

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6638**

**AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO A GRANT AGREEMENT IN AN AMOUNT NOT TO EXCEED \$29.5 MILLION AND A DISPOSITION AND DEVELOPMENT AGREEMENT WITH THE HOUSING AUTHORITY OF PORTLAND FOR THE DEVELOPMENT OF THE RESOURCE ACCESS CENTER AND RELATED DEVELOPMENT ON THE WESTERN PORTION OF CERTAIN PDC-OWNED REAL PROPERTY LOCATED AT NW HOYT STREET AND NW BROADWAY AND KNOWN AS "BLOCK U" IN THE RIVER DISTRICT URBAN RENEWAL AREA**

**WHEREAS**, in furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland (the "City"), the Portland Development Commission ("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 River District Urban Renewal Area, which was approved by the City Council of the City on October 21, 1998 by Ordinance No. 172808 (as amended from time to time, the "Plan");

**WHEREAS**, PDC found it necessary and in the public interest to implement the Plan by acquiring certain real property known as "Block U" located at the northeast corner of NW Broadway Street and NW Hoyt Street in the River District Urban Renewal Area and offering ("Block U") for redevelopment as the site for the Project (as hereinafter defined) to serve as a catalyst for further redevelopment;

**WHEREAS**, PDC and the City of Portland adopted Home Again: A Ten Year Plan to End Homelessness (the "10-year Plan") in December 2005 which seeks permanent solutions to homelessness and contemplated the development of a resource access center for the delivery of services to the homeless (the "Resource Access Center");

**WHEREAS**, the Resource Access Center, which shall include an internal queuing area for clients, shall be a component of a larger development that shall include, among other things, a men's shelter with ninety (90) beds, 130 units of permanent supportive housing, and off-street parking (collectively the "Project");

**WHEREAS**, Resolution No. 6564, adopted February 27, 2008, by PDC's Board of Commissioners ("Board"), authorized the negotiation of a Disposition and Development Agreement (the "DDA") related to the conveyance of Block U to the Housing Authority of Portland ("HAP") and PDC's financial participation in the Project;

**WHEREAS**, in the interim, as part of a broader assessment of urban renewal in downtown Portland, the boundaries of the Downtown Waterfront URA were amended, among other things, to remove the Property from the Downtown Waterfront URA and the boundaries of the River District Urban Renewal Area (the "River District URA") were amended, among other things, to include the Property in an expanded River District URA with an increased maximum indebtedness (the "Amended River District") in order to make available Tax Increment Financing ("TIF") resources for the Project;

**WHEREAS**, the Amended River District subsequently has been appealed to the State of Oregon Land Use Board of Appeals (LUBA Case Nos. 2008-116 and 2008-117, including any related actions or appeals in the Oregon Court of Appeals or the Oregon Supreme Court, collectively, the "Appeal");

**WHEREAS**, PDC's conveyance of the Property and financial participation in connection with the Project shall be contingent upon: (i) full and final resolution of the Appeal on terms that permit use of TIF resources for the Project; or (ii) PDC's determination, in its sole and absolute discretion, that it has sufficient funds available to provide the Grant (as hereinafter defined) and the necessary legal power and authority to consummate the transactions contemplated by the DDA and otherwise perform its obligations under the DDA (collectively, the "Contingencies");

**WHEREAS**, given the current market conditions, PDC and HAP have determined that it is prudent to: (i) to locate the Project on the westernmost 22,500 square feet of Block U (the "Property"); and (ii) in addition to the \$28 Million, make available an additional \$1,500,000 dollars resulting in a potential grant for the Project in an amount not to exceed \$29.5 Million (the "Grant") subject to the terms of the DDA;

**WHEREAS**, prior to PDC's conveyance of the Property to HAP, PDC has committed to perform soil remediation activities on the Property (the "Environmental Clean-Up") in an amount not to exceed \$500,000 (the "Environmental Clean-Up Cost");

**WHEREAS**, PDC's obligation to commence the Environmental Clean-Up shall be contingent upon PDC's determination, in its sole discretion, that financial resources are available to fund the Environmental Clean-Up Cost;

**NOW, THEREFORE, BE IT RESOLVED**, that the Executive Director is hereby authorized to enter into the DDA with HAP, substantially in the form attached hereto as Exhibit A, which, among other things, sets forth the terms and conditions under which PDC will convey the Property, provide the Grant, and perform the Environmental Clean-Up for the Environmental Clean-Up Cost;

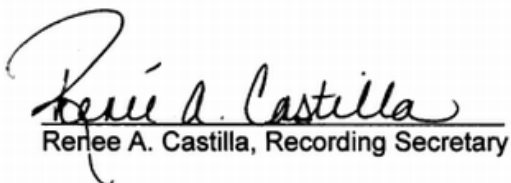
**BE IT FURTHER RESOLVED**, that the Executive Director is hereby authorized to enter into a Grant Agreement with HAP for the Grant consistent with the terms set forth on Exhibit E of the DDA;

**BE IT FURTHER RESOLVED**, that PDC's obligations in the DDA, including but not limited to, the conveyance of the Property, providing the Grant and performance of the Environmental Clean-Up shall be contingent upon the Contingencies;

**BE IT FURTHER RESOLVED**, that the Executive Director is further authorized to approve changes to the DDA if such modifications do not materially change PDC's obligations or risks thereunder; and

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

**Adopted by the Portland Development Commission January 29, 2009.**

  
Renee A. Castilla, Recording Secretary

**AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY**

**IN THE RIVER DISTRICT URBAN RENEWAL AREA**

**KNOWN AS THE WESTERN PORTION OF BLOCK “U”**

**BETWEEN**

**THE PORTLAND DEVELOPMENT COMMISSION**

**AND**

**THE HOUSING AUTHORITY OF PORTLAND**

**DATED**

**January \_\_, 2009**

**AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY**

**IN THE RIVER DISTRICT URBAN RENEWAL AREA**

**KNOWN AS THE WESTERN OF PORTION OF BLOCK “U”**

**THIS AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY IN THE RIVER DISTRICT URBAN RENEWAL AREA KNOWN AS PORTION OF BLOCK “U”** (this “**Agreement**”) is entered into as of January \_\_\_, 2009 (the “**Effective Date**”) 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 the **HOUSING AUTHORITY OF PORTLAND**, an Oregon public body corporate and politic (“**Developer**” or “**HAP**”). PDC and Developer are referred to jointly in this Agreement as “**Parties**” and individually as a “**Party**.”

**RECITALS**

A. 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 River District Urban Renewal Area, which was approved by the City Council of the City on October 21, 1998 by Ordinance No. 172808 (as amended from time to time, the “**Urban Renewal Plan**” or the “**Plan**”);

B. 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, as Document No. 98211526 and is by this reference made a part hereof;

C. PDC found it necessary and in the public interest to implement the Plan by acquiring certain real property located at the northeast corner of NW Broadway Street and NW Hoyt Street (“**Block U**”) in the River District Urban Renewal Area and offering the Property for redevelopment as the site for the Project (as hereinafter defined) to serve as a catalyst for further redevelopment;

D. The City of Portland (“**City**”) Council adopted its Resolution No. 36367 on December 21, 2005 and thereby adopted Home Again: A Ten Year Plan to End Homelessness (“**10-Year Plan**”), which seeks permanent solutions to homelessness by focusing on the most chronically homeless populations, streamlining access to existing services to prevent and reduce homelessness and concentrating resources on programs that offer measurable results;

E. The 10-Year Plan contemplates a Resource Access Center (“**RAC**”) to provide homeless people with quick and direct access to programs that move them directly into permanent housing;

F. HAP is a public corporate body created by the City, and having the powers to plan, undertake, construct, acquire, finance, own and operate housing projects and community service facilities;

G. The Bureau of Housing and Community Development (“**BHCD**”) is the City bureau charged with managing programs and investing resources targeted towards ending homelessness;

H. Transitions Project, Inc. (“**TPI**”) is experienced at providing services to homeless individuals and running shelter facilities within the Central City, and due to this experience has been identified by the City as the operator of the RAC;

I. In a September 19, 2007 memorandum, Commissioner Erik Sten communicated the importance of the RAC to the City and requested that PDC, HAP and BHCD work cooperatively and in their respective roles to bring about the development of the RAC;

J. The improvements shall include the RAC (which shall include an internal queuing area for clients) and an auxiliary men’s shelter with ninety (90) beds, which shall be components of a larger development that shall include, among other things, affordable rental housing, permanent supportive housing, commercial lease space, and off-street parking (as further described in the definitions section below, the “**Project**”);

K. On February 27, 2008, the PDC Board of Commissioners passed Resolution No. 6564, which stipulated Block U as the designated site for the Project and to provide a level of financial resources for the development of the Project, appropriate to the Project need as determined by PDC and HAP, and subject to the appropriation of \$28,000,000 dollars of Tax Increment Financing (“**TIF**”);

L. On March 5, 2008, City Council adopted its Resolution No. 36586, which reaffirmed the siting of the Project on Block U;

M. As part of a broader assessment of urban renewal in downtown Portland, the boundaries of the Downtown Waterfront Urban Renewal Area were amended, among other things, to remove Block U from the Downtown Waterfront Urban Renewal Area and the boundaries of the River District Urban Renewal Area (the “**River District URA**”) were amended, among other things, to include Block U in an expanded River District URA with an increased maximum indebtedness (the “**Amended River District**”) in order to make available TIF resources for the Project. In the interim, the Amended River District has been appealed to the State of Oregon Land Use Board of Appeals (LUBA Case Nos. 2008-116 and 2008-117, including any related actions or appeals in the Oregon Court of Appeals or the Oregon Supreme Court, collectively, the “**Appeal**”);

N. The Parties have determined that it is prudent under current market conditions (i) to locate the Project on the western portion of Block U (as further described in the Definitions sections below, the “**Property**”) and (ii) to make available an additional \$1,500,000 dollars for the Project subject to the provisions of this Agreement, including Exhibit E.

O. PDC’s conveyance of the Property to Developer and financial participation in connection with the Project shall be contingent upon: (i) full and final resolution of the Appeal on terms that permit use of TIF resources for the Project; or (ii) PDC’s determination, in its sole and absolute discretion, that it has sufficient funds available to provide the Grant (as hereinafter defined) and the necessary legal power and authority to consummate the transactions contemplated by this Agreement and otherwise perform its obligations under this Agreement;

P. 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 inducement to PDC to enter into this Agreement;

Q. 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; and

R. Accordingly, the Parties desire to enter into this Agreement setting forth the terms and conditions under which PDC will convey the Property to Developer for development of the Project.

### **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. **“Agreement”** means this Agreement for the Disposition and Development of Property and all attached Exhibits.
2. **“Appeal”** shall have the meaning set forth in Recital M.
3. **“Business Day”** means any day other than a Saturday, Sunday or legal holiday on which banks in Portland, Oregon are closed.
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 and HAP.
6. **“Closing”** means the date on which Developer closes or shall have closed on all financing necessary to construct the Project as further described in Section 3.1.
7. **“Closing Date”** means the earlier of October 1, 2009 or the date on which the conditions precedent set forth in Section 1.8 are satisfied.
8. **“Commercial Component”** means the non-residential portion of the Project, including the RAC, shelter, queuing courtyard, public restrooms, parking and bicycle storage.
9. **“Construction Drawings and Technical Specifications”** means documents, based upon the Design Development Drawings, that set forth in detail the requirements for construction of the Project pursuant to the terms of this Agreement, reviewed and commented on or approved by PDC, as applicable, pursuant to Section 3.2 of this Agreement and approved by the appropriate City agencies. Construction Drawings and Technical Specifications shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project.
10. **“Conveyance”** means the transfer of fee simple title to the Property by PDC to Developer on the Closing Date.

