

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6553

**AUTHORIZING THE EXECUTIVE DIRECTOR TO
EXECUTE A DISPOSITION AND DEVELOPMENT
AGREEMENT WITH KILLINGSWORTH STATION, LLC,
FOR DEVELOPMENT OF CERTAIN PDC-OWNED
PROPERTY AT THE NORTHEAST CORNER OF NORTH
INTERSTATE AVENUE AND NORTH KILLINGSWORTH
STREET**

WHEREAS, in furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, PDC has undertaken a program for the development and redevelopment of blighted areas in the City and in connection therewith prepared and approved an Urban Renewal Plan for the Interstate Corridor Urban Renewal Area ("ICURA"), which was approved by the City Council of the City on August 23, 2000 (as amended from time to time, the "Urban Renewal Plan" or the "Plan");

WHEREAS, the Plan, adopted by the Portland Development Commission ("PDC"), stipulates a general principal to optimize light rail investment through the creation of catalyst projects near light rail stations;

WHEREAS, the Interstate MAX Station Area Revitalization Strategy projects a demand for 1,700 to 3,400 new housing units in the vicinity of station areas along and near Interstate Avenue in the ICURA, serving a variety of income levels;

WHEREAS, the ICURA Housing Strategy includes goals to increase ownership opportunities for current and future residents and support expanded services, business and employment opportunities;

WHEREAS, to implement these goals, PDC purchased the 32,000 square feet of property located at the northeast corner of N. Killingsworth Street and N. Interstate Avenue ("Killingsworth Property") to redevelop as a transit-supportive, mixed-use housing project;

WHEREAS, PDC found it necessary and in the public interest to offer the Property for redevelopment as a mixed-use residential condominium project (the "Project") via Request for Proposals #05-40 ("RFP") so as to serve as a catalyst for area redevelopment and to provide additional housing within the ICURA, consistent with Goal Section III.B of the Plan;

WHEREAS, PDC received proposals from three development entities, including Killingsworth Station, LLC, who proposed to build 51 residential condominium units of which 8 units would be affordable at 80% median family income (MFI) and 18 units would be affordable at 100% MFI, along with 9,227 square feet of ground floor commercial condominium space;

WHEREAS, a Selection Advisory Committee comprised of community and city wide stakeholders reviewed and evaluated the Proposals based on the evaluation criteria in the RFP, and recommended that Killingsworth Station, LLC, be selected as the development entity to enter into negotiations to redevelop the Killingsworth Property;

WHEREAS, on August 23, 2006, the PDC Board of Commissioners adopted Board Resolution No. 6386 authorizing the Executive Director to enter into exclusive negotiations with Killingsworth Station, LLC to redevelop the Killingsworth Station Property;

WHEREAS, PDC's Executive Director authorized staff to negotiate with Killingsworth Station, LLC, a disposition and development agreement ("DDA") for the redevelopment of the Property;

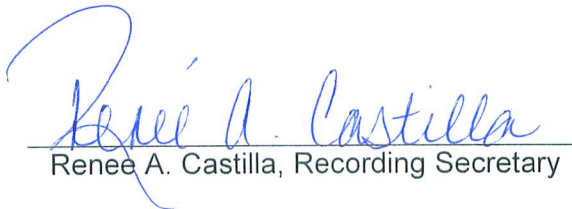
WHEREAS, on November 14, 2007, in a briefing to the PDC Board of Commissioners staff was asked to look at the feasibility of making more housing units affordable and providing deeper affordability; and

WHEREAS, PDC staff has negotiated the DDA with Killingsworth Station, LLC to refine the housing development program to include 54 homeownership units, of which 33 will be affordable to households making 80% of area median family income;

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to execute the DDA with Killingsworth Station, LLC, substantially in the form 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 23, 2008.



Renee A. Castilla, Recording Secretary

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

IN THE INTERSTATE URBAN RENEWAL AREA

BETWEEN

THE PORTLAND DEVELOPMENT COMMISSION

AND

KILLINGSWORTH STATION, L.L.C.

DATED

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

IN THE INTERSTATE URBAN RENEWAL AREA

THIS AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY IN THE INTERSTATE URBAN RENEWAL AREA (this “Agreement”) is entered into as of _____, 20__ between the CITY OF PORTLAND, a municipal corporation of the State of Oregon (the “City”), acting by and through the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland (which, together with any successor public agency designated by or pursuant to law, is herein called “PDC”), and **KILLINGSWORTH STATION, L.L.C.,** an **OREGON LIMITED LIABILITY COMPANY** (“Developer”). PDC and Developer are referred to jointly in this Agreement as “Parties” and individually as a “Party”.

RECITALS

WHEREAS, in furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, PDC has undertaken a program for the development and redevelopment of blighted areas in the City and in connection therewith prepared and approved an Urban Renewal Plan for the Interstate Urban Renewal Area, which was approved by the City Council of the City on August 23, 2000 (as amended from time to time, the “Urban Renewal Plan” or the “Plan”);

WHEREAS, a copy of the Urban Renewal Plan, as amended, as constituted on the date hereof has been recorded in the real property records of Multnomah County, Oregon, and is by this reference made a part hereof;

WHEREAS, PDC found it necessary and in the public interest to implement the Plan by acquiring a parcel of land located at the NE Corner of North Interstate Avenue and North Killingsworth Street (as further described in the Definitions section below, the “Property”) in the Interstate Urban Renewal Area and offering the Property for redevelopment as a mixed-use residential condominium project so as to serve as a catalyst for area redevelopment and to provide additional housing within the district, consistent with Goal Section III.B of the Plan;

WHEREAS, in furtherance of that redevelopment objective, on April 12, 2006, PDC issued a Request for Proposals Number 05-40 (the “RFP”) for redevelopment of the Property;

WHEREAS, in response to the RFP, Developer submitted a proposal for redevelopment of the Property;

WHEREAS, in furtherance of that redevelopment objective, PDC and Developer entered into negotiations for conveyance of the Property to Developer and for Developer’s redevelopment of the Property as a high-quality, four-story, residential mixed-use, transit-oriented development with approximately 54 unit residential condominiums and significant sustainable building features (as further described in the definitions section below, collectively, the “Project”);

WHEREAS, the Parties are now prepared to enter into a definitive agreement for Developer to acquire the Property and undertake development and operation of the Project;

WHEREAS, the completion of the Project according to the terms of this Agreement, including the Scope of Development (defined below) and the Schedule of Performance (defined below), is a material

WHEREAS, PDC finds that the fulfillment, generally, of this Agreement, and the intentions set forth herein, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of the applicable state and federal laws and requirements under which the Urban Renewal Plan was adopted.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises set forth above and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

DEFINITIONS

The following words and phrases have the designated meanings in this Agreement:

1. **“Affordability Trust Grant”** has the meaning set forth in Section 6.3.
2. **“Agreement”** means this Agreement for the Disposition and Development of Property and all attached Exhibits.
3. **“Business Day”** means a day of the year on which banks are not required or authorized to close in Portland, Oregon.
4. **“Certificate of Completion”** means a certificate issued by PDC to Developer pursuant to Section 3.8 of this Agreement.
5. **“City”** means the City of Portland, Oregon and its constituent bureaus and agencies, except PDC.
6. **“Close”** means the conveyance of the Property to Developer by PDC through recordation of the Deed.
7. **“Closing”** means the date on which the Deed from PDC to Developer is recorded.
8. **“Commencement of Construction”** means the date Developer is to begin construction in accordance with the Schedule of Performance.
9. **“Construction Documents”** means documents, based upon the Design Review Documents, that set forth in detail the requirements for construction of the Project pursuant to the terms of this Agreement, approved by PDC and the appropriate City agencies. Construction Documents shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project.
10. **“Construction Feasibility Subsidy”** has the meaning set forth in Section 6.1.2.
11. **“Construction Period”** means the period of time between the Commencement of Construction and the date for completion of the construction set forth in the Schedule of Performance, as such date may be extended pursuant to provisions hereof.
12. **“Conveyance”** means the transfer of fee simple title to the Property by PDC to Developer.
13. **“Deed”** means the form of Bargain and Sale Deed which will be used to convey fee simple title to the Property, as attached to this Agreement as Exhibit A and incorporated herein by this reference.
14. **“Demolition”** means the removal of certain improvements on the Property, including but not limited to the removal of debris from the Property and its lawful disposal.
15. **“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.
16. **“Effective Date”** means the date stated in the first paragraph of this Agreement.
 17. **“Environmental Condition”** means the physical condition of the Property measured by the standards of the Environmental Laws.
 18. **“Environmental Laws”** means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Property or the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (as defined in the definition of Hazardous Substances, below), CERCLA (defined in the definition of Hazardous Substances, below), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
 19. **“Environmental Due Diligence Reports”** means investigations performed as part of environmental due diligence such as Phase 1, Phase 2 and Hazardous Buiding Site Assessment or other reports, documents or documentation of recognized environmental conditions that PDC has completed or will complete or PDC has in their possession completed by others.
 20. **“Escrow Agent”** means Chicago Title Insurance Company.
 21. **“Final Construction Plans and Specifications”** means all plans and specifications required to complete the Project pursuant to the terms of this Agreement, approved by PDC and the appropriate City agencies.
 22. **“Final Project Budget”** means the estimated sources and uses of funds and Project costs approved by the PDC Director of Housing prior to Closing.
 23. **“Green Building”** means building design, siting, construction and operations practices that conserve natural resources and improve the performance of the building, other site improvements, and their users.
 24. **“Hazardous Substances”** means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance 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.
 25. **“Infrastructure”** means sidewalks, alleys, and driveway approaches, connections to garages, planting street trees and grass in planting strips, stormwater mitigation, street and parking lot lighting, construction and connection of the Project to abutting potable water and sewer and storm sewer mains, connecting the Project to gas and electric and other necessary utility services, and all permitting for any of the above and as may be further described in the Scope of Development set forth in Exhibit D attached hereto and incorporated herein by this reference to the extent any of which directly serve the Project.

