;
- c) Amortization Schedule: Annual payments based on 20 year amortization schedule;
- d) Payments: Payments shall be made from cash flow availability beginning the earlier of (a) three years after Agency provides a Certificate of Completion for the Project or (b) at Stabilization of the Garage Structure. Stabilization shall be defined as set forth in Definition 29 herein. Cash flow shall be defined as set forth in Definition 6 herein. Agency shall receive an annual payment of Fifty Thousand Dollars (\$50,000) or 50% of Cash Flow, whichever is greater. Proceeds of Agency's portion of Cash Flow shall first pay down interest and then principal on the PDC Loan. If insufficient funds are available from Agency's share of Cash Flow to make a PDC Loan payment, the unpaid balance of principal and/or interest shall be added to the principal amount owing on the PDC Loan and shall be due on maturity, default or otherwise when the PDC Loan is due. Payments shall be payable at the end of each of Redeveloper's fiscal years.
- e) Due on Sale. The entire balance of the PDC Loan is due and payable in the event Redeveloper 1) sells the Parking Structure or Building to an entity other than one controlled by Redeveloper and one or more of its equity partners; 2) defaults on the PDC Loan; or 3) defaults under this Agreement prior to receiving a Certificate of Completion.
- f) Refinance. If Redeveloper refinances its senior private financing on either the Parking Structure or Building, it shall maximize the dollars available at time of refinance and shall obtain Agency's prior written approval, which

approval shall not be unreasonably withheld so long as the refinance meets the requirements of this Section 4. All funds received in refinance in excess of the cost of refinance shall be used first to pay down the PDC Loan.

g) Subordination. The PDC Loan shall be subordinate to Redeveloper's senior private construction and permanent financing.

4.3.2. Look-Back Provision. As a condition of making the PDC Loan, Agency requires an IRR look back provision and IRR test to determine if the rate of return for the Parking Structure exceeds the IRR level set by the Parties. If Redeveloper's IRR exceeds the targeted rate of twelve percent (12%), the Redeveloper shall pay additional interest, when the PDC Loan is due, in an amount that reduces the IRR to the target level. The amount of interest paid shall not exceed the difference in the market rate interest and the actual interest paid over the twenty year term of the PDC Loan. The market rate interest shall be deemed to be equal to the initial interest rate charged on the senior permanent lender's loans at senior permanent loan closing.

5. SPECIAL COVENANTS AND CONDITIONS.

5.1 Agricultural Marketing Center Tenants. Agency and Redeveloper will endeavor to accommodate tenants for the Project that support the concept of an Agricultural Marketing Center.

5.2 Staffing and Operation of Project. Redeveloper covenants and agrees that it will provide an experienced qualified full-time project representative with authority to act on behalf of the Redeveloper. The Principal-in-Charge for Redeveloper is James H. Winkler. Redeveloper's Project Manager will be Robert Naito. Redeveloper will own, operate and maintain the Project at its sole cost and expense, except as otherwise provided in the REA.

5.3 Project Name. Agency will have the right to approve the name of the Project as proposed by the Redeveloper, limited to naming the project anything other than One Waterfront Place.

5.4 LEED Certification. Developer shall submit all materials necessary to obtain the LEED Gold Certification, within sixty (60) days after Agency issues the Certificate of Completion for the Project. Developer will cooperate with Agency staff in the follow-up and monitoring of the effectiveness of the green building standards, including for example, providing information on the installation and operating of the measures and practices, and will provide Agency access to the building utility bills.

6. ANTISPECULATION AND ASSIGNMENT PROVISIONS

6.1 Antispeculation.

6.1.1 General. The Redeveloper represents its purchase of the Building and Garage Sites is for redevelopment and not for speculation in landholding. Redeveloper further represents that except as otherwise provided in this Section 6, it has not entered into any agreement to sell, assign, convey, lease, transfer or otherwise dispose of all or any part of the Building and Garage Sites or improvements or interest therein before a Certificate of Completion has been issued as to the improvements to be transferred. The Redeveloper acknowledges that due to the importance of the redevelopment of the Building and Garage Sites to the general welfare of the community, the qualifications and identity of the Redeveloper are of particular concern to the community and the Agency. The Redeveloper further acknowledges it is because of such qualifications that the Agency is entering into this Agreement with the Redeveloper.

6.1.2 Precompletion Participation. The Agency acknowledges that Redeveloper intends that other parties may participate with Redeveloper in connection with the Project. Such arrangements may take the form of a joint venture, limited partnership, sale and leaseback, lease with retained supervisory powers, and the like with Redeveloper in any and all such events retaining principal operational control. Such arrangements may involve Redeveloper transferring all or portions of the Building and Garage Sites, or interest therein, to a separate entity or entities before, during, or after completion of the improvements to be constructed on the Building and Garage Sites, and may result in consideration being paid to Redeveloper in excess of Redeveloper's hard and soft costs (including carrying costs) of acquiring and developing the Building and Garage Sites and improvements therein. Notwithstanding the form such arrangements may take, Redeveloper at all times prior to the issuance by the Agency of the Certificate of Completion, shall retain no less than 50% ownership interest in the Project, and shall retain principal operating and management control of the participating entity (as managing partner or otherwise) subject only to removal for fraud, willful misconduct or gross negligence. Further, Redeveloper shall remain fully responsible to the Agency for the performance of this Agreement. Agency shall give its approval to precompletion participations so long as they comply with the conditions of this subsection 6.1.2. Agency shall have the right to review any formation documents of a participating entity for the purpose of determining Redeveloper's compliance with this section. Agency shall not unreasonably withhold its determination of compliance.

6.2 Antiassignment/Restrictions.

6.2.1 General. Except as provided in Section 6.1.2, Redeveloper shall not partially or wholly dispose of, or agree to dispose of, the Building and Garage Sites prior to the Redeveloper receiving the Certificate of Completion, or Redeveloper's interest in this Agreement, without the prior written approval of the Agency in accordance with this Section. As to transfers other than the type contemplated by Section 6.2.2, Agency may withhold its approval in its sole discretion. Any action or occurrence, which is

essentially the equivalent of a disposition, shall be subject to the foregoing restriction. The Agency may require as conditions of its approval one or more of the following:

(a) Declare the PDC Loan due and payable, subject to the limitations provided in Section 4.3.1(e);

(b) any transferee shall provide the Agency an assumption agreement in a form satisfactory to the Agency. The fact that any transferee referred to in this Section 6 shall not have agreed to assume Redeveloper's obligations or is not required to do so shall not of itself relieve or except such transferee from such obligations, conditions, or restrictions, or deprive or limit the Agency of any rights or remedies or controls with respect to the Building and Garage Sites or the construction of the improvements. It is the intent of the Parties that to the fullest extent permitted by law and equity, no transfer of the Building and Garage Sites or anything essentially the equivalent of a transfer, whether voluntary or involuntary, shall operate to deprive or limit the Agency, legally or practically, of or with respect to any rights or remedies or controls provided in or resulting from the Agreement with respect to the Building and Garage Sites and the construction of the improvements which the Agency would have had if there had been no such transfer;

(c) any proposed transferee shall have qualifications and financial responsibility comparable to Redeveloper; and

(d) the Redeveloper and its transferee shall comply with such other conditions as the Agency finds necessary in order to achieve and safeguard the purposes of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland and the Urban Renewal Plan.

The antiassignment restrictions contained in this Section 6 shall not apply to any transfers that are to become effective at or after the PDC Loan is fully repaid.

6.2.2 Approved Precompletion Transfers. Notwithstanding the foregoing Section 6.2.1, and provided that Redeveloper provides Agency with copies of all agreements related to the transfer at least thirty (30) days prior to the effective date of the proposed transfer, and sufficient other information as requested by Agency so that Agency may determine whether such transfer complies with the requirements of this Agreement, Agency hereby consents to:

(a) Any mortgage(s), which Redeveloper may cause to attach to the Building and Garage Sites solely in connection with the acquisition of the Building and Garage Sites and construction and/or permanent financing of improvements on the Building and Garage Sites provided that:

- (i) such mortgage(s) provide that Agency shall have the right to require notice and cure to be agreed upon; and
- (ii) the funds advanced to Redeveloper or on its behalf pursuant to such mortgage(s) which Redeveloper may cause to attach to the Building and Garage Sites in connection with the acquisition of the Building and Garage Sites and construction and/or permanent financing of improvements on the Building and Garage Sites do not exceed an amount representing the "actual cost" (including carrying charges) to the Redeveloper of the Building and Garage Sites and the improvements, if any, theretofore made or thereafter to be made thereon by Redeveloper; it being the intent of this provision to preclude mortgage of any portion of Building and Garage Sites and for purposes unrelated to the completion of the Project prior to the issuance of a Certificate of Completion pursuant to Section 3.8 hereof; and, in the event that any such mortgage is made (and is not canceled), the Agency shall be entitled in addition to its legal and equitable remedies, to increase the purchase price to the Redeveloper of the Building and Garage Sites provided in Sections 1.1 and 1.2 of this Agreement by the amount that the funds advanced are in excess of the amount authorized in this Section 6.2.2(a)(ii), and such funds shall, to the extent they are in excess of the amount authorized, belong to and be paid to Agency immediately upon their receipt by Redeveloper. For purposes of this Section 6.2.2(a)(ii), the "actual cost (including carrying charges) to the Redeveloper of the Building and Garage Sites and the improvements" means all hard costs and soft costs which are customarily incurred in connection with the acquisition of land and the construction and development of multifamily residential, commercial and retail improvements and specifically includes, but is not limited to, the following: all site work, building improvements, leasehold improvements, cost of obtaining all licenses and permits for the construction, architects, attorneys, and other consultants' fees, financing costs, expenses and fees, closing costs, expenses and fees, construction period interest and taxes, parking lot improvements, developer's fee, contractors' fees, if any, and other costs commonly regarded as cost of real estate construction (excluding trade fixtures or other removable personal property of Redeveloper that does not become part of the realty) and development.

(b) Leases of commercial space, where the lessee will be the operator of the business in the leased space.

6.2.3 Effect of Section 6.2 Transfers. Any transfer referred to in this Section 6.2 shall not relieve Redeveloper or any other person of any obligations created under or pursuant to this Agreement.

6.2.4 Limitation on Consideration Payable for Precompletion Transfers. Unless: (a) Redeveloper retains an economic interest in and principal operating and management control of the transferee subject only to removal for fraud, willful misconduct or gross negligence, and (b) the Agency shall have approved the transfer pursuant to Section 6.2.1, the consideration payable for a precompletion transfer by the transferee or on its behalf shall not exceed an amount representing the actual hard and soft costs (including carrying charges) to the Redeveloper of the Building and Garage Sites and the improvements, if any, theretofore made on the Building and Garage Sites by Redeveloper. It is the intent of the parties to preclude assignment of this Agreement or transfer of the Building and Garage Sites and the improvements thereof for profit prior to the issuance of a Certificate of Completion where the Redeveloper no longer will be involved either financially or in the performance of this Agreement. In the event any such transfer is made (and is not cancelled), the Agency may increase the purchase price of the Building and Garage Sites under Section 1 by the amount the consideration payable for the transfer is in excess of the amount authorized in this Section 6.2.4. Such consideration shall belong and be paid immediately to the Agency upon the transfer to the extent it is in excess of the amount so authorized.

7. REMEDIES

7.1 Default-Cure.

7.1.1 Default by Redeveloper. A default of this Agreement shall occur if Redeveloper shall breach any of the material provisions of this Agreement or the PDC Loan, whether by action or inaction, and such breach shall continue and not be remedied within sixty (60) days after the Agency shall have given notice specifying the breach or in the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, if Redeveloper shall not within such sixty (60) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure within a reasonable time after the notice from the Agency. A default also shall occur if Redeveloper shall have made any assignment for the benefit of creditors, or shall have become adjudicated a bankrupt, or shall have had a receiver, trustee or creditor's committee appointed over it. Redeveloper shall not be deemed to be in default hereunder for failure to pay any tax, assessment, lien or other charge if Redeveloper in good faith is contesting the same and, if necessary to avoid foreclosure, has furnished an appropriate bond or other undertaking to assure payment in the event Redeveloper's contest is unsuccessful.

7.1.2 Default by Agency. A default shall occur if the Agency shall breach any of the material provisions of this Agreement whether by action or inaction, and such breach shall continue and not be remedied within sixty (60) days after the Redeveloper shall have given notice specifying the breach or in the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, if Agency shall not within such sixty (60) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure within a reasonable time after the notice from Redeveloper.

7.2 Agency's Preconveyance Remedies. In the event of Redeveloper's default prior to the conveyance of the Garage Site to Redeveloper, the Agency shall have the following remedies:

7.2.1 Termination. This Agreement and any rights of the Redeveloper in this Agreement or arising therefrom with respect to the Agency or the Garage Site may be terminated by the Agency at the option of the Agency. In the event of Agency's termination, Agency may exercise the right to repurchase the Building Site for the Repurchase Price. Alternatively, Agency may choose to not exercise such right, determine that all terms of this Agreement are null and void, and record a certificate releasing the Building Site from this Agreement and obligations under the deed conveying the Building Site to Madrona Park, LLC..

7.2.2 Delivery of Development Materials. Redeveloper shall deliver to Agency within thirty (30) days after any such termination, copies of all Parking Structure market research, design documents, engineering documents, proformas and financial projections prepared for Redeveloper by unrelated third parties, and which Redeveloper is authorized to release; and design and construction contracts with the consent of any party having approval rights thereunder which may be used by Agency in any manner which Agency sees fit.

7.2.3 Restoration of Garage Site/ Indemnity. Redeveloper shall repair and restore, pursuant to the terms of any Right of Entry Permit granted to Redeveloper by Agency, any portion of the Garage Site upon which Redeveloper had conducted any activities. Redeveloper shall indemnify, defend and hold the Agency harmless from any claim for personal injury or property damage arising from or alleged to have arisen from the Redeveloper's activities on the Garage Site prior to conveyance by the Agency.

7.3 Agency's Postconveyance Remedies. In the event of Redeveloper's default after the conveyance of the Garage Site to Redeveloper, the Agency shall have the following remedies:

7.3.1 Agency's Reentry and Termination of Redeveloper's Interest in Garage Site. Subject to the right of any holder of a mortgage under Section 7.6 of this Agreement

to cure defaults as provided in Section 7.6.4, the right to reenter and take possession of the Garage Site if a Certificate of Completion has not been issued, and to terminate (and revert in the Agency subject to the interest of such holder) the estate conveyed by the Deed. It is the intent of the parties that the conveyance of the Garage Site to the Redeveloper shall be made upon, and that the deed to the Garage Site shall provide for, a condition subsequent to the effect that in the event of a default by the Redeveloper, the Agency shall have the option to declare a termination in favor of the Agency of all the title, rights and interest in the Garage Site conveyed to the Redeveloper, in which event the interest of Redeveloper and of any assigns or successors in interest of Redeveloper shall revert to the Agency, except as provided in Section 7.7.1.

7.3.2 Repurchase of Building Site. In lieu of the conditions subsequent contained in the existing deed for the Building Site (which conditions are superseded by the provisions hereof), Agency may exercise the right to repurchase the Building Site for the Repurchase Price. Alternatively, Agency may choose to not exercise such right, determine that all terms of this Agreement are null and void, and record a certificate releasing the Building Site from this Agreement and obligations under the deed conveying the Building Site to Madrona Park, LLC.