11. “**Deed**” means the form of Bargain and Sale Deed which will be used to convey fee simple title to the Property attached to this Agreement as Exhibit A and incorporated herein by this reference.
12. “**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.
13. “**DEQ**” means the Oregon Department of Environmental Quality.
14. “**Design Development Drawings**” means the detailed plans submitted to the City of Portland, Bureau of Planning, 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 sight 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; and
  - A description of servicing requirements, trash collection locations, loading docks and related functional areas.
15. “**Design Team**” means Holst Architecture and its subcontractors that are stipulated in the architectural contract between Developer and Holst Architecture.
16. “**Drawings**” has the meaning set forth in Section 3.2.1.
17. “**Effective Date**” means the date stated in the first paragraph of this Agreement.
18. “**Environmental Conditions**” means the physical condition of the Property as measured by the standards of the Environmental Laws. Environmental Conditions do not 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.
19. “**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.
20. “**Environmental Due Diligence Reports**” means all currently existing and any future reports of investigations performed as part of environmental due diligence, which may include Phase I, Phase 2 and Hazardous Building Site Assessments and reports, documents or documentation of Recognized Environmental Conditions, that PDC has completed or PDC has in its possession,

completed by others. A complete list of the Environmental Due Diligence Reports in existence as of the Effective Date is attached as Exhibit J and incorporated herein by reference.

21. **“Environmental Remediation Plan”** means the environmental remediation plan described in Section 4.1.3 hereof.
22. **“Escrow Agent”** means Fidelity National Title Company of Oregon.
23. **“Final Permitted Exceptions”** has the meaning set forth in Section 1.3.2.
24. **“Final Project Budget”** means the estimated sources and uses of funds, cash flow, and Project costs related to development approved by PDC prior to Closing.
25. **“General Contractor”** means Walsh Construction Co./OR.
26. **“Grant”** means the grant in an amount not greater than \$29,500,000 that PDC will provide to Developer for acquisition of the Property and construction of the Project pursuant to this Agreement and the Grant Documents.
27. **“Grant Agreement”** means the Grant Agreement by and between PDC and Developer evidencing the Grant.
28. **“Grant Documents”** means the Grant Agreement and any other reasonable and customary documents that may be required by PDC to evidence the Grant.
29. **“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 uses.
30. **“Green Building Policy”** means PDC’s Green Building Policy in effect on the Effective Date, a copy of which is attached hereto as Exhibit K and incorporated herein by this reference, which Green Building Policy is applicable to the Project.
31. **“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.
32. **“Housing Component”** means the housing portion of the Project that shall be programmed in the following manner:
  - 130 studio units of approximately 325 square feet each.
  - All units to receive operating subsidy, currently estimated at 100 units receiving project-based Section 8 subsidy and 30 units receiving public housing operating subsidy.
  - All units to be restricted to a 60% AMI by the restrictive use agreement securing the Low Income Housing Tax Credit and benefiting Oregon Housing and Community Services. Additionally, all units to be further restricted to 35% AMI by the restrictive use agreement securing and providing benefit to the City of Portland.



- All units will be managed as Permanent Supportive Housing. Screening criteria will be negotiated by HAP and BHCD to reflect a shared desire to housing vulnerable homeless individuals, while not creating an unsafe living environment for residents or jeopardizing the overall successful management of the Project.

The obligation to maintain such programming and affordability levels shall be subject to the Regulatory Agreement which shall stipulate that in the event that Developer (after consultation with its financing sources for the Project, including without limitation any tax credit investor) determines that the then applicable Housing Component can no longer feasibly operate to serve its targeted populations and/or to maintain programmed affordability levels, then Developer will revise the housing program, in consultation with the City as appropriate, so as to be consistent with the then economic and stabilization needs of the Project.

33. “**IGA**” means that certain Intergovernmental Agreement among HAP, the City and PDC of even date herewith, related to the operation and maintenance of the Project.
34. “**Infrastructure**” means public streets, 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 as further described in the Scope of Development set forth in Exhibit D attached hereto and incorporated herein by this reference.
35. “**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.
36. “**Mortgage**” means a mortgage or deed of trust against the Property (or any portion thereof) to finance the Project that is approved by PDC and recorded in the real property records of Multnomah County, Oregon.
37. “**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 person or entity who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale.
38. “**Notice**” means any notice concerning any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by the Oregon Department of Environmental Quality (“**DEQ**”), the United States Environmental Protection Agency, PDC, or other federal, state or local authority or any other government having jurisdiction with respect to the Property.
39. “**Notice of Termination**” has the meaning set forth in Section 9.3.1.
40. “**Oregon Prevailing Wage Law**” has the meaning set forth in Section 3.4.

41. **“PDC’s knowledge”** means the actual current knowledge of the PDC Project Manager, without any duty of inquiry or investigation.
42. **“PDC Project Manager”** has the meaning set forth in Section 10.1.
43. **“Permanent Supportive Housing”** means households comprised of individuals that: (i) earn up to 35% MFI; (ii) are homeless or at risk of homelessness, including those who may be leaving other systems of care (corrections, hospitalization, etc.) without a place to live; (iii) experience chronic health conditions that are at least episodically disabling (e.g. mental illness, HIV/AIDS, and substance use issues) or other substantial barriers to housing stability; and (iv) who would not be able to retain stable housing without tightly linked supportive services.
44. **“Permitted Exceptions”** has the meaning set forth in Section 1.3.1.
45. **“Predevelopment Grant”** means the grant made by PDC to Developer described in Section 3.1 herein.
46. **“Preliminary Design Documents”** means the site drawings for the Project including schematic, massing, feasibility and preliminary cost estimates for the Project delivered by Developer to PDC before the Effective Date and that were the basis for entering into this Agreement.
47. **“Project”** means the Property, and the new improvements to be constructed by Developer on the Property including the Commercial Component and the Housing Component as further described in the Scope of Development set forth in Exhibit D.
48. **“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 related to development approved as of the Effective Date.
49. **“Property”** means the western portion of that certain real property known as “Block U” and located at the northeast corner of NW Broadway Street and NW Hoyt Street, and more particularly described in Exhibit A attached hereto.
50. **“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.
51. **“RAC”** means the Resource Access Center which is a facility to provide homeless people with a variety of resources including access to programs that move them directly into permanent housing, as more fully described in the Scope of Development.
52. **“Recognized Environmental Conditions”** means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Property or into the ground, ground water, or surface water of the Property, whether or not the Release is in compliance with applicable law. Recognized Environmental Conditions do not 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.
53. **“Regulatory Agreement”** has the meaning set forth in Section 1.5.1(a)(xi).

54. “**Release**” means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
55. “**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.
56. “**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.
57. “**Scope of Development**” means the description of the improvements to be built comprising the Project, attached hereto as Exhibit D and incorporated herein by this reference.
58. “**Special Soils**” means any soil that must be excavated from the Property as part of the Required Commercial Excavation or as part of PDC’s obligations pursuant to Section 4 hereof, *and* which, pursuant to Environmental Laws, will require excavation, handling or disposal at a location, or using means and methods, that are prescribed by the Oregon Department of Environmental Quality (“DEQ”).
59. “**Title Report**” has the meaning set forth in Section 1.3.1.
60. “**Unforeseen Environmental Conditions**” means the presence of a Hazardous Substance on the Property that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by the Oregon Department of Environmental Quality.
61. “**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

- 1.1 **Conveyance.** 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 Closing Date.
  - 1.1.1 **Conveyance by Deed.** Subject to satisfaction of the Conditions Precedent to Conveyance set forth in Section 1.5 hereof PDC will complete the Conveyance to the Developer by delivery of the Deed on the Closing Date.
  - 1.1.2 **Acceptance of Conveyance.** Subject to satisfaction of the Conditions Precedent to Conveyance set forth in Section 1.5 hereof, Developer shall accept the Conveyance on the Closing Date.
- 1.2 **Purchase Price.** The cash portion of the Purchase Price for the fee simple interest in the Property is Zero Dollars (\$0.00). The Purchase Price includes other consideration from Developer.

1.3 **Title Review.**

- 1.3.1 Within ten (10) Business 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 fifteen (15) Business 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 shall be the “**Permitted Exceptions**”. If Developer objects to any item, then PDC shall have ten (10) Business 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 the Closing Date. If PDC does not respond to Developer’s objections within such ten (10) Business Day time period, PDC shall be deemed to have agreed to remove such objected to exceptions to title prior to the Closing Date. If PDC refuses to remove any such objected to exceptions, PDC shall give written notice thereof to Developer within such ten (10) Business Day time period, and upon receipt of such notice, Developer shall have ten (10) Business 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 shall also include those exceptions, if any, that Developer originally objected to and that PDC refused to remove.
- 1.3.2 Developer may obtain an update to the Title Report at any time prior to the Closing Date. Developer shall promptly give to PDC a copy of any updated Title Report. Within five (5) Business Days after receiving an 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) Business 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 the Closing Date. If PDC does not respond to Developer’s objections within such ten (10) Business Day time period, PDC shall be deemed to have agreed to remove such objected to exceptions to title prior to the Closing Date. If PDC refuses to remove any such objected to exceptions, PDC shall give written notice thereof to Developer within such ten (10) Business Day time period, and upon receipt of such notice Developer may terminate this Agreement, by written notice to PDC, or continue with the Closing subject to same. The Permitted Exceptions together with any other exceptions that Developer accepts on the Closing Date 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, or was deemed to have agreed 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 not paid with proceeds of the Predevelopment Grant.

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 Two Million Five Hundred Thousand Dollars (\$2,500,000) (“**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 H 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 costs related to the Closing, 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 Date for the Property’s prorata share of any special assessments that have been paid in annual installments. Developer shall assume liability for payment of any annual payments due after the Closing Date 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 Closing.**

- 1.5.1 **Conditions.** Developer and PDC are not obligated to proceed with the Closing unless the following conditions are satisfied to their reasonable satisfaction prior to Closing. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied. 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 Design Development Drawings shall have been reviewed and commented on or approved by PDC, as applicable, pursuant to Section 3.2 of this Agreement and subsequently approved by the City of Portland, Bureau of Planning, in connection with its Design Review process.
  - (ii) The Final Construction Drawings and Technical Specifications for the Project have been approved by all required governmental entities and agencies, except that the scope of PDC approval shall be as provided in Section 3.2.3.
  - (iii) All land use approvals and permits for the Project required by Title 33 of the Code of the City of Portland shall have been secured and no appeal of any required approval or permit shall have been filed, and the time for any such appeal shall have expired. If an appeal was filed, it shall have been finally resolved.

- (iv) The City of Portland Bureau of Development Services shall have issued building permits that are required to begin construction of the Project.
  - (v) Developer shall have demonstrated financial feasibility for the Project, consistent with the Final Project Budget, by providing to PDC: (a) copies of binding commitment letters from private lenders for the construction financing for the Project, (b) copies of binding commitment letters from private lenders for the permanent financing for the Project after completion of construction and required lease-up as may be required by the private lenders, (c) written evidence of necessary equity commitments, and (d) commitments from public financing sources, including the approval by the PDC Board of Commissioners, if necessary, and the PDC Loan Committee of the terms and conditions of the Grant, subject to underwriting practices appropriate for this Project.
  - (vi) All financing necessary to construct the Project shall have closed or will close simultaneously with the Closing.
  - (vii) The Parties shall have agreed to the final form of the Deed, the Final Permitted Exceptions, the Grant Agreement and any documents necessary to close the Conveyance.
  - (viii) No litigation is pending that prevents PDC or Developer from performing its respective obligations under this Agreement.
  - (ix) All tasks shown on the Schedule of Performance to be completed as of Closing have been completed.
  - (x) The No Further Action Letter (as defined in Section 4.1.3 below) has been issued by DEQ with respect to the Property in form and substance acceptable to the Parties or, if DEQ has not yet issued such a letter, DEQ has issued the DEQ Progress Letter that indicates the status of cleanup actions undertaken on the Property and the Parties are satisfied with the current status of the environmental remediation or abatement, as appropriate, of the Recognized Environmental Conditions on the Property.
  - (xi) The Parties shall have delivered a duly-executed Regulatory Agreement restricting the use of the Project consistent with the affordability requirements of the Housing Component (the “**Regulatory Agreement**”) to the Escrow Agent along with a duly-executed Deed and any other documents required in connection with the Closing.
- (b) To Developer’s Satisfaction:
- (i) Developer is satisfied that PDC has fee simple 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 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. At the Closing, PDC shall represent to Developer that PDC is not in default under this Agreement and that no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of PDC under this Agreement.
  - (v) No material adverse change in the physical or legal condition of the Property has occurred.
- (c) To PDC's Satisfaction:
- (i) Developer has provided to PDC documentation satisfactory to PDC of the ownership structure and requisite entity authorizations for completing the Project including, but not limited to, documentation that (a) Developer has full power and authority to enter into and perform its obligations under this Agreement; and (b) this Agreement has been executed and delivered, for and on behalf of Developer, by an authorized individual.
  - (ii) PDC has determined that the final construction budget for the Project is in substantial conformance with the Final Project Budget.
  - (iii) PDC has received a certification from Developer and BHCD certifying that the operating budget and availability of funding for the operation of the RAC, men's shelter and social services for residents of the Housing Component, is, subject to appropriation, consistent with the intent of the IGA to provide adequate future funding for such support services.
  - (iv) Developer has provided PDC with documentation on the Project evidencing a design that meets the applicable Green Building standard set forth in the Green Building Policy.
  - (v) Developer's representations and warranties set forth in Section 1.7 hereof are true and correct as of the Closing.
  - (vi) Developer is not in default under this Agreement. At the Closing, Developer shall represent to PDC that Developer is not in default under this Agreement and that no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Developer under this Agreement.