26. **“LEED”** means Leadership in Energy and Environmental Design, which is the trademarked rating system that is intended to serve as an impartial method of evaluating overall Project sustainability across four levels of certification. Major categories of evaluation are: sustainable sites, water efficiency, energy and atmosphere, materials and resources, indoor environmental quality, and innovation and design process.
27. **“Mortgage”** means a mortgage or deed of trust against the Property, or any portion thereof, approved by PDC and recorded in the real property records of Multnomah County, Oregon.
28. **“Mortgagee”** means the holder of any Mortgage, together with any successor or assignee of such holder. The term “Mortgagee” shall include any Mortgagee as owner of the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a Mortgage but shall not include (a) any other party who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee.
29. **“PDC’s knowledge”** means the actual current knowledge of the PDC Project Manager and John Warner, without any duty of inquiry or investigation.
30. **“PDC Project Manager”** has the meaning set forth in Section 10.1.
31. **“Predevelopment Loan”** means the loan made by PDC to Developer described in Section 6.2 herein.
32. **“Project”** means the Property, and the new improvements to be constructed by Developer on the Property, including two buildings with approximately 54 residential condominium units, 48 1-bedroom units, and six 2-bedroom units and approximately 9,200 square feet of ground-floor, neighborhood serving retail space. The Project construction type will consist of three stories of wood frame construction over a concrete ground floor with a commercial aluminum storefront system and post-tension concrete lid. Approximately 60% of the Project (33 units) will be affordable to individuals earning no more than 80 percent of MFI as further described in the Scope of Development set forth in Exhibit D.
33. **“Project Budget”** means the summary financial analysis for the Project set forth in Exhibit B, attached hereto and incorporated herein by this reference. The Project Budget represents the estimated sources and uses of funds, cash flow and Project costs as of the Effective Date.
34. **“Property”** means the real property located at the northeast corner of North Interstate Avenue and North Killingsworth Street, and includes the following tax lots:

R #	Address	Legal
R226112	1421 N. Killingsworth Ave.	NORTH ALBINA; W 1/2 OF LOT 5&6 BLOCK 1
R226115	5533 N. Maryland Ave.	NORTH ALBINA; LOT 8 BLOCK 1
R226114	5525 N. Maryland Ave	NORTH ALBINA; LOT 7 BLOCK 1
R226113	5513-5515 N. Maryland Ave	NORTH ALBINA; BLOCK 1; E 1/2 OF LOT 6
R226111	5510-5514 NE Interstate Ave	NORTH ALBINA; EXC PT IN ST LOT 2-4 BLOCK 1
R503087	No street address	NORTH ALBINA; BLOCK 1; E 1/2 OF LOT 5

in the City of Portland, County of Multnomah, State of Oregon as more particularly described in Exhibit A.

35. **“Purchase Price”** means the price Developer shall pay to PDC for the Property to be conveyed by PDC to Developer. The Purchase Price is set forth in Section 1.2.
36. **“RFP Submittal Drawings”** means the preliminary plans, general property use description, site drawings and cost estimates for the Project that Developer submitted to PDC as part of its proposal submitted in response to the RFP.
37. **“Real Estate Loan”** means the financing that PDC will provide to Developer for acquisition of the Property and construction of the Project pursuant to this Agreement and the Real Estate Loan Documents.
38. **“Real Estate Loan Documents”** means the promissory note, loan agreement, trust deed, financing statement and any other documents required by PDC to evidence the Real Estate Loan.
39. **“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.
40. **“Release”** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
41. **“Required Commercial Excavation”** means the excavation of soils for the utilities that will directly serve the Project, and the excavation of soils for the placement of structural support within the ground less than 5 feet deep for the Project.
42. **“Schedule of Performance”** means the document describing the schedule by which construction and development of the Project will occur, attached hereto as Exhibit C and incorporated herein by this reference.
43. **“Schematic Design Documents”** means the following documents, all of which have been submitted by Developer and approved by PDC as of the Effective Date:
 - Documents based on a mutually agreed-upon program and schedule;
 - Documents establishing the schematic level design of the Project illustrating the scale and relationship of the Project components;
 - Documents that include a schematic level site plan, elevations, preliminary building plans, sections and elevations;
 - Three-dimensional representations of the Project in the site that may include study models, perspective sketches, electronic modeling or combinations of this media;
 - Preliminary selections of major building systems and construction material shall be noted on the drawings or described in writing.
44. **“Scope of Development”** means the description of the improvements to be built comprising the Project, including the proposed development program, attached hereto as Exhibit D and incorporated herein by this reference which shall survive the issuance of the Certificate of Completion.
45. **“Unforeseen Environmental Conditions”** means any Hazardous Substance that was not previously identified as a Recognized Environmental Condition *and* which, pursuant to Environmental Laws, will require remediation or abatement using means and methods, that are prescribed by the Oregon Department of Environmental Quality (“DEQ”).

46. “**USGBC**” means the U.S. Green Building Council, a coalition of building industry representatives working to promote buildings that are environmentally responsible, profitable, and healthy places to live and work. The USGBC manages the LEED rating system and is responsible for certification of registered projects.

1 GENERAL TERMS OF CONVEYANCE OF PROPERTY

1.1 **Closing.** Subject to the terms, covenants, and conditions of this Agreement, the Conveyance of the Property to Developer shall occur in an escrow Closing at the office of the Escrow Agent not later than the deadline for Closing set forth in the Schedule of Performance.

1.1.1 **Conveyance by Deed.** Subject to satisfaction of the Conditions Precedent to Conveyance set forth in Section 1.5 hereof, at the Closing PDC will convey the Property to the Developer by Deed, subject only to the Final Permitted Exceptions (defined in Section 1.3 hereof).

1.1.2 **Conveyance to Developer.** Subject to satisfaction of the Conditions Precedent to Conveyance set forth in Section 1.5 hereof, at the Closing Developer shall accept the Conveyance of the Property, provided that the Conveyance shall not occur prior to July 2, 2008. The conveyance terms are specific to Developer’s unique characteristics and are not assignable except as allowed under Section 5 below

1.2 **Purchase Price.** The cash portion of the Purchase Price for the Property is Zero Dollars (\$0). The Purchase Price includes other consideration from Developer.

1.3 **Title Review.**

1.3.1 Within ten (10) days after the Effective Date, PDC will deliver to Developer a preliminary title report on the Property and copies of all exception documents (the “Title Report”) in PDC’s possession. Developer will have twenty (20) days after receiving the Title Report to notify PDC in writing if Developer objects to any item in the Title Report. Those items to which Developer does not object are the “Permitted Exceptions”. If Developer objects to any item, then PDC shall have twenty (20) days after receiving Developer's written objection to notify Developer in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If PDC does not give its response to Developer’s objections within the twenty (20) day time period or if PDC refuses to remove any such objected to exceptions, Developer shall have twenty (20) days to terminate this Agreement by written notice to PDC. If this Agreement is not terminated in accordance with the preceding sentence, the Permitted Exceptions together with the exceptions, if any, that Developer originally objected to and that PDC refused to remove or failed to respond to will be deemed the “Final Permitted Exceptions”. If this Agreement is terminated due to PDC’s failure to remove a lien (i) arising solely by or through PDC’s actions or inactions and not a matter of public record on the Effective Date or (ii) that PDC agreed, in writing, to remove after objection thereto by Developer, then PDC shall promptly reimburse to Developer all out of pocket expenses incurred by Developer in connection with the Project and the Property to the extent supported by reasonable documentation and otherwise not already reimbursed by the Predevelopment Loan if the Predevelopment Loan has been forgiven.

1.3.2 Developer may obtain an update to the Title Report at anytime prior to the Closing. Developer shall promptly give to PDC a copy of any updated Title Report. Developer

shall give PDC 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 Developer's written notice to PDC described in the preceding sentence, PDC shall notify Developer in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If PDC refuses to remove any such objected to exceptions, Developer may terminate this Agreement, by written notice to PDC, or Close subject to same. Any exceptions that Developer accepts at Closing are the "Final Permitted Exceptions". If this Agreement is terminated due to PDC's failure to remove a lien (i) arising solely by or through PDC's actions or inactions and not a matter of public record on the Effective Date or (ii) that PDC agreed, in writing, to remove after objection thereto by Developer, then PDC shall promptly reimburse to Developer all out of pocket expenses incurred by Developer in connection with the Project and the Property to the extent supported by reasonable documentation and otherwise not already reimbursed by the Predevelopment Loan if the Predevelopment Loan has been forgiven.

1.4 **Title Insurance, Survey, Property Taxes and Closing Costs.**

- 1.4.1 PDC, at its expense, shall provide Developer with a standard coverage Owner's Policy of Title Insurance, issued by Escrow Agent, and covering the Property when conveyed, and insuring Developer in the amount of One Million One Hundred and Twenty Thousand Dollars (\$1,120,000.00) (the "Market Valuation"), free and clear of encumbrances, except Final Permitted Exceptions. Developer, at its option and its expense, may elect to obtain extended coverage under such policy of title insurance and PDC agrees to execute any affidavits or other documents reasonably required by the Escrow Agent to enable Developer to obtain such coverage. Developer may also elect to obtain a survey at its own expense.
- 1.4.2 The costs for recording a Memorandum of this Agreement, a form of which is attached as Exhibit J and incorporated herein by this reference, the Deed and any other documents required by Developer to be recorded will be paid by Developer. Each Party shall pay one-half (1/2) of any escrow fees charged by Escrow Agent. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Multnomah County. PDC shall pay only the annual payments due through the Closing for any special assessments that have been paid in annual installments. Developer shall assume liability for payment of any annual payments due after the Closing for any special assessments that have been paid in annual installments. Developer shall pay any property taxes accruing to the Property as a result of the transfer of the Property from public ownership, and therefore the change of the Property's status from tax exempt to taxable. In addition, the Developer shall pay property taxes on the Property from and after the Closing.

1.5 **Conditions Precedent to Conveyance.**

- 1.5.1 **Conditions.** Developer and PDC are not obligated to close the Conveyance unless the following conditions are satisfied to their reasonable satisfaction. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied and such Party may waive the condition in its sole discretion, provided such waiver shall be in writing to the other Party to be effective. The Parties shall act diligently and in good faith to satisfy conditions over which they have control or influence.

- (a) To the satisfaction of both PDC and Developer:

- (i) The Final Construction Plans and Specifications for the Project have been approved by all required governmental entities and agencies, including PDC pursuant to Section 3.2 hereof.
 - (ii) All land use approvals and permits for the Project 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, provided that final resolution shall not be required if the issue(s) involved in the appeal is such that customary bonding or indemnification represents a reasonable basis for proceeding with the Project
 - (iii) The City of Portland Bureau of Development Services (“BDS”) is ready to issue building permits that are required to construct the Project, subject only to Developer’s ownership of the Property.
 - (iv) Developer has demonstrated financial feasibility for the Project, consistent with the Project Budget, by providing to PDC: (a) copies of binding commitment letters from private lenders for the construction financing for the Project, (b) written evidence of necessary equity commitments (c) commitments from public funding sources, including the approval by the Commission, if necessary, and the PDC Loan Committee of the terms and conditions of the Real Estate Loan, subject to standard underwriting practices, for the construction of the Project.
 - (v) The Parties have agreed to the final form of the Deed and any documents necessary to Close the Conveyance.
 - (vi) The Parties have entered into the Compliance Agreement attached hereto as Exhibit G.
 - (vii) No litigation is pending that prevents PDC or Developer from performing their respective obligations under this Agreement.
 - (viii) Neither party is in default under this Agreement and all tasks shown on the Schedule of Performance to be completed as of Closing have been completed.
- (b) To Developer’s satisfaction:
- (i) Developer is satisfied that PDC has title to the Property subject only to the Final Permitted Exceptions.
 - (ii) Escrow Agent has issued to Developer a binding commitment, satisfactory to Developer, to issue to Developer a standard coverage Owner’s Policy of Title Insurance Policy covering the Property in an amount not less than the Market Valuation, subject only to the Final Permitted Exceptions.
 - (iii) PDC’s representations and warranties set forth in Section 1.6 hereof are true and correct as of the Closing.
 - (iv) PDC is not in default under this Agreement.
 - (v) No material adverse change in the physical or legal condition of the Property has occurred.