7.3.3 Right to Cure. The right to cure such default. In the event Agency cures such default, Agency may make demand upon Redeveloper for reimbursement of all reasonable costs associated with such cure. If Redeveloper refuses to reimburse Agency within thirty (30) days of demand, Agency may draw upon the Security Deposit to pay such costs, or Agency may declare a default of this Agreement for such failure to pay.

7.3.4 Delivery of Development Materials. In the event that Agency terminates Redeveloper's interest, the right to cause Redeveloper to deliver to Agency copies of all Redeveloper Parking Structure market research, design documents, engineering documents, proformas and financial projections prepared for Redeveloper by unrelated third parties, and which Redeveloper is authorized to release; and design and construction contracts which with the consent of any party having approval rights which may be used by Agency in any manner which Agency sees fit.

7.4 Redeveloper's Remedies. If the default consists of the Agency's failure to perform any covenant required by the terms of this Agreement, in addition to any other remedies Redeveloper may have, Redeveloper may terminate this Agreement.

7.5 Nonexclusive Remedies. Except if expressly stated to be exclusive, the rights and remedies afforded under the provisions of this Agreement shall not be deemed exclusive and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for

the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation the right to compel specific performance.

7.6 Mortgagee Protection Provisions.

7.6.1 Effect of Reversion to Agency. Any reversion and revesting of the Building and Garage Sites in Agency pursuant to this Agreement shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way any lien, mortgage or security interest authorized by this Agreement and executed for the sole purpose of obtaining funds to construct the improvements.

7.6.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of the Agreement, excepting those which are or are intended to be covenants running with the Building and Garage Sites, the holder of any mortgage authorized by the Agreement or its designee for purposes of acquiring title at foreclosure ("Mortgagee") shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Section 7.6.2 or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the Building and Garage Sites or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the Urban Renewal Plan and in this Agreement. The term "Mortgagee" shall include any Mortgagee as owner of the Building and Garage Sites as a result of foreclosure proceedings, or action in lieu thereof, but shall not include (a) any other party who thereafter obtains title to the Building and Garage Sites or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee.

7.6.3 Copy of Notice of Default of Mortgagee. Whenever the Agency shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this Agreement, the Agency shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder shown in the records of the Agency.

7.6.4 Mortgagee's Option to Cure Defaults. After any default in or breach of this Agreement by the Redeveloper or its successor in interest, each holder of any mortgage permitted under this Agreement shall (insofar as the rights of the Agency are concerned) have the right after the failure of the Redeveloper to cure or remedy said default or breach, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Building and Garage Sites covered by its mortgage) within sixty (60) days and if permitted by its loan documents to add the cost thereof to the mortgage debt and the lien of its mortgage. If the breach of default is with respect to construction of the improvements, nothing

contained in this Section or any other Section of this Agreement shall be deemed to prohibit such holder, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements, provided that the holder notifies Agency in writing of its intention to complete, in the manner provided in this Agreement, the improvements on the Building and Garage Sites. Any such holder who shall properly complete the improvements relating to the Building and Garage Sites shall be entitled, upon written request made to the Agency, to the Certificate of Completion by the Agency to such effect in the manner provided in Section 3.8 of this Agreement, and any such Certificate of Completion shall, if so requested by such holder, mean and provide that any remedies or rights with respect to recapture of or reversion or reversioning of title to the Building and Garage Sites that the Agency shall have or be entitled to because of failure of Redeveloper to complete the Project or any other default in or breach of the Agreement by the Redeveloper shall not apply to the Building and Garage Sites after such Certificate of Completion has been issued.

7.6.5 Mortgage and Holder. For the purposes of this Agreement, the term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon the Building and Garage Sites, or any part thereof, as security for a loan and a security interest created pursuant to a sale and leaseback financing agreement. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage.

7.7 Declaration of Termination.

7.7.1 Priority of Mortgage. Any reversion and reversioning of the Building and Garage Sites in Agency pursuant to this Agreement shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way any lien, mortgage or security interest authorized by this Agreement and executed for the sole purpose of obtaining funds to construct the Project or improvements.

7.7.2 Procedure. The Agency shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of Section 7.7.1, including also the right to execute and record or file with the County Recording Office a written declaration of the termination of all rights and title of the Redeveloper, its successors in interest and assigns, in the Building and Garage Sites or a portion thereof as allowed by this Agreement and, the reversioning of title thereto in the Agency; provided, that any delay by the Agency in institution or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 7.7 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the Agency should not be constrained because of concepts of waiver, laches or estoppel so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section or otherwise to exercise such remedy at a time when it may still hope otherwise to

resolve the problems created by the default involved); nor shall any waiver in fact made by the Agency with respect to any specific default by the Redeveloper under this Section be considered or treated as a waiver of the rights of the Agency with respect to any other defaults by the Redeveloper under this Section or with respect to any particular default except to the extent specifically waived.

7.8 Agency Completion, Resale. In the event that the title to the Building and Garage Sites or part thereof shall revert in the Agency in accordance with the provisions of this Agreement, the Agency may, at its option and subject to rights of holders of mortgages under Section 7.6, bring the improvements to a state of completion deemed necessary by the Agency, and shall use its best efforts to resell at a reasonable price the Building and Garage Sites or part thereof and such improvements (subject to such mortgage liens and leasehold interest as hereinbefore set forth and provided) as soon and in such manner as the Agency shall find feasible to a qualified and responsible party or parties (as determined by the Agency in its sole discretion) who will assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to the Agency.

7.9 Application of Proceeds from Resale. Upon such resale, and subject to the rights of any mortgagee described in Section 7.6 herein, the proceeds thereof shall be applied as follows:

7.9.1 Agency and City. First, to the Agency on its own behalf, to reimburse it for all costs and expenses reasonably incurred by it in retaking, completing and selling the Building and Garage Sites and its improvements, including, but not limited to, salaries of personnel in connection with and to the extent of the recapture, management and resale of the Building and Garage Sites or part thereof; finishing construction of Project improvements which were Redeveloper's responsibility to construct but were done by or on behalf of Agency; all taxes, assessments, and water and sewer charges with respect to the Building and Garage Sites or part thereof (or, in the event the Building and Garage Sites is exempt from taxation or assessment or such charges during the period of ownership thereof by the Agency or Redeveloper, an amount equal to such taxes, assessments, or charges (as determined by the County assessing official) as would have been payable if the Building and Garage Sites were not so exempt (however, in no event shall Agency be entitled to recover property taxes which would have been payable with respect to the Building and Garage Sites or improvements thereon but for the partial tax exemption of such Building and Garage Sites or improvements if such partial tax exemption remains in effect following such resale); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Building and Garage Sites or part thereof at the time of reverting of title thereto in the Agency or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redeveloper, its successors or transferees excluding any mortgage if the Building and Garage Sites and/or the improvements are sold subject

to such mortgage; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Building and Garage Sites or part thereof; any amounts paid to the State or City as lease or license fees, legal fees and costs and any amounts otherwise owing the Agency by the Redeveloper and its successor or transferee.

7.9.2 Agency. Second, any balance remaining after any reimbursements shall be retained by the Agency as its property.

7.10 Force Majeure. Except as limited below, for the purposes of any of the provisions of this Agreement neither the Agency nor the Redeveloper, as the case may be, nor any successor in interest shall be considered in breach of or default in its obligations with respect to the preparation of the Building and Garage Sites for development, preparation and submission of plans and drawings, the beginning and completion of construction of the improvements, or any other obligations created hereunder or progress in respect thereto, in the event of delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault (including the enjoining of a party's performance or the issuance of a stay prohibiting performance by an administrative Agency or court having jurisdiction) acts of God, or of the public enemy, acts of the Government (provided that Agency's acts will not relieve it from responsibility hereunder), acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of suppliers or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay the time or times for performance of the obligations of the Agency, or Redeveloper, as the case may be, shall be extended for the period of the delay; provided that neither party shall be excused under this Section from performance of any of its obligations for a period longer than one (1) year in the aggregate. The Guarantor, if any, shall be excused under any applicable Completion Guaranty for the duration in which Redeveloper is excused under this Section from performing any obligation under this Agreement.

8. MISCELLANEOUS PROVISIONS

8.1 Conflict of Interests. No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of Agency shall be personally liable to Redeveloper or any successor in interest in the event of any default or breach by Agency or for any amount which may become due to Redeveloper or its successor or on any obligations under the terms of this Agreement.

8.2 Discrimination. Redeveloper, for itself and its successor and assigns, agrees that during the construction of the Project Redeveloper will not discriminate against any

employee or applicant for employment because of race, color, religion, age, marital status, sex, handicap or national origin.

8.3 Notice. A notice or communication under this Agreement by either Party to the other shall be deemed given or delivered forty-eight (48) hours after being dispatched by registered or certified mail, postage prepaid, return receipt requested, and

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

One Waterfront Place LLC
210 S.W. Morrison, Suite 600
Portland, OR 97204
Attn: James H. Winkler

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

Steven L. Shain
Portland Development Commission
222 NW Fifth Avenue
Portland, OR 97209

with a copy to: Portland Development Commission
222 NW Fifth Avenue
Portland, OR 97209
Attn: General Counsel

or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing dispatched as provided in this Section. Notice given in any other manner shall be effective upon receipt by the Party for whom the same is intended.

8.4 Participation in Portland Development Commission Programs.

8.4.1 M/W/ESB Good Faith Effort Program. In connection with the Project, Redeveloper shall comply with the Portland Development Commission Minority Business Enterprise (MBE), Women Business Enterprise (WBE) and Emerging Small Business (ESB) Program. This program promotes the participation of minority-owned, women-owned and emerging small businesses in connection with Agency projects, as described in Exhibit J, Attachment B of the Fair Contracting and Hiring Guideline Index, as modified by the terms of this section 8.4.1. Redeveloper agrees

to attach Exhibit H Attachment B to all agreements with the general contractor for the Project and to abide by its provisions.

For the purpose of this section 8.4.1 and the M/W/ESB Program, the goal percentages in Exhibit H, Attachment B will be increased to 25% of total hard construction costs in consideration of enhanced technical assistance on the part of Agency staff and/or its representatives. The nature of this technical assistance will include: (i) Pre-Bid assistance (May include meetings with owner and prime contractor to outline scope of work, identification of appropriate M/W/ESB contractors, and communicating with M/W/ESB contractors about opportunity and participation in pre-bid meetings); (ii) Estimating and Bidding assistance (May include assisting M/W/ESB contractors with bid information and providing estimating and bidding oversight to firms that request assistance); (iii) Contract Award assistance (May include review of bids that have been submitted and assistance to the owner or prime contractor determine methods to maximize M/W/ESB participation); and (iv) Project Management assistance (May include providing M/W/ESB contractors with project management oversight to assure businesses are prepared for work and proactively identify and address challenges; in addition to participation in meetings with the owner/prime as necessary to identify and address M/W/ESB issues).

8.4.2 Construction Hiring. In connection with the Project, Redeveloper shall comply with the City of Portland Workforce Training and Hiring Program in effect at the Effective Date described in Exhibit H, Attachment A of the Fair Contracting and Hiring Guideline Index by requiring its contractors and subcontractors to comply with such program. The failure of Redeveloper's contractors and subcontractors to comply with such program shall constitute a breach of a material provision of this Agreement.

8.4.3 Construction Wage Policy. Agency has adopted a Construction Wage Policy (the "Policy") to increase the opportunity for Portlanders to access family and living wage jobs as an important means of wealth creation and to expand opportunities for People of Color and women in the construction trades to ensure that benefits of Agency's investments are equitably disbursed. Agency has determined that the Parking Structure is subject to the Policy. Accordingly, in connection with the Project, the Redeveloper shall comply with the Policy. The Policy is set forth in Exhibit H, Attachment C of the Fair Contracting and Hiring Guideline Index.

8.5 Merger and Integration. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Garage Site from Agency to Redeveloper or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement. This Agreement supersedes and replaces the Memorandum of Understanding.

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

8.7 Counterparts. This Agreement is executed in four (4) counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

8.8 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 Agency or Redeveloper 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.

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

8.10 Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.

8.11 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 such holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or such a holiday.

8.12 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.

8.13 Legal Purpose. Redeveloper agrees that it shall use the Building and Garage Sites solely for lawful purposes.

8.14 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.

8.15 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.

8.16 Modifications. Any modifications to this Agreement shall be made in writing executed by both Parties. The Parties recognize that circumstances may change and that it may be in the interest of both Parties that the Schedule of Performance be amended from time to time. For this reason, each of the Parties will consider changes that may be proposed by the other during the term of this Agreement.

8.17 Successors and Assigns. Subject to the provisions of Section 6.2, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.

8.18 Consents. Whenever consent or approval by Agency is required under the terms of this Agreement, all such consents or approvals shall be given in writing by the Executive Director of Agency, or the Executive Director's designee.

8.19 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Multnomah County, or the United States District Court for the District of Oregon.

8.20 No Partnership. Neither anything in this Agreement contained nor any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties.

8.21 Nonwaiver of Government Rights. Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the deeds, Agency is specifically not obligating itself, the City, or any other Agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Building and Garage Sites, including, but not limited to, rezoning, variances, environmental clearances or any other governmental Agency approvals which are or may be required, except as expressly set forth herein.

8.22 Waiver of Surety Defenses. Redeveloper, for itself and its successors and assigns, and all persons (except Agency and the City), who are or shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, whether real, personal, or otherwise, or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

8.23 Arbitration. In those disputes where it is specified hereinabove that the dispute shall be resolved by arbitration, such arbitration shall be conducted by Arbitration Service of Portland. The decision of the arbitrator shall be final and binding on the Parties. Judgment may be entered on the award and fully enforceable by any court having jurisdiction thereof. The arbitration shall be completed by no later than thirty (30) days from the date on which it is commenced. Except as otherwise provided herein, the rules of the Arbitration Service

of Portland shall control. The arbitrator shall determine the prevailing Party in any such arbitration and shall award such prevailing Party all of its costs including costs of experts and attorneys' fees incurred in connection with arbitration. In addition to other matters to be submitted to arbitration pursuant to the terms of this Agreement, the following issues shall be subject to arbitration under this Agreement:

8.23.1 Approvals: Whenever in this Agreement, Agency approval is required pursuant to the terms of Section 8.23 and has not been given, and where Agency has not retained sole discretion over such approval, the Parties agree to arbitrate as to whether Agency has unreasonably withheld such approval.

8.23.2 Certificate of Completion: Agency and Redeveloper agree to arbitrate as to whether Agency has unreasonably withheld issuance of the Certificate of Completion.

8.24 Approvals. Where approvals of Agency are required, Agency will approve or disapprove within ten (10) business days after receipt of the material to be approved, except where (a) a longer or shorter time period is specifically provided to the contrary in this Agreement; or (b) the approval of Agency's Commission is required, in which case the Commission shall approve or disapprove within forty-five (45) days. Failure by Agency to approve or disapprove within said period of time shall be deemed an approval. Any disapproval shall state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are reserved to Agency's sole discretion. Redeveloper, upon receipt of such disapproval, shall revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to Agency within forty-five (45) days after receipt of the notice of disapproval or, unless such disapproval is within the sole discretion of Agency, submit the matter to arbitration pursuant to Section 8.23.

