

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6658**

**APPROVING THE DOWNTOWN MARKETING INITIATIVE  
GRANT AGREEMENT WITH PORTLAND BUSINESS  
ALLIANCE AND AUTHORIZING THE EXECUTIVE DIRECTOR  
TO DISBURSE \$453,466 TO THE PORTLAND BUSINESS  
ALLIANCE PER TERMS OF THE AGREEMENT**

**WHEREAS**, on September 19, 2008, the Portland Development Commission (“PDC”) Executive Director, per authority granted by the PDC Board of Commissioners (the “Board”) in Resolution No. 5214, entered into an Interagency Agreement with the City of Portland (the “City”) for fiscal year 2008-09 to administer City funds in the amount of \$959,230 for Downtown Marketing Services;

**WHEREAS**, under the Interagency Agreement, PDC agreed to enter a Downtown Marketing Initiative Grant Agreement with the Portland Business Alliance (“PBA”) to provide Downtown Marketing Services;

**WHEREAS**, on September 19, 2008, the Executive Director, per authority granted by the Board in Resolution No. 5214, entered into a Downtown Marketing Initiative Grant Agreement with PBA for \$944,841 (Grant No. 105625);

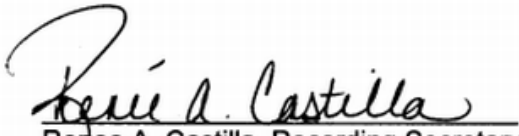
**WHEREAS**, under the Executive Director’s existing delegated grant authority, two grant payments totaling \$491,515 have been disbursed to PBA under the Downtown Marketing Initiative Grant Agreement; and

**WHEREAS** the final disbursement under the Downtown Marketing Initiative Grant Agreement, in the amount of \$453,466, is expressly conditioned on, and will be disbursed only after approval of the Downtown Marketing Initiative Grant Agreement by the Board because such disbursement exceeds the Executive Director’s existing delegated grant authority.

**NOW, THEREFORE, BE IT RESOLVED** that the Downtown Marketing Initiative Grant Agreement, substantially in the form of Exhibit A attached hereto (the “Grant Agreement”), is hereby approved and the Executive Director authorized to make the remaining disbursement of \$453,466 to PBA per terms of the Grant Agreement;

**BE IT FURTHER RESOLVED** that the Executive Director may approve changes to the Grant Agreement, if such changes, in the opinion of the Executive Director and General Counsel, do not materially change PDC’s obligations or risks; and

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

  
Renee A. Castilla, Recording Secretary

Grant No. 105625

\$944,841

## DOWNTOWN MARKETING INITIATIVE GRANT AGREEMENT

This **DOWNTOWN MARKETING INITIATIVE GRANT AGREEMENT** ("**Grant Agreement**") dated as of <sup>2008</sup> August 19, 2008, is entered into by and between **PORTLAND BUSINESS ALLIANCE**, an Oregon non-profit corporation ("**Grantee**"), and the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND DEVELOPMENT COMMISSION** ("**Grantor**").

### RECITALS

A. Grantor and Grantee collaborated on the development of the Downtown Marketing Initiative (DMI), which is a plan of action designed to maintain and enhance Downtown Portland as a retail destination.

B. Grantor's Board of Commissioners adopted a Retail Strategy Update (Strategy Update) on March 14, 2007 as a series of goals and objectives and support for the Downtown Marketing Initiative was one of the goals of that Strategy Update.

C. The Strategy Update contemplates that Grantee will take the lead in implementing the Strategy in consultation and coordination with Grantor.

D. In order to implement the goal of marketing downtown Portland as indicated in the Strategy Update, Grantee has requested \$944,841 in financial assistance from Grantor.

E. Grantor is willing to provide such assistance on the terms and conditions of this Agreement.

**NOW THEREFORE**, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

Unless otherwise defined herein, capitalized terms in this Grant Agreement shall have the meanings set forth in Article 1 of this Grant Agreement and the recitals hereof.

**“Default”** means an event of default or an event which, with notice or lapse of time, or both, would become an Event of Default.

**“Event of Default”** means (i) with respect to this Grant Agreement, any Event of Default described in Article 5 of this Grant Agreement and (ii) with respect to any other Grant Documents, any event of default described therein.