- (vii) The Appeal shall have been fully and finally resolved on terms that permit use of TIF resources for the Project as determined by PDC in its sole and absolute discretion, or PDC shall have determined, in its sole and absolute discretion, that it has sufficient funds available to provide the Grant and the necessary legal power and authority to consummate the transactions contemplated by this Agreement and otherwise perform its obligations under this Agreement.

1.5.2 **Elections upon Non-Satisfaction of Conditions.** If any condition in Section 1.5.1 is not fulfilled to the satisfaction of the benefited Party or Parties on the Closing Date (or such later date, if any, designated pursuant to this Section 1.5.2 or determined in accordance with Section 9.8.2), then such benefited Party or Parties may elect to:

- (a) Terminate this Agreement by and effective upon written notice to the other Party which termination shall become effective sixty (60) days after the notice of termination is sent (“**Closing Termination Date**”) unless, before the 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 satisfied, if the condition can be satisfied and the other Party agrees in writing to the later date.

1.5.3 **Final Closing Termination Date.** If all of the conditions precedent to Closing set forth in Section 1.5.1 have not been satisfied or waived by the later of (a) the Closing Date or (b) such later Closing date, if any, designated pursuant to Section 1.5.2 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 Closing Termination Date**”).

1.5.4 **Effect of Termination for Non-Satisfaction of Conditions Precedent to Closing.** If this Agreement terminates or is terminated for non-satisfaction 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 upon termination of this Agreement 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 date this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to Closing, 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:



- 1.6.1 To PDC's knowledge, except as has been disclosed to Developer in the Environmental Due Diligence Reports and herein, 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.
- 1.6.2 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.
- 1.6.3 PDC is not a "foreign person" within the meaning of Section 1445(f) (3) of the Internal Revenue Code of 1986, as amended.
- 1.6.4 To PDC's knowledge, with the exception of the Appeal and as otherwise disclosed herein, 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.
- 1.6.5 To PDC's knowledge, with the exception of the Appeal, and except as otherwise disclosed in writing to Developer before the Effective Date, the Property is in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements.
- 1.6.6 To PDC's knowledge and except as otherwise disclosed herein, 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.
- 1.6.7 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.
- 1.6.8 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.
- 1.6.9 PDC is the legal and beneficial fee simple titleholder to the Property and, to PDC's knowledge, with the exception of the Appeal, 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:

- 1.7.1 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.
- 1.7.2 No representation, warranty or statement of Developer 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.
- 1.7.3 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.
- 1.7.4 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 or cause completion of all necessary site preparation in accordance with the Schedule of Performance, provided that PDC shall at its cost perform the Environmental Remediation Plan subject to the limitations described in Section 4.1.3 below.
- 2.3 **Utility Service.** 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 fee simple interest in the Property to Developer, and Developer shall accept the same, in "AS IS" condition on the Closing Date, without warranty of any kind except as otherwise specifically set forth in this Agreement. 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 been provided copies of the Environmental Due Diligence Reports listed on attached Exhibit J.

## 3. DEVELOPMENT

- 3.1 **Project Financing**

3.1.1 **Construction and Permanent Financing for the Project.** Developer will be responsible for obtaining all funds and financing necessary to acquire the Property and construct and operate the Project. The total construction and acquisition cost shall not exceed that set forth in the Final Project Budget. The parties acknowledge an innovative funding structure for the Project, which by its nature, requires a series of complex transactions to provide the public and private funds necessary to develop the Project. The parties acknowledge and agree that the Project Budget is only a projection and that a number of factors may change this projection including interest rates, lender requirements, market shifts, and the soft and hard development costs. The Parties anticipate that the Project financing will be generally structured such that: (a) prior to the Closing, (i) PDC shall fund the Predevelopment Grant (described in Section 3.1.2 below) for the purpose of enabling Developer to undertake certain pre-development activities in connection with the Project; and (ii) PDC shall pay the costs of environmental remediation at a cost not to exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for the Property which costs shall be separate and apart from the Project Budget and not reduce the Grant; (b) after the Closing, (i) PDC shall provide a portion of the construction and permanent financing for the Project with the Grant in an amount not to exceed TWENTY-NINE MILLION FIVE HUNDRED THOUSAND DOLLARS ( \$29,500,000), certain terms and conditions of which shall include those listed on the attached Exhibit E, provided that, to the extent that a portion of the Grant is not in the current budget, such portion shall be subject to appropriation; and (ii) the Project will be financed with tax credit equity and tax-exempt bonds. Notwithstanding the foregoing, all PDC financial participation in the Project, including the Grant, is contingent upon the full and final resolution of the Appeal on terms that permit use of TIF resources for the Project, as determined by PDC in its sole and absolute discretion, or PDC shall have determined, in its sole and absolute discretion, that it has sufficient funds available to provide the Grant and the necessary legal power and authority to consummate the transactions contemplated by this Agreement and otherwise perform its obligations under this Agreement and is further subject to PDC underwriting consistent with the goals and targeted population of the Project, PDC Loan Committee review and approval by PDC’s Executive Director, provided, however, that the amount of the Grant shall not be subject to reduction by reason of other discretionary PDC funding programs, priorities or projects in the River District URA or Amended River District.

3.1.2 **Predevelopment Grant.** PDC and Developer entered into, an Intergovernmental Agreement before the Effective Date making up to TWO HUNDRED FOURTEEN THOUSAND EIGHTY ONE DOLLARS (\$214,081.00) available to Developer to fund the activities described therein (the “**Predevelopment Grant**”).

3.2 **Plans, Drawings and PDC Design Review and Approval.**

3.2.1 **PDC Design Review and Comment/Approval, in General.** The Scope of Development is described in Exhibit D. Developer has prepared Preliminary Design Documents for the Project that is the basis for entering into this Agreement. Developer shall prepare Design Development Drawings and Construction Drawings and Technical Specifications for the Project and submit them to PDC for review and comment or 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 comment/approval process. Prior to submitting Drawings (defined below) to City Design Review, Developer must (i) obtain PDC comments on Design Development Drawings and provide PDC with Developer's responses thereto and (ii) obtain PDC approval of the design items of the Drawings that are related to the design objectives set forth in Section 3.2.2. 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 Comment/Approval.** Drawing from the Old Town/Chinatown Development Plan, adopted by City Council and PDC in December 1999, and other applicable policies and plans noted below, PDC will review and comment on Drawings for the Project that, in PDC's reasonable opinion, adequately address each of the following design objectives and will have the right to approve in its reasonable discretion the design items of the Drawings that impact the following design objectives.

- (a) **Urban and Pedestrian Environment.** The Project should be designed to foster an active pedestrian environment along NW Hoyt that enhances 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, landscape improvements, building lighting, and storefront entries located on the street. Areas conducive to external loitering and/or camping are strongly discouraged, and designated courtyards should be well-designed to support facility clients, residents, and the surrounding neighborhood.
- (b) **Neighborhood Compatibility.** The Project should be designed such that the buildings, site improvements, landscaping, and public art 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 building forms, incorporating high-quality, durable materials and colors.

3.2.3 **Limitations on Review of Design.** PDC's review and comment or approval, as applicable pursuant to Sections 3.2.1 and 3.2.2, of Drawings will occur in stages and will be progressive in nature, but limited to the following elements for each of which Developer shall submit to PDC a set of Drawings (each a "**Submittal**"):

- (a) **Draft Design Development Drawings (50% DD).** Elements, including Green Building elements, draft Design Review Application and Narrative, draft Development Drawings (50%) material and color samples, and draft Design Development Drawings (50%) cost estimate that were not: (i) previously approved; (ii) at a level of detail to be approved; or (iii) in conformance with the approved Preliminary Design Documents;
- (b) **Final Design Development Drawings (100% DD).** Elements, including Green Building elements, Final Design Review Application and Narrative, Final Development Drawings material and color samples, and

Final Design Development Drawings cost estimate that were not: (i) previously approved; (ii) at a level of detail to be approved; or (iii) in conformance with the approved Draft Design Documents Drawings;

- (c) **Draft Construction Drawings and Technical Specifications (50% CD).** Elements, including Green Building elements, Draft Construction Drawings and Technical Specifications (50%) cost estimate, and material and color samples that were not: (i) previously approved; (ii) at a level of detail to be approved; or (iii) in conformance with the approved Final Design Development Drawings;
- (d) **Final Construction Drawings and Technical Specifications (100% CD).** Elements, including Green Building elements, Final Construction Drawings and Technical Specifications cost estimate, and material and color samples that were not: (i) previously approved; (ii) at a level of detail to be approved; or (iii) in conformance with the approved Draft Construction Drawings and Technical Specifications (50% CD).

3.2.4 **Changes in approved Final Construction Drawings and Technical Specifications.** The Developer shall submit to PDC for review and comment or approval, as applicable, any substantive changes to the Drawings, but only to the extent the substance of such changes is subject to PDC review and comment or approval pursuant to Section 3.2.1, Section 3.2.2 or Section 3.2.3 of this Agreement. A substantive 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 commented on or approved the changes, as applicable, and Developer has responded to PDC's comments where required. 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.

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

3.2.6 **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 and approval 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 and other design meetings that shall be set on a schedule mutually agreeable to PDC staff and Developer. 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 deciding design and related issues. PDC shall have the full rights of consultation and input on all such issues not specifically subject to PDC's approval under Section 3.2. Developer shall give good faith consideration to all design suggestions and proposals made by PDC either on its own initiative or in response to each Submittal delivered to it by Developer. In any event, all PDC comments whether related to design suggestions and proposals or its approval rights under Section 3.2 shall be received by Developer within five (5) Business Days after receipt of a Submittal from Developer. Developer shall be obligated to consider only such comments or input as are provided by PDC not later than five (5) Business Days after receipt of a Submittal from Developer. Developer shall be obligated to provide PDC within five (5) Business Days after receipt of comments from PDC with a reasoned response to any design suggestion or recommendation provided by PDC that Developer in its good faith discretion elects to reject, provided that Developer shall be obligated to accept any approval or rejection by PDC of any design item related to the design objectives set forth in Section 3.2.2 if such approval or rejection is received by Developer before expiration of the five (5) Business Days after PDC's receipt of the related Submittal. In the event that the Parties have a dispute regarding PDC's approvals in connection with Section 3.2, such dispute shall be referred to the Parties' respective Executive Directors for final resolution promptly upon written request of Developer or PDC. The Executive Directors shall render their decision within ten (10) Business Days after referral. The decision of the Executive Directors shall balance the interests of PDC and Developer affected by the disputed design issue(s) according to their determination of the relative importance of such interests and otherwise consistent with the provisions of this Agreement. The scope of PDC's approval of the Drawings will be consistent with Sections 3.2.1, 3.2.2 and 3.2.3 of this Agreement. Subject to the foregoing and consistency with all conditions of City approvals, Developer shall have authority of final decision on all design and related issues.

