

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6565

APPROVE TERMS OF THE LETTER OF INTENT AND ESCROW AGREEMENT WITH THE UNITED STATES POSTAL SERVICE AND AUTHORIZE EXECUTIVE DIRECTOR TO ENTER INTO NEGOTIATIONS FOR A DEFINITIVE AND BINDING PURCHASE AND SALE AGREEMENT WITH USPS FOR THE PROPERTY LOCATED AT 715 NW HOYT STREET, PORTLAND, OREGON, IN THE RIVER DISTRICT URBAN RENEWAL AREA.

WHEREAS, relocation and acquisition of the United States Postal Service (“USPS”) Processing and Distribution Center (“P&DC”) at 715 NW Hoyt Street in the River District Urban Renewal Area has long been envisioned by the general public, elected officials, and adopted land use and development plans;

WHEREAS, in May 1995, former Mayor Vera Katz wrote a letter to the USPS requesting that it engage in negotiations to relocate the P&DC to another location freeing up the site for redevelopment, and work cooperatively with the City to realize the vision of the River District;

WHEREAS, the 1988 Central City Plan and the 2001 Pearl District Development Plan approved by City Council, state that the City should reestablish a partnership with the USPS to redevelop and re-use portions of the site, especially the parking areas along NW Ninth Avenue and over the long term, encourage the relocation of the regional distribution facility, while retaining a postal facility to serve the River District;

WHEREAS, PDC and the Port of Portland have been working together to encourage USPS to relocate their P&DC from the River District to the Port of Portland’s Portland International Center at the Portland Airport;

WHEREAS, after numerous meetings with USPS in Washington DC and here in Portland, USPS is willing to enter into a Letter of Intent with PDC that PDC and USPS anticipate will lead to a definitive and binding agreement to purchase the USPS P&DC;

WHEREAS, the Letter of Intent requires PDC to place \$2,000,000 into escrow to be governed by an Escrow Agreement where certain amounts will be released to USPS on specific events, this expenditure is included within the adopted 2007-2008 Fiscal Year budget;

WHEREAS, the action of approving the terms of the Letter of Intent and Escrow Agreement supports the acquisition of the largest redevelopment parcel in Portland’s Central Business District supporting substantial public benefits;

WHEREAS, the PDC Board acknowledges that the structure of the Letter of Intent and the Escrow Agreement creates a potential financial risk for PDC, but presents a unique opportunity to acquire this signature 13.4 acre site in North Downtown;

WHEREAS, the potential public benefits from the sale and ultimately the reuse of the property include substantial economic development opportunities that will create a vast number of employment opportunities, the generation of millions of dollars of tax revenue, and the opportunity to integrate this large site into the fabric of the City; and

WHEREAS, the PDC Board acknowledges that this is likely the only opportunity to acquire the USPS P&DC site in the foreseeable future.

NOW, THEREFORE, BE IT RESOLVED that the PDC Board approves the terms of the Letter of Intent with the USPS, substantially in the form attached hereto as Exhibit A (the "Letter of Intent"), and the Escrow Agreement with the USPS and Chicago Title Insurance Company, substantially in the form attached hereto as Exhibit B (the "Escrow Agreement");


BE IT FURTHER RESOLVED that the Executive Director is authorized to execute and transmit the Letter of Intent to the USPS and to execute and deliver the Escrow Agreement;

BE IT FURTHER RESOLVED that the Executive Director may approve changes to the Letter of Intent and Escrow Agreement prior to and subsequent to execution, if such changes, in the opinion of the Executive Director and General Counsel, do not materially change PDC's obligations or risks;

BE IT FURTHER RESOLVED that the Executive Director, or his designee, is hereby authorized to enter into negotiations for a definitive and binding purchase and sale agreement with USPS for the property located at 715 NW Hoyt street, Portland, Oregon, with periodic project status briefings to the Board of Commissioners; and

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

Adopted by the Portland Development Commission on March 26, 2008.


Renee A. Castilla, Recording Secretary

FACILITIES - HEADQUARTERS



March 6, 2008

Mr. Steven L. Shain
Development Manager
Portland Development Commission
222 NW Fifth Avenue
Portland, Oregon 97209-3859

Re: Letter of Intent Regarding the United States Postal Service Processing and Distribution Center, Portland, Oregon

Dear Steven:

On behalf of the United States Postal Service ("USPS" or "Seller"), this Letter of Intent ("LOI") will serve to evidence the intention of USPS and the Portland Development Commission ("PDC" or "Purchaser"), to negotiate a transaction whereby Seller would sell to Purchaser, and Purchaser would purchase from Seller, the above-captioned improved real property ("USPS Property").