8.25 Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a party being given "sole discretion" or being allowed to make a decision in its "sole judgment."

8.26 Recordation of Memorandum. On or before the date of execution of this Agreement, Agency shall execute, acknowledge and deliver to Redeveloper a Memorandum of Disposition and Development Agreement in the form attached hereto as Exhibit I ("Memorandum") and upon execution and acknowledgment thereof by Redeveloper, the Memorandum shall be recorded in the Official Records of Multnomah County, Oregon.

8.27 Statutory Disclosure. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)). THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)).

\

[remainder of page intentionally left blank]

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

CITY OF PORTLAND, a municipal corporation of 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: _____
Bruce A. Warner, Executive Director

ONE WATERFRONT PLACE LLC, an Oregon limited liability company

By: _____
James H. Winkler, Co-Managing Member

MADRONA PARK, LLC, joins in the execution of the Agreement solely to evidence its agreement and obligation to comply with the provisions of Sections 1.1, 1.4.4, 7.21, 7.32, 8.3, and 8.6 through 8.27 (to the extent applicable to Madrona Park, LLC).

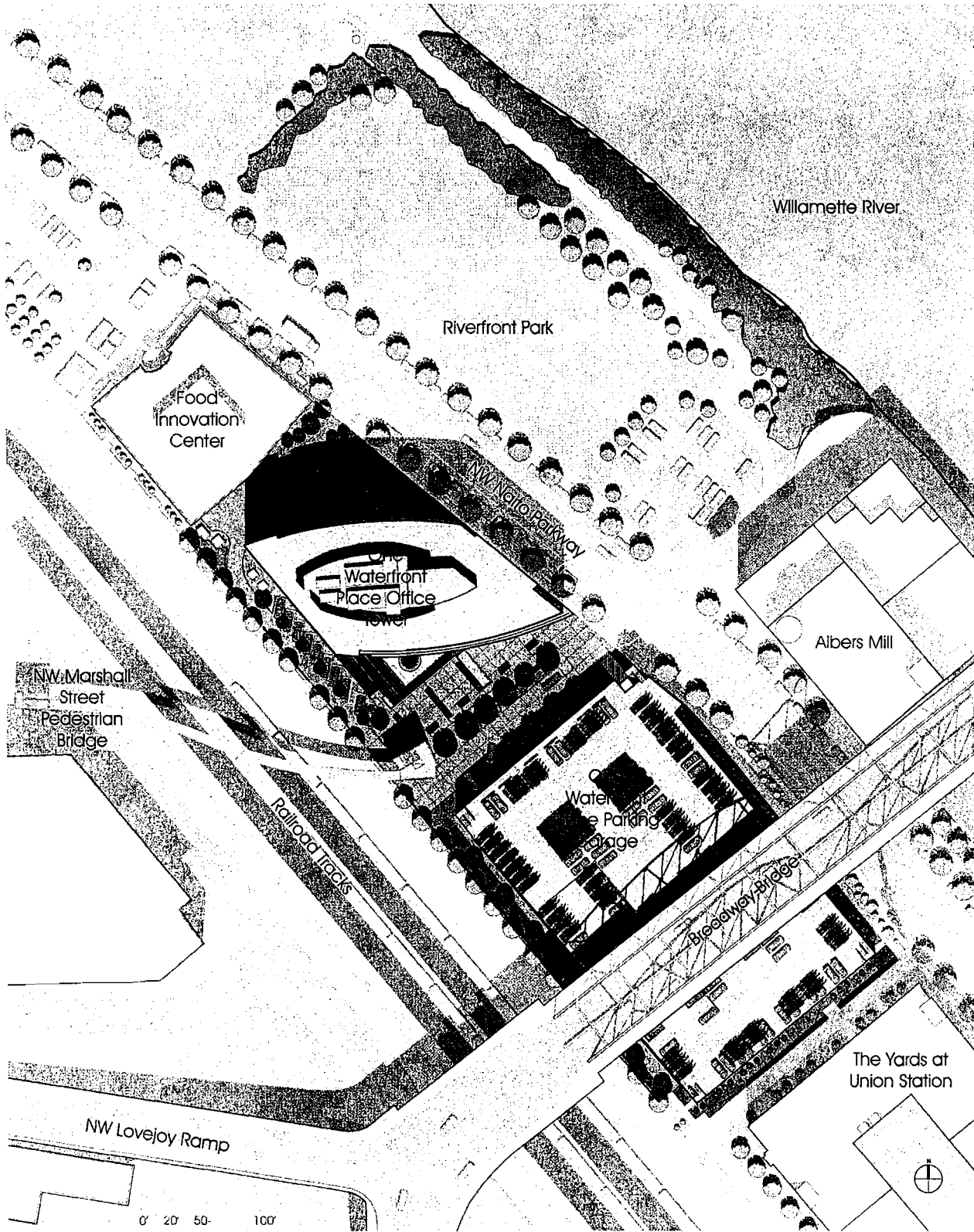
MADRONA PARK, LLC, an Oregon limited liability company

By: _____
James H. Winkler, Managing member

EXHIBIT LIST

- A - Master Plan
- B - Schedule of Performance
- C - Deed
- D - FIC Health and Safety Plan
- E - Scope of Development
- F - Project Budget
- G - Certificate of Completion
- H - Attachments A, B and C of Fair Contracting and Hiring
- I - Memorandum of Disposition and Development Agreement

ONE WATERFRONT MASTER PLAN



FORM OF QUITCLAIM DEED AND ESCROW INSTRUCTIONS

After recording return to
and send tax statements to:

Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209
Attn: General Counsel

For a valuable consideration, receipt of which is hereby acknowledged
_____, a _____ (“Grantor”), does hereby demise, release
and quitclaim to CITY OF PORTLAND acting by and through the PORTLAND DEVELOPMENT
COMMISSION, the duly designated Urban Renewal Agency of the City of Portland (“Grantee”), all right,
title and interest in and to the following described real property, with the tenements, hereditaments and
appurtenances, situated in the County of Multnomah and State of Oregon, to wit:

To have and to hold the same unto the said Grantee and Grantee's successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ -0-. However, the
actual consideration consists of or includes other property or value given or promised which is the whole
consideration.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE
SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT
DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF
APPLICABLE LAND USE LAWS AND REGULATIONS. 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 APPROVED USES, TO
DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN
ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY,
UNDER ORS 197.352.

January 9, 2008

IN WITNESS WHEREOF, Grantor has executed this instrument this ___ day of _____, 20__.

_____, a _____

By: _____
Name: _____
Title: _____

Accepted this ___ day of _____, 20__.

CITY OF PORTLAND
acting by and through the PORTLAND DEVELOPMENT COMMISSION

By: _____
Executive Director

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20__, by
_____, _____ of _____, a
_____.

Notary Public for
My commission expires: _____

ESCROW INSTRUCTIONS FOR QUITCLAIM DEED

_____ Title Insurance Company

Attention: [INSERT TITLE OFFICER]

Re: Escrow No. _____

_____, a _____ (“Developer”), has entered into that certain Agreement for Disposition and Development of Property (_____) (“DDA”) with the City of Portland, Oregon acting by and through the Portland Development Commission (“Agency”) dated as of _____, 20__, a Memorandum of which was recorded _____, 20__ as Document No. _____, Records of Multnomah County, Oregon, whereby the Agency will convey to the Developer or its assignees certain real property (the “Property”) in the _____ Urban Renewal Area. The Property is the subject of this escrow and is described in the accompanying quitclaim deed (“Quitclaim Deed”).

Section 9.3.1 of the DDA provides that, under certain circumstances, the Agency is entitled to reconveyance of the Property pursuant to a Quitclaim Deed and Escrow Instructions. This document constitutes those escrow instructions and is for the purpose of irrevocably instructing you as to the disposition of the accompanying Quitclaim Deed.

In the event that you receive from Agency a notice signed by the Agency's Executive Director certifying that a copy of said notice has been delivered concurrently to Developer and certifying that a termination in favor of Agency of the title, and of all of the rights and interest of Developer in the Property has occurred, and that rights to the Property described in the Quitclaim Deed have reverted in the Agency pursuant to the DDA (“Notice of Termination”), you shall at the end of thirty (30) days after receipt of said instructions record the subject Quitclaim Deed unless within said thirty (30) day period, you are notified by the Agency that the Agency has withdrawn the Notice of Termination, or unless you are prohibited from recording the Quitclaim Deed(s) by temporary restraining order, preliminary injunction, or other court order.

In the event that you receive a copy of a Certificate of Completion issued by Agency with respect to the Project (either an original or one certified by Developer as being a duplicate of the original), you will forthwith return the Quitclaim Deed to Developer. In the event that there still remains in your possession an undisposed Quitclaim Deed by [insert date eighteen (18) months after DDA scheduled date for completion of improvements] you shall contact Agency and Developer as to its disposition.

These instructions may not be withdrawn or in any way amended, modified or waived without the prior written consent of both of the parties hereto.

Very truly yours,

_____, a _____

By: _____
Name: _____
Title: _____

Very truly yours,

CITY OF PORTLAND, acting by and through the
PORTLAND DEVELOPMENT COMMISSION

By: _____
Name: _____
Its: _____

Accepted and agreed to this
___ day of _____, 20__

By _____
_____ Title Insurance Company

Board Resolution 6550 - Amended DDA with One Waterfront Place, LLC
January 9, 2008

**SITE-SPECIFIC WORKER SAFETY PLAN
SHALLOW SOIL CONTAMINATION EXPOSURE
UNION STATION, PARCEL A NORTH**

Exhibit A-1
MAR 18 1998
Page 8 of 93
ACM → ALG
PORTLAND DEVELOPMENT
COMMISSION

1.0 GENERAL INFORMATION

A thorough study of soil conditions was conducted at Parcel A North at Union Station. Low levels of several hazardous substances have been measured in shallow soils at the site. In order to prevent future long-term exposure to these hazardous substances, the Oregon Department of Environmental Quality (DEQ) has determined that the site must be capped. A cap prevents human contact with the soils containing the hazardous substances.

The Food Innovation Center is planned for construction on Lot 1 of Parcel A North at Union Station. The DEQ has approved the use of the Food Innovation Center and associated parking and landscaping areas as the cap for the site. Because workers constructing the Food Innovation Center may come into contact with the contaminated soil, an evaluation of the risk of such a worker exposure has been completed. The evaluation has concluded that the low levels of hazardous materials present in shallow Parcel A North soils do not constitute a health hazard to site construction workers as long as they are not working at the uncapped site for more than 170 days.

Even though the contaminated soils are not a health hazard, the Oregon Occupational Safety and Health Administration (OSHA) requires that employees be notified of: 1) the presence of contaminated soils, 2) the health effects overexposure to the hazardous substances present in the contaminated soil, and 3) measures that can be taken to minimize exposure be communicated to workers. The purpose of this Worker Safety Plan is to satisfy these Oregon OSHA requirements.

2.0 POTENTIAL CHEMICAL HAZARDS

During the completion of environmental studies on Lot 1, low levels of polycyclic aromatic hydrocarbons (PAHs), lead and arsenic were measured in shallow (0 to 5 feet below grade) near surface soils. Table 1 provides a summary of the routes of entry, and potential acute and chronic health effects. Keep in mind that the health effects listed in Table 1 would result from overexposure to these compounds, and that no overexposure to these compounds should occur during Food Innovation Center construction activities.

2.1 PAHs

PAHs are a group of chemicals that are formed during the incomplete burning of coal, oil and gas, garbage, or other organic substances like charbroiled meat. PAHs are designated as probable human (B2) carcinogens. Although there is no direct data to show that the carcinogenic PAHs cause cancer in humans, these PAHs are a component of mixtures which have been associated with cancer in humans. The health effects of PAHs are varied, and assigning specific effects to individual PAHs is extremely difficult, because most exposures involve mixtures of PAHs. Exposure to PAHs can occur through inhalation, incidental ingestion, and dermal contact.

TABLE 1
POTENTIAL CHEMICAL HAZARDS
 Potential Effects, Route of Entry

CHEMICAL	ROUTE OF ENTRY	EYE IRRITANT	POTENTIAL EFFECTS OF HIGH DOSES	
			Acute	Chronic
Polycyclic Aromatic Hydrocarbons (PAHs) (as coal tar pitch)	Inhalation Ingestion Contact	High	Dermatitis, bronchitis.	Carcinogenic. Impaired bladder, kidneys, respiratory system. Dermatitis.
Lead	Inhalation, Ingestion, Contact	Medium	Weakness, lassitude, insomnia, facial pallor.	Anorexia, low weight, malnutrition, anemia, constipation, abdominal pain, colic, tremor.
Arsenic	Inhalation, Ingestion, Contact	High	Ulceration of nasal septum, skin. Gastrointestinal disturbances. Respiratory irritation, skin pigmentation.	Liver, kidney, lung, lymphatic dysfunction. Dermatitis.

2.2 ARSENIC

Arsenic is found widely in nature and most abundantly in sulfide. Arsenic accounts for 0.0005% of the earth's crust. Most cases of human toxicity have been associated with the inorganic form.

Arsenic is considered a known human carcinogen by United States Environmental Protection Agency (EPA). This classification is based mainly on observation of increased lung cancer mortality in populations exposed primarily through inhalation and on increased skin cancer incidence in several populations consuming drinking water with high arsenic.

2.3 LEAD

Lead occurs naturally and has been found in the earth's crust and in all compartments of the biosphere. The primary source of lead in the environment is emissions from a variety of sources to the atmosphere, where it exists mainly in particulate form. Natural levels of lead in soil derived from crustal rock can range from below 10 milligrams per kilogram (mg/kg) to 30 mg/kg. Next to roadways, it is estimated that lead levels in surface soils are typically 30 to 2,000 mg/kg higher than natural levels. Soil adjacent to smelter sites as high as 60,000 mg/kg have been measured. Lead concentrations detected on Parcel A North generally do not exceed 800 mg/kg. Non-carcinogenic effects of lead are well known. The most publicized effect of lead exposure is the neurological damage produced in children exposed through household dust or paint chips.

3.0 OCCUPATIONAL EXPOSURE STANDARDS

Table 2 below summarizes Oregon OSHA permissible exposure limits (PELs) and action levels for each hazardous substance present at the site, expressed as an eight-hour time weighted average. The maximum probable exposure levels were calculated using a concentration considered to conservatively represent the average concentration in soil, and assuming a dust level equivalent to the OSHA standard of 10 milligrams per cubic meter (mg/m^3) in air.

**TABLE 2
OSHA EXPOSURE STANDARDS AND
MAXIMUM PROBABLE PARCEL A NORTH EXPOSURE LEVELS**

COMPOUND	OSHA ACTION LEVEL OR PERMISSIBLE EXPOSURE LEVEL		MAXIMUM PROBABLE EXPOSURE LEVEL
	PEL	ACTION LEVEL	
LEAD	50 $\mu\text{g}/\text{m}^3$	30 $\mu\text{g}/\text{m}^3$	8 $\mu\text{g}/\text{m}^3$
ARSENIC	10 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	0.3 $\mu\text{g}/\text{m}^3$
PAH	200 $\mu\text{g}/\text{m}^3$	none	0.2 $\mu\text{g}/\text{m}^3$

4.0 ACTION PLAN TO MINIMIZE WORKER RISK

4.1 PERSONAL PROTECTION EQUIPMENT (PPE)

Although contact with contaminated site soils for a period of less than 170 days presents negligible risk to workers, it is recommended that contact with contaminated soils be minimized. The following PPE is required, and will be supplied by the construction contractor, to minimize worker exposure prior to placement of a temporary or permanent cap. After the cap is in place, no PPE is required. This list does not include PPE that may be required to minimize risk to workers from physical hazards.