- (b) **Separate Process for Partner Design Review.** The Parties acknowledge that a separate "partner review" process will also be employed to develop the Drawings, the Project Budget and related mission and program documents and that entities involved in such "partner review" process shall include at least PDC, Developer, BHDC and TPI. PDC Staff shall have the right to participate fully in all "partner review" meetings as set forth in the Schedule of Performance or otherwise. It is expected that, notwithstanding the separate PDC Staff design review and comment or approval process provided in Section 3.2.6(a) above, PDC will be a full and active participant in the "partner review" meetings and process to maximize the benefits and efficiencies of concurrent input and discussion of design matters with other participating partner agencies and entities.
- (c) **Community Input.** PDC and the Developer have previously 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 Citizen’s Advisory Committee, Developer will exercise its best good faith judgment in determining whether and to what extent to present the revised Project for further community input and advice.

- 3.3 **Diligent Completion.** Subject to the terms and conditions of this Agreement, Developer covenants to complete the development of the Project in substantial conformance with the Final Construction Drawings and Technical Specifications and in accordance with the Schedule of Performance. 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:
  - 3.3.1 Entering into all necessary architectural and construction contracts;
  - 3.3.2 Securing all necessary public entitlements and building permits;
  - 3.3.3 Securing all financing necessary to complete the Project, consistent with the Final Project Budget.
- 3.4 **Oregon Prevailing Wage Law.** The Parties hereby acknowledge that the Project is a “public work” subject to ORS 279C.800 to 279C.870 and the administrative rules adopted thereunder (the “Oregon Prevailing Wage Law”). Accordingly, Developer hereby agrees to comply with the Oregon Prevailing Wage Law.
- 3.5 **Inspection and Property Access.**
  - 3.5.1 **Before Conveyance.** Before the Conveyance, PDC shall allow Developer and Developer’s employees, agents and consultants to enter upon the Property in reasonable furtherance of the transaction contemplated herein pursuant to a written permit of entry.
  - 3.5.2 **After Conveyance.** For a reasonable period before the Conveyance, during construction of the Project, and until or for a reasonable period after the Certificate of Completion is issued for the Project, Developer shall have the right to access and use the eastern portion of Block U for construction staging for the Project pursuant to a Construction Period Ground Lease Agreement and Developer’s work on the Property 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.
- 3.6 **Safety Matters and Indemnification.** Developer shall:
  - 3.6.1 **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 any entry or inspection by Developer pursuant to Section 3.5.1 above or the performance of its construction.

- 3.6.2 **Indemnity from Liability Claims.** Indemnify, defend (at PDC's request) and hold harmless PDC, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with the death of, or, injury, loss or damage whatsoever caused to, any person or to the property of any person by act or omission of Developer in connection with any entry or inspection by Developer pursuant to Section 3.5.1 above or in the process of the construction work, except to the extent caused by the negligence or intentional acts of PDC. PDC shall indemnify, defend (at Developer's request) and hold Developer harmless from all claims, costs, expenses and liabilities arising from the death of, or accident, injury, loss or damage caused to, any person or to the property of any person by act or omission of PDC in connection with any entry or inspection by PDC pursuant to Section 3.5.2 above, except to the extent caused by the negligence or intentional acts of Developer. The indemnities set forth in this Section 3.6.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.
- 3.6.3 **Indemnity from Liens.** Indemnify, defend (at PDC's request) and hold harmless PDC, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics', materialmen's, laborers' or other construction or statutory liens filed against any portion of the Property or the Project or arising from or related to construction on the Property or the Project performed by or at the request of Developer or Developer's contractors or agents. The indemnity set forth in this Section 3.6.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.
- 3.7 **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 Developer's contractors or agents or in connection with any construction on the Property or the Project, Developer shall, within thirty (30) days after the filing thereof, take whatever action is 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, 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, 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 fifteen (15) days thereafter cause the lien to be discharged of record.



**3.8 Certificate of Completion.**

**3.8.1 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 that the Project has been completed according to the Final Construction Drawings and Technical Specifications, except for punch-list items that do not materially affect the use of the Project for the purposes intended under this Agreement, (ii) Developer has completed all environmental remediation and abatement on the Property, if any, required of Developer under Sections 4.1.3 or 4.1.4, (iii) the City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project, (iv) Developer has provided PDC with evidence that the Project meets the applicable Green Building standard set forth in the Green Building Policy, and (v) PDC determines that any other improvements required by this Agreement have been completed in all material respects.

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

**3.8.3 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 fifteen (15) 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 fifteen (15) day period shall be deemed PDC's approval of Developer's request for the Certificate of Completion.

**4. ENVIRONMENTAL CONDITIONS, AND PARTIES' RESPONSIBILITY AND INDEMNITY**

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

**4.1.1 Environmental Due Diligence Reports.** Developer acknowledges receipt of copies of the Environmental Due Diligence Reports listed in attached Exhibit J.

**4.1.2 Environmental Disclosure.** The Property is within the study boundaries of the EPA Portland Harbor Superfund Site and PDC has responded to the CERCLA

104(e) Information Request Letter for businesses located near the Portland Harbor and provided all known environmental information on the Property to the EPA. To PDC's knowledge, there are no known or suspected releases of contamination to the Willamette River from the Property.

- 4.1.3 **Phase I Environmental Assessment.** Not later than 180 days prior to the Closing Date, PDC shall initiate a Phase I Environmental Assessment of the Property in conformance with the ASTM E 1527-05 process in compliance with the United States Environmental Protection Agency All Appropriate Inquiries (40 CFR Part 312). PDC shall provide a copy of the Phase I Environmental Assessment promptly after PDC's receipt thereof.
- 4.1.4 **Environmental Remediation Plan and Cleanup.** As soon as practicable following the Effective Date, but in no event later than the date therefor established by the Schedule of Performance, PDC and Developer shall agree on a comprehensive plan for PDC to perform or cause to be performed all environmental remediation of the Property known to be required under applicable law (the "**Environmental Remediation Plan**"). The Environmental Remediation Plan shall be consistent with the terms contained in that certain Memorandum dated March 24, 2008, from Dave Obern to Mike Greenburg (a copy of which is attached hereto as Exhibit L) under the DEQ Independent Cleanup Pathway. The Environmental Remediation Plan shall provide that PDC is responsible for the cost of all Required Commercial Excavation and all remediation work described therein, including all remediation of Special Soils (including Special Soils up to a depth of at least 14 feet in to-be-designated locations on the Property), provided that PDC's obligation for such costs shall not exceed \$500,000.00, subject to the provisions of Section 4.1.4 below. The Environmental Remediation Plan shall also provide, as its principal and essential goal, that PDC shall obtain from the Oregon Department of Environmental Quality, a No Further Action letter prior to the Closing Date (the "**No Further Action Letter**"). If PDC receives the No Further Action Letter prior to Closing, then Developer shall, from and after Closing, and in connection with the Project, comply with all restrictions, limitations, conditions and obligations set forth therein. If PDC does not receive the No Further Action Letter prior to Closing, PDC will request a DEQ Progress Letter that indicates the status of cleanup actions undertaken on the Property and the anticipated schedule to issue the NFA as well as any likely conditions, restrictions or obligations. Upon review, if the Parties are satisfied with the DEQ Progress Letter and with the current status of the environmental remediation or abatement, as appropriate, of the Recognized Environmental Conditions on the Property, and Developer elects in its reasonable discretion, by written notice to PDC, to proceed with Closing, then Developer shall comply with all restrictions, limitations, conditions and obligations set forth in the No Further Action Letter once issued by DEQ to the extent these relate solely to or are equitably allocable to the Property. PDC shall comply with all restrictions, limitations, conditions and obligations set forth in the No Further Action Letter once issued by DEQ that are not the responsibility of Developer pursuant to the preceding sentence.

- 4.1.5 **Unforeseen Environmental Conditions.** If Developer encounters, after Conveyance and prior to issuance of the Certificate of Completion, an Unforeseen Environmental Condition on the Property that was not caused, directly or indirectly by Developer, Developer shall suspend all related construction activities pending PDC's investigations under this Section 4.1.4. Developer shall also, promptly thereafter, notify DEQ (to the extent required by applicable law) and PDC of the Unforeseen Environmental Condition and provide PDC with any documentation regarding the circumstances of the discovery of the Unforeseen Environmental Condition, including but not limited to any documentation on the release of a Hazardous Substance on the Property . After discovery of an Unforeseen Environmental Condition on the Property, Developer shall allow PDC access to the Property to make such surveys and conduct such tests and investigations as PDC deems reasonably necessary or desirable to determine the nature and extent of the Unforeseen Environmental Condition. Developer hereby grants a license to PDC for PDC to enter on the Property to perform the foregoing surveys, tests and investigations which PDC shall conduct in accordance with applicable Environmental Laws. PDC will provide Developer with copies of any reports arising from such surveys, tests and investigations. Promptly after PDC's completion of the surveys, tests and investigations, the Parties shall meet to agree upon a source and method for funding the remediation or abatement, as applicable, of the Unforeseen Environmental Condition, which, upon reaching mutual agreement, Developer shall then complete as part of the Project, as a condition to issuance of the Certificate of Completion and in a manner necessary to obtain a No Further Action Letter or other approval as may be required from DEQ in respect of the Property. Developer shall comply with all restrictions, limitations, conditions and obligations set forth in the No Further Action Letter or other approval once issued by DEQ in respect of the Property. If the Parties are unable to agree on a source and method for funding the remediation or abatement within their respective existing authorizations, then PDC shall in good faith seek such additional PDC board authorizations, which may include additional funding authorization, and direction as may be prudent and appropriate in the circumstances. Such direction may include pursuit of other responsible parties of the Unforeseen Environmental Condition or performance of remediation or abatement of the Unforeseen Environmental Condition itself, as it determines necessary or appropriate in its sole discretion as a matter of right but not obligation, and Developer shall permit PDC access to the Property to do so.
- 4.1.6 **Developer Indemnification.** Developer shall be responsible for compliance with all Environmental Laws to the extent related to matters arising from its actions or omissions with respect to the Property , its business and the operation of the Project from and after the Closing Date, including but not limited to compliance with all restrictions, limitations, conditions and obligations imposed by DEQ pursuant to a No Further Action Letter, Underground Storage Tank Closure letter or Easement and Equitable Servitude applicable and/or equitably allocable to the Property , if any. In addition, Developer shall be responsible for all environmental remediation and abatement of Recognized Environmental Conditions and Unforeseen Environmental Conditions on the Property as and to the extent such obligations are imposed on Developer under Sections 4.1.3 or 4.1.4 above. Developer shall defend (at PDC's request), indemnify and hold harmless PDC, its successors and assigns, from and against all claims, costs,

expenses, losses, damages, and liabilities, 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 person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer, Developer's failure to comply with a restriction, limitation, condition or obligation imposed by DEQ pursuant to a No Further Action Letter, Underground Storage Tank Closure Letter or Easement and Equitable Servitude applicable and/or equitably allocable to the Property, if any, or Developer's failure to complete any environmental remediation or abatement of Recognized Environmental Conditions or Unforeseen Environmental Conditions on the Property required of Developer by Sections 4.1.3 or 4.1.4 above. The indemnity set forth in this Section 4.1.4 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

- 4.1.7 **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.

## 5. ASSIGNMENT AND TRANSFER PROVISIONS

- 5.1 **Restrictions on Transfer of the Property and Assignment of the Agreement.** 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.
- 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 customarily required of owners of similar real estate development projects similarly situated, or (c) the transfer or disposition will cause a material delay in completion of the Project.
- 5.2 **Approved 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 Developer is the sole owner of the assignee, directly or indirectly controls the assignee, or is the managing member or general partner of such

assignee and retains control of the operations of the assignee. Notwithstanding 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 in its reasonable discretion.

**6. RESERVED**

**7. RESERVED**

**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, except as expressly set forth herein, any Mortgage approved in writing by PDC 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, 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 Project 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. Failure of PDC to send a copy of such notice or demand to a Mortgagee shall not prevent or limit in any way PDC's rights and remedies under this Agreement or create any liability for PDC, unless any agreement between PDC and a Mortgagee provides otherwise.

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 comprising the Project, 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 Drawings and Technical 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.