Other than the exclusive negotiation provision set forth in Section 8 below, this LOI and provisions set forth herein are not intended to be construed as comprising or creating legally binding agreements, obligations or responsibilities of either Purchaser or Seller. Seller and Purchaser intend to negotiate a definitive and binding purchase and sale agreement ("Agreement"), which will set out the final terms and binding obligations of the parties. It is the intent of the parties that unless and until the definitive Agreement is prepared and executed, neither Seller nor Purchaser has any obligation to the other under this LOI except as set forth in Section 8 below.

The provisions of this LOI, including certain currently anticipated terms of the definitive Agreement for purchase and sale of the USPS Property, are as follows:

1. THE USPS PROPERTY

The approximately 13 acres of land and improvements located at 715 NW Hoyt Street, Portland, Oregon together with all development rights and other rights associated with said USPS Property. Total acreage will be determined by an ALTA survey to be supplied by Purchaser.

2. PARTIES

It is intended that the Purchaser be the PDC and the Seller be the USPS.

3. AS IS CONDITION OF USPS PROPERTY

It is the intent of the parties that the USPS sell the USPS Property and Purchaser purchase the USPS Property in its "as is" condition. It is the intent of the parties that the Purchaser be responsible for any and all costs associated with building demolition and development of the property which includes, but not is not limited to, environmental site remediation for any and all environmental conditions, entitlements, zoning, etc.

4. ENVIRONMENTAL CONDITION OF USPS PROPERTY

On May 27, 2003, the USPS and the Oregon Department of Environmental Quality ("DEQ") executed an Intergovernmental Agreement (IGA) for Remedial Investigation/Feasibility Study regarding the USPS Property. Furthermore, in March of 2006, the USPS entered into a Consent Decree with the Portland Terminal Railroad Company pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA") and ORS §§ 465.255, 465.257, 465.325, and 466.640, which resolved payment of both past and future response costs and remedial action costs associated with the USPS Property. The USPS has submitted to the DEQ for review a final draft Feasibility Study which provides remedial alternatives and a recommended remedial alternative for the USPS Property.

5. PURCHASE PRICE

It is the intent of the parties that, the purchase price for which Seller is willing to sell, and Purchaser is willing to purchase the USPS Property be 150% of the appraised value of the USPS Property as established by two separate MAI appraisals to be obtained within 120 days from the date of execution of this LOI; provided, however, that if either appraiser requests additional time to complete the appraisal, the party commissioning that appraisal may, by written request to the other party, extend the date for completion of that appraisal as reasonably requested by the appraiser. It is the intent of the parties that one appraisal be commissioned and paid for by Purchaser and the other appraisal be commissioned and paid for by Seller. It is the intent of the parties that prior to commissioning the appraisals, Seller and Purchaser agree upon the set of instructions and other information to be provided to appraisers for purposes of conducting the appraisals. If the difference between the appraised values is equal to or less than twenty percent (20%) of the lower value appraisal, the appraised value used to determine the purchase price will be the average of the two appraised values from the appraisers. If the difference exceeds twenty percent (20%), the parties agree to negotiate a mutually agreeable resolution of the appraised value to be used in determining the purchase price. It is the intent of the parties that the final purchase price be agreed to by the parties no later than sixty (60) days after the date of receipt of the last appraisal. If the parties are unable to reach agreement on the purchase price for the USPS Property within the foregoing timeframe, the parties may: 1) mutually agree in writing to refer the matter to mediation; or, 2)

either party may terminate this LOI by and effective upon written notice to the other party. It is the intent of the parties that if this LOI is terminated, neither party have any further obligation to sell or purchase the USPS Property and Seller have no further rights to any Pre-Development Funds (as defined in Section 6 below) then on deposit with the Escrow Agent.