**“Grant”** means the grant described in this Grant Agreement.

**“Grant Amount”** means the dollar amount to be granted by Grantor to Grantee, as provided in Section 2.1 hereof.

**“Grant Documents”** mean this Grant Agreement and all other agreements, documents and instruments executed by Grantee in connection with the Grant.

## **ARTICLE 2 GRANT GENERALLY**

**Section 2.1 Grant Amount.** On the terms and conditions of this Grant Agreement, Grantor agrees to make a one time Grant to Grantee in an amount not to exceed NINE HUNDRED FORTY FOUR THOUSAND EIGHT HUNDRED FORTY ONE DOLLARS (\$944,841) to assist Grantee in implementing the Downtown Marketing Initiative as described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Project”). Grantee agrees and acknowledges that the Grant will be funded with the City’s General Funds and Parking Funds. Grantee may use the Grant proceeds only for costs incurred on the Project.

**Section 2.2 Disbursement of Grant Proceeds.** Provided that no Default has occurred and that Grantor has received sufficient funds from the City of Portland, Grantor shall disburse the Grant proceeds to Grantee in three installments. The first installment, in the amount of \$100,000, and the second installment, in the amount of \$391,515, will be disbursed after submission to Grantor of an invoice therefore, in form and substance satisfactory to Grantor. The third installment, in the amount of \$453,466, is expressly conditioned on, and will be disbursed after, approval of this Grant Agreement by Grantor’s Board of Commissioners and submission to Grantor of an invoice therefore in form and substance satisfactory to Grantor. If this Grant Agreement is not approved by Grantor’s Board of Commissioners, then Grantor shall have no obligation to disburse the third installment and the Grant Amount shall be reduced to \$491,515. The invoices should be sent to the attention of Grantor’s Project Manager, Claudia Plaza, and specify the following Grantor project number: Downtown Marketing Initiative: 001-10-24001-7829. Disbursement will typically occur between 14 and 30 days after Grantor’s approval of the invoice.

### ARTICLE 3 GRANTEE'S REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Grantor as follows:

Section 3.1 **Existence and Power; Authority.** Grantee is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Oregon. Grantee has (a) full power and authority to carry on its business as now being conducted and as Grantee contemplates it to be conducted with respect to the Project, and (b) full power, authority, and legal right to execute and deliver this Grant Agreement and all other Grant Documents and to incur and perform its obligations hereunder and thereunder. The execution and performance by Grantee of this Grant Agreement and the other Grant Documents have been duly authorized by all necessary action of Grantee. This Grant Agreement and the other Grant Documents have been duly executed by Grantee and will constitute legal, valid and binding obligations of Grantee, enforceable in accordance with their terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

Section 3.2 **No Violations or Default.** Grantee is not in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority. No creditor has given Grantee notice or threatened to give it any notice of default under any material agreement. No event has occurred and is continuing and no condition exists with respect to Grantee or the Project that would constitute an Event of Default or which, with the lapse of time, if not cured, or with the giving of notice or both, would become an Event of Default.

Section 3.3 **Litigation.** No action, suit or proceeding (and to Grantee's knowledge, no investigation) is pending against Grantee or with respect to the Project before any court or administrative agency, (a) the outcome of which, by itself or taken together with other such litigation, would be reasonably expected to have a material adverse effect on the business, assets, operations, or financial condition of Grantee, the Project or the power of Grantee to complete the Project or (b) which purports to affect the legality, enforceability, or validity of any Grant Document.

Section 3.4 **Compliance With Laws.** Grantee is in material compliance with all federal, state and local laws, rules, regulations, ordinances and orders applicable to it, the Project, and the completion thereof, including, without limitation, all applicable health and safety, environmental, and zoning laws.

### ARTICLE 4 AFFIRMATIVE COVENANTS

Until completion of the Project, Grantee covenants and agrees as follows:

Section 4.1 **Licenses; Maintenance of Business.** Grantee will remain a non-profit corporation validly existing under the laws of Oregon and will keep in force all licenses and permits necessary to the proper conduct of its business and the completion of the Project.

Section 4.2 **Completion of Project and Performance of Obligations.** Grantee will comply with all the requirements of the Grant Documents, including but not limited to, those set forth in Exhibit A. Grantee shall complete the Project no later than June 30, 2009; provided, however, that Grantee shall not be required to complete the Project if (a) Grantor's Board of Commissioners fails to approve this Grant Agreement and, accordingly, the third installment of the Grant is not made available to Grantee or (b) Grantor fails to disburse an installment of the Grant to Grantee as required by this Grant Agreement and such failure remains uncured 30 days after written notice thereof to Grantor.