1. **Dust- and soil-resistant clothing** - Wearing coveralls (washable or disposable) or rain gear. Outer clothing should not be worn or taken home for laundering.
2. **Boots** - Boots normally worn at other sites are acceptable, and no dedication of footwear for this site is necessary. However, boots must be washed or brushed to remove mud or dust prior to being taken home.
3. **Gloves** - Gloves normally worn at other sites are acceptable, and no dedication of gloves for this site is necessary. However, gloves must not be taken home.

A secure area for the storage of the PPE required above will be provided. Running water will be available on site for washing of PPE (gloves and boots). If disposable dust- and soil-resistant clothing is utilized, its disposal must be properly managed by the construction contractor. If laundered clothing is utilized, the types of contaminants present at low levels in site soils must be disclosed to the laundry service provider selected by the construction contractor.

5.0 SITE CONTROL MEASURES

The following section defines measures and procedures for maintaining site control. Site control is an essential component in the implementation of the worker safety program.

No special requirements for wheel washing or surface water management, other than those required by the City of Portland for a normal construction site, are necessary at Parcel A North. An erosion control plan and storm water management plan has been prepared for the site and approved by the City of Portland.

5.1 WORK ZONE DEFINITION

No formal definition of work zones is necessary for this project.

Eating and drinking increases the probability of hand-to-mouth transfer and ingestion of contaminated soil. A modular break room for workers will be provided. The break room will be equipped with running water. The break room should be utilized by workers as an eating area. Prior to eating, workers should wash their hand. A boot brush will be located at the entrance to the break room. In order to prevent contaminated soil track-in, workers should clean their boots prior to entering the break room. The break room will be cleaned twice weekly, or if and when conditions warrant.

Smoking and chewing tobacco use also increases the probability of hand-to-mouth transfer and ingestion of contaminated soil. If possible, workers should wash their hands prior to smoking or chewing tobacco.

Contact with contaminated or potentially contaminated material should be avoided. Routine dust suppression techniques (i.e. periodic water truck sprinkling) should be used if airborne dust occurs. Whenever possible, do not walk through puddles, mud or any discolored ground surface. Avoid sitting or laying on the ground, or leaning against excavation sidewalls to the maximum extent practicable.

6.0 MONITORING EMPLOYEE EXPOSURE

6.1 AIR MONITORING

Air monitoring was conducted at the construction site located adjacent to, and south of, Parcel A North. Environmental conditions on this adjacent site are similar, or worse, than environmental conditions on Lot 1. Employee exposure monitoring for lead, arsenic and PAHs was conducted using air monitoring devices for a two month period. No lead, arsenic or PAH concentrations above Oregon OSHA PELs or action levels were measured.

The results of air monitoring data from the adjacent site preclude the need for initial monitoring during Food Innovation Center construction. However, initial air monitoring for each of the compounds in shallow soils will be conducted to provide further assurance that no health hazard is present at the site. Personal air samples will be collected in the breathing zone of selected workers engaged in tasks which involve extensive soil handling using a battery powered pump with mixed cellulose ester filters as the collection media.

6.2 BLOOD AND URINE TESTING

The employee exposure monitoring program for the adjacent construction project also included pre- and post-project testing of arsenic in urine and lead in the blood of employees. Approximately 25 employees were screened. The blood testing provided no evidence of increases in arsenic concentrations in urine or lead concentrations in blood during the project.

Blood and urine testing is not required by OSHA. However, this testing is useful in documenting that no exposure resulting in an increase of arsenic or lead levels in blood has occurred. Approximately 10 workers will be tested both prior to stepping foot on the site, and after their work at the site is completed. The workers targeted for this testing will be those with the greatest potential for exposure to contaminated soils such as foundation excavators and carpenters, and utility installers.

7.0 TRAINING

Limited training is required at all sites where hazardous substances are present, even if it can be demonstrated that no exposure to concentrations above action levels or PELs will occur. In general, the limited training must include information regarding the health effects of exposure to the substance(s) to which employees potentially may be exposed, and information regarding actions to minimize exposure. Specific training requirements for Parcel

A North include Appendix A of the Arsenic Standard (29 CFR 1910.1018) and Appendices A and B of the Lead Standard (29 CFR 1926.62). This training is required for all employees working on the site prior to placement of the cap, and workers whose work will involve penetration of the cap after it has been placed. The training program will cover the content of this Worker Safety Plan in its entirety. It is anticipated that site training can be completed in no more than four hours.

8.0 OVEREXPOSURE

Any employee at this site who develops signs or symptoms indicating possible overexposure involving contaminated soil will be required to seek medical attention within 24 hours, and to notify his or her supervisor. The incident will be reported as soon as possible in writing. The workers employer shall test the employees blood and urine for lead and arsenic, respectively, to determine if overexposure to lead and/or arsenic from the site is the cause of the employees reported symptoms. A physicians written opinion will be required prior to the employees return to normal site activities.

9.0 EMERGENCY RESPONSE NOTIFICATION REQUIREMENTS

Based upon thorough characterization of the site, no hazardous substances which may result in an acute overexposure are known to be present at the site. However, it is possible that physical injury may result in an emergency situation. Designated supervisors or foremen are to be notified immediately if severe physical injury to a worker occurs. It is the responsibility of the designated supervisor or foremen to notify the hospital and any emergency response personnel that patient's clothing may be contaminated. No hospital or emergency responder pre-notification is necessary, as the potential for overexposure to hazardous substances present in shallow site soils has been shown to be negligible.

9.1 NEAREST HOSPITAL

Nearest Hospital: Good Samaritan Hospital (Portland), 1015 NW 22nd Avenue, Portland, Oregon

Hospital Route: Proceed north from the site on N. W. Front Avenue to N. W. 9th Avenue. Turn left (south) on N. W. 9th Avenue and proceed south to N. W. Glisan Street. Turn right (west) on N. W. Glisan Street and go 12 blocks to the intersection with N. W. 21st Avenue. Turn right (north) on NW 21st Ave. and proceed 5 blocks to NW Lovejoy Street. Turn left (west) on NW Lovejoy St. and proceed 2 blocks. The hospital will be on your right.

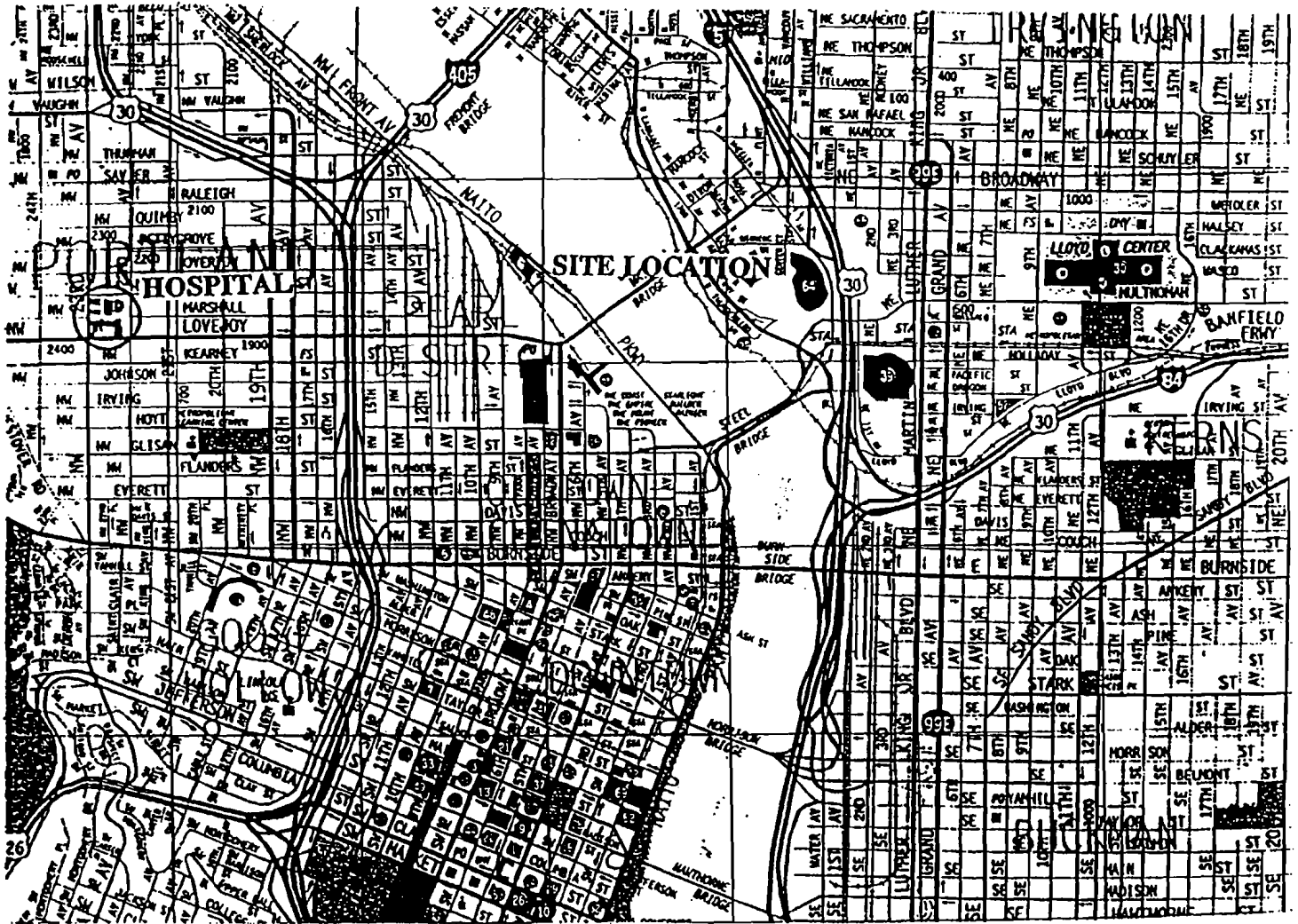
SEE HOSPITAL ROUTE MAP ON NEXT PAGE

EXHIBIT D

- Emergency Room: (503) 229-7260
- Information Number: (503) 229-7711
- Ambulance: 911
- Fire: 911
- Police: 911

- Oregon OSHA Central (Salem): (503) 378-3272
- National Response Center: 1-800-424-8802
- EPA Environmental Response Team: (201) 321-6600
- Utility Notification Center: (800) 332-2344

9.1.1 Hospital Route Map





March 17, 1998

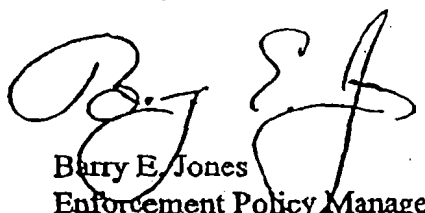
Bruce Allen
Portland Development Commission
1900 SW Fourth Ave, Suite 100
Portland OR 97201-5304

Dear Bruce,

Oregon Occupational Safety & Health Division (Oregon OSHA) has reviewed the Site Specific Worker Safety Plan for the Union Station, Lot 1, Parcel A North, Portland, Oregon. Based on the data provided from the site assessments of Lot 1, Parcel A and the adjacent south lot, and the occupational exposure and biological monitoring from the adjacent south lot, Oregon OSHA accepts your safety and health plan for Lot 1, Parcel A North.

If you have any questions, please feel free to call me at (503) 378-3272. I look forward to working with you in the future.

Sincerely,


Barry E. Jones
Enforcement Policy Manager
Oregon OSHA

- cc: Len Farr, Senior Project Manager
- Lorna Youngs, Ph.D., Department of Agriculture
- Mike Rosen, Department of Environmental Quality
- David Sparks, OR-OSHA Deputy Administrator
- Penny Wolf-McCormick, OR-OSHA Field Health Manager
- Chris Ottoson, OR-OSHA Health Analyst
- Rodney Boast, OR-OSHA Technical Specialist

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UNSTATION PARCEL A NORTH

Background: The site on which the Food Innovation Center is to be constructed has been evaluated by the Oregon Department of Environmental Quality (DEQ) under it's Voluntary Cleanup Program. The site was previously occupied by railroad tracks and sidings built in the late 1800's, and operated until the 1950's. Low levels of hazardous substances including arsenic, lead, and polycyclic aromatic hydrocarbons (PAHs) were identified in shallow soils. These materials are believed to have originated as residues from the burning of fuel, including coal, associated with the railroad, DEQ has approved the use of the building and parking lots on this site as a means to prevent long-term human contact with these materials in the future. Until this contaminated soil is covered or capped, special precautions are recommended.

Site Hazard Evaluation: A thorough study of soil conditions has been conducted. This study has been reviewed by the DEQ and the Oregon Occupational Safety and Health Administration (OR-OSHA). Based on this study it has been determined that contaminated soils on this site are not a health hazard to intermittent short-term site workers. Air samples have been taken, and workers monitored, during other operations on this site with no measurable exposures determined. Never-the-less, OR-OSHA requires that workers be notified of: 1) the presence of contaminated soil, 2) the health effects of overexposure to the substances in the soil, and 3) measures that can be taken to minimize exposure.

Degree of Hazard: Maximum Probable Exposures (MPEs) have been calculated assuming that extremely dusty conditions may exist on site, and that workers may inhale this dust. These are compared to OR-OSHA Permissible Exposure Levels (PELs) and Action Levels:

MATERIAL	PEL	ACTION LEVEL	MPE
LEAD	50 mg/m ³	30 mg/m ³	8 mg/m ³
ARSENIC	10 mg/m ³	5 mg/m ³	0.3 mg/m ³
PAH	200 mg/m ³	none established	0.2 mg/m ³

Effects of Overexposure: Each of these substances has been identified as presenting a risk to future residents, or workers who have been exposed to the materials for periods of time greater than 170 consecutive days. Lead and arsenic both occur naturally, in small amounts, in soil and in other substances found in nature. Lead is known to have caused neurological damage to children who have eaten lead paint, and employees who have inhaled large amounts during mining and ore processing. Arsenic is known to cause lung cancer if inhaled over long periods, and skin cancer in people who drink water with high arsenic levels. PAHs are produced during the partial burning of coal, oil, garbage, and other substances such as charbroiled meat. The health effects of PAHs are varied but some have been associated with elevated risk of cancer.

Means to Minimize Worker Exposures: The goal of minimizing hazards on this site will be to minimize actual contact with the soil and to prevent carrying it off-site. Workers will be asked to wear coveralls, which will be provided upon entry onto the site and will remain at the site. When leaving the site, it is recommended that your boots be cleaned, and your hands washed.