In the event the parties mutually agree to refer the matter to mediation, any dispute concerning the value of the USPS Property should be resolved in accordance with the Rules of the Counselors of Real Estate's ("The Counselors") Real Estate Dispute Resolution Program, as it may be amended from time to time, by means of appraisal proceeding by one appraiser. It is the intent of the parties that the neutral appraiser be selected from the panel of arbitrators maintained by The Counselors (it is the intent of the parties that in the case of an appraisal dispute the neutral appraiser be a member of the Panel of Arbitrators and also have appropriate experience and credentials in the appraisal field). The dispute resolution process, including neutral appraiser selection, is to be governed and administered by a representative of The Counselors and the decision reached will not be binding on the parties and may not be entered by any court. If a party disagrees with the decision of the Counselors' appraisal proceeding, that party may terminate this LOI by and effective upon written notice to the other party and, upon such termination, neither party will have any further obligation to sell or purchase the USPS Property and Seller will have no further rights to any Pre-Development Funds then on deposit with the Escrow Agent.

6. EARNEST MONEY

Subject to the approval of Purchaser's Board of Commissioners and execution and delivery of a mutually acceptable Escrow Agreement among Seller, Purchaser and a mutually acceptable Escrow Agent, it is the intent of the parties that Purchaser promptly after this LOI takes effect, deposit \$2,000,000 (which, together with any interest earned thereon while in escrow, referred to herein as the "Pre-Development Funds") into an interest bearing escrow account to be set up and administered by the Escrow Agent under the terms of the Escrow Agreement. Said Pre-Development Funds will be governed by the Escrow Agreement with the expectation that they will be made available to Seller during the period of negotiations as follows:

\$500,000	Promptly after approval of the Escrow Agreement by PDC's Board of Commissioners, provided the Escrow Agreement has been executed by all parties thereto
\$500,000	Upon receipt of the appraisals and joint agreement to Purchase Price
\$1,000,000	Upon execution by Seller and Purchaser of a definitive Agreement for the purchase and sale of the USPS Property

The final disbursement of Pre-Development Funds to Seller, if triggered, will include all interest earned and then on deposit in the escrow account. If Seller and Purchaser reach a definitive Agreement, the Pre-Development Funds will be credited against the Purchase Price at closing. Subject to the preceding sentence, any Pre-Development Funds disbursed out of escrow to Seller will be non-refundable to Purchaser. Any Pre-Development Funds remaining on deposit with the Escrow Agent on the earlier of termination of this LOI or the Exclusive Negotiation Termination Date will be returned to Purchaser.

7. PROCESS AND TIMING OF TRANSACTION

- Seller and Purchaser intend to execute Letter of Intent on or before March 31, 2008
- Seller and Purchaser intend to engage Appraisal firms within 30 days after execution of LOI
- Seller and Purchaser endeavor to execute a Purchase and Sale Agreement (PSA) on or before December 31, 2008
- Closing should occur 180 days after executed PSA

8. EXCLUSIVE NEGOTIATION

Subject to earlier termination of this LOI as provided herein, Seller and Purchaser agree to negotiate exclusively and in good faith with each other for the purchase and sale of the USPS Property until December 31, 2008 (the “Exclusive Negotiation Termination Date”).

9. DUE DILIGENCE AND INSPECTION

After execution of the LOI, Purchaser will be entitled to conduct due diligence investigations of the USPS Property which will include such inspections, reviews or inquiries that Purchaser deems necessary. Such investigations will be at the sole cost and expense of Purchaser. Upon written request from Purchaser, it is the intent of Seller to provide Purchaser at Purchaser's sole cost and expense copies of the LOI and all documents, records and other information relating to the Property that are necessary to perform the due diligence that Purchaser reasonably requests, including but not limited to environmental documents referenced in Section 4 above, and, a current preliminary title report together with copies of all exceptions referred to therein. USPS' responsibility under this LOI extends only to information, records or documents that USPS's Representative(s), without investigation or inquiry of any kind, is personally aware of or has in their direct possession, and not information or documents USPS may have in its possession generally.

Purchaser's Right of Entry. It is the intent of Seller to permit Purchaser and its agents to enter the Property to perform such inspections and investigations as Purchaser may consider necessary or desirable as part of its due diligence. Purchaser's right of entry is subject to the Purchaser executing a binding license agreement with Seller (hereinafter "License"). The License will include language

granting permission to Purchaser and its agents to enter period, which shall commence upon execution of the License and shall end at a date agreed upon by the parties which shall be no earlier than the termination of this LOI. Purchaser may investigate every aspect of the condition and status of the USPS Property, including, without limitation, consistency with zoning and use limitations, construction of the improvements, the existence and availability of utility connections, soil and groundwater conditions, the presence of underground storage tanks and hazardous wastes or substances, and compliance or consistency with permits, approvals, and applications of or to governmental agencies in connection with the USPS Property. After conducting any such investigation, Purchaser, at its sole expense, shall restore the USPS Property to the condition that it was in prior to the investigation, unless USPS expressly permits otherwise.