- (vi) All commitments between Developer and other parties contemplated for Project financing pursuant to Section 6.1 hereof are in effect.
- (c) To PDC's satisfaction:
 - (i) Developer has provided to PDC reasonable proof that (a) Developer is a limited liability company existing in the state of Oregon, (b) the Articles of Organization and Operating Agreement of the Developer have not been altered since the Effective Date in any manner that may adversely affect PDC's interests after the Closing, (c) Developer has full power and authority to enter into and perform its obligations under this Agreement and (d) this Agreement has been executed and delivered, for and on behalf of Developer, by an authorized individual.
 - (ii) The PDC Director of Housing has determined that the final construction budget for the Project is in substantial conformance with the Final Project Budget.
 - (iii) Developer has registered the Project for LEED certification and, to the extent available to Developer, has provided PDC with documentation of the Project's LEED credits, evidencing anticipated credits sufficient to reach at least the LEED Certification level, if not the LEED Silver level.
 - (iv) Developer's representations and warranties set forth in Section 1.7 hereof are true and correct as of the Closing.
 - (v) Developer is not in default under this Agreement.

1.5.2 **Elections upon Non-Occurrence of Conditions.** Except as provided below, if any condition in Section 1.5.1 is not fulfilled to the satisfaction of the benefited Party or Parties on the date scheduled for Closing as set forth in the Schedule of Performance, then such benefited Party or Parties may elect to:

- (a) Terminate this Agreement by written notice to the other Party, which termination shall become effective sixty (60) days after the notice of termination is sent ("Termination Date") unless, before the sixty (60) day period ends, such condition is fulfilled to the satisfaction of the benefited Party or Parties;
- (b) Waive in writing the benefit of that condition precedent to Closing and proceed in accordance with the terms hereof; or
- (c) Designate in writing a later date for Closing, to allow additional time for the condition to be fulfilled, if the condition can be fulfilled and the other Party agrees in writing to the later date.

1.5.3 **Final Termination Date.** If all of the conditions precedent to Closing set forth in Section 1.5.1 have not been fulfilled or waived by the later of (a) the date scheduled for Closing as set forth in the Schedule of Performance or (b) such later Closing date, if any, designated pursuant to Section 1.5.2(c) or determined in accordance with Section 9.8.2, then this Agreement shall automatically terminate sixty (60) days after the later of the foregoing dates (the "Final Termination Date").

1.5.4 **Effect of Termination for Failure of Conditions Precedent.** If this Agreement is

terminated for failure of fulfillment of the conditions precedent to Closing and neither Party is in default under this Agreement, then all rights and obligations of the Parties under this Agreement shall terminate on the Final Termination Date other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Multnomah County. If a Party is in default under this Agreement on the Final Termination Date, then the rights and remedies accruing to the other Party under this Agreement as a result of such default shall survive termination of this Agreement.

1.6 **PDC Representations and Warranties.** PDC's representations and warranties under this Agreement are limited to the following, each of which shall be deemed made as of the Effective Date, shall be deemed remade and effective as of Closing and shall survive Closing. PDC represents that:

- (a) To PDC's knowledge, except as has been disclosed to Developer in the Environmental Reports, there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, Release or production of Hazardous Substances on the Property, or underground storage tanks existing on the Property, except in compliance with Environmental Laws currently in effect, and PDC has not received notice of the Release of any Hazardous Substances on the Property.
- (b) PDC has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by PDC to authorize the execution of this Agreement and the transactions contemplated hereby.
- (c) PDC is not a "foreign person" within the meaning of Section 1445(f) (3) of the Internal Revenue Code of 1986, as amended.
- (d) To PDC's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, PDC's ability to perform its obligations under this Agreement, or Developer's ability to develop the Project.
- (e) To PDC's knowledge, and except as disclosed in writing to Developer, the Property is in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements.
- (f) To PDC's knowledge, PDC has not received or given any notice stating that the Property is in violation of any applicable laws, rules, regulations, ordinances or other governmental requirements. To PDC's knowledge, utility connections are available to the Property.
- (g) No representation, warranty or statement of PDC in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.
- (h) As of the Effective Date, PDC is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of PDC under this Agreement.
- (i) PDC is the legal and beneficial fee simple titleholder to the Property and, to

PDC's knowledge, the Property is free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments or other matters, except as disclosed by the Title Report.

1.7 **Developer Representations and Warranties.** Developer's representations and warranties under this Agreement are limited to the following, each of which shall be deemed made as of the Effective Date, shall be deemed remade and effective as of Closing and shall survive Closing: Developer represents that:

- (a) Developer has full power and authority to enter into and perform this Agreement in accordance with its terms and all requisite action has been taken by Developer to authorize the execution of this Agreement and the transactions contemplated hereby. Developer's execution and delivery of this Agreement and the performance of its obligations hereunder do not require the consent of any third party that has not been obtained.
- (b) No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.
- (c) As of the Effective Date, Developer is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of Developer under this Agreement.
- (d) Developer enters into this Agreement without reliance on verbal representations by PDC, its employees, agents or consultants, regarding any aspect of the Property, the Project or its feasibility or financing, or compliance with any governmental regulation.

2 INFRASTRUCTURE, UTILITIES AND LAND CONDITION

- 2.1 **Infrastructure Improvements.** As part of the Project, Developer, at its own cost, will design, construct, fund and obtain permits for all Infrastructure.
- 2.2 **Site Preparation.** As part of the Project, Developer will, at its own cost, complete all necessary site preparation in accordance with the Schedule of Performance.
- 2.3 **Utility Service.** To PDC's knowledge, utility connections are available to the Property. As part of the Project, Developer shall install, connect, and upgrade new and existing utilities necessary to serve the Project.
- 2.4 **Subsurface, Surface and Building Conditions.** PDC shall convey the Property to Developer, and Developer shall accept the Property, in "AS IS" condition on the Closing date, without warranty of any kind except as otherwise specifically set forth in this Agreement and other Closing documents. In particular, PDC makes no warranties or representations that the soil conditions, environmental conditions or any other conditions of the Property or structures thereon are suitable for any improvements. Developer acknowledges that it has not relied on any verbal representations made by the PDC as to the soil conditions, environmental conditions or any other conditions of the Property. Developer acknowledges that it has had free access to PDC's records with respect to the condition of the Property, specifically including the

Environmental Reports, which access PDC agrees to continue to provide to Developer through Closing.

3 DEVELOPMENT

3.1 **Project Financing.** Subject to PDC's obligations under this Agreement, Developer will be responsible for obtaining all funds and financing necessary to construct and operate the Project. The Project financing shall be obtained from private persons and institutions. It is generally understood by Developer and PDC that the Project will be financially structured such that: (a) prior to the Commencement of Construction, PDC shall fund the Predevelopment Loan for the purpose of undertaking certain pre-development activities which Predevelopment Loan shall be repaid by financing for the construction phase of the Project; (b) during the Construction Period, PDC will make available: (i) the Real Estate Loan; and (ii) the Construction Feasibility Subsidy; (c) after the Construction Period: (i) the Real Estate Loan will be repaid from the Project and Developer shall be responsible for paying any outstanding balance at maturity; (ii) PDC will make available the Affordability Trust Grant or a mutually satisfactory alternative funding arrangement or mechanism to achieve the desired level of affordability in the Project. Notwithstanding the foregoing, all PDC financial participation in the Project is subject to PDC underwriting, loan committee review and/or approval by PDC's Board of Commissioners. The parties acknowledge and agree that this 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 PDC Design Review and Approval.**

3.2.1 **PDC Design Review and Approval, in General.** The Scope of Development is described in Exhibit D. Developer has submitted and received PDC approval of Schematic Design Documents. Developer shall prepare Design Review Documents, Construction Documents, and Final Construction Plans and Specifications and submit them to PDC for review and approval as discussed below and in accordance with the Schedule of Performance. Review meetings with the design team and PDC representatives are encouraged to facilitate the review and approval process. For purposes of this Agreement, PDC's approval of the Drawings listed in Section 3.2.3 will be evidenced by the written approval of the Director of Housing upon recommendation of the PDC Project Manager. PDC approval of Design Review Documents must be obtained prior to submission for City Design Review. In addition, the Final Construction Plans and Specifications must be approved as required by the terms of the Real Estate Loan. All plans and specifications referred to in this Section 3.2 are referred to herein as the "Drawings".

3.2.2 **Standards for PDC Design Review and Approval.** PDC will approve Drawings for the Project that, in PDC's reasonable opinion, adequately address each of the following design objectives:

- (a) **Urban and Pedestrian Environment.** The Project should be designed to foster active pedestrian environments along Interstate Street and Northeast Killingsworth Avenue 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 mixed-use, mid-rise residential condominium 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) **Housing and Housing Integration in the Overall Project.** The design and layout of the housing portion of the Project and the commercial portion of the Project should be complementary and integrated to create a unified and pedestrian friendly environment along Interstate Street. Housing design should foster an active and safe street life. The design should provide an opportunity for home-occupation office/commercial uses.
- (d) **Green Building Principles.** The Project should be designed to achieve at least LEED Certification, if not LEED Silver Certification, incorporating green building, energy efficiency and sustainability practices and designs. The residential portion of the Project will also be required to comply with the PDC green housing policy, which encourages the use of durable materials with life-cycle benefits. Specific aspects to be incorporated are described in Exhibit D, Scope of Development.