Section 4.3 **Compliance with Laws and Use Restrictions.** Grantee will comply with all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality having jurisdiction over Grantee and the Project, including all applicable health and safety, environmental, and zoning laws.

Section 4.4 **Other Obligations.** Grantee will pay and discharge before the same shall become delinquent all indebtedness, taxes, and other obligations for which it is liable or to which its income or property is subject and all claims for labor and materials or supplies except any thereof whose validity or amount is being contested in good faith by Grantee in appropriate proceedings with adequate provision having been made in accordance with generally accepted accounting principles for the payment thereof if the contest is determined adversely to Grantee.

Section 4.5 **Indemnity.** Grantee shall indemnify and hold Grantor, its officers, employees and agents harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees and expenses) which any of them may suffer or incur in connection with (a) the inaccuracy of any of the representations and warranties made by Grantee in any Grant Documents, (b) any transaction contemplated by this Grant Agreement or any other Grant Document and (c) the actions or inactions of Grantee, or its employees, agents or contractors, related to the Project, other than claims, losses, damages, or expenses that arise solely from the gross negligence or willful misconduct of Grantor. Grantee's obligations under this Section 4.5 shall survive completion of the Project.

Section 4.6 **Records and Inspection.** Grantee shall maintain fiscal records pertinent to this Grant Agreement for at least three (3) years following completion of the Project. Grantee shall maintain all fiscal records relating to this Grant Agreement in accordance with generally accepted accounting principles and in a manner that clearly documents when and how all Grant funds were expended. In addition, Grantee shall maintain all other records pertinent to this Grant Agreement in such a manner as to clearly document Grantee's performance hereunder. Grantee shall make any or all of the foregoing records available to the City of Portland, PDC and their representatives, as they may reasonably request from time to time, to enable City of Portland and/or PDC to perform examinations and audits and make excerpts and transcripts.

## ARTICLE 5 EVENTS OF DEFAULT

Any of the following shall constitute an Event of Default under this Grant Agreement:

**Section 5.1 Failure to Pay General Debts When Due.** Grantee (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property, (ii) admits in writing its inability to pay, or generally is not paying, its debts as they become due, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary action under the United States Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent; (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vii) fails to ~~controvert in a timely or appropriate manner, or acquiesces or consents in writing to~~, any petition filed against it, in an involuntary action under the United States Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

A proceeding or case is commenced against Grantee, without its consent, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Grantee, (ii) a receiver, trustee, custodian, liquidator, or the like is appointed for Grantee or for all or a substantial part of its assets, or (iii) relief is granted to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or (iv) an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for any period of 60 days, or an order for relief against Grantee is entered in an involuntary case under the United States Bankruptcy Code (as now or hereafter in effect).

**Section 5.2 Failure to Disclose Material Facts.** Grantee fails to disclose any fact material to the making of the Grant, or a disbursement, to Grantee, or upon discovery by Grantor of any misrepresentation by, on behalf of, or for the benefit of, Grantee.

**Section 5.3 Failure to Pay Amounts Due.** Grantee fails to pay any sum due under this Grant Agreement or any other Grant Document within the time specified herein or therein.

**Section 5.4 Failure to Comply with Other Obligations.** Grantee fails to observe, perform, discharge or comply with any other covenant, agreement or obligation imposed on Grantee by this Grant Agreement and such failure remains uncured 30 days after written notice thereof to Grantee.

**ARTICLE 6  
RIGHTS AND REMEDIES UPON EVENT OF DEFAULT**

Upon the occurrence of an Event of Default and at any time thereafter, Grantor may, at its option, exercise any one or more of the following rights and remedies:

Section 6.1 **Repayment.** Grantor may declare the entire original Grant Amount (or so much thereof as has been disbursed to Grantee) and other charges payable by Grantee pursuant to this Grant Agreement, to be immediately due and payable in full and, upon such declaration, Grantee shall pay to Grantor the amount declared to be immediately due and payable; provided, however, that Grantor shall not require Grantee to repay any portion of the Grant Amount that has been properly expended under the terms of this Grant Agreement.