Purchaser's Indemnity. The parties agree that the License shall include indemnification language whereby the Purchaser shall, to the extent permitted by law and up to the limits of the Oregon Tort Claims Act (ORS 30.260 to 30.300), indemnify USPS from and against any claims, liens, costs (including attorneys' fees or allocated costs of in-house counsel), liabilities, damages, losses, or causes of action of whatever kind or nature (collectively "Claims") arising from Purchaser's activities, or the activities of, its employees, agents, or contractors on the USPS Property, other than Claims arising from the negligence or willful misconduct of USPS or its employees, agents or contractors. Purchaser agrees to comply with all laws, regulations, and orders of government agencies pertaining to the presence or suspected presence of hazardous wastes or substances on or about the USPS Property or groundwater, and shall, to the extent permitted by law and up to the limits of the Oregon Tort Claims Act (ORS 30.260 to 30.300), indemnify USPS, and shall waive any of its own Claims against USPS, from and against any Claim arising in connection with the release or threatened release of any hazardous wastes or substances arising out of Purchaser's activities on the Property, including any liability under CERCLA, or any other federal, state or local law, ordinance, or regulation pertaining to the presence or release of hazardous wastes or substances to the environment from or at the USPS Property, other than Claims arising from the negligence or willful misconduct of USPS or its employees, agents or contractors.

If Purchaser's inspections reveal any condition or information which is not satisfactory to Purchaser, then prior to execution of the Agreement, Purchaser may give written notice to Seller that it elects not to purchase the Property and may terminate this LOI by and effective upon written notice to Seller.

10. PURCHASE AND SALE AGREEMENT

It is the intent of the parties to negotiate and execute a mutually satisfactory definitive Agreement for the purchase and sale of the USPS Property by December 31, 2008. If the Agreement is not executed by said date, this LOI shall automatically terminate. It is the intent of the parties to negotiate the issue of environmental insurance and indemnification that Purchaser may provide to Seller for liability of Seller that may arise from the environmental condition of the USPS

Property. The parties acknowledge that Purchaser's power to indemnify is subject to legal limitations

The Agreement will contain a timeline for performance of certain critical events to occur between the date of execution of the Agreement and when the Board of Governors is expected to approve the Agreement. The events and dates to be included will be negotiated between Purchaser and Seller during negotiation of the Agreement.

The Agreement will contain such other terms and conditions as may be deemed appropriate by the parties and their counsel. The conveyance of the USPS Property will be by a special warranty deed.

11. CLOSING

To the extent there is a signed Agreement, the parties anticipate that there will be a closing within 180 days following execution of the Agreement or a mutually acceptable time based upon Seller's relocation plans.

12. BROKERS

In the Agreement, Seller and Purchaser will each represent and warrant to the other that it has engaged no broker or intermediary (other than USPS' engagement of Jones Lang LaSalle (JLL)) in connection with the proposed transaction and will agree to indemnify (for Purchaser, subject to customary limitations) the other party for any other loss, liability, and reasonable expenses, incurred by virtue of any action on its part giving rise to a breach of such warranty or a claim of such other fees. Seller will pay JLL a fee as provided in Seller's listing agreement with JLL. It is the intent of the parties that Purchaser not be required to pay a fee or any other compensation to JLL.

13. NON-BINDING NATURE OF LETTER OF INTENT

It is expressly agreed by Seller and Purchaser that this LOI is non-binding on Purchaser and Seller, other than the exclusive negotiation provision set forth in Section 8 above, and Purchaser and Seller will have no contractual obligation to purchase or sell the USPS Property prior to the execution and delivery of the Agreement. No legal obligation is intended to be created by this LOI or by any written or oral statements, negotiations or promises between the parties hereto, directly or through any representatives, with the exception of Section 8 above and statements and promises expressly set forth in the Agreement executed and delivered by both parties. Moreover, this LOI will not give rise to any rights based on any legal theory other than the right and obligation of exclusive negotiation set forth in Section 8 above; it being intended that only the subsequent formal, written Agreement, executed and delivered by both parties hereto, will bind the parties with respect to any matter covered by this LOI other than matters addressed in Section 8 above.