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

- (a) **Schematic Design Documents.** These have been submitted by Developer and approved by PDC;
- (b) **Draft Design Review Documents (50%).** Elements, including green building elements, Draft Design Review Application and Narrative, Design Review Material and Color Samples, and draft Design Review Documents cost estimate, depicted in the Draft Design Review Documents that were not approved, that were not at a level of detail to be approved, or that are not in conformance with the approved Schematic Design Documents;
- (c) **Final Design Review Documents.** Elements, including green building elements, Final Design Review Application and Narrative, Design Review Material and Color Samples, and Design Review Documents cost estimate, depicted in the Final Design Review Documents that were not approved, that were not at a level of detail to be approved, or that are not in conformance with the approved Draft Design Review Documents;
- (d) **Draft Construction Documents (50%).** Elements, including green building elements, 50% Construction Documents Cost Estimate, and material and color samples, depicted in the Draft Construction Documents (50%) 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;
- (e) **Draft Construction Plans and Specifications (80%).** Elements, including green building elements, 80% Construction Documents Cost Estimate, and material and color samples, depicted in the Draft Construction Documents (80%) that were not approved, that were not at a level of detail to be approved, or that are not in conformance with the approved Draft Construction Documents (50%);

- (f) **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 Draft Construction Documents (80%);
- (g) **Construction Specification and Product ‘Cut Sheets’.** Construction specification and product ‘Cut Sheets’ for the Project must be submitted to the PDC Project Manager for review of elements that were not approved, that were not at a level of detail to be approved, or that are not in conformance with the Final Construction Plans and Specifications. Conformance to the PDC residential green building guidelines, attached hereto as Exhibit L and incorporated herein by this reference, will include ongoing communication between the development team and PDC Housing Construction Coordinator, Michael Prothe, for review, comment, and compliance.
- (h) **Changes in Approved Drawings.** If Developer wants to substantially change any Drawings after approval by PDC or the City, including design build changes and bidder design features, Developer shall submit the proposed changes to PDC for approval. A substantial change shall mean any change that would have a material impact on the function, appearance or cost of the Project. Developer acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals shall be sought after PDC has approved the changes. PDC shall assist Developer throughout any City or PDC design review process of the appropriate bureaus or agencies within the City, but PDC does not represent or warrant that its assistance will guarantee approval.

3.2.4 **Project Rendering.** Developer will provide PDC with at least one color rendering of the Project at the time the Project is submitted for City Design Review.

3.2.5 **PDC Design Review Process.**

- (a) **PDC Staff Review of Design.** PDC and Developer acknowledge that the Schedule of Performance for the Project requires expeditious review and response from PDC and responsiveness and cooperation from Developer 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. PDC staff may attend regularly scheduled design meetings for the Project. The PDC Project Manager will meet with Developer 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 PDC's review will be consistent with Sections 3.2.2 and 3.2.3 of this Agreement.
- (b) **Community Input.** PDC and the Developer have coordinated on outreach efforts regarding the Project and its design. It is expected that if Developer changes the design of the Project in a material way from that presented to the Interstate Corridor Urban Renewal Advisory Committee, and the Overlook, Humboldt, Arbor Lodge, and Piedmont Neighborhood Associations, Developer will present the revised Project design to the foregoing groups for their input and advice.

3.3 **Diligent Completion.**

3.3.1 Subject to the terms and conditions of this Agreement, (i) Developer covenants to complete the development of the Project in substantial conformance with the Final Construction Plans and Specifications and in accordance with the Schedule of Performance and (ii) Developer shall complete development of the Project no later than the date for completion of construction set forth in the Schedule of Performance. Developer agrees to keep PDC 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 PDC issues the Certificate of Completion for the Project. Project development shall include:

- (a) Entering into all necessary architectural and construction contracts;
- (b) Securing all necessary public entitlements and building permits;
- (c) Securing all financing necessary to complete the Project, consistent with the Project Budget.

3.4 Inspection and Property Access.

3.4.1 **Before Conveyance of Property.** Before Closing, PDC shall allow Developer and Developer's employees, agents and consultants to enter upon the Property pursuant to a written permit of entry.

3.4.2 **After Conveyance of Property.** After Closing, during construction of the Project, and until the Certificate of Completion is issued for the Project, Developer's work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of PDC. PDC agrees not to interfere with the work occurring on the Property.

3.5 Safety Matters and Indemnification. Developer shall:

3.5.1 **Safety.** Comply with all safety laws and take all safety measures reasonably necessary to protect its employees, and PDC'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.

3.5.2 **Liability Claims.** Indemnify, defend (at PDC's request) and hold PDC 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 property of any person as occurs in the process of the construction work, except for those caused solely by the negligence or intentional acts of PDC.

3.5.3 **Indemnity from Liens.** Indemnify, defend (at PDC's request) and hold PDC 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 Developer or Developer's contractors or agents, except to the extent arising in connection with a default caused solely by PDC under this Agreement or any agreement referenced herein.

3.6 **Liens.** If any statutory lien shall be filed, prior to PDC's issuance of the Certificate of Completion, against any portion of the Property or the Project by reason of labor, services or materials supplied to or at the request of Developer or in connection with any construction on the Project, Developer 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 Property and the Project shall thereafter be entirely free of the lien. Alternatively, Developer may elect to leave the lien of record and to contest its validity, amount or applicability by appropriate legal proceedings, but only if Developer 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 Property 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) Developer shall indemnify and hold harmless PDC 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 arising in connection with a default caused solely by PDC 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 Developer, Developer shall within ten (10) Business Days thereafter cause the lien to be discharged of record. Developer's performance of the provisions of this Section 3.7 shall not prejudice any right or claim Developer may have under this Agreement.

3.7 **Certificate of Completion.**

- 3.7.1 **When Developer 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 Developer is not in default under this Agreement, PDC will furnish Developer with a Certificate of Completion for the Project, substantially in the form of Exhibit F attached hereto and incorporated herein by this reference. The Project will be deemed to be substantially complete when (i) PDC determines consistent with customary construction standards 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) PDC determines consistent with customary construction standards 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.
- 3.7.2 **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 PDC as expressly provided for in the Certificate of Completion.
- 3.7.3 **Form of Certificate of Completion; Procedure Where PDC 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 Developer'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 PDC refuses or fails to provide a Certificate of Completion in accordance with this section, then PDC, within five (5) Business Days after written request by Developer for such Certificate of Completion, shall provide Developer with a written statement indicating in detail in what respects Developer has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts Developer must take or perform to obtain such Certificate of Completion. PDC's failure to furnish Developer with such detailed written statement within such five (5) day period shall be deemed PDC's approval of Developer's request for the Certificate of Completion.

4 **ENVIRONMENTAL CONDITIONS, RESPONSIBILITY AND DEVELOPER INDEMNITY**

4.1 **Environmental Condition of the Property and Parties' Responsibilities.**

- 4.1.1 **Environmental Due Diligence Reports.** PDC shall provide the Developer with all Environmental Due Diligence Reports completed by PDC or in PDC's possession completed by others as of the Effective Date. A complete list of the Environmental Due Diligence Reports is attached as Exhibit K and incorporated herein by this reference. Developer acknowledges receipt of all Environmental Due Diligence Reports listed on Exhibit K.
- 4.1.2 **Phase 1 Environmental Assessment.** Within 180 days prior to closing, PDC shall undertake a Phase 1 Environmental Assessment in conformance with ASTM E 1527-05 process in compliance with EPA All Appropriate Inquiries (40 CFR Part 312) and shall provide the Developer with a copy of the report.
- 4.1.3 **Environmental Cleanup.** PDC has completed all environmental cleanup actions to remediate and/or abate Recognized Environmental Conditions in compliance with DEQ requirements and any residual contamination (if any) is below action levels. Cleanup actions included removal of underground storage tanks and associated soil contamination. Copies of all Closure Reports are attached referenced in Exhibit K, attached hereto and incorporated herein by reference.
- 4.1.4 **DEQ UST Tank Closure, NFA Letter.** Upon completion of environmental cleanup actions undertaken by PDC in 2004 and 2005 the Oregon Department of Environmental Quality ("DEQ") has issued a Underground Storage Tank Closure Letter (the "UST Letter") dated January 6, 2005 File 26-03-0641 and a No Further Action Letter dated December 14, 2006 ESCI #4620 (the "NFA Letter"). Copies are attached referenced in Exhibit K, attached hereto and incorporated herein by this reference. Developer acknowledges receipt of UST Letter and NFA Letter and agrees to pursue the Project development according to the specific DEQ conditions (if any remain).
- 4.1.5 **Remaining Recognized Environmental Conditions.** Based on environmental cleanup and reports there are no known or suspect remaining recognized environmental conditions on the property.
- 4.1.6 **Unforeseen Environmental Conditions.** The Developer upon Closing up to the point of Certificate of Completion of development encounters any unforeseen Environmental Conditions not previously identified in the Recognized Environmental Conditions reports, investigations or due diligence shall immediately notify PDC Project Manager and suspend all related construction activities pending PDC action pursuant to this paragraph. With notice to PDC, Developer shall immediately notify DEQ as may required and provide to PDC any documentation regarding the circumstances of the discovery of the Unforeseen Environmental Conditions that were not caused directly or indirectly by Developers actions, including but not limited to any form of Release of Hazardous Substances. Developer shall allow PDC access to the Property to make such surveys or conduct such tests as PDC expeditiously deems reasonable to determine the nature and extent of any Unforeseen Environmental Conditions. Developer hereby grants a license to PDC for PDC to enter on the Property to perform PDC's obligations pursuant to this paragraph. PDC will conduct all of its activities according to applicable Environmental Laws. PDC shall provide the Developer with any and all copies of reports, investigations or findings. Upon PDC's satisfaction as to determination of the nature and extent of any Unforeseen Environmental Conditions

the Parties agree to promptly meet and mutually determine a source and method for funding which may include adding additional costs to the Project Budget. If the parties cannot reasonably agree on a funding plan within fifteen days of the meeting then either PDC or the Developer shall have the option to terminate this Agreement. PDC reserves the exclusive right to pursue other responsible parties, self perform any environmental cleanup work or take any other reasonable action to cause remediation or abatement of the Unforeseen Environmental Condition.

- 4.1.7 **Responsibility and Liability.** Except as agreed to above, PDC shall have no further responsibility for performing Environmental Due Diligence and shall have no further liability for Recognized Environmental Conditions and no further obligation to comply with the EPA and/or DEQ requirements on the Property, except as specifically provided in Section 4.1.6 above.
- 4.1.8 **Indemnification.** Developer 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 PDC's request), indemnify and hold harmless PDC, 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 PDC, its successors or assigns, or asserted against PDC, 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 Developer. The indemnity set forth in this Section 4.1.4 shall survive the issuance of the Certificate of Completion.
- 4.1.9 **Contribution.** 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.