Section 6.2 **Termination of Funding Obligation.** Grantor may, by and effective upon written notice to Grantee, terminate Grantor's obligation to disburse additional Grant funds to Grantee.

Section 6.3 **No Election Required.** Grantor shall have any other right or remedy provided in this Grant Agreement, Grant Documents or any other instrument delivered by Grantee in connection therewith, or available at law, in equity, or otherwise in such order and manner as it may select.

Section 6.4 **Rights and Remedies Cumulative.** All rights and remedies described in this Article 6 are cumulative and in addition to any other remedy Grantor may have by agreement, at law, or in equity. Partial exercise of any right or remedy shall not limit or restrict Grantor's subsequent exercise of such right or remedy nor shall it restrict Grantor's contemporaneous or subsequent exercise of any other right or remedy.

Section 6.5 **No Waiver.** No failure on the part of Grantor to exercise, and no delay in exercising, any right, power, or privilege under this Grant Agreement shall operate as a waiver of that right or any other right. No modification or waiver of any provision of this Grant Agreement shall be effective unless in writing, and then only in specific instance and for the purpose given. No notice or demand on Grantee shall entitle Grantee to any other notice or demand in other similar circumstances.

Section 6.6 **Payment of Costs of Collection.** In case of a Default, or in case litigation is commenced to enforce or construe any term of this Grant Agreement, the losing party will pay to the prevailing party such amounts as shall be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding.

**ARTICLE 7  
MISCELLANEOUS**

Section 7.2 **Counterparts.** This Grant Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

Section 7.3 **Survival.** All agreements, representations, and warranties shall survive the execution and delivery of this Grant Agreement, any investigation at any time made by Grantor or on its behalf and the making of the Grant.

Section 7.4 **Notice.** Any notice required or permitted under this Grant Agreement shall be in writing and shall be deemed effective (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile (answer back or receipt confirmed), addressed to the parties as follows:

If to Grantee:           Portland Business Alliance  
                                  Attn: Sandra McDonough  
                                  President and Chief Executive Officer  
                                  Portland, Oregon 97204  
                                  Telephone: (503) 224-8684  
                                  Facsimile: (503) 323-9186

If to Grantor:           Portland Development Commission  
                                  Attn: Claudia Plaza  
                                  222 NW Fifth Avenue  
                                  Portland, OR 97209  
                                  Telephone: (503) 823-3234  
                                  Facsimile: (503) 865-3873

with a copy to:       Portland Development Commission  
                                  Attn: General Counsel  
                                  222 NW Fifth Avenue  
                                  Portland, OR 97209  
                                  Telephone: (503) 823-3200  
                                  Facsimile: (503) 823-3368

Section 7.5 **Successors and Assigns.** Grantee may not assign this Grant Agreement, in whole or in part, without the prior written consent of Grantor. This Grant Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

Section 7.6 **Governing Law, Jurisdiction, Venue.** This Grant Agreement and the other Grant Documents shall be governed by and construed in accordance with the laws of the State of Oregon. Any legal action regarding this Grant Agreement must be brought and conducted in the federal or state court, as appropriate, serving Multnomah county, Oregon, and the parties hereby consent to the jurisdiction and venue of such courts.



Section 7.7 **Assignment.** Grantee may not assign this Grant Agreement without the prior written consent of Grantor.

Section 7.8 **Modification; Prior Grant Agreements; Headings.** This Grant Agreement may not be modified or amended except by an instrument in writing signed by Grantee and Grantor. This Grant Agreement taken together with the other Grant Documents reflect and set forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersede all prior agreements and understandings relating to such subject matter. The headings in this Grant Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

Section 7.9 **Validity; Severability.** ~~If any provision of this Grant Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Grant Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.~~

Section 7.10 **Exhibits.** The exhibits to this Grant Agreement are, by this reference, incorporated into and deemed a part of this Grant Agreement as if they were fully set forth in the text hereof.

Section 7.11 **Time of Essence.** Time is of the essence of this Grant Agreement and each of the Grant Documents.

Section 7.12 **Relationship of the Parties.** Nothing contained in this Grant Agreement or any acts of the parties hereto shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture or of any other association other than that of independent contracting parties.

Section 7.13 **No Third Party Beneficiary Rights.** No person not a party to this Grant Agreement is an intended beneficiary of this Agreement, and no person not a party to this Grant Agreement shall have any right to enforce any term of this Agreement.