14. NOTICES

Any notice under this LOI by one party to the other will be deemed given and delivered (a) three days after being mailed, by registered or certified mail, postage prepaid, return receipt requested, or (b) when received if personally delivered, and:

In the case of notice to USPS, addressed as follows:

Mr. Stephen Roth
United States Postal Service
4301 Wilson Blvd, Suite 300
Arlington, VA 22203

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

Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209
Attn: Mr. Steven Shain

Please evidence your agreement that the foregoing represents an accurate statement of our mutual intent by signing and returning two copies of this LOI to the undersigned. This LOI shall not take effect until approved by Purchaser's Board of Commissioners. In the event this LOI has not been fully executed and approved by Purchaser's Board of Commissioners by March 31, 2008, this LOI shall automatically expire and be null and void.

We look forward to working with you to successfully complete this transaction.

Sincerely,

Kurt H. Little
Managing Director
Jones Lang LaSalle

Seth Weinert
Vice President
Jones Lang LaSalle

cc: Steve Roth, USPS
Randy Alder, USPS

Agreed to and accepted this _____ day of _____, 2008

Seller

By: Steven C. Roth
Its: Contracting Officer

Agreed to and accepted this _____ day of _____, 2008

Purchaser

By: Bruce A. Warner
Its: Executive Director

Agreed to and accepted this _____ day of _____, 2008

**ESCROW AGREEMENT
UNITED STATES POSTAL SERVICE AND
THE PORTLAND DEVELOPMENT COMMISSION
FOR NEGOTIATION OF PURCHASE AND SALE OF
715 N.W. HOYT STREET, PORTLAND, OREGON**

THIS ESCROW AGREEMENT is entered into effective this ___ day of March, 2008, by and among the UNITED STATES POSTAL SERVICE (“**Seller**”), the PORTLAND DEVELOPMENT COMMISSION, the duly authorized and acting urban renewal agency of the City of Portland, Oregon (“**Purchaser**”), and CHICAGO TITLE INSURANCE COMPANY (“**Escrow Agent**”). Seller, Purchaser and Escrow Agent are each a “party” to this Escrow Agreement, and may be referred to collectively as the “parties.”

RECITALS

- A. On March ___, 2008, Seller and Purchaser executed a non-binding *Letter of Intent Regarding the United States Postal Service Processing and Distribution Center, Portland, Oregon* (“LOI”). All parties acknowledge receipt of an executed copy of the LOI. Any capitalized term used in this Escrow Agreement that is not defined herein, shall have the meaning ascribed to that term in the LOI.
- B. The LOI expresses the intent of the parties to negotiate the sale and purchase of real property and improvements located at 715 N.W. Hoyt, Portland, Oregon, and commonly known as the USPS Postal Service Processing and Distribution Center (“USPS Property”). The parties anticipate an extended period of negotiations leading to a definitive Purchase and Sale Agreement for the USPS Property.
- C. Pursuant to the LOI, Purchaser is to deposit the sum of Two Million and No/100 Dollars (\$2,000,000.00), as earnest money, with the Escrow Agent, for administration and disbursement according to this Escrow Agreement (referred to in the LOI as “Pre-Development Funds” and herein as “Earnest Money”).

AGREEMENT

In consideration of the mutual benefits to be realized by the parties for performance of this Escrow Agreement, the parties hereby agree as follows.

1. EARNEST MONEY DEPOSIT

Upon the date of the signature of the final party to sign this Escrow Agreement, Purchaser will provide for the deposit of the Earnest Money in the amount of Two Million and No/100 Dollars (\$2,000,000.00) with Escrow Agent to be administered and disbursed pursuant to this Escrow Agreement. Purchaser may make the deposit by wire transfer or by deposit of certified funds, whichever the Purchaser may choose in its sole discretion.

2. ACCEPTANCE OF ESCROW

The Escrow Agent hereby agrees to accept the Earnest Money, to deposit the funds in an interest-bearing account, at the direction of the City Treasurer in investments that are permissible under the City of Portland's most currently adopted investment policy, and to administer the escrow account according to this Escrow Agreement. The Earnest Money is "earnest money" in accordance with applicable law.