5 ASSIGNMENT AND TRANSFER PROVISIONS

- 5.1 **Restrictions on Transfer of the Property or Assignment of the Agreement Prior to Issuance of Certificate of Completion.** Because it is a municipal entity, PDC is uniquely benefited by completion of the Project. Developer is uniquely qualified to construct and manage the Project. Accordingly, PDC and Developer agree and acknowledge that the anti-assignment provisions of this Section 5 are reasonable and necessary to provide to each Party the benefit of the transaction implemented through this Agreement. The anti-assignment provisions of this Section 5 shall not apply to any transfer or disposition of the Property, the Project or Developer's interest in this Agreement that occur after the issuance by PDC of the Certificate of Completion for Project.
- 5.1.1 Except as provided in Section 5.2, Developer shall not partially or wholly transfer or dispose of or agree to transfer or dispose of the Property, the Project, or Developer's interest in this Agreement without the prior written approval of the PDC, which may be withheld in PDC's sole discretion. Without limiting PDC's discretion to withhold its approval in any event, PDC is unlikely to approve a transfer or disposition if (a) the transfer or disposition violates another provision of this Agreement, (b) the proposed transferee does not possess qualifications and financial capacity equal to or superior to

that of Developer, or (c) the transfer or disposition will cause a material delay in completion of the Project.

5.1.2 Winkler Development Corporation (“Developer’s Principals”) shall retain a controlling ownership interest in the Developer and retain control of the operations of the Developer.

5.2 **Approved Pre-Certificate of Completion Transfers.** Notwithstanding Section 5.1 above, and provided that Developer provides PDC with copies of all agreements related to the transfer at least fifteen (15) days prior to the effective date of the proposed transfer, and any other information reasonably necessary for PDC to determine whether such transfer complies with the requirements of this Agreement, PDC hereby consents to:

5.2.1 An assignment of Developer’s rights under this Agreement and interest in the Property (which interest will remain subject to the terms and conditions of this Agreement) to a partnership, limited liability company or limited partnership provided that the owners of the assignee are substantially the same as the owners of Developer and that Developer’s principals hold a controlling ownership interest in the assignee, are the managing members or general partners of such assignee and retain principal operations control over the assignee. In the event of an assignment under this Section 5.2.1, Developer shall remain fully responsible to PDC for performance of this Agreement.

5.2.2 Any Mortgage that Developer may cause to attach to the Property to finance the Project provided that PDC has approved the terms of the Mortgage as consistent with customary mortgage provisions of similar real estate development projects similarly situated.

5.3 **Transfers After issuance of Certificate of Completion.** After PDC’s issuance of a Certificate of Completion for the Project, Developer may transfer or dispose of the Property, the Project, or Developer’s interest in this Agreement without the consent or approval of PDC.

6 PROJECT FINANCING

6.1 Construction and Permanent Financing for the Project.

6.1.1 Subject to PDC’s obligations under this Agreement, Developer will obtain all construction financing necessary to complete the Project at a total construction cost not to exceed that set forth in the Project Budget. Subject to the approval of the PDC Loan Committee (the “Loan Committee”), PDC shall provide a portion of the construction financing for the Project in the form of the Real Estate Loan, certain terms and conditions of which are subject to PDC underwriting, Loan Committee review and/or approval by PDC’s Board of Commissioners.

6.1.2 **Construction Feasibility Subsidy.** PDC will make available to Developer [a cash grant in an amount sufficient to construct the Project (the “Construction Feasibility Subsidy”);

6.2 **PDC Predevelopment Loan.** The Loan Committee approved, and PDC and Developer entered into, a Predevelopment Loan Agreement before the Effective Date making up to \$200,000 available to Developer as a Predevelopment Loan to fund the activities listed therein. All loan funds disbursed by PDC to Developer under the Predevelopment Loan Agreement

must be repaid to PDC from the first construction loan draw for the Project, whether from the Real Estate Loan or from other financing.

- 6.3 **Affordability Trust Grants.** Unless other funding arrangements are mutually agreed by PDC and Developer, PDC shall make available to the appropriate party a cash loan to buy-down the cost of approximately 60% of the Project units to affordable levels for qualified and eligible buyers (the “Affordability Trust Grant”).

7 CONTINUING COVENANTS AFTER COMPLETION OF CONSTRUCTION

- 7.1 **Approval of Building Occupants.** It is PDC’s intent to ensure that the commercial portion of the Project provides products and services to meet unmet demand in the North Portland community and serve as a catalyst to stimulate adjacent and nearby businesses. An occupant mix is sought that will be compatible with adjacent residential uses, not unreasonably contributing to negative immediate-neighbor impacts, such as traffic, outdoor activities, garbage and noise.

7.1.1 The Developer shall make a good faith attempt to attract locally owned commercial occupants to the Project following execution of this Agreement and until all initial spaces are occupied. A “good faith attempt” means that the Developer will:

- (a) Hold at least two (2) informational meetings to describe the ownership opportunities for interested persons before construction begins;
- (b) Advertise the ownership opportunities and the informational meetings in The Skanner, The Portland Observer, El Hispanic News, the Asian Reporter, and other emerging community and immigrant media publications;
- (c) Send written notice of the ownership opportunities and informational meetings to the Interstate Corridor Urban Renewal Advisory Committee, the Oregon Association of Minority Entrepreneurs, the Urban League, the Overlook, Humboldt, Piedmont and Arbor Lodge Neighborhood Associations, the North Northeast Business Association, and the Portland Minority Chambers of Commerce; and
- (d) Provide documentation to PDC to verify the above attempts and any additional attempts to meet the goals.

7.1.2 The Developer shall notify and allow comment from the Overlook Neighborhood Association and the Interstate Corridor Urban Renewal Advisory Committee, or both, regarding commercial occupants, the ownership mix of commercial occupants, and the good faith attempts made to attract locally owned commercial occupants, beginning on the Effective Date. If changes are made to the above, Developer shall notify and allow comment until five years after completion of construction of the Project.

7.1.3 For the term of any outstanding PDC financing, the following user types are specifically prohibited: commercial parking, vehicle servicing or repair, self-service storage, heavy industrial uses, drive-throughs, and businesses that exclude minors. PDC, as third party beneficiary of this Section 7.1.3 only, may institute legal action to void any occupancy agreement entered into contrary to these provisions.

- 7.2 **Local Wealth Creation, Business Opportunities, and Employment Objectives.**

- 7.2.1 **Ownership Opportunities.** The Project will support and create opportunities for local ownership, including:
- (a) **Homeowners.** Developer will include in its marketing of the units in the residential portion of the Project, outreach efforts to the Overlook, Humboldt, Piedmont and Arbor Lodge community, including advertising opportunities in the publications listed in 7.1.1(b) and marketing the first time homebuyer second mortgage program.
 - (b) **Minority Homeownership Initiative.** In addition to other efforts to market to minority homebuyers, Developer shall support the City of Portland’s Minority Homeownership Initiative (“MHI”) by working with MHI partners to promote awareness of ownership opportunities at the Project. Developer shall also market units to the MHI’s minority homebuyer pool as such units near completion.

- 7.2.2 **Employment Opportunities** It is PDC’s goal that the commercial portion of the Project will support and create opportunities for employment having a minimum job density goal of at least one job per each 800 square feet of commercial space, for a total of approximately 11 jobs (9,300 SF / 800 = 11.625 jobs). To attain the goal:
- (a) **Developer Workforce.** Developer will work with Worksystems, Inc. and the local One Stop Career System to provide employment and internship opportunities for North Portland residents through the utilization of First Source Agreements;
 - (b) **Developer Information Strategy.** Developer will work with PDC staff to provide a central mechanism to broadcast business development information and employment opportunities on or connected with the Project or Property. This is intended to serve as a resource for occupants, including but not limited to providing workforce links, business association information, Soul of Portland marketing assistance, and other technical assistance programs offered through the Portland Minority Chambers of Commerce to encourage connections with the North Portland community and its existing resources;
 - (c) **Occupants.** As a goal when negotiating a purchase agreement with a commercial occupant in the Project, Developer shall encourage occupants to work with Worksystems, Inc. and the local One Stop Career System to provide employment and internship opportunities for North Portland residents through the utilization of First Source Agreements or other mechanisms.

If Developer takes the actions described in subsection (a) through (c) immediately above, but the Developer and/or commercial occupants fail to achieve the job density goal when the Project is fully occupied, such failure shall not be deemed a breach of this Agreement.

- 7.2.3 **Procurement of Goods and Services from Local Vendors.** Post-construction, the Project will seek to attain a goal of at least twenty-percent (20%) of third party contracting for goods and services from local businesses and residents. PDC shall make staff services available to assist Developer to achieve this goal.

- 7.3 **LEED Certification.** Developer shall submit all materials necessary to obtain at least LEED Certification for the Project, if not the LEED Silver Certification, within sixty (60) days after PDC issues the Certificate of Completion for the Project. Developer will cooperate with PDC 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 PDC access to the building utility bills.

8 PERMITTED MORTGAGES

8.1 Mortgagee Protection Provisions.

- 8.1.1 **Effect of Revesting on Mortgages.** Any reversion and revesting of the Property or any portion thereof in PDC 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 approved in writing by PDC and authorized by this Agreement.
- 8.1.2 **Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of the Agreement, except those that are covenants running with the Property, if any, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements in the Property or to guarantee such construction or completion; provided, however that nothing in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the Property or any part thereof to any uses, or to construct any improvements thereon other than those uses or improvements provided or permitted in this Agreement.
- 8.1.3 **Copy of Notice of Default to Mortgagee.** If PDC delivers a notice or demand to Developer with respect to Developer's breach of this Agreement, PDC shall at the same time send a copy of such notice or demand to each Mortgagee approved by PDC, at the last address of such holder shown in the records of PDC.
- 8.1.4 **Mortgagee's Options to Cure Defaults.** After Developer's breach of this Agreement and if Developer fails to cure or remedy said breach within the required time period, then each Mortgagee shall have thirty (30) days after passage of the latest date for Developer's cure or remedy of the breach, to cure or remedy the breach itself, if cure or remedy thereof is permitted by this Agreement. If a Mortgagee does cure or remedy the breach within said thirty (30) day period, the Mortgagee may add the cost thereof to the Mortgage debt and the lien of its Mortgage, if permitted by its loan documents. If the breach is with respect to construction of the improvements, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements, provided that the Mortgagee notifies PDC in writing of its intention to complete the Project according to the approved Final Construction Plans and Specifications. Any Mortgagee who properly completes the Project shall be entitled to issuance of a Certificate of Completion, upon written request made to PDC following the procedures set forth in Section 3.8 above.
- 8.2 **Amendments Requested by Mortgagee.** PDC shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to Developer secured by a security interest in all or any part of the Property or the Project, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of PDC or its interest in the Property.