- 8.1.5 **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 a 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 prosecute to completion such cure within sixty (60) days after the written notice from PDC, provided that if cure cannot reasonably be completed within such 60 day period, then within such additional time as is reasonable in the circumstances if and only if Developer commences cure within such 30 day period and thereafter pursues cure diligently and in good faith to completion. 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 an 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 Final Construction Drawings and Technical 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, provided that if cure cannot reasonably be completed within such 60 day period, then within such additional time as is reasonable in the circumstances if and only if PDC commences cure within such 30 day period and thereafter pursues cure diligently and in good faith to completion. Failure of conditions precedent not caused by PDC shall not constitute a default but any such failure shall be subject to Sections 1.5.2 and 1.5.3 above.
- 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, or (ii) 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 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 9.5 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 G. 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 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 revert 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 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 reversion 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, and (e) 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 PDC (if PDC provided financing for the Project), less any gains or income withdrawn or made as to the Project; 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 or (ii) specifically enforce the obligations of PDC under this Agreement.
- 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 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 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, PDC shall designate a Project Manager. At the Effective Date, the PDC Project Manager is John Warner.
- 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:

Michael Andrews, Director  
Development and Community Revitalization  
135 SW Ash Street, Suite 500  
Portland, OR 97204

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

John Warner  
Portland Development Commission  
222 NW 5<sup>th</sup> Ave.  
Portland, OR 97209

with a copy to:

Portland Development Commission  
Attn: General Counsel  
222 NW 5<sup>th</sup> 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 **Compliance with PDC Policies.** PDC and Developer have shared values in respect of and as evidenced by their respective public policies and programs relevant to the Project. The Parties acknowledge and agree that Developer's compliance with its Economic Participation Policy satisfies PDC's requirements relating to: (i) utilization goals relating to PDC's Business Equity Program (Emerging Small Businesses, Minority Business Enterprises, and Women's Business Enterprises), and (ii) PDC's Workforce Equity Program, including PDC's Workforce Training and Hiring Program. A copy of Developer's Economic Participation Policy is attached hereto as Exhibit I.
- 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 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.
- 10.9 **Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.
- 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 exhibits and attachments hereto are the entire agreement between the Parties on the subject matter hereof. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no representations or warranties made by either Party, implied or express, other than those contained in this Agreement.
- 10.15 **Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties, and approved by the PDC Board of Commissioners. Notwithstanding this general requirement, the PDC Executive Director may approve minor modifications to this Agreement without Board of Commissioners approval. “Minor Modifications” include:
  - 10.15.1 Changes in the Schedule of Performance when deemed warranted by the Executive Director which do not exceed sixty (60) days; and
  - 10.15.2 Corrections of errors, clarifications, or minor modifications that do not change the substantive content of the Agreement.
- 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 permitted assigns of the Parties.
- 10.17 **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 other than that of independent contracting parties.
- 10.18 **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.

- 10.19 **Approvals.** Where this Agreement requires the approval of PDC, PDC will approve or disapprove in writing within thirty (30) 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, to the extent governed by applicable loan documents, 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 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.
- 10.20 **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.
- 10.21 **Time of Essence.** Time is of the essence of this Agreement.
- 10.22 **No Third-Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.
- 10.23 **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 hereto as Exhibit H. 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.
- 10.24 **STATUTORY WARNING. 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 OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22.**

(Signature Page Follows)

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

**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:

\_\_\_\_\_  
Lisa Gramp, Assistant General Counsel  
Portland Development Commission

**HOUSING AUTHORITY OF PORTLAND**,  
an Oregon public body corporate and politic

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

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

Title: \_\_\_\_\_

**EXHIBITS**

<b>Exhibit A</b>	Form of Deed
<b>Exhibit B</b>	Project Budget
<b>Exhibit C</b>	Schedule of Performance
<b>Exhibit D</b>	Scope of Development
<b>Exhibit E</b>	Grant Term Sheet
<b>Exhibit F</b>	Form of Certificate of Completion
<b>Exhibit G</b>	Form of Quitclaim Deed and Escrow Instructions
<b>Exhibit H</b>	Form of Memorandum of Agreement
<b>Exhibit I</b>	Developer's Economic Participation Policy
<b>Exhibit J</b>	Environmental Due Diligence Reports
<b>Exhibit K</b>	Green Building Policy
<b>Exhibit L</b>	Memorandum dated March 24, 2008, from Dave Obern to Mike Greenburg



**EXHIBIT A**  
**FORM OF**  
**BARGAIN AND SALE DEED**

After recording return to and,  
until a change is requested, all  
tax statements shall be sent to:

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**BARGAIN AND SALE DEED**

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 “Grantor” or “PDC”), conveys to the Housing Authority of Portland, an Oregon public body corporate and politic (herein called the “Grantee” or “Developer”), the following described real property (herein called the “Property”):

LOTS 2, 3, 6 AND 7 OF BLOCK U, COUCH’S ADDITION TO THE CITY OF PORTLAND, IN THE  
CITY OF PORTLAND, COUNTY OF MULTNOMAH, STATE OF OREGON

The conveyance is made pursuant to that certain Agreement for Disposition and Development of Property in the River District Urban Renewal Area known as the Western Portion of Block “U” between Developer and PDC, dated January \_\_\_\_\_, 2009, a Memorandum of which was recorded on \_\_\_\_\_, 20\_\_ as Document No. \_\_\_\_\_, Records of Multnomah County, Oregon (the “DDA”). Any capitalized terms in this Bargain and Sale Deed shall have the meanings set forth in the DDA, unless otherwise defined herein. The Purchase Price for the Property is ZERO DOLLARS (\$0.00). Other property or value was either part or the whole consideration.

The conveyance is subject to the following:

1. A condition subsequent to this conveyance, that PDC shall have the option, in the event of a default by Developer before the Closing Date or at any time 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, and its successors and assigns, in the Property. After delivery of such Notice of Termination, and in the event the default is not remedied within the 30-day period in the manner stated in the Notice of Termination, Developer or its successors and assigns shall reconvey the Property to PDC by quitclaim deed, pursuant to the Escrow Instructions in Exhibit G to the DDA.
2. 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 entry to the Property and power of termination in PDC described in subparagraph 1 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 River District Urban Renewal Area approved by the City Council of the City on \_\_\_\_\_, 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 the DDA to continue after the delivery of this Deed.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO 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 OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22.

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 \_\_\_\_\_ 2009.

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 on \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ and \_\_\_\_\_ as Chairman and Secretary of the City of Portland  
Development Commission, on its behalf.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_