3. DISBURSEMENT OF PRE-DEVELOPMENT FUNDS

Upon receipt of a written, dated certificate signed by both the Seller and the Purchaser for each disbursement, in the form attached hereto as Attachment 1, the Escrow Agent will disburse the Earnest Money to Seller as follows:

- a. \$500,000.00 on the later of the date that (i) the Escrow Agreement is signed by all parties; or (ii) the date of the approval of the Escrow Agreement by the Purchaser's Board of Commissioners;
- b. \$500,000.00 on the date the Seller and Purchaser agree to the Purchase Price for the USPS Property according to the terms of the LOI; and
- c. \$1,000,000.00 and all interest accrued on the Earnest Money, on the date the Seller and Purchaser execute a Purchase and Sale Agreement for the USPS Property.

4. DISPOSITION OF UNDISBURSED EARNEST MONEY

- a. Upon receipt of written, dated, separate escrow instructions signed by both the Seller and the Purchaser notifying the Escrow Agent that a party has terminated the LOI, the Escrow Agent will disburse any Earnest Money remaining in the escrow account, together with any accrued interest, to the Purchaser.
- b. If Earnest Money remains in the escrow account on December 31, 2008, the Escrow Agent will disburse the remaining funds, together with accrued interest, to the Purchaser. To implement this provision, Seller and Purchaser will execute Attachment 2, and Purchaser shall deliver Attachment 2 to the Escrow Agent immediately after the Escrow Agreement is delivered to the Escrow Agent.

5. MISCELLANEOUS PROVISIONS

- a. Escrow Fee. The Escrow Fee for administering this Escrow Agreement is \$750.00. Purchaser shall pay the Escrow Fee to the Escrow Agent upon Purchaser's deposit of the Earnest Money.
- b. Additional Deposits. The parties anticipate that additional funds and documents will be deposited into the escrow account if the Seller and Purchaser execute a Purchase and Sale Agreement. Seller and Purchaser will provide additional written instructions for Escrow Agent's administration of such additional deposits.
- c. Party's Authority. Each party has the full power and authority to enter into and perform this Escrow Agreement in accordance with its terms, and all requisite entity action has been taken by each party in connection with the execution of this

Escrow Agreement. This Escrow Agreement constitutes a valid, binding and enforceable obligation of each party.

- d. Signatures. The person(s) executing this Escrow Agreement on behalf of each party has the legal power, right and authority to bind that party to this Escrow Agreement
- e. Notices. Notices shall be given by and to the parties according to the terms of the LOI, and in the case, of the Escrow Agent, to:

Chicago Title Insurance Company
888 S.W. Fifth Avenue, Suite 930
Portland, OR 97204
Attn: Jennifer Lyke
- f. Severability. If any provision of this Escrow Agreement shall be invalid or unenforceable, the remaining provisions shall not be affected thereby, and every provision of this Escrow Agreement shall be valid and enforceable to the fullest extent permitted by law.
- g. Attorneys' Fees. In the event a suit, action, or any other proceeding of any nature whatsoever, including, without limitation, any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained with respect to any dispute relating to this Escrow Agreement, the recovery of attorney fees paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred shall be governed in accordance with applicable law,
- h. Governing Law and Disputes. This Escrow Agreement and disputes under this agreement shall be governed by and construed in accordance with applicable law.
- i. Time of the Essence. Time is of the essence in this Escrow Agreement with respect to disbursement, in accordance with Section 4(b) hereof, of any Earnest Money and accrued interest remaining in the Escrow Account on December 31, 2008.
- j. Counterparts. This Escrow Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.
- k. Amendment to this Escrow Agreement. The terms of this Escrow Agreement may not be modified or amended except by an instrument in writing executed by all the parties.
- l. Waiver. The waiver or failure to enforce any provision of this Escrow Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement as of the date(s) set forth below.

Seller: United States Postal Service

By: Steven C. Roth
Its: Contracting Officer
March ____, 2008

Purchaser: Portland Development Commission

By: Bruce A. Warner
Its: Executive Director
March ____, 2008

Escrow Agent: Chicago Title Insurance Company

By: _____
Its: _____
March ____, 2008

ATTACHMENT 1

**CERTIFICATE AND INSTRUCTIONS FOR DISBURSEMENT
PRIOR TO CLOSE OF ESCROW**

Date: _____

Escrow No: _____

To: Chicago Title Insurance Company

UNITED STATES POSTAL SERVICE (“Seller”) and the **PORTLAND DEVELOPMENT COMMISSION** (“Purchaser”) hereby certify to **CHICAGO TITLE INSURANCE COMPANY** (“Escrow Agent”) that the following event has occurred which, pursuant to the Escrow Agreement dated March ____, 2008, requires disbursement of a portion of the Earnest Money to the Seller. All capitalized terms shall have the same meanings as in the Escrow Agreement.