9 DEFAULT AND REMEDIES

9.1 **Default and Cure.**

9.1.1 **Default by Developer.**

- (a) Developer shall be in default under this Agreement if Developer breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from PDC specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Developer shall be in default under this Agreement if Developer does not commence the cure of the breach within thirty (30) days after Developer receives written notice from PDC and thereafter diligently prosecutes to completion such cure within sixty (60) days after the written notice from PDC. Failure of conditions precedent not caused by the Developer shall not constitute a default but any such failure shall be subject to Sections 1.5.2 and 1.5.3 above.
- (b) Developer shall also be in default under this Agreement if Developer makes any assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment.
- (c) Developer shall also be in default under this Agreement, and PDC shall be irreparably harmed by such default, if Developer constructs or operates any portion of the Project in a manner materially inconsistent with the Scope of Development and Final Construction Plans and Specifications.

9.1.2 **Default by PDC.** PDC shall be in default under this Agreement if PDC breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after PDC receives written notice from Developer specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, PDC shall be in default under this Agreement if PDC does not commence cure of the breach within thirty (30) days after PDC receives written notice from Developer and thereafter diligently prosecute to completion such cure within sixty (60) days after the written notice from Developer. Failure of conditions precedent not caused by the Developer shall not constitute a default but any such failure shall be subject to Sections 1.5.2 and 1.5.3.

9.2 **PDC's Pre-Conveyance Remedies.** If a Developer default (as described in Section 9.1.1) occurs before the Property is conveyed to Developer, PDC may, at its option: (i) terminate this Agreement by written notice to Developer, without waiving any cause of action for monetary damages PDC may have against Developer, (ii) seek monetary damages against Developer, or (iii) specifically enforce the obligations of Developer under this Agreement. If PDC terminates this Agreement as provided in this Section 9.2, then Developer shall deliver to PDC within thirty (30) days after such termination, copies of all assignable Project market research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties, and which Developer is authorized to release. PDC may use any of the foregoing documents in any manner that PDC deems appropriate with the consent of any party having approval rights thereunder. PDC shall pay no compensation to Developer for the foregoing Project documents. If, prior to Closing, Developer performs any construction activities on the Property and Developer fails to acquire the Property, Developer agrees to restore the Property to substantially the condition that existed prior to the time that Developer performed any activities thereon, or to such condition as PDC shall reasonably approve.

- 9.3 **PDC's Post-Conveyance Remedies.** If a Developer default (as described in Section 9.1.1) occurs after the Property is conveyed to Developer, including but not limited to Developer's failure to complete the Project as required by Section 3.3, then PDC shall have the following remedies:
- 9.3.1 Subject to the Mortgagee protections specified in Section 8.1, PDC shall have the right to re-enter and take possession of the Property and to terminate (and revest in PDC) the estate conveyed by the Deed, terminate Developer's right to develop the Project, and resell the Property pursuant to Section 9.4 hereof. It is the intent of this provision together with other provisions of this Agreement, that the conveyance of the Property to Developer shall be made upon, and that the Deed to the Property shall provide for, a condition subsequent to the effect that, in the event of a Developer default (as described in Section 9.1.1), PDC, at its option, may upon 30 days written notice (hereinafter "Notice of Termination") to Developer and the Escrow Agent, declare a termination in favor of PDC of the title, and of all the rights and interest 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, all the title and rights and interest in the Property conveyed to Developer by Deed, or to any successors or permitted assigns of Developer, shall be reconveyed to PDC by quitclaim deed and pursuant to the escrow instructions, each as set forth in Exhibit H. Any delay by PDC in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 9.3 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 PDC 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 PDC with respect to any specific default by the Developer be considered or treated as a waiver of the rights of PDC with respect to any other defaults by the Developer or with respect to any particular default except to the extent specifically waived.
- 9.3.2 Developer shall deliver to PDC within thirty (30) days after reconveyance of the Property pursuant to Section 9.3.1, copies of all assignable Project market research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties, and which Developer is authorized to release. PDC may use any of the foregoing documents in any manner that PDC deems appropriate with the consent of any party having approval rights thereunder. PDC shall pay no compensation to Developer for the foregoing Project documents.
- 9.4 **PDC Resale.** If title to the Property shall revest in PDC in accordance with the provisions of Section 9.3, PDC may, at its option, bring the improvements to a state of completion deemed by PDC as reasonably necessary to protect the improvements from the elements or other dangers, and shall, pursuant to its responsibilities under Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, use its best efforts consistent with prudent business practices and generally in accordance with the terms of this Agreement to resell at a reasonable price, the Property and such improvements (subject to any Mortgages permitted by this Agreement) as soon and in such a manner as PDC shall find feasible and consistent with the objectives of such laws and the Urban Renewal Plan, to a qualified and responsible party or parties (as determined by PDC 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 PDC. Upon such resale, the proceeds thereof shall be applied as follows:

- 9.4.1 **PDC Reimbursement.** First, to PDC on its own behalf to reimburse PDC for all costs and expenses reasonably incurred by it in retaking, completing and selling the Property and its improvements, including, but not limited to, the following: (a) salaries of personnel in connection with and to the extent of the recapture, management and resale of the Property, (b) any expenditures made or costs incurred in completing the construction of the Project improvements that were Developer's responsibility to construct but were done by or on behalf of PDC, (c) any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or the Project at the time of revesting of title thereto in PDC or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successor or transferees excluding any Mortgage if the Property or improvements are sold subject to such Mortgage, (d) all taxes, assessments and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment of such charges during the period of ownership thereof by PDC or Developer, an amount equal to such taxes, assessment, or charges (as determined by the County assessing official) as would have been payable if the Property were not so exempt), and (e) to the extent relating to the Property or Project, any amounts owed to the City as lease or license fees, and any amounts otherwise owing PDC by Developer or its successor or transferee;
- 9.4.2 **Developer Reimbursement.** Second, to reimburse Developer, up to the amount equal to the sum of (a) any portion of the Purchase Price of the Property that Developer has paid to PDC and (b) the PDC-approved development costs for the Project paid by Developer, or for which Developer remains liable, that were not funded by the PDC (if PDC provided financing for the Project), less any gains or income withdrawn or made as to the Project to the extent actually realized or received; and
- 9.4.3 **Balance to PDC.** Third, any balance remaining after the reimbursements described above shall be retained by PDC.
- 9.5 **Developer's Pre-Conveyance Remedies.** If a PDC default (as described in Section 9.1.2) occurs before PDC conveys the Property to Developer, Developer may, at its option: (i) terminate this Agreement by written notice to PDC without waiving any cause of action Developer may have against PDC, (ii) specifically enforce the obligations of PDC under this Agreement, or (iii) seek monetary damages against PDC without terminating this Agreement. Notwithstanding the preceding sentence, Developer shall not seek consequential damages from PDC in connection with PDC's default.
- 9.6 **Developer's Post-Conveyance Remedies.** If a PDC default (as described in Section 9.1.2) occurs after PDC conveys the Property to Developer, Developer may specifically enforce the obligations of PDC under this Agreement, or seek monetary damages against PDC. Notwithstanding the preceding sentence, Developer shall not seek consequential damages from PDC in connection with PDC's default.
- 9.7 **Nonexclusive Remedies.** The rights and remedies provided by this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of 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 of any of its remedies for any other default by the other Party, including, without limitation, the right to compel specific performance. Any limitation of remedies set forth herein shall not limit or affect the obligations of a Party under any contractual indemnities set forth herein.
- 9.8 **Unavoidable Delay**

- 9.8.1 Neither a Party nor a Party's successor in interest shall, to the extent described in Section 9.8.2 below, be considered in breach of any obligation created hereunder or progress in respect thereto if the delay in performance of such obligation (the "Unavoidable Delay") is due to causes that are unforeseeable, beyond its control, and without its fault or negligence, including but not limited to acts of God, acts of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, malicious mischief, condemnation action, delays of litigation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar events or occurrences beyond the control of such Party.
- 9.8.2 It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of PDC or Developer as set forth in the Schedule of Performance or otherwise, as the case may be, shall be extended for the period of the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section shall, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and the estimated time of correction and, provided further, that in no event shall the time or times for performance of an obligation be extended for more than 180 days in aggregate.

10 MISCELLANEOUS PROVISIONS

- 10.1 **PDC Project Manager.** For the purposes of managing the implementation of the provisions of this Agreement on behalf of PDC, the Director of Housing of the Portland Development Commission shall designate a Project Manager. At the Effective Date, the PDC Project Manager is Matthew Collier.
- 10.2 **Discrimination.** Developer, for itself and its successor and assigns, agrees that, during the construction of the Project, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.
- 10.3 **Notice.** Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail, postage prepaid, return receipt requested, or (b) when received if personally delivered, and:

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

Killingsworth Station L.L.C.
210 S.W. Morrison, Suite 600
Portland, OR 97204

with a copy to:

TBD

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

Portland Development Commission
222 NW 5th Ave.
Portland, OR 97209

with a copy to:

Portland Development Commission
Attn. General Counsel
222 NW 5th Ave.
Portland, OR 97209

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.

10.4 **Participation in Portland Development Commission Programs.**

- 10.4.1 **Workforce Training and Hiring.** In connection with the Project, Developer shall comply with the City of Portland Workforce Training and Hiring Program in effect at the Effective Date described in Exhibit I, Attachment A of the Fair Contracting and Hiring Guideline Index, Exhibit I, and made a part hereof, by requiring its contractors and subcontractors to comply with such program. The failure of Developer's contractors and subcontractors to comply with such program shall constitute a breach of a material provision of this Agreement.
- 10.4.2 **M/W/ESB Good Faith Effort Program.** Developer 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 PDC projects, as described in Exhibit I, Attachment B of the Fair Contracting and Hiring Guideline Index, as modified by the terms of this section 10.4.1. The Fair Contracting and Hiring Guideline Index is attached to this Agreement as Exhibit I, and made a part hereof. Developer agrees to attach Exhibit I, Attachment B to all agreements with the general contractor for the Project and to abide by its provisions.
- 10.4.3 **Construction Wage Policy.** PDC 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 PDC's investments are equitably disbursed. PDC has determined that the Project is subject to the Policy. Accordingly, in connection with the Project, the Developer shall comply with the Policy, which requires Developer to enter into a Project Apprenticeship Agreement ("PAA") with PDC and to require its General Contractor for the Project to enter into the PAA and comply with the Policy. The PAA shall set forth, among other things, specific goals for increased participation by People of Color and women on the

Project. The Policy is set forth in Exhibit I, Attachment C of the Fair Contracting and Hiring Guideline Index, Exhibit I, and made a part hereof.