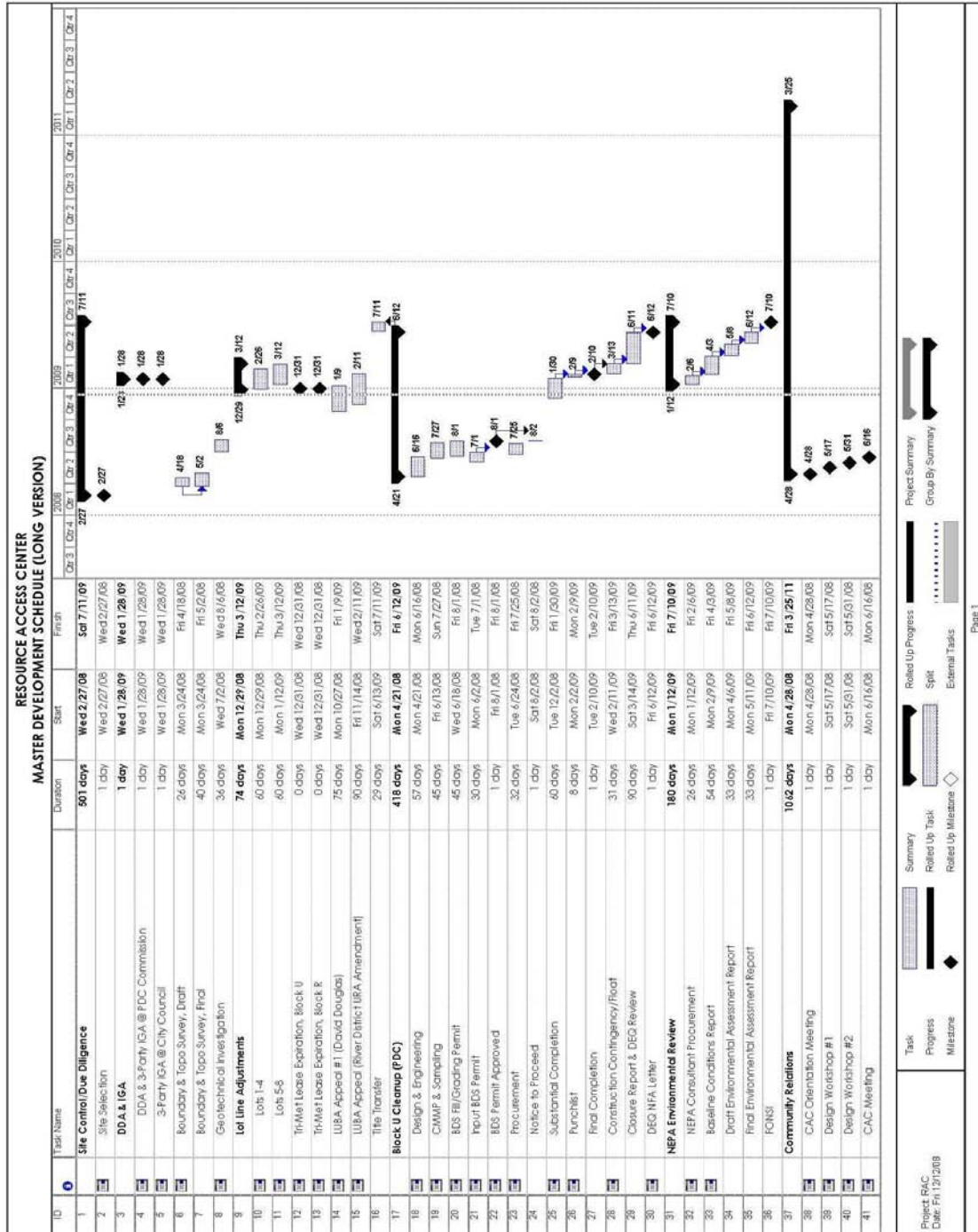
**EXHIBIT B**  
**PROJECT BUDGET**

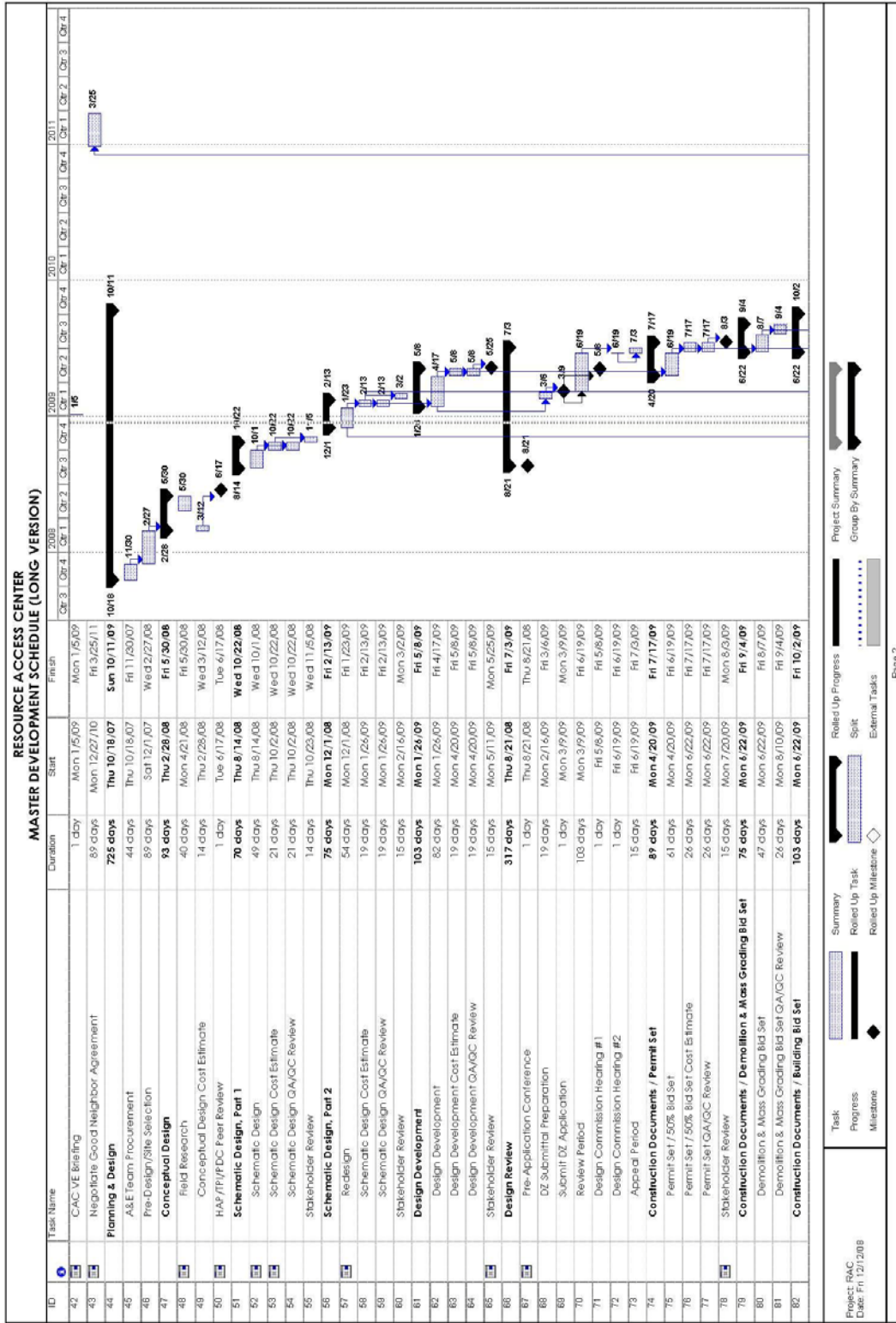
*The Resource Access Center*  
**TOTAL PROJECT SOURCES & USES**  
Draft: December 5, 2008

<b>PROJECT SOURCES</b>	
Low-Income Housing Tax Credits	9,106,614
HAP Lot Sale Proceeds	3,495,354
HAP Recontributed Development Fe	3,000,000
PDC TIF Contribution	29,500,000
BETC / ETO	500,000
General Partner Equity	10
Bond Proceed Interest Earned	256,607
Gap	<u>0</u>
<b>Total</b>	<b>45,858,585</b>

<b>PROJECT USES</b>	
Acquisition Costs	0
Construction Costs	29,495,274
Development Costs	1,386,709
General Fees	8,163,276
Construction Loan Costs/Fees	177,110
Tax Credit Fees	83,430
Bond Issuance Fees	290,384
Interest	3,600,309
Reserves/Contingency	<u>2,662,091</u>
<b>Total</b>	<b>45,858,585</b>

## EXHIBIT C SCHEDULE OF PERFORMANCE





Project RAC  
 Date: Fri 12/1/2008

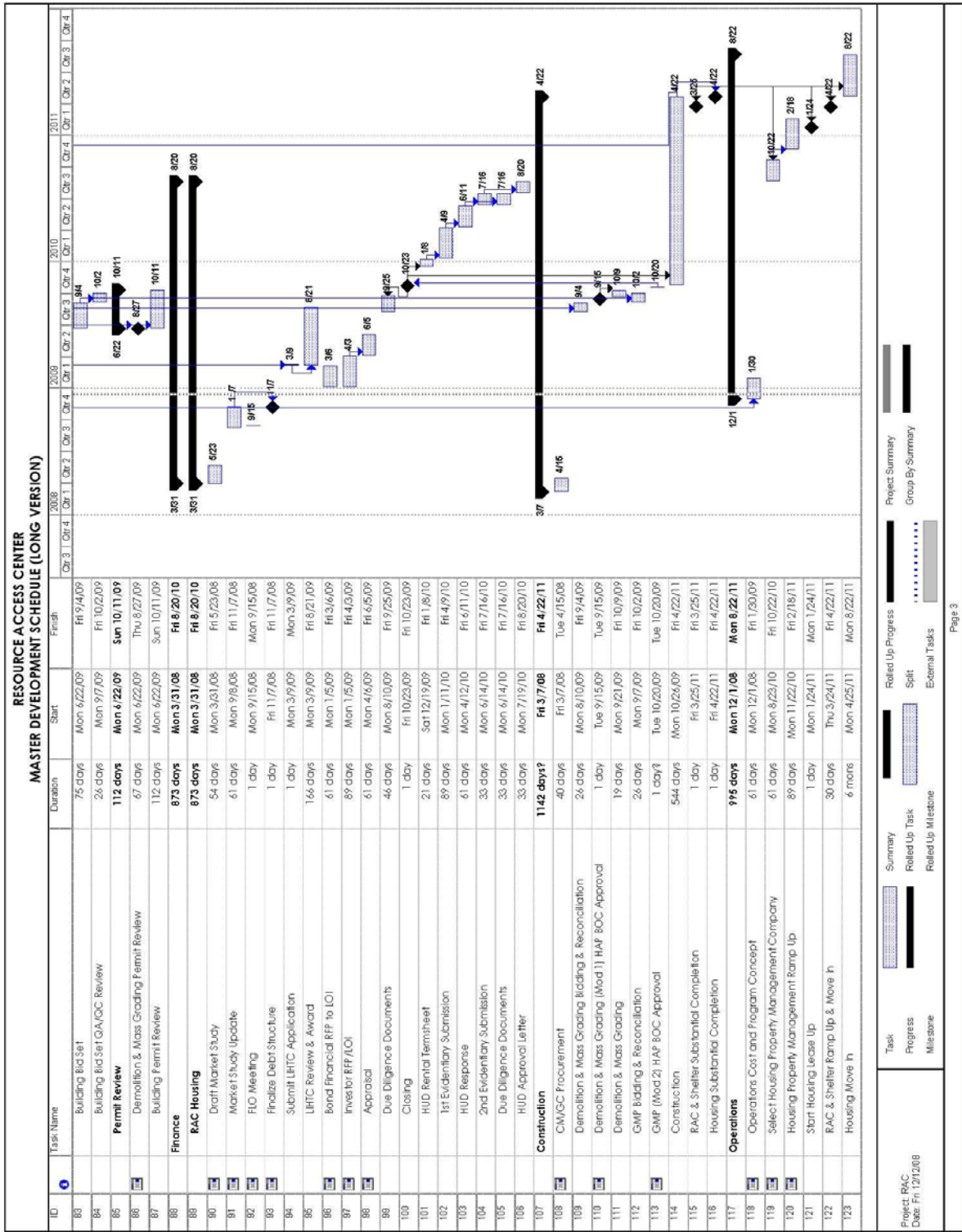
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 Progress: [Bar with diamond icon]  
 Milestone: [Diamond icon]

Summary: [Bar with diamond icon]  
 Rolled Up Task: [Bar with diamond icon]  
 Rolled Up Milestone: [Diamond icon]

Summary: [Bar with diamond icon]  
 Rolled Up Progress: [Bar with diamond icon]  
 Split: [Bar with diamond icon]  
 External Tasks: [Bar with diamond icon]

Project Summary: [Bar with diamond icon]  
 Group By Summary: [Bar with diamond icon]

Page 2





## EXHIBIT D

### SCOPE OF DEVELOPMENT

**BLOCK U:** HAP will own Lots 2,3,6 and 7 of Block U and utilize a ground lease and condominium structure for the Development.

**HOUSING:** (~63,000 sf) A limited partnership with HAP as the General Partner will own the housing. The Development will provide approximately 130 studio units serving people who earn at or less than 35% of the AMI. The City shall consider and account for all 130 units to meet the City's definition of Permanent Supportive Housing under the City's Ten Year Plan to End Homelessness. The 130 units of housing shall be programmed to provide housing for the following populations:

- 130 studio units of approximately 325 square feet each.
- All units to receive operating subsidy, currently estimated at 100 units receiving project-based Section 8 subsidy and 30 units receiving public housing operating subsidy.
- All to be restricted to a 60% AMI by the restrictive use agreement securing the Low Income Housing Tax Credit and benefiting Oregon Housing and Community Services. Additionally, all units to be further restricted to 35% AMI by the restrictive use agreement securing and providing benefit to the City of Portland.
- All units will be managed as Permanent Supportive Housing, meaning they will be made available to households who:
  - earn up to 35% MFI;
  - are homeless or at risk of homelessness, including those who may be leaving other systems of care (corrections, hospitalization, etc.) without a place to live;
  - experience chronic health conditions that are at least episodically disabling (e.g. mental illness, HIV/AIDS, and substance use issues) or other substantial barriers to housing stability;
  - who would not be able to retain stable housing without tightly linked supportive services;
- Screening criteria will be negotiated by HAP and BHCD to reflect a shared desire to house vulnerable homeless individuals, while not creating an unsafe living environment for residents or jeopardizing the overall successful management of the Project.

**RESOURCE ACCESS CENTER:** (~21,800 sf) The Development will include the RAC, a day use center that will have the physical capacity to serve up to 220 at any one point in time and shall be designed and developed so as to facilitate the provision of the programmatic elements listed below.

**SHELTER:** (~14,900 sf) The Development will include a 90- bed men's shelter with sleeping, living and dining areas, as well as food storage, restrooms, and laundry facilities.

**PARKING:** (~14,400 sf) The Development will include mechanical rooms, bicycle parking, and vehicle parking with approximately 20 parking spaces for vehicles and approximately 100 spaces for bicycles.

**(b) Programmatic Development Description:**

**SHELTER:** The shelter will be a replacement for the shelter currently operated by TPI on Glisan Street. TPI will operate the shelter by leasing space from HAP.

**RESOURCE ACCESS CENTER:** The RAC will provide a range of services to homeless and other at-risk populations including access to housing information, ID assistance, birth certificate assistance, TriMet tickets, food boxes, hygiene items, local and long distance phone service, access to case management and shelter waitlists, lockers, showers, clothing rooms, laundry facilities, mail and message service, internet/computer stations, bicycle parking, and a pet area. Physical and mental health services along with medication assistance will be available. The RAC will include indoor and outdoor public spaces and space for a number of service providers. Transition Projects Inc. will operate the RAC by leasing space from HAP.

**EXHIBIT E**

**GRANT TERM SHEET**

Capitalized terms not defined in this Grant Term Sheet will have the definitions given in the Disposition and Development Agreement (the “DDA”).

Grantor:	Portland Development Commission (“PDC”)
Grantee:	Housing Authority of Portland (“HAP”)
Principal Amount of Grant:	The Grant will be in an amount equal to the gap needs in the construction and permanent financing structure for the Project, however the amount of the Grant shall not exceed \$29,500,000.
Use of Grant Proceeds:	HAP will use the Grant proceeds (a) directly on construction of the Project or (b) in combination with other capital, grants, or borrowings to make a loan to a low income housing tax credit partnership related to the construction of the Project. The proceeds of the Grant may only be used to cover TIF-eligible construction costs of the Project.
Disbursement:	The Grant proceeds will be disbursed on an eligible cost incurred basis.
Repayment:	The failure of the Grantee to use the funds only for the purposes specified in the Grant Agreement shall be an event of default, which shall trigger repayment of the Grant. The failure of the Grantee to comply with the Regulatory Agreement shall also be an event of default triggering the repayment of the Grant.
Collateral:	The Grant will be unsecured.
Regulatory Agreement:	The Grant is subject to HAP’s and the tax credit partnership’s consent to the Regulatory Agreement. The Regulatory Agreement will be recorded against the Property , but shall acknowledge that it does not apply to non-housing condominium units within the Project.
Other Terms:	The Grant is subject to approval by the PDC Loan Committee and Executive Director, within the parameters set forth in this Exhibit. PDC will perform its underwriting of the Grant in manner consistent with the goals and targeted population of the Project.
Special Terms and Conditions:	Any funds advanced by PDC in excess of \$28 million and up to \$29.5 million is subject to standard underwriting and a final determination of need by PDC based upon low-income housing tax credit yield, investor required reserves and actual construction costs of the Project pursuant to all City requirements. If funds advanced by PDC pursuant to the foregoing aggregate less that \$28 million, HAP shall be entitled to receive the difference between such aggregate amount and \$28 million for use in connection with the Project for a TIF eligible purpose.