ADDITIONAL INFORMATION IS AVAILABLE ON REQUEST FROM THE JOB SAFETY OFFICER

EXHIBIT E

SCOPE OF DEVELOPMENT

One Waterfront Place LLC

The Scope of Development for the Project includes the following:

1. A commercial, Class "A", office building of approximately 250,000 square feet, with support facilities including common areas, lobbies, etc. The building may also include retail space on the ground floor, locker and shower facilities, exercise room, public art, day care facilities and similar ancillary uses. The building is conceived to contain state-of-the-art technology and attract tenants associated with high tech and sustainable development businesses.
2. An above-grade parking garage containing 1) a limited amount of ground floor retail; and 2) a minimum of 500 parking spaces to accommodate short-term and long-term parking for the One Waterfront Place Office Building. The parking spaces shall also be made available to the general public on both a short-term and long-term basis, subject to availability. The garage will be developed and owned by One Waterfront Place Garage LLC.
3. Infrastructure and site improvements will include:
 - a. A pedestrian way and fence along the railroad tracks to match and connect to the Food Innovation Center and the Yards at Union Station.
 - b. Auto and delivery access from Naito Parkway, across from the Albers Mill driveway, serving the parking garage, the loading area for the Food Innovation center and the One Waterfront Place Office Building, and surface parking on the site.
 - c. Necessary utility services for the parking garage and the One Waterfront Place Office Building.
 - d. Landscaping and other open space areas meeting City of Portland code requirements.
4. Other anticipated site improvements include:
 - a. A four-way traffic signal at the entrance to the site.

EXHIBIT F
ONE WATERFRONT PLACE LLC
PROJECT BUDGET
 November 15, 2007

	Office Building	Parking Structure	Total Project
Land/Acquisition Costs:			
Property at Historical Cost	\$ 1,547,000	\$ 2,000,000	\$ 3,547,000
PDC Sewer Hook Up	40,000	-	40,000
Total Land/Acquisition Costs	\$ 1,587,000	\$ 2,000,000	\$ 3,587,000
Hard/Construction Costs:			
Off-Sites			
PGE Transformers	\$ 195,000	\$ -	\$ 195,000
Water Meter	97,000	-	97,000
Traffic signal/driveway	164,000	164,000	328,000
Total	\$ 456,000	\$ 164,000	\$ 620,000
Permits, SDC's, Testing			
Permits	\$ 694,000	\$ 145,000	\$ 839,000
Refresh Design Review	75,000	-	75,000
SDCs/Utilities	890,000	199,000	1,089,000
Testing & Inspection	120,000	139,000	259,000
Total	\$ 1,779,000	\$ 483,000	\$ 2,262,000
Shell and Core Contract:			
Sitework	\$ 2,455,000	\$ 2,267,000	\$ 4,722,000
Contaminated Soil Haul Off	708,000	1,176,000	1,884,000
Building Shell & Core	26,745,000	8,820,000	35,565,000
Shell Upgrade	9,853,000	-	9,853,000
Total	\$ 39,761,000	\$ 12,263,000	\$ 52,024,000
Other Hard Costs			
Main Lobby Finishes	\$ 680,000	\$ -	\$ 680,000
Comm. backbone	195,000	-	195,000
Conference Center	300,000	-	300,000
Art and installation	1,075,000	-	1,075,000
Water Feature	187,000	-	187,000
FF & E	150,000	-	150,000
Cost Reimbursement	(708,000)	(1,340,000)	(2,048,000)
Total	\$ 1,879,000	\$ (1,340,000)	\$ 539,000
Total Hard/Construction Costs	\$ 43,875,000	\$ 11,570,000	\$ 55,445,000
Soft/Development Costs:			
Predevelopment Loan	\$ 2,118,000	\$ -	\$ 2,118,000
Architecture & Engineering	1,248,000	643,000	1,891,000
Spaceplanning	150,000	-	150,000
Marketing and Promotion	100,000	-	100,000
Builder's All Risk Insurance	75,000	-	75,000
Taxes during Construction	61,000	-	61,000
Oregon BETC	(345,000)	-	(345,000)
Developer's Fee	3,150,000	490,000	3,640,000
Contingency	2,625,000	307,000	2,932,000
Total Soft/Development Costs	\$ 9,182,000	\$ 1,440,000	\$ 10,622,000
Leasing Costs			
Tenant Improvements	\$ 11,000,000	\$ -	\$ 11,000,000
Leasing Commissions	3,600,000	-	3,600,000
Total Leasing Costs	\$ 14,600,000	\$ -	\$ 14,600,000
Debt Service			
Interest During Construction	\$ 4,740,000	\$ 655,000	\$ 5,395,000
Origination Points & Fees	600,000	85,000	685,000
Total Debt Service	\$ 5,340,000	\$ 740,000	\$ 6,080,000
Total Development Costs	\$ 74,584,000	\$ 15,750,000	\$ 90,334,000

EXHIBIT G

FORM OF CERTIFICATE OF COMPLETION

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") hereby certifies that Developer, _____, a _____ ("Developer"), has satisfactorily completed construction of the Project as described in the Agreement for Disposition and Development of Property (_____), dated _____, 20__ (herein called the "DDA"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. _____ on _____, 20__ . Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 3.8.1 of the DDA, PDC hereby certifies that:

- (i) the Project is completed according to the Final Construction Plans and Specifications, except for punchlist items that do not materially affect the use of the Project for the purposes intended under the DDA,
- (ii) the City of Portland has issued a temporary or permanent Certificate of Occupancy with respect to the Project, and
- (iii) any other improvements required by the terms of the DDA to have been completed at the time the Project is complete are complete in all material respects.

This Certificate of Completion is and shall be a conclusive determination of the satisfaction of all of the agreements, covenants and conditions contained in the DDA with respect to the obligations of Developer, its successors and assigns, as to the construction of the Project, and such obligations are hereby terminated. This Certificate represents and certifies the completion of Developer's construction obligations described herein as to PDC only.

Further,

- (1) Any party acquiring or leasing any portion of the Project shall not (because of such purchase or lease) have any obligation under the DDA with respect to the construction of the Project, and
- (2) The following Sections of the DDA shall survive and remain in effect for the periods identified in the DDA notwithstanding issuance of this Certificate ("Surviving Sections"): Section 3.6.2 (LIABILITY CLAIMS), Section 3.6.3 (INDEMNITY FROM LIENS), Section 4.1 and 4.2 (GARAGE SPACES) and Section 5.4 (LEED CERTIFICATION).

Other than its right to enforce the Surviving Sections, PDC shall hereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the DDA with respect to the construction of the Project, or as a result of a breach of any provisions of the DDA relating to construction by the Developer, or by any successors in

interest or assigns of Developer. Without limitation, PDC confirms that PDC no longer has any right of re-entry to the Project or termination of the DDA.

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

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

By: _____
Name: _____
Executive Director

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20__, by _____, Executive Director of the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland.

Notary Public for
My commission expires: _____

Workforce Training & Hiring Program

This program applies to prime contracts of \$200,000 or greater and on Commission's construction related projects other than direct bid construction of \$1,000,000 or more and subcontracts of \$100,000 or more.

The following Workforce Training & Hiring Requirements are a summary of the key contractual obligations of contractors working on City funded public works projects, development agreements or Enterprise Zone benefits. It is the contractor's responsibility to read and fully understand this section of the bid specifications and to comply with all provisions of the program, regardless of whether they appear on this checklist. The City administers this program for Multnomah County, Portland Development Commission, TriMet, Portland Community College and the Housing Authority of Portland.

CHECKLIST:

1. Prime Contractor:

- **A. Submit Projected Hiring Needs form (Exhibit 2) to Owner within 15 calendar days after bid opening or prior to contract award, whichever occurs first.**
- **B. Ensure compliance by all subcontractors with subcontracts of \$100,000 or more, and provide them with a copy of the Workforce Program section of the specifications.**

2. Subcontractors, at all tiers, with contracts of \$100,000 or more :

- **Submit Projected Hiring Needs form (Exhibit 2) prior to beginning work on the project or within 5 days of signing subcontracts, whichever occurs first.**

3. Prime and all subcontractors with contracts of \$100,000 or more must:

- **A. Throughout the duration of the project:** Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the prime and subcontractors of \$100,000 or more are worked by state-registered apprentices.
- **B. Before starting work on this project:** Submit proof of registration as a Training Agent with the Bureau of Labor & Industry, Apprenticeship & Training Division (ATD) in each trade employed. For assistance, contact the City Workforce Program (503) 823-6850 or ATD (503) 731-4072.
- **C. Throughout the duration of the project:** Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the unions, the apprenticeship programs and other community resources, as described in this section of the specifications.
- **D. Throughout the duration of the project:** Maintain written documentation of all requests for workers from the unions, apprenticeship programs, and community organizations.
- **E. When an apprentice is hired:** Notify the City Workforce Program.
- **F. By the 5th of each month to the Owner's Project Manager and the City Workforce Program, submit Monthly Employment Report (Exhibit 4).**

Please consult the Workforce Training & Hiring Requirements for additional information or call the City Workforce Program at (503) 823-6850 if you have questions. Thanks.

WORKFORCE TRAINING AND HIRING PROGRAM REQUIREMENTS

I. PURPOSE OF WORKFORCE SPECIFICATIONS

A. General Program Description

The Portland City Council has directed that all Bureaus and Departments maximize apprenticeship and employment opportunities for minorities, women and economically disadvantaged workers in the construction trades. (City Ordinance No. 167374, Feb. 16, 1994 and County Ordinance No. 861, July 11, 1996) Their goals include a) ensuring that the City do business with contractors whose workforce reflects the diversity of the workforce found in the City of Portland, and b) that their contracting dollars provide fair and equal opportunities to the jurisdictions' diverse populations.

The City Workforce Training & Hiring Program ("Workforce Program") is administered for the City of Portland, Portland Development Commission (PDC), Multnomah County, and Tri-Met, and the Housing Authority of Portland by the City of Portland, Bureau of Purchases. The Workforce Program applies to all prime Contracts of \$200,000 or more and to each subcontractor having a subcontract of \$100,000 or more on the project. The Contractor and all subcontractors are encouraged to fulfill the program requirements even if their contracts are less than these amounts.

Contractors shall make reasonable efforts to ensure that their workforce reflects the diversity of the City of Portland.

One way Contractors can make reasonable efforts to ensure that their workforce is diverse is to recruit, train and employ minorities and women whenever possible. This portion of the contract establishes requirements regarding that recruitment, training and employment.

For purposes of the Workforce Specifications, the following definitions shall apply:

"The contract" shall mean the contract awarded as a result of these bid specifications.

"Contractor" shall mean the bidder to whom a contract is awarded.

The term "minorities" shall include members of either sex who are African-Americans, Hispanic Americans, Asians or Pacific Islanders, Native Americans or Alaskan Native Americans.

"Owner" shall mean the government agency that awarded the contract, or leveraged public involvement in the project through a loan, development agreement or Enterprise Zone program.

"The project" shall include all work performed pursuant to the contract.

B. Organization of Program Requirements

The Workforce Specifications are divided into several parts.

Section II refers to the action that bidders must take in order to be eligible for an award of a contract.

Section III lists the actions that must be taken by the Contractor.

Section IV refers to remedies available to the Owner if a Contractor fails to meet the requirements of the Workforce Specifications.

Section V refers to the Owner's ability to monitor compliance with the Workforce Specification by examination of contractor and subcontractor records.

II. ACTION REQUIRED OF ALL BIDDERS

A. All Bidders shall thoroughly read this Workforce Program specification and commit to perform all

Needs within fifteen (15) calendar days after bid opening or prior to award of the contract, whichever occurs first. The Exhibit shall provide complete information. The Projected Hiring Needs must demonstrate how the workforce on this project will fulfill all program requirements, including utilization of apprentices.

In the event that the Apparent Low Bid is nonresponsive, the next lowest Bidder considered for contract award shall submit Exhibit 2 within fifteen (15) days after bid opening or within two (2) days of notification by the Owner, whichever occurs last.

For PDC development agreements, Exhibit 2 shall be submitted by the prime Contractor within fifteen (15) calendar days after its selection.

III. ACTIONS NECESSARY TO SATISFY CONTRACT REQUIREMENTS

A. Make Reasonable Efforts to Have Diverse Workforce

A Contractor must make all necessary and reasonable efforts to have a workforce that reflects the diversity of the City of Portland and is reasonably consistent with the availability of qualified women and minorities based on Equal Employment Opportunity data supplied by the City. This requirement is in addition to any other requirement of this portion of the contract.

The Contractor shall demonstrate that it is an EEO employer with a diverse workforce, or that it is making serious efforts to become one, as follows:

1. The Contractor and each affected subcontractor shall submit a copy of its "A" level EEO certification letter from the City of Portland EEO Program. An "A" level EEO certification demonstrates that the Contractor is not underutilized by trade, race, and gender in its companywide workforce based on availability data from the 1990 census and the City's EEO statistical summary; or
2. Provide written documentation of its good faith recruitment efforts. If the Contractor is unable to verify that it employs a diverse workforce based on the standards described in the paragraph above, then the Contractor must follow the process for recruiting apprentices and journey workers described in Sections IIIF and IIIG of this specification. This process is considered by the Owner to be the minimum effort to recruit a diverse workforce.

NOTE: A Contractor seeking an "A" level EEO certification may wish to consider utilizing the Recommended Good Faith Recruitment & Retention Practices, attached as Exhibit 1.

3. The failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall not excuse the Contractor's obligations under this section of the specifications.

B. Ensure Compliance By Certain Subcontractors

1. The contractor shall ensure that each subcontractor having a subcontract of \$100,000 or more, at all tiers shall comply with all of the provisions of the workforce specifications. Contractors shall include in their bid all costs associated with this requirement. No change order will be executed in order for the contractor to comply with this section.
2. The Contractor shall provide a copy of this Workforce Program specification to all subcontractors with contracts of \$100,000 or more executed for the project.

C. Register As A Training Agent

The Contractor shall register with the Oregon Bureau of Labor and Industries (BOLI) as a Training Agent and ensure that all subcontractors who have contracts in the amount of \$100,000 or more are registered as Training Agents. However, registration as a Training Agent in a specific trade is not

January 9, 2008 if there are no training opportunities in that trade on the project, based on the training allowed by BOLI. Page 25 of 53

1. Only training programs approved by and registered with BOLI may be used to fulfill training requirements under the workforce specifications.
2. Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary. Hours performed in crafts, which are not apprenticeable occupations, such as truck driving, are exempt from the training requirements.
3. Exemptions to the training requirements must be approved by the Owner in writing prior to starting work on the project. Written requests for exemptions related to the training requirements will be considered by the Owner during the course of the project, only for extreme circumstances, and must also be approved in writing. All requests to exempt all or any portion of the work on a project shall be submitted to the Bureau (14) days before any work on the project begins. Requests for exemptions should be directed to the City Workforce Training & Hiring Program Compliance Specialist for the project.

Requests for exemptions shall be approved by the City Workforce Training & Hiring Program Coordinator.

D. Submit Documentation

The contractor shall submit documentation regarding the following subjects to the Owner. The Owner's failure to object to documentation submitted by the Contractor or subcontractor shall not relieve them of the requirements of this section.

1. Training Agent Status

The Contractor and all required subcontractors must submit proof to the Workforce Program that they are registered Training Agents with BOLI prior to beginning any work on the project.

2. Subcontractor Workforce Information

Exhibit 2, Projected Hiring Needs, must also be submitted for each subcontractor required to register as a Training Agent prior to beginning work on the project or within 5 calendar days after the execution of the applicable subcontract, whichever occurs first. Work by a subcontractor shall not begin prior to submission of such documentation.