Section 7.14 **Integration, Amendment.** This Grant Agreement constitutes the entire agreement of the parties relating to the subject matter hereof. There are no promises, terms, conditions, obligations, or warranties other than those contained in this Grant Agreement. This Grant Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the parties relating to the subject matter hereof. This Grant Agreement may not be amended except in writing executed by the parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Grant Agreement to be executed by their duly authorized representatives as of the date first above written.

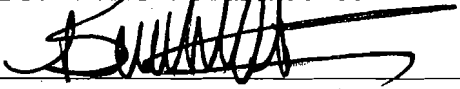
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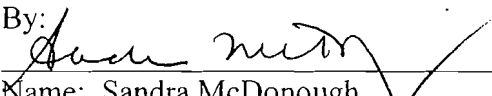
**GRANTOR:**

**GRANTEE:**

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

**PORTLAND BUSINESS ALLIANCE**, an Oregon non-profit corporation

By:   
Bruce A. Warner, Executive Director

By:   
Name: Sandra McDonough  
Title: President and Chief Executive Office

**APPROVED AS TO FORM:**

  
Portland Development Commission  
Legal Counsel

Exhibit A  
Project Description  
Portland Business Alliance

**SCOPE:**

The Portland Business Alliance will implement a Downtown Marketing Initiative to bolster the health of downtown Portland. The Portland Business Alliance has retained a Downtown Marketing Initiative Director to implement the Downtown Marketing Initiative. The Director is authorized, with Alliance supervision, to negotiate contracts that will assist with implementation of Downtown Marketing Initiative projects. The Director will work in collaboration with the City of Portland (City), TriMet, Portland Development Commission (PDC), Portland Mall Management Inc., Downtown Retail Council, Portland Business Alliance (Alliance) and other stakeholders during the contract period to accomplish priorities established by the Downtown Marketing Initiative Advisory Board.

**Deliverables:**

- Employ a qualified DMI Director
- Contract with a creative services firm to be managed by the DMI Director
- The DMI Director will work with the City of Portland's OMF and Mayor's Office to develop a plan for the most efficient long term funding, operation and management of the marketing of Downtown.
- Publicize the City's SmartPark system with an emphasis on the parking validation program.
- Oversee the following work performed by the DMI Director:
  - Manage a creative services contract
  - Leverage current marketing funds and in-kind contributions

- Leverage corresponding community/public resources by integrating the downtown campaign with the creative and strategic work of Travel Portland and other state branding initiatives
- Manage development of a media plan and evaluate and approve all broad based advertising.
- Prepare a budget for approval by the Advisory Board and Mayor's Office.
- Provide timely and meaningful reviews and reports on activities and performance to PBA, OMF, Mayor's Office and PDC including:
  - Provide quarterly program status reports
  - Provide quarterly budget reviews
  - Provide two measurable outcomes from the use of resources in addition to pedestrian counts and garage parking counts
- Create a "holiday shopping" ad campaign in coordination with the Downtown Retail Council members.
- Select an Advisory Board for the Downtown Marketing Initiative in consultation with the Mayor's office.
- Manage and coordinate the linking of web sites from appropriate agencies, bureau's and organizations.
- Use the media as the tool to change and influence our target audience's perception and behavior about downtown, and
- Maximize the budget and reach audiences outside the core Portland-metro area by generating publicity.

# PDC

PORTLAND DEVELOPMENT COMMISSION

## Resolution Number 6658

TITLE: APPROVING THE DOWNTOWN MARKETING INITIATIVE GRANT AGREEMENT WITH PORTLAND BUSINESS ALLIANCE AND AUTHORIZING THE EXECUTIVE DIRECTOR TO DISBURSE \$453,466 TO THE PORTLAND BUSINESS ALLIANCE PER TERMS OF THE AGREEMENT

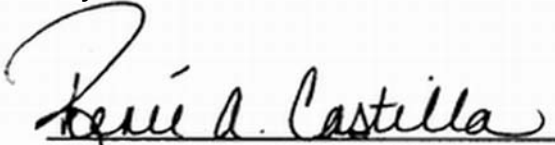
Adopted by the Portland Development Commission on December 10, 2008.

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 checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Regular Agenda		

### Certification

The undersigned hereby certifies that:

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

  
Renee A. Castilla, Recording Secretary

Date: December 12, 2008