**EXHIBIT F**

**FORM OF CERTIFICATE OF COMPLETION**

After recording return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF COMPLETION**

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”) hereby certifies that the Housing Authority of Portland, an Oregon public body corporate and politic (“Developer”), has satisfactorily completed construction of the Project as described in the Agreement for Disposition and Development of Property in the River District known as the Western Portion of Block “U”, dated January \_\_\_\_, 2009 (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:

the Project has been completed according to the Final Construction Drawings and Technical Specifications, except for punchlist items that do not materially affect the use of the Project for the purposes intended under the DDA, Developer has completed all environmental remediation and abatement on the Property, if any, required of Developer under Sections 4.1.3 or 4.1.4 of the DDA, the City of Portland has issued a temporary or permanent Certificate of Occupancy with respect to the Project, Developer has provided PDC with \_\_\_\_\_, evidencing that the Project meets the applicable Green Building standard set forth in the Green Building Policy, and any other improvements required by the DDA have been completed 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,

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

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) and Section 4.1.5 (DEVELOPER INDEMNIFICATION).

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 entry to the Property or power to terminate Developer’s title to the Property and revest such title in PDC.

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, on its behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

**EXHIBIT G**

**FORM OF QUITCLAIM DEED AND ESCROW INSTRUCTIONS**

After recording return to and,  
until a changes is requested,  
all tax statements shall be sent to:

Portland Development Commission  
222 NW 5<sup>th</sup> Avenue  
Portland, OR 97209  
Attn: General Counsel

**QUITCLAIM DEED**

The Housing Authority of Portland, an Oregon public body corporate and politic (“Grantor”), releases and quitclaims to 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 “Grantee”), all right, title and interest in and to the following described real property:

---

Other property or value was either part or the whole consideration.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO 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 OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22.

IN WITNESS WHEREOF, Grantor has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF PORTLAND, a municipal corporation of the State of Oregon,  
acting by and through the PORTLAND DEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_, on its behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

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, on its behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

**EXHIBIT G (Continued)**

**ESCROW INSTRUCTIONS FOR QUITCLAIM DEED**

\_\_\_\_\_ Title Insurance Company  
\_\_\_\_\_  
\_\_\_\_\_

Attention: [INSERT TITLE OFFICER]

Re: Escrow No. \_\_\_\_\_

The Housing Authority of Portland, an Oregon public body corporate and politic (“Developer”), has entered into that certain Agreement for Disposition and Development of Property in the River District known as the Western Portion of Block “U” (“DDA”) with the City of Portland, Oregon acting by and through the Portland Development Commission (“PDC”) dated as of January \_\_, 2009, a Memorandum of which was recorded \_\_\_\_\_, 20\_\_ as Document No. \_\_\_\_\_, Records of Multnomah County, Oregon, whereby PDC will convey to the Developer or its assignees certain real property (the “Property”) in the River District 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, PDC 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 PDC a notice signed by PDC’s Executive Director certifying that a copy of said notice has been delivered concurrently to Developer and certifying that a termination in favor of PDC 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 PDC 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 PDC that PDC has withdrawn the Notice of Termination, or unless you are prohibited from recording the Quitclaim Deed 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 PDC 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 PDC 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: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and agreed to this  
\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_, Title Insurance Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT H

### FORM OF MEMORANDUM OF AGREEMENT

After recording return to:

Portland Development Commission  
222 NW Fifth Avenue  
Portland, Oregon 97209-3859  
Attn: General Counsel

#### 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 the Housing Authority of Portland, an Oregon public body corporate and politic (“Developer”), with an address of \_\_\_\_\_, entered into an Agreement For Disposition And Development of Property in the River District known as the Western Portion of Block “U”, dated as of January \_\_, 2009 (the “Agreement”) relating to certain 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 either part or 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 Developer closes on its financing in connection with the Project or at any time before PDC issues a Certificate of Completion for the Project, 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 G 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 entry to the Property or power to terminate the title, rights and interests of Developer in the Property 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.

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: \_\_\_\_\_  
Title: Executive Director

\_\_\_\_\_, 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, on its behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

This instrument was acknowledged before me on \_\_\_\_\_, 200\_\_, by \_\_\_\_\_,  
\_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on its behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

**Exhibit A to Memorandum of Agreement**

**Legal Description**

Lots 2, 3, 6 & 7 of "Block "U", COUCH'S ADDITION TO THE CITY OF PORTLAND, in the City of Portland, Multnomah County, Oregon

**EXHIBIT I**

**DEVELOPER'S ECONOMIC PARTICIPATION POLICY**



**MEMORANDUM**

**SUBJECT: RESOLUTION 06-10-06**  
**Economic Participation in Contracting Policy**

**TO: BOARD OF COMMISSIONERS**

**FROM: Steven D. Rudman 503-802-8455**  
**Contact: Jerry Walker 503-802-8509**

**DATE: October 10, 2006**

**ISSUE:**

Resolution 06-10-06 authorizes the adoption of a policy that promotes increased economic participation of target businesses (certified Disadvantaged Businesses, Minority -Owned Businesses, Women-Owned Businesses and Emerging Small Businesses) on HAP projects, including professional services, and authorizes HAP to utilize the City of Portland's Workforce Training and Hiring Program on construction projects.

**BACKGROUND:**

*In December 2002, the Board of Commissioners approved Resolution 02-12-05, which adopted the Equal Opportunity in Public Contracting policy. The policy was designed to promote increased participation of target businesses on HAP projects. The primary goal of the policy was to provide opportunities to historically underutilized and disadvantaged businesses. The policy was based on corresponding policies and best practices of peer agencies and was designed and adopted to facilitate the aspirational goals HAP set for the HOPE VI New Columbia project.*

In January of 2004, Resolution 04-01-04, approved by the Board of Commissioners, amended the Equal Opportunity in Public Contracting Policy and renamed the effort the 2004 Supplier Diversity Plan. This was done in order to refine the former policy and eliminate initiatives that proved not to be a good fit for HAP. The two initiatives eliminated were participation in the City of Portland's Sheltered Market Program and requiring Prime Contractors to document Good Faith Efforts to secure target businesses as subcontractors on construction projects. The Sheltered Market Program was less than successful because it resulted in projects where there were no bids received. HAP was not consistent in applying good faith efforts requirements in all construction projects because in some instances all bids had to be rejected as non-responsive because the good faith effort requirements proved to be to confusing and burdensome to contractors.

In contrast, the policy before you will remedy prior problems encountered under the Equal Opportunity in Public Contracting Policy adopted in December of 2002, by reestablishing and refining programs that were eliminated in the 2004 policy. This will be accomplished by utilizing a select bidding process that includes the City of Portland's Sheltered Market Program as well as all state certified target businesses, as a first source on projects valued at less than \$100,000.00. The success achieved by Walsh Construction on New Columbia supports this new model for increased economic participation. By adopting this resolution, problems encountered in the prior Good Faith Effort model should be eliminated with the new policy's clarification and less stringent documentation submittals.

*This proposed policy represents analysis and refinements of HAPs prior efforts. The Agency's experience in using multiple models for pursuing increased target business participation combined with best practices of other public agencies should result in more effective strategies to increase target business participation in HAP's contracting processes.*

**RECOMMENDATION:**

Staff recommends approval of Resolution



06-10-06.

## **Housing Authority of Portland Economic Participation in Contracting Policy**

### **Purpose**

The purpose of this policy is to promote increased economic participation of target businesses (certified Disadvantaged Businesses, Minority -Owned Businesses, Women-Owned Businesses and Emerging Small Businesses) on HAP projects, including professional services; and authorizes HAP to utilize the City of Portland's workforce training and hiring program on all construction projects.

To demonstrate the Housing Authority of Portland's organizational commitment to this policy, the following key strategic objective will be adhered to on all professional services and construction projects:

- An aspirational goal of 20% participation of targeted businesses on professional services and construction contracts;

In addition:

- For construction contracts over \$200,000, an aspirational goal of a minimum of 20% of labor hours in each apprenticeable trade will be worked by state registered apprentices

These strategic objectives will be met by the by the following operational practices:

- Utilization of firms certified by the State of Oregon Office of Minority, Women, and Emerging Small Businesses and the City of Portland's Sheltered Market Program as a first source for contracts between \$5,000 and \$100,000;
- Use of the Workforce Training and Hiring Program (WTHP) through the City of Portland;
- Requiring that prime contractors make Good Faith Efforts in soliciting sub-contract work to the target firms, with an emphasis on real results;
- Effective language addressing target business participation in our RFPs, both construction and non-construction;
- The use of a Consultant Roster to provide contracting opportunities for professional, technical and expert services provide by small and medium size firms including target businesses firms and;
- The placement of RFP and Bid notices on the State of Oregon's electronic bid notification system (ORPIN), and notify ethnic chambers of commerce.
- Other project specific or agency wide efforts implemented by the Purchasing Manager for the purpose of increasing economic participation for targeted businesses.

Exemptions from these strategic objectives and operations practices require prior approval from the Purchasing Manager.

### **POLICY COMPONENTS**

The Housing Authority of Portland has established this policy in accordance with state and federal law. The primary goal of this policy is to provide opportunities to historically underutilized and disadvantaged businesses. HAP aspires to reach an annual overall goal of 20% participation of targeted business firms (DMWESB<sup>1</sup> firms) on construction and professional, technical and expert service contracts. To achieve this goal, HAP will employ a multifaceted

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<sup>1</sup> **DMWESB:** For purposes of this document means state-certified disadvantaged businesses (DBE), minority-owned businesses (MBE), woman-owned businesses (WBE) and emerging small businesses (ESB).

approach to procuring contractors. Listed below are the major programs and processes to be used by HAP to achieve this goal:

**1. STATE OF OREGON OFFICE OF MINORITY, WOMEN, AND EMERGING SMALL BUSINESSES DIRECTORY:**

Firms certified with OMWESB (Office of Minority, Women and Emerging Small Business)<sup>2</sup>, which includes firms in the City of Portland Sheltered Market Program, are to be considered as the first source for construction contracts where there is sufficient availability of these firms to do the work. Contracts will have a dollar value of \$5,000 to approximately \$100,000.

HAP may, at its option, identify certain projects in the \$100,000 - \$200,000 range on which it will allow participating DMWESB firms to compete among themselves as prime contractors.

This will apply to federally funded and mixed-finance projects, as well as projects with no federal funding, providing that HAP is letting the solicitation.

**2. WORKFORCE HIRING AND TRAINING:**

HAP will utilize the City of Portland's workforce hiring and training program on all construction projects.

The City of Portland Purchasing Bureau administers this program. This program applies to projects greater than \$200,000 and requires contractors to ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade are worked by state registered apprentices. Program requirements are outlined in bid documents. It is the contractor's responsibility to read and fully understand the bid specifications and to comply with all provisions of program.

Evening Trades Apprenticeship Program/Construction Apprenticeship Workforce Solutions (ETAP/CAWS) graduates will be given first opportunity.

HAP staff will meet with City at monthly compliance meetings to assess the participation of ETAP/CAWS and other apprentices and diversity on all projects and confirm that it meets HAP requirements. HAP Bids and RFPs will stipulate the use of this program. This procedure will be uniform to that of other local agencies to the maximum extent possible.

**3. GOOD FAITH EFFORTS:**

Good Faith Efforts are the requirement that Prime Contractors or Prime Consultants contact targeted businesses (DMWESB) subcontractors for subcontractor or sub-consultant work needed and make them aware of sub-bid opportunities and document this effort and the results. Good Faith Efforts will be applied to all HAP construction bids and RFPs. The program will be uniform with other local public agencies, to the fullest extent possible, while looking for focused efforts on the part of Prime Contractors or Prime Consultants. HAP recognizes that Good Faith

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<sup>2</sup> Firms certified with the Office of Minority Women and Emerging Small Businesses (OMWESB) as DBE, MBE, WBE or ESB.