3. Contractor and Subcontractor Reports After Work Begins

The Monthly Employment Report (Exhibit 4) must be submitted by the prime Contractor and any subcontractor having a subcontract of \$100,000 or more to the Workforce Program by the 5th day of each month, with a copy to the Owner's project manager. The Contractor shall follow the submittal instructions on the report form. All hours subject to prevailing wage rates on public projects, in addition to supervisors, foremen, and superintendents, shall be reported on Exhibit 4.

4. A copy of certified payroll reports may be requested by the Owner to verify information in the Report. The payroll reports shall be provided within 7 days of the date when the contractor receives the request for the payroll.

E. Use of Apprentices

The Contractor shall:

1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed on the project by the prime contractor, and subcontractors with subcontracts of \$100,000 or more, are worked by state registered apprentices throughout the duration of the project. Contractors and subcontractors shall fulfill the 20% apprenticeship hour's requirement without exceeding the

2. Pay all apprentices the wages required by any applicable collective bargaining contract or pursuant to state or federal law and regulations.
3. Not use workers previously employed at journey-level or those who have successfully completed a training course leading to journey-level status to satisfy the requirements of these provisions.
4. Notify the Workforce Program when an apprentice is hired for this project.
5. Count apprentice hours as follows:
 - (a) Hours worked on the project by apprentices enrolled in state-approved apprenticeship programs. If the Contractor is unable to fulfill its 20% requirement, then the Contractor may also use methods (b) and (c) below;
 - (b) Hours worked on the project by apprentices who are required to be away from the job site for related training during the course of the project, but only if the apprentice is rehired by the same employer after completion of training; and
 - (c) Hours worked on the project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the 12-month period following the apprentice's completion date.

F. Use Apprenticeship Programs for Referrals

A Contractor that does not have an "A" level EEO certification must follow all of these steps in seeking apprentice referrals:

1. Contact the appropriate apprenticeship program or dispatch center to request apprentices who are enrolled in the apprenticeship program; and
2. Request female or minority apprentices from the union or open shop apprenticeship program if such an action will help meet Equal Employment Opportunity (EEO) certification requirements or remedy historical underutilization in the Contractor's workforce; and
3. Keep a written record of the request for apprentices, including name of contact person at apprenticeship program, phone, fax, date, time, job location, start date, etc.; and
4. Make reasonable and necessary efforts to recruit apprentice applicants from community organizations/recruitment resources, and seek to enroll them into an apprenticeship program, if the apprenticeship program is unable to supply an apprentice (or if no women or minorities are available to meet EEO needs), and if the program is open for applications or allows direct entry from community resources.

NOTE: Contractors may contact the Workforce Program for assistance regarding the apprentice referral process, or may utilize Exhibit 3, Request For Apprentice form, to document their efforts. A list of community organizations/recruitment resources is also available. Instructions are on the last page of this section of the specifications.

G. Utilize Unions and Community Organizations When Recruiting For Any Positions on this Project

When hiring, requesting, recruiting, or replacing workers for this project, the Contractor that does not have an "A" level EEO certification shall:

1. Make reasonable and necessary efforts to employ a diverse workforce, especially to correct any potential EEO certification problems. Such actions should include requests for minority and female applicants. Contractors are notified that direct hiring of employees (such as "walk-ons") without providing notification of that job opportunity, in accordance with paragraph G.2. below, may not constitute a reasonable effort.

2. Document its employment efforts. Documentation should be sufficient to establish the Contractor's efforts, and should include:
 - (a) Requests to union halls for signatory contractors;
 - (b) Requests to union or open shop apprenticeship programs;
 - (c) Requests to community resources who assist contractors with recruitment and referral of workers.

Documentation will be requested by the Owner from Contractors that are not "A" level EEO certified if it appears that the Contractor has not made reasonable and necessary efforts to acquire a diverse workforce. When requested, the Contractor shall provide that documentation to the Workforce Program within 7 calendar days.

IV. CONSEQUENCES OF NONCOMPLIANCE WITH WORKFORCE REQUIREMENTS

The Owner's commitment to this program is reflected, in part, by the cost of administering the program. Failure to meet the requirements of this section of the specifications negates such funding and impairs the Owner's efforts to promote workforce diversity and to provide fair and equal opportunities to the public as a whole as a result of the expenditure of public funds. Therefore, the parties mutually agree that failure to meet the requirements of this section of the specifications, including but not limited to the submission of required documentation, constitutes a material breach of contract.

In the event of a breach of this section of the contract, the Owner may take any or all of the following actions:

A. Withholding Progress Payments

The Owner may withhold all or part of any progress payment or payments until the Contractor has remedied the breach of contract. In the event that progress payments are withheld, the contractor shall not be entitled to interest on said payments.

If a subcontractor(s) is responsible for noncompliance with the Workforce Program requirements, the Owner may choose to withhold only their portion of the progress payment.

B. Retain sums as damages for failure to comply with Workforce Specifications

The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Owner for the Contractor's failure to comply with the Workforce Specifications. The parties further agree that it is difficult, if not impossible, to determine the cost to the Owner when workforce opportunities are not provided.

Therefore, if the Contractor fails to comply with the workforce provisions of this contract, the Contractor agrees to pay the sum of \$250 per day for each day of missed apprenticeship hours or until the breach of contract is remedied. Damages may be assessed for failure to meet the 20% apprenticeship training requirements by the prime and each required subcontractor in each trade employed. Damages will be calculated based on the training hours not provided to the Owner at a rate of \$250 per day. For example, if the Contractor was required to provide 200 hours of carpenter training (20% of 1,000 total carpenter hours), and the Contractor only provided 150 training hours, then the difference (50 hours) is divided by 8 (one day of work) to determine number of days of undelivered training. ($50/8 = 6.25 \times \$250 = \$1,562.5$).

Damages may also be assessed for failure to fulfill the inclusive hiring process described in sections IIIF and IIIG.

These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by the Contractor's failure to comply with the Workforce provisions of the contract.

C. Retain sums as liquidated damages for delay

The Contractor agrees that any delay to the specified contract time as a result of the Contractor's failure

January 9, 2008, to comply with the requirements of this section shall subject the Contractor to the amount of liquidated damages specified elsewhere in the contract. Page 28 of 53

D. Notification of Possible Debarment

By executing this contract, the contractor agrees that it has been notified that failure to comply with the requirements of this portion of the contract may lead to the Contractor's disqualification from bidding on and receiving other Owner contracts.

E. Other Remedies

The remedies that are noted above do not limit any other remedies available to the Owner in the event that the Contractor fails to meet the requirements of the Workforce Specifications.

V. **REVIEW OF RECORDS**

In the event that the Owner reasonably believes that a violation of the requirements of this section has occurred, the Owner is entitled to review the books and records of the Contractor and any subcontractors employed on the project to whom the requirements of this section are applicable to determine whether such a violation has or has not occurred.

In the event that the Contractor or any subcontractor fails to provide the books and records for inspection and copying when requested, such failure shall constitute a material breach of this contract and permit the imposition of any of the remedies noted in Section IV above, including the withholding of all or part of any progress payment.

ATTACHMENTS:

Exhibit 1: Recommended Recruitment & Retention Practices

Exhibit 2: Projected Hiring Needs

Exhibit 3: Request For Apprentice form

Exhibit 4: Monthly Employment/Training Report

Exhibit 5: Apprenticeship Ratio Data

Community Organizations/Recruitment Resources

A list of community resources that assist with construction recruitment is available upon request by calling the Workforce Program at (503) 823-6850.

The list is also available by calling the City of Portland Purchasing Buyline at (503) 823-6855. Then choose Fax On Demand and order document 20307. This service is available 24 hours daily.

Questions Regarding Apprenticeship:

Bureau of Labor & Industries
Apprenticeship & Training Division
800 N.E. Oregon St. # 32
Portland, OR 97232
(971) 673-0761

Questions Regarding City/County

Workforce Training and Hiring Program
City of Portland/Bureau of Purchases
1120 S.W. Fifth Ave., Room 750
Portland, OR 97204
(503) 823-6850 or (503) 823-6855
Fax: (503) 823-5539.

**RECOMMENDED GOOD FAITH RECRUITMENT &
RETENTION PRACTICES**

A. Recruitment Efforts

Good faith recruitment efforts are those intense, aggressive, sincere, and result-oriented actions taken by the Contractor designed to accomplish the objectives of the City Workforce Training & Hiring, and Equal Employment Opportunity Programs. These efforts may assist the Contractor in achieving an "A" level EEO certification. Good faith recruitment efforts include, but are not limited to:

1. Work aggressively with Contractor's Joint Apprenticeship Training Committee (JATC) to recruit minorities, women and disadvantaged individuals. Provide evidence of these efforts.
2. Assist the JATC by conducting a workshop with minority and women employees to enlist their assistance as recruiters and request their ideas on how to increase employment of underutilized groups.
3. Support the efforts of the Contractor's JATC by giving all apprentices referred to the Contractor a fair chance to perform successfully, allowing for possible lack of previous experience. Recognize that the Contractor is responsible for providing on-the-job training, and that all apprentices should not be expected to have previous experience.
4. Participate in job fairs, school-to-work, and community events to recruit minorities, women, and disadvantaged individuals into the construction trades.
5. Allow scheduled job site visits by participants in community programs, as safety allows, to increase awareness of job and training opportunities in the construction trades.
6. Keep applications of those not selected for an opening. Contact when opening occurs.

B. Retention Efforts

The Contractor shall endeavor to retain minorities, women, and disadvantaged individuals by implementing steps such as the following:

1. Maintain a harassment-free work place.
2. Ensure that employees are knowledgeable about the company's policies if they need to report a harassment problem.
3. Make reasonable attempts to keep apprentices working and train them in all work processes described in the apprenticeship standards.
4. Review and disseminate, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility

5. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
6. Take steps to reduce feelings of isolation among minorities and women to curb hostile attitudes and behavior (e.g., have several minorities and women at the job site, provide access to support group system).
7. Provide adequate toilet facilities for women on the job site.
8. Match minority, female, or disadvantaged apprentices who may need support to complete their apprenticeship programs with a journey-level mentor.

PROJECTED HIRING NEEDS

This form must be completed thoroughly by the prime and each subcontractor with a subcontract of \$100,000 or more.

Please state how you plan to perform the work on this project, indicating the number of journey workers and apprentices by trade. This workforce plan must demonstrate how your company will fulfill all Workforce Program requirements, including utilization of apprentices. **Complete all columns, with project-specific information.**

BID# _____ PROJECT NAME: _____
 Federal ID # _____ Prime Contractor Subcontractor

Trade	Total # of Journey Workers	# of Apprentices	# of New Positions (indicate Journey or Apprentices)	Anticipated Start Date	Estimated Total Hours (all workers in each trade)

Please list the apprentices who will work on this project. If you need more space, attach an additional sheet of paper. The Workforce Program compliance staff must approve all apprentices on the project.

Name of Apprentice	Trade	Race	Gender	Date of Hire	Staff use only (Initial:Approved Notified, Docs)

If no current apprentices, indicate when and how they will be hired.

Person in your company who does hiring: _____

COMPANY: _____ CCB# _____ PHONE: _____ FAX: _____

Are you a registered Training Agent? Yes No Are you a Union Open Shop contractor?

With which JATCs are you registered to train apprentices? _____

Apprentice committee or union contact person who dispatches apprentices to your company:

Name: _____ Phone: _____ Fax: _____

Name: _____ Phone: _____ Fax: _____

PREPARED BY: _____ / _____ DATE: _____
 (sign and print)

Prime contractor must complete and submit to Owner within 15 calendar days after bid opening or prior to award of contract, whichever occurs first.

Subcontractors with contracts of \$100,000 or more must submit prior to beginning work on the project or within five (5) days of signing subcontract, whichever occurs first, to Prime Contractor. Prime Contractor must submit to:

**Workforce Program, Bureau of Purchases,
 1120 S.W. Fifth Avenue #750, Portland, OR 97204
 Phone (503) 823-6850 or FAX (503) 823-5539**

Request For Apprentice

The contractor may use this form to document efforts when recruiting apprentices.

FAX To: _____ / _____
(Apprenticeship Committee) (Contact/ Dispatcher)

Fax Number : _____ Number of Pages _____

Request From:

Company Name _____ / _____
(Registered Training Agent) (Contact Person)

Phone _____ Fax _____

Date: _____ Time: _____

Apprentice Request:

As a registered Training Agent, I am using this form to request referral of an apprentice for employment with my company in cooperation with the City/County/PDC Workforce Training & Hiring Program. I would like to continue to diversify my workforce. Therefore, please refer ethnic minorities and women for my consideration. If I am unable to receive a referral from my apprenticeship program within a reasonable time, and my apprenticeship program is open for applications or allows direct entry, I may use this form to request a referral to the apprenticeship program from community recruitment resources.

Apprentice referral is needed by this date: _____ Work Starts: _____

Job Site Location: _____ Expected Length of Employment: _____

Project _____ Owner (City of Portland) _____

Number of Apprentices: _____ Trade/Occupation: _____

Number of Apprentices: _____ Trade/Occupation: _____

Minimum qualifications (if different from apprenticeship standards): _____

Safety needs: ___ Hard hat ___ Gloves ___ Hard-toed boots Other? _____

Please fax this Request For Apprentice form to your apprenticeship committee.

To document your good faith efforts, copies may also be sent to:

City Workforce Training & Hiring
1120 SW 5th Ave. Rm 750
Portland, OR 97204
Phone: (503) 823-6850
FAX: (503) 823-5539

For Apprenticeship Program Only

Please check the appropriate box and fax to City Workforce Program:

I was able to dispatch an apprentice to the project listed above.

Name of Apprentice: _____ Race _____ Gender _____

I was unable to dispatch an apprentice to the project listed above because _____

Fax this form with dispatch information to (503) 823-5539. Thank you.

January 9, 2008

Federal ID # _____

Workforce Training & Hiring Program

Project Name: _____

CCB# _____

Bid #: _____

Indicate here if final report _____

The Monthly Employment/Training Report must be completed by the prime contractor and all subcontractors with contracts of \$100,000 or more, and signed by a responsible official of the company. The prime contractor shall submit a report for its workforce on the project. Each subcontractor shall separately submit a report for its workforce on the project. It is the responsibility of the prime contractor to assure that all Monthly Employment Reports are submitted in a timely manner.

The reports are due on the 5th day of the month following each month of employment during the term of the contract.

Either on the form below or on a contractor-provided form approved by the City Workforce Training & Hiring Program, complete all categories for each employee working on the project during the reporting period.

Dates from: _____ to: _____ Company Name: _____ Phone: _____ Fax: _____

NAME (PLEASE PRINT OR TYPE)	ZIP CODE	SOCIAL SECURITY NUMBER	TRADE	LEVEL (Journey, Apprentice, Apprentice Grad) J or A or G	*RACE	SEX M/F	HOURS WORKED this PERIOD

Submit to: City Workforce Program
Bureau of Purchases
1120 SW 5th Ave #750
Portland, OR 97204
FAX: (503) 823-5539

Send copy to: Developer and Owner's Project Manager

* Race includes the following minorities:
AA - African American - having origins in any of the black racial groups of Africa;
H - Hispanic American - person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portugese culture or origin;
A - Asian American - having origins in any of the original people of the Far East, Southeast Asia, Indian subcontinent or the Pacific Islands;
NA - Native American - American Indian or Alaskan Native, having origins in any of the original peoples of North America;
C - Caucasian.

Signature: _____ Print Name: _____ Title: _____

NOTE: Apprentice hours spent in the classroom during the course of the project can be submitted as hours worked.