- 10.4.4 **EEO Certification.** Developer shall comply with PDC's EEO Certification Program in effect at the Effective Date by requiring its contractors and subcontractors to comply with such Program.
- 10.4.5 **Equal Employment Opportunity.** Developer must comply with all applicable provisions of Federal or state statutes and regulations and City ordinances concerning equal employment opportunities for persons engaged in the Project.
- 10.5 **Merger.** None of the provisions of this Agreement are intended to or shall be merged by reason of any Deed transferring title to the Property from PDC to Developer 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.
- 10.6 **Headings.** Titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 10.7 **Waivers.** No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by PDC or Developer of any provision of this Agreement or any breach thereof, shall be of any force or effect unless in writing and no such waiver shall be construed to be a continuing waiver.
- 10.8 **Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing 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 at trial or on any appeal in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.
- 10.9 **Choice of Law.** This Agreement shall be governed by Oregon law.
- 10.10 **Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.
- 10.11 **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.
- 10.12 **Legal Purpose.** Developer agrees that it shall use the Project solely for lawful purposes.
- 10.13 **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.

- 10.14 **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.
- 10.15 **Amendments and Modifications.** Any modifications to this Agreement shall be made in writing and executed by all Parties, and approved by the PDC Commission. Notwithstanding this general requirement, the PDC Executive Director may approve Minor Modifications to this Agreement without Commission approval. “Minor Modifications” include:
- 10.15.1 Modifications to the Scope of Development that do not increase or decrease the proposed amount of square footage for the commercial portion of the Project by more than 20%;
- 10.15.2 Modifications to the Scope of Development that do not increase or decrease the proposed amount of unit square footage for the residential portion of the Project by more than 10%;
- 10.15.3 Changes in the Schedule of Performance when deemed warranted by the Executive Director which do not exceed sixty (60) days; and
- 10.15.4 Corrections of errors, clarifications, or minor modifications that do not change the substantive content of the Agreement.
- 10.15.5 A change to Drawings or Specifications that does not have a material impact on the function, appearance, quality or cost of the Project.
- 10.16 **Successors and Assigns.** Subject to the provisions of Section 5, 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.
- 10.17 **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 in Portland, Oregon.
- 10.18 **No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties.
- 10.19 **Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, PDC 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 Property, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.
- 10.20 **Approvals.** Where this Agreement requires the approval(s) of PDC, PDC will approve or disapprove within ten (10) Business Days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary, and further excepting construction change orders which will be processed according to the applicable loan documents. Failure by PDC to approve or disapprove within said period of time shall be deemed approval. Any disapproval shall state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly

reserved to PDC’s sole discretion in this Agreement. Developer, 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 PDC within forty-five (45) days after receipt of the notice of disapproval.

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

10.22 **Recording of Memorandum of Agreement.** PDC shall provide for recording a Memorandum of this Agreement within ten (10) days of the Effective Date. Developer shall pay the recording costs pursuant to Section 1.4. The form of the Memorandum of Agreement is attached as Exhibit J to this Agreement. When PDC issues to Developer a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record an Amended Memorandum of Agreement to reflect the surviving covenants of this Agreement.

10.23 **Statutory Notice.** “THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES.THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER [ORS 197.352] SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT. 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, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER [ORS 197.352] SECTIONS 2, 3 AND 5 TO 22 OF THIS 2007 ACT.”

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

PDC:

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

By: _____
Bruce A. Warner, Executive Director

APPROVED AS TO FORM:

PDC Legal Counsel

DEVELOPER:

By: _____

Name: _____

Title: _____

EXHIBITS

- Exhibit A** Legal Description
- Exhibit B** Preliminary Project Budget
- Exhibit C** Schedule of Performance
- Exhibit D** Scope of Development
- Exhibit E** Form of Deed
- Exhibit F** Form of Certificate of Completion
- Exhibit G** Compliance Agreement
- Exhibit H** Form of Quitclaim Deed and Escrow Instructions
- Exhibit I** Fair Contracting Guidelines Index
 - Attachment A** Workforce Training and Hiring Program
 - Attachment B** M/W/ESB Recruitment Guidelines/Good Faith Effort Process Requirements
 - Attachment C** Construction Wage Policy
- Exhibit J** Form of Memorandum of Agreement
- Exhibit K** List of Environmental Documents
- Exhibit L** Residential Green Design & Construction Guidelines
- Exhibit M** DEQ No Further Action Letter

EXHIBIT A
LEGAL DESCRIPTION
(See attached)

EXHIBIT B

PRELIMINARY PROJECT BUDGET

Construction

Sources				Uses			
					Total	% of Total	\$ per Sq. Ft.
Construction Loan	9,396,220	70.5%	150.32	Land	1,116,630	8.4%	17.86
Metro TOD Subsidy	250,000	1.9%	4.00	Construction	9,400,000	70.5%	150.38
PDC			0.00	Prevailing Wage	0	0.0%	0.00
Construction Loan	2,190,087	16.4%	35.04	Soft Costs	2,000,000	15.0%	32.00
Construction Subsidy	1,232,711	9.2%	19.72	Construction Loan			
Total PDC Funding	3,422,797	25.7%	54.76	Fee	93,962	0.7%	1.50
Developer Cash	266,715	2.0%	4.27	Interest	475,140	3.6%	7.60
Total Sources	13,335,732	100.0%	213.34	Project Management Expense	250,000	1.9%	4.00
				Total Uses	13,335,732	100.0%	213.34
Construction Funding (Gap)/Surplus	0						

Permanent

Sources				Uses			
					Total	% of Total	\$ per Sq. Ft.
Sales Revenue	12,380,025	88.9%	198.05	Commercial Tenant Improveme	500,000	3.6%	8.00
PDC				Sales Commissions	557,101	4.0%	8.91
Commercial TI Assistance	500,000	3.6%	8.00	Closing Costs	75,000	0.5%	1.20
Housing Affordability Assistance	1,043,148	7.5%	16.69	Repay Construction Loan	9,396,220	67.5%	150.32
Total Sources	13,923,172	100.0%	222.74	Repay PDC Construction Loan	2,190,087	15.7%	35.04
				Repay Developer Equity	266,715	1.9%	4.27
Permanent Funding (Gap)/Surplus	0			Developer Profit	938,050	6.7%	15.01
				Total Uses	13,923,172	100.0%	222.74

EXHIBIT C

SCHEDULE OF PERFORMANCE

	TASK	TASK TYPE	DUE DATE	STATUS
1	PDC to provide Preliminary Title Report to Developer (Section 1.3.1)	1	1/29/07	Complete
2	Substantial Draft DDA	1	11/29/07	Complete
3	PDC to complete review of 50% Schematic Design Documents	1	11/1/07	Complete
4	Developer to provide final Schematic Design Documents (Section 3.2.3(b))	1	11/10/07	Complete
5	PDC to complete review of final Schematic Design Documents	1	11/15/07	Complete
6	LEED EcoCharette	1	11/19/07	Complete
7	MW ESB Coordination Meeting	1	12/3/07	Complete
8	Project to R&H for Schematic Pricing	1	12/5/07	Complete
9	Final Community Outreach Presentation (5th Presentation)	1	12/10/07	Complete
10	Type II Design Review Submission / 85 Day Duration Type II	1	1/14/08	
11	Developer to provide 50% Design Review Package for PDC review	1	1/20/08	
12	PDC to Complete Review of 50% Design Package	2	1/27/08	
13	Project Design Development Bid-Set out for Pricing	1	1/20/08	
14	Commission Approval of DDA	1	2/9/08	
15	Design Development Pricing complete for Review	1	2/15/08	
16	Selection of MEP Bidder-Design Sub-Contractors	1	2/18/08	
17	Developer to provide Design Development Budget to PDC(Section 3.2.3(c))	1	12/22/45	
18	PDC to complete review of Design Development Budget	2	12/29/45	
19	Design Review Approval	1	4/14/08	
20	Completion of Lot Consoladation and TriMet Easements	1	4/14/08	
21	Submission to BDS for Building Permit	1	4/28/08	
22	Developer to provide Permit Application Documents, Specifications to PDC for Review (Section 3.2.3(e))	1	4/28/08	
23	Developer to provide revised Permit Application Project Budget	1	5/10/08	
24	PDC to complete review of Permit Application Budget and Plans	2	5/17/08	
25	Developer to provide Final Construction Plans and Specifications & Project Budget (Section 3.2.3(g))	1	6/22/08	
26	PDC to complete review of Permit Application Plans and Specifications & Project Budget	2	6/28/08	
27	Developer to provide documentation of required financing (Section 1.5.1(a)(iv))	1	6/28/08	
28	PDC to provide final form of Deed (Section 1.5.1(a)(v))	2	7/5/08	
29	Developer to provide Articles of Organization, Operating Agreement, Certificate of Good Standing, and Authorizing Resolution (Section 1.5.1(c)(i))	1	6/28/08	
30	Developer to submit MW ESB target confirmation	1	6/28/08	
31	Developer to provide LEED documentation (Section 1.5.1(c)(iii))	1	6/28/08	
32	Developer to submit Final Construction Budget (Section 1.5.1(c)(ii))	1	7/3/08	
33	Developer to secure building permits from BDS (Section 1.5.1(a)(iii))	1	7/12/08	
34	PDC to complete review of Final Construction Budget	2	7/19/08	
35	Closing/Conveyance of Property to Developer (Section 1.1)	1	7/19/08	
36	Developer to begin construction	1	7/26/08	
37	Final Termination Date (if Closing does not occur by 7/19/08) (Section 1.5.3)	1	9/1/08	
38	Developer to complete construction and secure Certificate of Occupancy for the Project (Section 3.3.1)	1	11/1/09	
39	Developer to request Certificate of Completion from PDC	1	11/1/09	
40	PDC to issue Certificate of Completion (assuming compliance with DDA)	2	11/8/09	

Task Type Definitions
<p>Type 1: Task to be completed by responsible party no later than the designated Due Date.</p> <p>Type 2: If preceding Task has been completed prior to the designated due date, the Due Date for a Type 2 task will be accelerated by the same number of days the preceeding task was completed prior to its designated due date.</p>

EXHIBIT D

SCOPE OF DEVELOPMENT

General:

The project includes approximately 54 residential condominium units, 48 1-bedroom units, and six 2-bedroom units (the “Project”). Approximately 60% of the Project (33 units) will be affordable to individuals earning no more than 80 percent of MFI. The remaining 21 units will be sold at market rates. Approximately 9,227 square feet of ground floor retail space will be marketed as commercial condominiums to promote wealth creation and entrepreneurship opportunities for local and other small business owners. The Project includes approximately 16 one-car garages and approximately 34 on-site surface parking spaces for a total of approximately 50 parking spaces.