Efforts alone cannot accomplish the goals of this policy, therefore; HAP will concentrate on results and use Good Faith Efforts as one of several tools to achieve those results.

#### **4. PARTICIPATION OF TARGETED BUSINESSES (DMWESB FIRMS) IN SOLICITATIONS FOR PROFESSIONAL SERVICES:**

HAP will address targeted business participation in informal procurements for professional services and all Requests for Proposal solicitations. This may include addressing proposer's affirmative action practices in hiring and subcontracting; how they would propose to reach the 20% goal; their past history with participation of targeted business subcontractors; and what requirements in this arena they will have in place for first tier subcontractors.

HAP will also post solicitation notifications on the State of Oregon's Procurement Information Network (ORPIN) in order to maximize access to procurement and contracting information by State certified targeted businesses.

#### **5. COMPLIANCE:**

All formal RFPs and Bids exceeding \$100,000 will be reviewed by Purchasing before publication for consistency with this policy. The Purchasing Manager or designee on an annual or more frequent basis will audit informal procurements.

Contracts of \$5,000 to \$100,000 will be reported to the Purchasing Manager and the Deputy Executive Director on a monthly basis with specifics on how HAP is meeting the objectives of this policy. The Executive Director will be informed of results achieved on a quarterly bases and the Board of Commissioners will be informed annually on the agency's achievements.

#### **6. SMALL BUSINESS PARTICIPATION:**

HAP will strive for balanced participation between certified, Minority-owned, Women-owned, Disadvantaged, and Emerging Small Businesses. In addition to conducting targeted outreach, HAP staff will participate and attend monthly meetings of the Oregon Association of Minority Entrepreneurs, The Native American Chamber of Commerce, the Hispanic Chamber of Oregon, the Minority Business Opportunity Committee and the Portland Area Business Association. In addition, HAP staff will work with other public agencies on multi-jurisdictional outreach efforts in order to publicize contracting opportunities with the agency.



RESOLUTION 06-10-06

ADOPTION OF ECONOMIC PARTICIPATION IN CONTRACTING POLICY

**WHEREAS,** The Housing Authority of Portland is committed to the principles of increasing economic participation of target businesses in contracting;

**WHEREAS,** The Housing Authority of Portland is committed to workforce training and hiring programs that result in workforce diversity;

**WHEREAS,** The Housing Authority of Portland has adopted prior policies that supported organizational initiatives to achieve greater economic participation of target businesses and workforce diversity with hiring and training programs;

**WHEREAS,** The Housing Authority of Portland reviewed and analyzed prior efforts and experiences in order to refine and strengthen its contracting policy; and

**WHEREAS,** The policy takes into consideration applicable state and federal law and meets the requirements of the Housing Authority of Portland;

**NOW THEREFORE, BE IT RESOLVED,** that the Board of Commissioners of the Housing Authority of Portland adopt the Economic Participation in Contracting Policy.

Adopted October 17, 2006:

**HOUSING AUTHORITY OF PORTLAND**

\_\_\_\_\_  
Kandis Brewer Nunn, Chair

Attest:

\_\_\_\_\_  
Steven D. Rudman, Secretary/Treasurer

**EXHIBIT J**

**ENVIRONMENTAL DUE DILIGENCE REPORTS**

- Phase 1 Environmental Site Assessment, Union Station South D - Block U – RZA February 1991
- Preliminary Remedial Investigation Report - Block U, Hart Crowser March 6, 2001
- Remedial Investigation Report - Block U, Hart Crowser, January 30,2003
- Voluntary Cleanup Agreement – Block U, PDC May 20, 2003
- Risk Assessment Work Plan - Block U, Hart Crowser, June 27, 2003
- Cleanup Approach & Restart ICP – Block U, PDC, March 24, 2008
- Pre-Construction Investigation – Block U, Hart Crowser, July 24, 2008

**[TO BE UPDATED TO REFLECT ANY NEW INFORMATION NOW AVAILABLE]**

**EXHIBIT K**

**(PDC's Green Building Policy)**

**EXHIBIT L**

**(Memorandum dated March 24, 2008, from Dave Obern to Mike Greenburg)**

**[TO BE UPDATED – CLEAN UP PLAN NEEDED]**

March 24, 2008

**MEMO**

**TO:** Mike Greenburg, DEQ Cleanup & Spill Response  
**FROM:** Dave Obern, Construction & Environmental Services Manager  
**RE:** Cleanup Approach & Restart ICP  
Block U – NW 6<sup>th</sup> Avenue and Hoyt Street

This memo will outline the Cleanup Approach and restarting the DEQ Independent Cleanup Pathway — Voluntary Cleanup Program for Block U (one full city block) in response to property disposition by PDC and redevelopment by the Housing Authority of Portland.

The objective is to prepare all actions necessary to facilitate redevelopment of the site anticipated in fall of 2008. PDC has retained the firm of Hart Crowser to assist with this effort. The memo outlines Section A. Background and Section B. Cleanup Approach for this site.

Upon general concurrence with DEO, PDC intends to immediately initiate actions with the general timeline outlined below. We look forward to any comments or suggestions you may have on this cleanup approach ASAP so we can meet the critical time schedule.

**A. Background**

In 1999 a Phase I Environmental Assessment prepared by AMEC Earth and Environmental was undertaken. In 2001 a Phase 2 Environmental Assessment including a geophysical was undertaken by Hart Crowser. The site was originally enrolled in the DEQ ICP program then moved in 2003 to the VCP program.

A summary of environmental conditions follow:

**SE Quadrant (former service station)**

**Debris Fill:** Debris fill within the area of the former service station area has diesel and heavy oil TPH as well as relatively high levels of PAH's and Lead. These conditions exist down to about 8 ft bgs. and appear to be fill material probably placed during the decommissioning of the stations UST's or during demolition of a former service station. Four of the lead values for this zone were 599, 610, 937, and 1870 ppm. This material also contains arsenic samples in the 30-40 ppm range.

**Former fueling areas:** These contaminants are present below 8 in the area of the former service station. They are probably releases from station operation or the former UST's. Gasoline (3,170 ppm) and VOC's were detected about 10 ft bgs in boring U-16. This is a fairly localized contamination.

**SW Quadrant**

A minor spill over of the debris fill from the SE corner from the former service station debris fill. No other recognized environmental conditions identified.

### **NW Corner**

A minor amount of debris fill material is present near boring U-1 in the NW corner of the property. This material is very similar to that found in the SE portion near the former service station — it may be remnants of the demolition of the service station.

### **NE Quadrant**

Former hotels located side by side, no recognized environmental conditions identified.

### **Groundwater**

A Beneficial Water Use Determination (BWUD) for the site initially determined that there are no current or reasonably likely future uses for the groundwater within the Locality of Facility,

From 2001 to 2004 a Remedial Investigation and baseline Risk Assessment was prepared by Hart Crowser. In 2005 PDC stopped all further VCP work at the site as future redevelopment plans and relationship to the URA for this lot was uncertain.

On February 26, 2008 PDC requested that DEQ transfer the site\_ from the VCP to the ICP program — this was summarily approved and this new approach effort initiated.

### **B. Cleanup Approach**

In response to a proposed redevelopment by the Housing Authority of Portland which envisions a full block redevelopment to include an "Access Resource Center" consisting generally of groundfloor shelter and 4 floors of affordable housing, parking area and other amenities.

In March 2008, PDC restarted the ICP effort and proposes to deploy the following cleanup approach to prepare the site ready by the Fall 2008 for the start of redevelopment. Reports will be submitted to DEQ for informal consultation.

#### **Preconstruction Actions:**

- **Pothole Investigation.** To obtain a better understanding of the type and extent of debris fill and contaminated soil best method of field screening, soil and to further search for underground storage tanks (UST) systems, a pre-construction investigation is planned.
- Consisting of a geophysical survey, test pit explorations, and chemical analysis by Hart Crowser. **Fieldwork: April 2, 2008; Report: Mid April 2008.**
- **Groundwater Evaluation.** Only minimal groundwater contamination has been detected at the site. Hart Crowser will prepare an evaluation letter summarizing this groundwater information and requesting concurrence from the Oregon Department of Environmental Quality (DEQ) that Groundwater does not pose a concern at this site. **Letter: Mid April 2008.**
- **Remedial Approach Development.** Based on the results of the pothole investigation and previous work at the site, various remedial alternatives will be evaluated in a letter to assess feasibility, cost effectiveness, and protectiveness. An option to have PDC perform a hot-spot pre-development soil removal action (SE quadrant) will be evaluated. The future development plan and in particular the foundation plans for the new building will also be considered. **Draft Letter: Early May 2008.**
- **Remedial Action Plan.** A Remedial Action Plan (RAP) will be developed to present the scope of work to implement the selected remedial approach. Because near-surface contamination is present, we assume that at least some excavation of contaminated soil/debris will be conducted. The plan will show the proposed extent of contaminated soil/debris removal; discuss the manner of excavation and loading for transport, identify the disposal facility(ies); and present protocols

for confirmation sampling and analysis, final report, cap maintenance and Easement and Equitable Servitude requirements. **RAP: Early June 2008.**

- Contaminated Media Management Plan. Based on the RAP and any hot spot removal action a Contaminated Media Management Plan (CMMP) may be developed if residual levels of contamination are present on the property and if redevelopment work could encounter this contamination. The CMMP would identify procedures to manage residual contamination during redevelopment field screening handling disposal and other special worker protection requirements. Information will be shared with the design team and future general contractor. **CMMP: July 2008.**

**Construction and Post Construction Environmental Oversight Actions:**

The following actions are likely necessary to enact the RAP and CMMP during construction that will lead up a DEQ No Further Action determination. At this point it is envisioned that PDC will be responsible for environmental oversight actions.

- Pre-construction. Baseline risk and CMMP information will be provided to the General Contractor who will prepare a site specific Health and Safety Plan (HSP). PDC environmental consultants will review the Draft HSP and summarily advance the final HSP to DEQ for approval. **Fall 2008**
- Construction. PDC's environmental consultants will provide environmental oversight and documentation of all CMMP actions to include soil handling disposal cap installation etc. during site redevelopment. **2008-2009**
- Post Construction. Upon completion of all remedial actions PDC's environmental consultants will prepare a Draft Closure Report for review by PDC with the Final Closure Report to be submitted for DEQ for approval. PDC would prepare an environmental Easement and Equitable Servitude (E&ES) [note- may not be required which will outline long term obligations/restrictions for the site. **Late 2009**
- No Further Action Letter. Upon approval of the Closure Report and Recording any necessary E&ES, DEQ would likely prepare a staff report and recommendation for a NFA, public comment period and then issue a NFA letter. **Early 2010**

Attachments: Block U Extent of Contaminates in Soil Figure  
Conceptual Redevelopment Schematic

Copies: John Warner, PDC  
Barbara Shaw, PDC  
Lisa Gramp, PDC  
Sarah Harpole, PDC  
Bob VanVickle, PDC  
Rick Ernst, Hart Crowser

# PDC

PORTLAND DEVELOPMENT COMMISSION

## Resolution Number 6638

**Title:**

AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO A GRANT AGREEMENT IN AN AMOUNT NOT TO EXCEED \$29.5 MILLION AND A DISPOSTION AND DEVELOPMENT AGREEMENT WITH THE HOUSING AUTHORITY OF PORTLAND FOR THE DEVELOPMENT OF THE RESOURCE ACCESS CENTER AND RELATED DEVELOPMENT ON THE WESTERN PORTION OF CERTAIN PDC-OWNED REAL PROPERTY LOCATED AT NW HOYT STREET AND NW BROADWAY AND KNOWN AS "BLOCK U" IN THE RIVER DISTRICT URBAN RENEWAL AREA

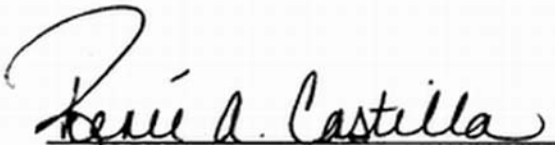
Adopted by the Portland Development Commission on January 29, 2009.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Charles Wilhoite, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Scott Andrews	<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"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Vacant	<input 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: February 20, 2009