APPRENTICESHIP RATIO DATA*

The following data may be used to determine the ratio of apprentices on a jobsite in proportion to journey-level workers on the jobsite. The ratios that apply are those listed in the standards of the apprenticeship committee to which the Training Agent (Contractor) is a member. If the applicable trade is not listed, contact the Bureau of Labor and Industries at (503) 731-4072 or your apprenticeship committee.

*Ratios may change pursuant to actions taken by the Oregon State Apprenticeship & Training Council/BOLI. For the purposes of this contract, the ratios approved by BOLI on the date the bid is advertised shall prevail.

<u>TRADE</u>	<u>APPRENTICE TO JOURNEY RATIO*</u>		
	<u>1st Apprentice</u>	<u>2nd Apprentice</u>	<u>Max</u>
Asbestos/Insulation Workers	1/1	1/4	
Brick/Marble/Terrazzo/Tile Finisher	1/1	1/3	
Bricklayer/Masonry	1/1	1/5	
Carpenter (Portland)	1/1	1/1 (1/5 union)	Additional apprentices authorized a 1/5 (union). Open shop and City of Portland industrial 1/1 for first three apprentices; 1/5 after.
Carpet Installers/Floorlayers	1/1	1/3	
Cement Masons	1/2	1/3	
Drywall Applicator (Ext/Int Specialists)	1/3	1/5	
Drywall Finisher (Taper)	1/1	1/3	
Electricians			
Inside	1/1	1/3 union (1/2 open shop)	
Outside	1/6	1/6	
Limited Energy/Limited Residential	1/1	1/1 union (1/2 open shop)	
Construction Lineman	1/1	1/1	
Limited Maintenance	1/1	1/2	
Stationary Engineer	1/1	1/3	
Elevator Contractor	1/1	1/1	1/1 for first two apprentices; 1/2 after
Environmental Control System (HVAC)	1/1	1/1	
Glass Installer (Glazier)	1/1	1/3	
Hod Carrier/Mason Tender	1/1	1/5 union (1/3 open shop)	
Iron Worker	1/1	1/6	
Laborer (Construction)	1/1	1/5 union (1/3 open shop)	
Landscape Laborer/Technician	1/1	1/5 union (1/3 open shop)	
Maintenance Mechanic	1/1	1/3	
Millwright	1/5 (1/3 open shop)	1/5 union (1/3 open shop)	
Operating Engineer (Heavy)	1/1-4	2/5-9	3/10-19 4/20-24 5/25-29 30 or more 1/for each 5 additional operators
Painting & Sandblasting	1/1	1/3	
Painting (Traffic Control)	1/1	1/4	
Pile Drivers	1/3	1/5	
Pipe Fitters/Steam Fitters	1/1	1/3	1/1 for first two apprentices
Plasterers	1/1	1/3	

TRADE

APPRENTICE TO JOURNEY RATIO

	<u>1st Apprentice</u>	<u>2nd Apprentice</u>	<u>Max</u>
Plumber	1/1	1/1	1/1 for first two apprentices, 1/3 after
Roofer	1/1	1/1	
Scaffold Erector	1/1	1/1	1/1 for first five apprentices, 1/5 after
Sheet Metal Worker	1/1	1/1	1/1 for first two apprentices, 1/3 after
Sheet metal Worker (Residential)	1/1	1/1	
Sign Maker/Erector	1/1	1/1	
Sprinkler Fitter	1/1	1/1	
Structural Fabricator	1/1	1/3	
Terrazzo Worker	1/1	1/3	
Tile/Marble Setter	1/1	1/3	

**M/W/ESB RECRUITMENT GUIDELINES/
GOOD FAITH EFFORT PROCESS REQUIREMENTS**

1. PURPOSE OF THE PROGRAM

The Portland Development Commission (the "Commission") has a compelling interest to ensure that our contracts provide employment opportunities for minority, women, and emerging small businesses in order to promote economic growth, to increase capacity and to expand competition in the market. **Therefore, if developer through its prime contractor has not achieved the 20% M/W/ESB (Minority-Owned, Women-Owned and Emerging Small Business) Utilization goal, the developer through their prime contractor is required to submit proof showing that good faith has been made to contract with M/W/ESB subcontractors. The 20% utilization is based on the terms outlined in the Development Agreement with the Commission or the public financing for the project if not specified in the Development Agreement.**

2. EFFORTS REQUIRED REGARDING M/W/ESBs

Developers through their Prime Contractors are required to make good faith efforts to contract with M/W/ESB firms for each division of work to be performed by a subcontractor.

Prime Contractors are not required to contact M/W/ESB firms for any division of work that will be performed by the prime contractors own forces.

These requirements are contractual obligations and are included in the development agreement. Failure to comply may result in a finding of breach of contract, disqualification of the developer to bid on future development RFPs, or a claim for damages.

Who to contact

For *each* division of work identified in these documents that will be performed by a subcontractor, the Prime Contractor must contact:

Every M/W/ESB firm that attended the pre-bid meeting (If one was held) which specializes in a division of work that will be subcontracted, *and*

In addition to the above, a minimum of three (3) M/W/ESB firms from the Office of Minority, Women and Emerging Small Business Certification list must be contacted in each division of work identified for subcontracting. If there are less than 3 firms listed for a particular division of work, *all* of the contractors in that division must be contacted.

How to contact

First Contact: Prime Contractors shall contact M/W/ESB subcontractors by letter, fax or E-mail to advise them of potential subcontracting opportunities. Contact must be made early enough to allow the M/W/ESB subcontractor sufficient time to prepare and submit a sub-bid.

Follow-up: Prime Contractors shall follow up with telephone calls to each M/W/ESB firm contacted to determine if a sub-bid will be submitted or if further information is required. A firm need not be contacted if that firm responds to the first contact with a statement that the firm will not sub-bid on this project.

What information must be provided

Prime Contractors must provide project information, including dates and times of sub-bids due, to M/W/ESB firms. Sufficient sub-bid preparation time must be given to subcontractors to allow for equal sub-bid opportunities.

3. SUBSTITUTION OR ADDITION OF SUBCONTRACTORS

If any subcontractor is added or replaced after execution of the development agreement with the Commission, the Prime Contractor shall make good faith efforts to contract with an M/W/ESB for the work to be performed by that subcontractor. Documentation of these efforts is required, and must be submitted to the Commission upon request. If the Prime Contractor finds cause to replace an MBE or WBE, the Commission strongly encourages substitution with either an MBE or WBE subcontractor. The Prime Contractor shall report substitutions to the Commission for the purposes of tracking and reporting overall M/W/ESB utilization.

4. DOCUMENTATION OF GOOD FAITH EFFORTS

The following documents shall be submitted to Commission as indicated:

With the Development Agreement:

- Compliance Form (FORM 1) Submit signed Compliance Form.

Prior to Beginning Construction:

- Subcontracting Plan (FORM 2) Submit a Subcontracting Plan on FORM 2 (or equivalent) showing all first-tier subcontractors and first-tier suppliers to be used on this contract.

If unable to meet the 20% M/W/ESB requirement, the following forms are due prior to Beginning Construction:

- Log of contacts with M/W/ESB firms (FORM 3) Submit a completed log of contacts with M/W/ESB firms on FORM 3 (or equivalent).
- Copy of letter, email or fax sent to M/W/ESB firms. Submit one copy of the letter, email or fax sent to M/W/ESB firms to solicit sub-bids for this project. If more than one form of letter, email or fax was sent, submit a copy of each form sent.
- List of M/W/ESB Bids (FORM 4): Submit FORM 4 (or equivalent) providing the requested information.

Documentation to be submitted during project:

- Updated Subcontracting Plan (Form 2): After the Subcontracting Plan (Form 2) has been submitted, any additional subcontracting, deleted subcontracting or adjustments to contracts greater than 20% must be reported on an updated Form 2.

Documents to be submitted upon project completion:

- Final subcontractor Utilization Report (FORM 5) *All first-tier subcontractors and first-tier suppliers* (including M/W/ESB) shall be reported on the form as well as contract amounts.

5. OPTIONAL GOOD FAITH EFFORTS

Prime Contractors should also consider efforts such as:

1. Advertisements in M/W/ESB newspapers.
2. Alternative methods of participation in Minority, Women or Emerging small businesses through arrangements such as joint ventures, negotiated subcontract agreements and competitive bids.
3. Utilization of M/W/ESB 2nd tier subcontractors and 2nd tier suppliers will not be calculated as part of the 20% M/W/ESB utilization but may be considered as part of the good faith effort requirements if 20% goal is not attained.

By signing this document the Developer hereby certifies and understands that:

1. It has not discriminated against any M/W/ESB firms in awarding subcontracts for this project and will not do so in the future.
2. The good faith effort requirements are contractual obligations that must be fulfilled whether or not listed on this form.
3. Form 1, Compliance Form, must be signed and submitted with the development agreement.
4. Form 2, Subcontracting Plan, must be completed and submitted prior to start of construction.
5. If unable to meet the 20% M/W/ESB goal, Compliance Form 3 and Compliance Form 4 and copy of the letter, email or fax sent to M/W/ESB firms are due prior to beginning construction.
6. Additional documentation to verify or clarify good faith efforts must be provided upon request.
7. After the Subcontracting Plan (Form 2) has been submitted, any additional subcontracting, deleted subcontracting or adjustments to contracts greater than 20% must be reported on an updated Form 2.
8. Form 5, the Final Subcontractor Utilization Report, shall be provided upon completion of project.
9. Replacement of a M/W/ESB subcontractor before contract award or during contract performance without a) obtaining the prior written consent of the Commission and b) subsequent good faith efforts in selection of a replacement, is prohibited and a breach of contract.
10. Consideration was given to waiving bonding requirements for M/W/ESB subcontractors. In addition, all subcontractor's bids have been treated the same for purposes of bonding requirements.

And, Executes this Compliance Agreement as:

Company Name: _____

Address: _____

Phone _____ Fax _____

By: _____

Signature of Authorized Owner or Representative Title Date

Print Name: _____

By signing this document the Prime Contractor hereby certifies and understands that:

1. It has not discriminated against any M/W/ESB firms in awarding subcontracts for this project and will not do so in the future.
2. The good faith effort requirements are contractual obligations that must be fulfilled whether or not listed on this form.
3. Form 1, Compliance Form, must be signed and submitted with the development agreement.
4. Form 2, Subcontracting Plan, must be completed and submitted prior to start of construction.
5. If unable to meet the 20% M/W/ESB goal, Compliance Form 3 and Compliance Form 4 and copy of the letter, email or fax sent to M/W/ESB firms are due prior to beginning construction.
6. Additional documentation to verify or clarify good faith efforts must be provided upon request.
7. After the Subcontracting Plan (Form 2) has been submitted, any additional subcontracting, deleted subcontracting or adjustments to contracts greater than 20% must be reported on an updated Form 2.
8. Form 5, the Final Subcontractor Utilization Report, shall be provided upon completion of project.
9. Replacement of a M/W/ESB or before contract award or during contract performance without a) obtaining the prior written consent of the Commission and b) subsequent good faith efforts in selection of a replacement, is prohibited and a breach of contract.
10. Consideration was given to waiving bonding requirements for M/W/ESB subcontractors. In addition, all subcontractor's bids have been treated the same for purposes of bonding requirements.

And, Executes this Compliance Agreement as:

Company Name _____

Address _____

Phone _____ Fax _____

By _____
Signature of Authorized Owner or Representative Title Date

Print Name _____

Prime Contractor Name _____ Total Contract Amount\$ _____

Project Name _____

We have elected to subcontract work in the following areas to the following subcontractors. List ALL first-tier subcontractors and first-tier material suppliers (including M/W/ESBs), their telephone numbers, the type of work to be done and the dollar amount of the subcontract.

Subcontractors/Suppliers (Please Print)	Scope Of Work	Dollar Amount Of Subcontract	Certified Firms M/W/ESB Yes/No		
			MBE	WBE	ESB
Name Address City/St/Zip Phone# CCB#					
			Cert#		
Name Address City/St/Zip Phone# CCB#					
			Cert#		
Name Address City/St/Zip Phone# CCB#					
			Cert#		
Name Address City/St/Zip Phone# CCB#					
			Cert#		
Name Address City/St/Zip Phone# CCB#					
			Cert#		

Minority, Women and Emerging Small Business Utilization

Total Amount of M/W/ESB subcontract dollars
 Total applicable portion of total contract amount
 M/W/ESB as a percent of the total applicable loan amount

\$ _____
 \$ _____
 \$ _____
 (goal = 20 %)

To verify MWESB certification or to receive information on obtaining names of certified firms contact:
 Office of Minority, Women, and Emerging Small Businesses
 State of Oregon, Executive Department
www.cbs.state.or.us/omwesb/
 Portland Field Office (503) 887-4349
 Salem Office (503) 947-7922

John Classen, Program Specialist
 Portland Development Commission
 222 NW 5th Ave.
 Portland, OR 97209
 (503) 823-3667 Fax (503) 823-3368
 E-mail: klassenj@pdc.us

SUBCONTRACTING PLAN
(FORM 2)
 (Additional Page to be Used as Needed)

Subcontractors/Suppliers (Please Print)	Scope Of Work	Dollar Amount Of Subcontract	Certified M/W/ESB Yes/No		
			MBE	WBE	ESB
Name Address City/St/Zip Phone# CCB#					
			Cert#		
Name Address City/St/Zip Phone# CCB#					
			Cert#		
Name Address City/St/Zip Phone# CCB#					
			Cert#		
Name Address City/St/Zip Phone# CCB#					
			Cert#		
Name Address City/St/Zip Phone# CCB#					
			Cert#		
Name Address City/St/Zip Phone# CCB#					
			Cert#		
Name Address City/St/Zip Phone# CCB#					
			Cert#		

Prime Contractor Name _____ **Project Name** _____

Prime Contractors should record their contacts with potential M/W/ESB subcontractors through use of this log or equivalent. Additional forms may be copied if needed.

Name of Subcontractor	Certified Firms M/W/ESB Yes/No			Date of Fax/Letter	Phone Contact				Made Contact		Submitting Quote		Quote Received		Notes
	MBE	WBE	ESB		Date of Call	Time of Call	Name of Person Placing Call	Name of Person Receiving Call	Yes	No	Yes	No	Yes	No	

Please list below all bids received from M/W/ESB firms that were rejected and provide requested information.

Quotes were received from the following M/W/ESB firms:

Company Name	Scope of Work	Bid Amount	Bid To Be Used		M/W/ESB Yes / No	Reason for Rejection
			Yes	No		

FINAL SUBCONTRACTOR UTILIZATION REPORT

(FORM 5)

Project Name _____ Prime Contractor _____

Prime Contract Amount \$ _____ Report Dates (Beginning & Ending) _____

List All First-Tier Sub- Contracts	MBE, WBE, or ESB	Scope Of The Work	Original Subcontract \$Amount	Changes To The Sub-Contract \$Amount	Total Sub-Contract \$Amount	Comments

IT IS HEREBY CERTIFIED THAT THE ABOVE LISTED FIRMS HAVE BEEN UTILIZED BY OUR COMPANY IN THE AMOUNTS REPRESENTED ABOVE AND THAT THE INFORMATION CONTAINED HEREIN IS COMPLETE AND ACCURATE.