Space	No. Units	Average NSF	Total NSF	Sales Price per		Total Sales	% of MFI	Affordable Sales Price
				NSF	Unit			
Commercial			9,258	225.00	NA	2,083,050	NA	
Residential								
Interstate Building								
2nd Floor								
1-Bedroom Units								
A	4	590	2,360	300.00	177,000	708,000	80.0%	144,900
A	3	590	1,770	300.00	177,000	531,000	80.0%	144,900
B	1	615	615	300.00	184,500	184,500	80.0%	153,035
C	1	676	676	328.51	222,072	222,072	119.2%	N/A
D	1	753	753	310.23	233,603	233,603	124.6%	N/A
2-Bedroom Units	1	973	973	324.12	315,369	315,369	162.5%	N/A
3rd Floor								
1-Bedroom Units								
A	4	590	2,360	300.00	177,000	708,000	80.0%	144,900
A	3	590	1,770	300.00	177,000	531,000	80.0%	144,900
B	1	615	615	300.00	184,500	184,500	80.0%	153,035
C	1	676	676	329.19	222,535	222,535	119.4%	N/A
D	1	753	753	310.89	234,096	234,096	124.8%	N/A
2-Bedroom Units	1	973	973	324.12	315,369	315,369	162.5%	N/A
4th Floor								
1-Bedroom Units								
A	7	590	4,130	300.00	177,000	1,239,000	80.0%	144,900
B	1	615	615	330.26	203,108	203,108	110.4%	N/A
C	1	676	676	329.88	222,998	222,998	119.6%	N/A
D	1	753	753	311.46	234,529	234,529	125.0%	N/A
2-Bedroom Units	1	973	973	325.07	316,295	316,295	162.9%	N/A
Killingsworth Building								
2nd Floor								
1-Bedroom Units								
A	2	590	1,180	300.00	177,000	354,000	80.0%	144,900
B-1	2	615	1,230	300.00	184,500	369,000	80.0%	N/A
B-2	2	619	1,238	328.75	203,497	406,993	110.5%	N/A
2-Bedroom Units	1	1,057	1,057	324.12	342,595	342,595	175.3%	N/A
3rd Floor								
1-Bedroom Units								
A	2	590	1,180	300.00	177,000	354,000	80.0%	144,900
B-1	2	615	1,230	300.00	184,500	369,000	80.0%	153,035
B-2	2	619	1,238	329.50	203,960	407,919	110.7%	N/A
2-Bedroom Units	1	1,057	1,057	324.56	343,058	343,058	175.5%	N/A
4th Floor								
1-Bedroom Units								
A	2	590	1,180	300.00	177,000	354,000	80.0%	144,900
B-1	2	615	1,230	330.26	203,108	406,216	110.4%	N/A
B-2	2	619	1,238	330.25	204,423	408,846	111.0%	N/A
2-Bedroom Units	1	1,057	1,057	325.00	343,521	343,521	175.8%	N/A
Residential Subtotal	54	658	35,556	311.20	204,910	11,065,122		
Garages w/o Storage	9		4,040		15,000	135,000		
Garages w/ Storage	7				20,000	140,000		
Average/Total Residential Sales			39,596	286.40	210,002	11,340,122	99.7%	
Gross Project Sales (Including Commercial)			48,854	274.76		13,423,172		

EXHIBIT E
FORM OF
BARGAIN AND SALE DEED

After Recording Return to and
Tax Statements to be sent to:

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, that the **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 (which, together with any successor public agency designated by or pursuant to law, is herein called "PDC"), does hereby grant, bargain, sell and convey to **KILLINGSWORTH STATION, L.L.C, .,** an **OREGON LIMITED LIABILITY COMPANY** (the "Developer"), and unto its successors and assigns, all the following described real property, with the tenements, hereditaments and appurtenances (herein called the "Property"), situated in the County of Multnomah and State of Oregon:

The conveyance is made pursuant to that certain Agreement for Disposition and Development of Property (_____), between Developer and PDC, dated _____20__, a Memorandum of which was recorded on _____, 20__ as Document No. _____, Records of Multnomah County, Oregon (the "DDA"). Any capitalized terms in this Deed shall have the meanings set out in the DDA, unless otherwise defined herein. The Developer has given other value as a portion of the consideration for this conveyance.

The conveyance is subject to the following:

1. All easements, covenants, restrictions, conditions and encumbrances of record, as set out in Exhibit " 1" attached hereto and incorporated herein; and
2. A condition subsequent to this conveyance, that PDC shall have the option, in the event of a default by Developer before PDC issues a Certificate of Completion for the Project, and upon 30 days written notice (hereinafter "Notice of Termination") to said Developer and the Escrow Agent, to declare a termination in favor of PDC of the title, and of all the rights and interest 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 H to the DDA.
3. After the Certificate of Completion is recorded, 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 DDA with respect to the construction of the Project, including but not limited to the right of re-entry to the Property and reversion in PDC described in subparagraph 2 immediately above. This Deed is made by PDC pursuant to powers exercised by it under Oregon Revised Statutes

Chapter 457, and Chapter XV of the Charter of the City of Portland, and for the purpose of carrying out an urban renewal plan for the Interstate Urban Renewal Area approved by the City Council of the City on August 23, 2000, as amended.

It is intended that the delivery of this Deed shall not effect a merger of those provisions of the DDA that are intended by the terms of said Agreement to continue after the delivery of this Deed.

TO HAVE AND TO HOLD the same unto the said Developer and unto its successors and assigns forever.

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.

IN WITNESS WHEREOF, the City of Portland Development Commission, as the duly designated urban renewal agency of the City of Portland, a municipal corporation of the State of Oregon, has caused this Deed 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, as the duly designated urban renewal agency of the City of Portland.

By: _____
Chairman

By: _____
Secretary

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this ____ day of _____, by _____ and _____ as Chairman and Secretary of the City of Portland Development Commission, on its behalf.

Notary Public for Oregon
My commission expires: _____

EXHIBIT F

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, **KILLINGSWORTH STATION, L.L.C.,** an **OREGON LIMITED LIABILITY COMPANY** (“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 4.1.4 (INDEMNIFICATION), Section 7.1 (APPROVAL OF BUILDING TENANTS), Section 7.2 (LOCAL WEALTH CREATION, BUSINESS OPPORTUNITIES AND EMPLOYMENT OBJECTIVES), Section 7.3 (LEED CERTIFICATION); and Exhibit D (SCOPE OF DEVELOPMENT AND DEVELOPMENT PROGRAM).

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: _____

EXHIBIT G

COMPLIANCE AGREEMENT

EXHIBIT H

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.

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: _____

EXHIBIT H (Continued)

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.

Please indicate your acceptance of and agreement to carry out these instructions as indicated below.

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

EXHIBIT I

FAIR CONTRACTING GUIDELINES INDEX

Attachment A – Workforce Training and Hiring Program

Attachment B – M/W/ESB Recruitment Guidelines/Good Faith Effort Process Requirements

Attachment C – Construction Wage Policy

EXHIBIT I – ATTACHMENT A

Workforce Training & Hiring Program

EXHIBIT I -- ATTACHMENT B

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

EXHIBIT I – ATTACHMENT C
CONSTRUCTION WAGE POLICY

EXHIBIT J

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 H 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 23, 2008

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: _____

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 K

LIST OF ENVIRONMENTAL DOCUMENTS

EXHIBIT L

**RESIDENTIAL GREEN DESIGN & CONSTRUCTION GUIDELINES (GREENING
AFFORDABLE HOUSING CRITERIA)**

EXHIBIT M

DEQ NO FURTHER ACTION LETTER



Oregon

Theodore Kulongoski, Governor

Department of Environmental Quality
Northwest Region Portland Office
2020 SW 4th Avenue, Suite 400
Portland, OR 97201-4987
(503) 229-5263
FAX (503) 229-6945
TTY (503) 229-5471

March 5, 2007

Robert VanVickle
Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209

Re: No Further Action Determination
Killingsworth Station
North Interstate Avenue & Killingsworth Street
Portland, Oregon
ECSI #4620

Dear Mr. VanVickle:

The Oregon Department of Environmental Quality (DEQ) reviewed the available site investigation information for the Killingsworth Station site located northeast of the intersection of North Interstate Avenue and Killingsworth Street in Portland, Oregon. Killingsworth Station consists of six distinct parcels that were purchased by the Portland Development Commission to enhance the newly built Light Rail Mass Transit along North Interstate Avenue. The tax lot numbers associated with these parcels are 1N1E15CC 16400, 1N1E15CC 16500, 1N1E15CC 16800, 1N1E15CC 16600, 1N1E15CC 16300 and 1N1E15CC 16301.

Site assessment activities discovered petroleum hydrocarbon contamination associated with vehicle lubricants, a heating oil UST and various other sources at several locations on the site. Subsequently approximately twenty tons of soil were removed from the site and disposed of at Hillsboro Landfill. All contamination was shown to have been removed to below analytical detection limits. The DEQ reviewed the information for the site and summarized its findings in a File Memorandum dated January 2, 2007. The File Memorandum recommended no further action (NFA) for the property.

DEQ provided a public comment period from February 1 to March 2, 2007, to announce the proposed NFA determination. No comments were received by DEQ. Based on our review of available site information, no further action is required at this site under the Oregon Environmental Cleanup law, ORS 465.200 et. seq., unless additional information becomes available that warrants further investigation.

No Further Action Determination
Killingsworth Station
Page 2

We will update the Environmental Cleanup Site Information System (ECSI) database to reflect this decision. If you have any questions about this letter, please contact Mike Greenburg at 503-229-5153.

Sincerely,



Bruce Gilles
Environmental Cleanup Program
Northwest Region

cc: Mike Greenburg, DEQ NWR Project Manager
Robert Williams, DEQ NWR Cleanup Coordinator
Gil Wistar, DEQ

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6553

TITLE: AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT WITH KILLINGSWORTH STATION, LLC, FOR DEVELOPMENT OF CERTAIN PDC-OWNED PROPERTY AT THE NORTHEAST CORNER OF NORTH INTERSTATE AVENUE AND NORTH KILLINGSWORTH STREET

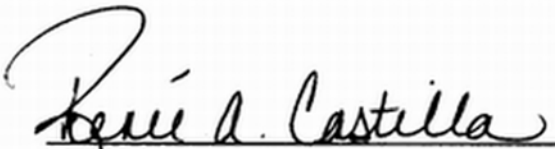
Adopted by the Portland Development Commission on January 23, 2008

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Mark Rosenbaum, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Sal Kadri	<input 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 type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

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


Renee A. Castilla, Recording Secretary

Date: January 31, 2008