[Insert relevant event description from Paragraph 3a, 3b or 3c of the Escrow Agreement]

Therefore, you are hereby instructed to pay to the Seller the sum of \$_____ from the Earnest Money deposited in the above numbered escrow.

It is expressly understood and agreed that the payment of this money is made on the following conditions:

- a. The purchase and sale of the USPS Property anticipated in the establishment of the escrow account has not closed and may never close, and no documents relating to any purchase or sale of the USPS Property have been recorded;
- b. This Certificate and Instructions is given of the parties’ free will, and with knowledge of the terms of the Escrow Agreement and of the Letter of Intent that is the basis for the Escrow Agreement;
- c. The payment of Earnest Money from the escrow account is made without liability or recourse to the Escrow Agent for the ultimate outcome of this escrow;
- d. In the event that any controversy should arise between the Seller and Purchaser or with any third person, the Escrow Agent is not required to make a determination about the controversy or take any action relating to the controversy, and instead the Escrow Agent will await the settlement of the controversy by joint escrow instructions or by appropriate legal proceedings. In the event that the Escrow Agent is made a party to such legal proceedings, the Seller and Purchaser agree jointly and severally to hold the Escrow Agent harmless from and against any and all costs, charges, damages, attorneys’ fees or other expenses the Escrow Agent may incur.

Seller: United States Postal Service

Purchaser:

Portland Development Commission

By: Steven C. Roth, Contracting Officer

By: Bruce A. Warner, Executive Director

ATTACHMENT 2

AGREEMENT FOR DISPOSITION OF REMAINING ESCROW FUNDS

Date: _____

Escrow Agent: **Chicago Title Insurance Company**

Escrow No: _____

In fulfillment of the conditions of that certain Escrow Agreement entered into on March ____, 2008 by and among **UNITED STATES POSTAL SERVICE** (“Seller”), the **PORTLAND DEVELOPMENT COMMISSION** (“Purchaser”), and **CHICAGO TITLE INSURANCE COMPANY**, (“Escrow Agent”), and in consideration of the premises thereof, Purchaser and Seller hereby agree that if Escrow Agent finds that it is holding funds in the above-numbered escrow account after December 31, 2008 (“Remaining Funds”), the Escrow Agent shall distribute the Remaining Funds, together with accrued interest, to the Purchaser, in such manner and to such accounts as the Purchaser shall designate to Escrow Agent in Purchaser’s sole discretion.

Seller acknowledges that pursuant to the Escrow Agreement, the Remaining Funds are the property of the Purchaser, and Purchaser has the sole right to direct disposition of the Remaining Funds. Seller hereby expressly releases all claims to the Remaining Funds, whether anticipated or unanticipated at the time of this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement for Disposition of Remaining Funds effective as of the date set forth above.

Seller: United States Postal Service

Purchaser:

Portland Development Commission

By: Steven C. Roth, Contracting Officer

By: Bruce A. Warner, Executive Director

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6565

Title: APPROVE TERMS OF THE LETTER OF INTENT AND ESCROW AGREEMENT WITH THE UNITED STATES POSTAL SERVICE AND AUTHORIZE EXECUTIVE DIRECTOR TO ENTER INTO NEGOTIATIONS FOR A DEFINITIVE AND BINDING PURCHASE AND SALE AGREEMENT WITH USPS FOR THE PROPERTY LOCATED AT 715 NW HOYT STREET, PORTLAND, OREGON, IN THE RIVER DISTRICT URBAN RENEWAL AREA.

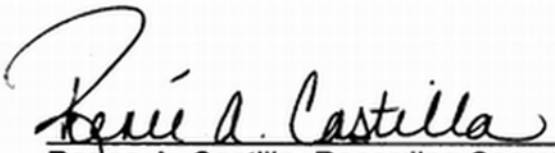
Adopted by the Portland Development Commission on March 26, 2008.

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 checked="" type="checkbox"/>	Sal Kadri	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Charles Wilhoite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input 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: April 22, 2008