Authorized Signature of Contractor Representative _____ Date _____

Instructions: Submit to: John Classen, Program Specialist, Portland Development Commission, 222 NW 5th Ave. Portland, OR 97209
 (503) 823-3667 Fax (503) 823-3368 E-mail: classenj@pdc.us

INSTRUCTIONS FOR COMPLETING THE SUBCONTRACTOR UTILIZATION REPORT

1. **PROJECT NAME:** Indicate the project name as shown on the contract document.
2. **PRIME CONTRACTOR:** Indicate the name of the prime contractor.
3. **PRIME CONTRACT AMOUNT:** Indicate the total dollar amount of the prime contract.
4. **REPORT DATES:** Indicate the beginning and ending dates corresponding to the progress payment period or use calendar month.
Example: 1/1/95 thru 1/31/95. Reports should be sequential and not overlap.
5. **SUBCONTRACTOR NAME:** List the names of all first-tier subcontractors and first-tier suppliers having performed work or paid on this project during the reporting period.
6. **STATUS:** Indicate the appropriate M/W/ESB status of each contractor listed in item 7. Enter State M/W/ESB Certification number. **Note:** Designations should be consistent with how firms were certified by the state at time of contract award. Only one designation may be used for credit and will be applied accordingly. Leave blank for non certified firms.
7. **SCOPE OF WORK:** Briefly describe subcontractors work. Example: Landscaping, electrical supplier, electrical contractor, remove and replace inlets, furnish and install catch basins, etc.
8. **ORIGINAL CONTRACT AMOUNT:** Indicate the dollar amount for each subcontract at time of award.
9. **CHANGES TO CONTRACT:** Indicate the cumulative dollar value of any changes to subcontracts. Additions to the contract should be shown using a plus sign in front of the amount and reductions in contract amounts using the minus sign. Examples: additions +\$3,050.50, reductions -\$3,050.50. Also please explain any changes in space provided below for comments.
10. **TOTAL SUBCONTRACT AMOUNT:** This amount should be the total dollar value (current contract amount) plus or minus changes indicated in column 11.

Verification of M/W/ESB certification or information on obtaining names of certified M/W/ESB firms may be obtained from:

Office of Minority, Women and Emerging Small Business
Portland Field Office (503) 887-4349, Salem Office (503) 947-7922
State of Oregon, Executive Department
www.cbs.state.or.us/omwesb/

For additional information:

John Classen, Program Specialist
Portland Development Commission

Phone: (503) 823-3667
Fax: (503) 823-3368
e-mail: classenj@pdc.us

EXHIBIT H – ATTACHMENT C
CONSTRUCTION WAGE POLICY
(Amended April 11, 2007)

The purpose of this PDC Construction Wage Policy (this “Policy”) is to ensure that PDC Resources are utilized to ensure that workers on projects subject to this Policy are paid a living wage and that PDC Resources are equitably dispersed.

1. Definitions.

- A. **“Land Write-Down”** shall mean the difference between the fair market value (“FMV”) of land and the price at which PDC sells such land. For example, if land owned by PDC has a FMV of \$800,000 and PDC sells such land for \$600,000, the Land Write-Down for purposes of calculating the amount of PDC Resources shall be \$200,000.
- B. **“PDC Resources”** include PDC funds in the form of grants, loans and Land Write-Downs. For purposes of calculating PDC Resources, any PDC funds used for a project in the form of grants, loans and Land Write-Downs shall be combined to determine the total amount of PDC Resources. Sources of PDC Resources may include Tax Increment Financing (TIF) but do not include New Market Tax Credits and other Federal and State Tax Credits or abatements.
- C. **“PDC Wage Rate”** means wage rates under this Policy shall be identical to the Bureau of Labor and Industries (“BOLI”) rate for Commercial Construction and the Federal Davis-Bacon Act (“Davis-Bacon”) rate for Residential Construction, and shall include wage, fringe and overtime rates and apprentice pay. Apprenticeship goals will be the same as on other PDC projects. In the event that a project under the Policy is subject to BOLI or Davis-Bacon, the PDC Wage Rate shall not apply.
- D. **“Residential Construction”** shall have a meaning consistent with BOLI’s definition for residential construction.

2. Policy.

A. Application of Policy. The Policy shall apply to:

- (a) All projects that are privately owned and constructed that receive \$1,000,000 in PDC Resources. In the event that the Policy applies, the owner of the project shall pay the PDC Wage Rates for the entire project.
- (b) All environmental remediation and demolition work that equals or exceeds \$50,000 in PDC Resources whether such environmental remediation and demolition work is undertaken in connection with a development agreement, in anticipation of a development agreement, or at PDC’s initiative.

B. Subsequent PDC Resources. In the event that a project that was originally determined not to be subject to the Policy based on the amount of PDC Resources, but through the addition of subsequent PDC Resources (the “Subsequent PDC Resources”) meets or exceeds the \$1,000,000 threshold for total PDC Resources, the project shall be subject to the Policy as follows:

- (i) if the addition of the Subsequent PDC Resources occurs prior to the signing of the prime construction contract with the private developer, the entire project shall be subject to the Policy; or
- (ii) if the addition of the Subsequent PDC Resources occurs after the signing of the prime construction contract with the private developer, then the Policy shall apply only to construction to be completed with the Subsequent PDC Resources.

C. Residential Construction Projects: The following provisions shall apply to all Residential Construction projects that are subject to this Policy:

- (a) As used in this Section 2.C, “privately-owned” projects include housing provided on real property owned by a public agency if the real property and related structures are leased to a private entity for fifty (50) or more years.
- (b) Unless otherwise required, construction of a privately owned Residential Construction project is not subject to the Policy if one or more of the following conditions are met:
 - (i) The project is a volunteer residential project in which no fewer than 500 hours of construction work associated with the units are performed by homebuyers or volunteers;
 - (ii) PDC Resources are provided as mortgage assistance, down payment assistance, or for rehabilitation or construction of a homeownership unit for a household earning no more than 80% median family income (“MFI”). For a mixed income project the Policy shall not apply if at least 60% of the units are restricted to households earning no more than 80% MFI. For a mixed use project the Policy shall not apply if 60% of the gross rentable square footage is restricted to households earning no more than 80% MFI;
 - (iii) The project consists of construction associated with a non-profit-owned Residential Construction project for persons that are homeless or that require transitional or permanent supportive housing; or
 - (iv) Rental Residential Construction projects where occupancy is restricted by deed or regulatory agreement to individuals or families earning no more than 60% MFI. For a mixed income project the Policy shall not apply if at least 60% of the units are restricted to households earning no more than 60% MFI. For a mixed use project the Policy shall not apply if 60% of the gross rentable square footage is restricted to households earning no more than 60% MFI.

D. Changes to Residential Construction Projects. In the event that a project that was originally determined not to be subject to the Policy based on the exception for a certain percentage of affordable units in Residential Construction projects as described in Section 2.C(b) herein, but through subsequent changes to the program of such Residential Construction project, the percentage of affordable units falls below the percentage

required for exception to the Policy set forth in Section 2.C(b), the project shall be subject to the Policy as follows:

- (i) if the subsequent change occurs prior to the signing of the prime construction contract with the private developer, the entire project shall be subject to the Policy; or
- (ii) if the subsequent change occurs after the signing of the prime construction contract with the private developer, then the Policy shall apply to the remainder of construction to be completed.

3. General.

The following provisions shall apply to all projects that are subject to the Policy:

- A. The effective date for applying the Policy to current projects is the signing of the memorandum of understanding (“MOU”) between PDC and the private developer. If there is no MOU, the effective date shall be the date of the disposition and development agreement, development agreement or other transactional documents between PDC and the private developer.
- B. At the signing of an MOU between PDC and the private developer, a preliminary determination shall be made by PDC of the applicability of the Policy. At the signing of a development agreement, a disposition and development agreement or other transactional documents between PDC and the private developer, a final determination shall be made by PDC of the applicability of the Policy. PDC Wage Rates shall lock in at the signing of the prime construction contract with the private developer.
- C. PDC Wage Rates shall be posted at the construction worksite.
- D. Contractors that are on the BOLI list of ineligible cannot participate in construction projects subject to the Policy.
- E. To the extent that a project is determined to be subject to BOLI’s prevailing wage rules, the Workforce Diversity provisions of the Policy shall apply.
- F. One year after the adoption of the Policy, the PDC Board of Commissioners (the “Board”) will review the effects of the Policy.
- G. A PDC Wage Rate Oversight Group shall be formed to include PDC, union representatives, non-union representatives, women in trades, the minority community, and the construction industry, and other stakeholders to review and propose changes to the Policy to PDC’s Executive Director.

4. Workforce Diversity Strategy Agreement.

- A. PDC, union and non-union representatives, union and non-union Joint Apprenticeship Training Committee (“JATC”), representatives from Evening Trades Apprenticeship Preparation (“ETAP”) Program, Oregon Tradeswomen, Construction Apprenticeship Workforce Solutions, Inc. (“CAWS”) Inc., Portland Youth Builders, Portland Community College Skill Center “PCC Skill Center”, Hispanic Metro Chamber of Commerce, Job Corps, Irvington Covenant Community Development Corporation, and

other relevant and qualified parties as appropriate (collectively, the “Parties”) shall enter into an agreement that sets forth the Parties’ commitment to develop a program for the recruitment, training, employment and retention of People of Color and women members of the Portland metropolitan area in union and non-union apprenticeship programs through graduation with the objective of achieving a permanent increase at the journey level in the participation of trained and licensed People of Color and women in the construction trades in the Portland metropolitan area (the “Workforce Diversity Strategy Agreement”). In developing the Workforce Diversity Strategy Agreement, PDC will work with existing collaborative efforts to strengthen and enhance efforts to increase the representation of People of Color and women in the construction trades.

B. Elements of the Workforce Diversity Strategy Agreement shall include:

- (a) A process for creating a mentorship program to improve retention from the apprentice to the journey level.
- (b) A process for entry, and for direct entry into JATCs that have state approved direct entry processes from approved programs.
- (c) Trade specific goals for all union and nonunion JATCs to increase diversity at the apprentice and journey level.
- (d) Union and nonunion specific goals to increase diversity amongst its membership/workforce.
- (e) The requirement that union and nonunion JATCs submit an annual affirmative action report from each of its member unions. Non-union contractors and subcontractors shall submit an annual affirmative action report, either individually or through its representative organization. The PDC Wage Rate Oversight Group shall participate in the review of such reports and make recommendations to the PDC Executive Team.
- (f) A commitment to comply with PDC’s programs authorized by the Disparity Study Implementation Plan adopted by the Board by Resolution 5066 that implements policies concerning fair contracting and workforce training (collectively, and as may be amended from time to time, the “Business and Workforce Equity Programs”).

5. **Project Apprenticeship and Equity Agreement.**

A. Prior to the commencement of construction of a project subject to the Policy, PDC, the developer and the general contractor (collectively, the “Contracting Parties”) shall enter into an agreement (the “Project Apprenticeship and Equity Agreement”) that sets forth, among other things, a process to achieve specific goals for increased participation by People of Color and women on the project (the “Project Specific Diversity Goals”) and a plan for compliance with the Business and Workforce Equity Programs.

B. Elements of the Project Apprenticeship and Equity Agreement shall include:

- (a) A commitment by the Contracting Parties to incorporate the terms of the Workforce Diversity Strategy Agreement into all construction contracts for the project.
 - (b) A commitment to comply with the process set forth in the Project Apprenticeship and Equity Agreement (the "PAE Process") to achieve the Project Specific Diversity Goals.
 - (c) An acknowledgement that failure to comply with the PAE Process shall result in an assessment of damages against the general contractor for each day of non-compliance.
 - (d) A commitment to comply with the Business and Workforce Equity Programs.
 - (e) An acknowledgement that failure to comply with the Business and Workforce Equity Programs shall result in an assessment of damages against the general contractor for each day of non-compliance.
- C. Damages assessed as a result of non-compliance with the PAE Process and the Business and Workforce Equity Programs shall be maintained in separate account and used exclusively for programs, such as mentoring, determined by PDC to effectively increase workforce diversity or increase the capacity of minority-owned, women-owned or emerging small businesses. A report of the account shall be made by PDC staff to the Board on a quarterly basis.
- D. Developers, contractors and subcontractors that fail to comply with any requirement of the PAE Process, the Business and Workforce Equity Programs or the procedural requirements of the Workforce Diversity Strategy Agreement as determined by PDC shall be placed on a PDC list of ineligible and barred from participation on PDC projects for a period of two (2) year

EXHIBIT I

FORM OF MEMORANDUM OF AGREEMENT

After recording return to:

Memorandum of Agreement

THIS MEMORANDUM OF AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY ("Memorandum") shall serve as notice to all persons that 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"), with an address of Portland Development Commission, 222 NW Fifth Avenue, Portland, Oregon 97209-3859 and _____, a _____ ("Developer"), with an address of _____, entered into an Agreement For Disposition And Development Of Property, (_____) dated as of _____, 20__ ("Agreement") relating to the real property located in Multnomah County, Oregon, as more particularly described in Exhibit "A" attached hereto (the "Property").

Among other things, the Agreement requires PDC to convey the Property to Developer upon the satisfaction of certain conditions precedent, and requires Developer to construct and complete certain infrastructure and project improvements on the Property, all as more particularly set forth in the Agreement. Other property or value was part of the whole consideration given for the Property conveyance referenced herein.

As a condition subsequent to the Property conveyance, in the event of a default by Developer before PDC issues a Certificate of Completion, PDC shall have the option, upon 30 days written notice ("Notice of Termination") to Developer and Escrow Agent, to declare a termination in favor of the PDC of all the title, rights and interests of Developer in the Property. After delivery of such Notice of Termination and in the event Developer fails to remedy, end or abrogate such default within the 30-day period in the manner stated in the Notice of Termination, Developer shall reconvey the Property to PDC by quitclaim deed, pursuant to the Escrow Instructions in Exhibit C attached to the Agreement. After a Certificate of Completion is recorded as to the Project, PDC shall thereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the Agreement with respect to the construction of the Project, or as a result of a default in or breach of any provisions of the Agreement by Developer, or by any successors in interest or assigns of Developer, except for those surviving sections described in the Certificate of Completion. PDC shall thereafter have no further right of re-entry to the Property or reversion as described above.

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

January 9, 2008

PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland.

By: _____

Title: _____

Date: _____, 200__

_____, a _____

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20__, by _____, Executive Director of the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland.

Notary Public for _____
My commission expires: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 200__, by _____, _____ of _____, a _____.

Notary Public for _____
My commission expires: _____

EXHIBIT A

Legal Description

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6550

Title: Authorizing the Executive Director to Execute an Amended and Restated Disposition and Development Agreement with One Waterfront Place LLC and Madrona Park LLC in the River District Urban Renewal Area

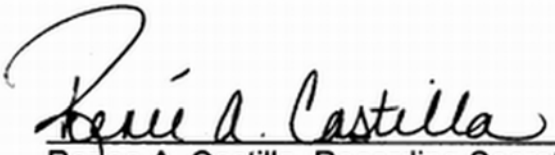
Adopted by the Portland Development Commission on January 9, 2008

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input type="checkbox"/>	Mark Rosenbaum, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Sal Kadri	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Charles Wilhoite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Consent Agenda		<input 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 duly recorded in the official minutes of the meeting.


Renee A. Castilla, Recording Secretary

Date: January 11, 2008