

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6689**

**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND AMENDMENT TO THE THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH PORTLAND HOTEL DEVELOPER, LLC; AND TO MODIFY LOAN DOCUMENTS WITH URBAN HERITAGE PORTLAND HOTEL, LLC, PORTLAND HOTEL DEVELOPER, LLC, AND PORTLAND HOTEL FUND, LLC, THAT PROVIDE FOR THE CHANGE IN PAYMENT STRUCTURE FOR TWO LOANS AND AN INCREASE IN LOAN AMOUNT IN ONE LOAN IN CONNECTION WITH THE REHABILITATION OF THE HOTEL PORTION OF THE MEIER & FRANK HISTORIC BUILDING IN THE RIVER DISTRICT URBAN RENEWAL AREA**

**WHEREAS**, the River District Urban Renewal Area Plan ("Plan"), adopted by the Portland Development Commission ("Commission") by Resolution No. 5158 on August 19, 1998 and by the City Council by Ordinance 172808 on October 21, 1998 provides tax increment funding and authority to support the accomplishment of community goals in the downtown retail core;

**WHEREAS**, The Central City Plan identifies the following policy for Downtown Portland: Policy 14, Downtown: "Strengthen the Downtown as the heart of the region, maintain its role as the preeminent business location in the region, expand its role in retailing, housing, tourism and reinforce its cultural, educational, entertainment, governmental and ceremonial activities;" **WHEREAS**, the Executive Director was authorized by Resolution No. 6241 adopted on May 25, 2005, to execute financial assistance documents for the redevelopment of the Meier and Frank Building ("Property") to Sage Hospitality Resources in the amount of \$13,925,000;

**WHEREAS**, the Executive Director was authorized by Resolution No. 6543 adopted on December 12, 2007, to execute financial assistance documents for the redevelopment of the Meier and Frank Building ("Property") to Sage Hospitality Resources ("Sage") for an additional \$3.0 million loan that increased total PDC financial assistance to \$16,925,000;

**WHEREAS**, recent national and local economic downturns have negatively impacted the Net Operating Income generated by the subject property and its ability to service the PDC debt;

**WHEREAS**, Sage has requested loan modifications for the three loans currently with loan payments due;

**WHEREAS**, to accommodate New Markets Tax Credits equity requirements, Sage is requesting that the \$3.0 million loan secured by an interest in the master lease to Buildco be paid off and a new secured loan be made to Ownco in an amount not to exceed \$3,115,000; and

**WHEREAS**, a Second Amendment to the Third Amended and Restated Development Agreement with Portland Hotel Developer, LLC is now required in order to accomplish the changes described herein.

**NOW, THEREFORE BE IT RESOLVED** that the Executive Director is hereby authorized to enter into a Second Amendment to the Third Amended and Restated Development Agreement with Portland Hotel Developer, LLC in substantially the form attached hereto as exhibit A ("Second Amendment") containing the above described amendments;

**BE IT FURTHER RESOLVED** that the Executive Director is hereby authorized to accept payoff of the existing \$3.0 million loan to Buildco and to make a new secured loan to Ownco in an amount not to exceed \$3.115 million;

**BE IT FURTHER RESOLVED** that the Executive Director is hereby authorized to sign modified loan documents that revise pay schedules and other terms to ones that are based upon the ability of the property to pay those loans from the Net Operating Income after the senior liens have been paid subject to legal and financial review;

**BE IT FURTHER RESOLVED** that Sage will provide audited financial statements to PDC on a quarterly or any other periodic basis as requested by PDC, in order for PDC to monitor all cash flows of the project and upper tier entities;

**BE IT FURTHER RESOLVED** that this action is being taken based upon the reasonable assurance of Sage and adequate language in the loan documents that financial and operating statements will be provided on a regular basis; and

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

**Adopted by the Portland Development Commission on March 25, 2009.**



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Emily Swensen, Recording Secretary

**SECOND AMENDMENT  
TO THE  
THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT  
FOR THE MEIER AND FRANK BUILDING**

**PORTLAND HOTEL DEVELOPER, LLC**

THIS SECOND AMENDMENT TO THE THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “Amendment”) is made as of March \_\_, 2009, by 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”), and **PORTLAND HOTEL DEVELOPER, LLC**, a Delaware limited liability company (“Developer” or “Buildco”).

**RECITALS**

- A. PDC and Sage Hospitality Resources, LLC, as predecessor-in-interest to Developer, previously entered into a Development Agreement on June 10, 2005 (“**Original Development Agreement**”) in connection with the proposed redevelopment of a portion of the building commonly known as the Meier & Frank Building into a hotel, the legal description of which is attached hereto as Exhibit A.
- B. PDC and Developer subsequently entered into that certain Amended and Restated Development Agreement dated September 19, 2005 (“**Amended and Restated Development Agreement**”) to amend and restate the Original Development Agreement.
- C. PDC and Developer subsequently entered into that certain Second Amended and Restated Development Agreement dated December 23, 2005 (“**Second Amended and Restated Development Agreement**”) to amend and restate the Amended and Restated Development Agreement.
- D. PDC and Developer subsequently entered into that certain Third Amended and Restated Development Agreement dated March 13, 2006 (“**Third Amended and Restated**

- Development Agreement”)** to amend and restate the Second Amended and Restated Development Agreement.
- E. PDC and Developer subsequently entered into that certain First Amendment To The Third Amended and Restated Development Agreement dated May 30, 2008 (“**First Amendment**”; together with the Third Amended and Restated Development Agreement, “**Existing Development Agreement**”) to amend the Third Amended and Restated Development Agreement.
- F. Pursuant to the First Amendment, PDC had consented to a mezzanine mortgage loan to Developer (the “**Buildco Mezzanine Loan**”) in the maximum principal amount of \$21,300,000, subject to further increase by \$9,525,000, thereby bringing the maximum Buildco Mezzanine Loan authorized by PDC to \$30,825,000. Developer has requested that PDC consent to a \$2,168,081 increase in the Buildco Mezzanine Loan for a total Buildco Mezzanine Loan in an amount not to exceed \$32,993,081, pursuant to the 2009 Mezzanine Lender Commitment Amendment (as hereinafter defined) effective as of the 2009 PDC Closing Date, for the purpose of, together with payments from Master Lessee to Developer and equity contributions to Developer, repaying or refinancing (i) the Sage-Buildco Mezzanine Loan, (ii) the Prudential-Buildco Loan, (iii) the Additional Construction Financing, (iv) the Future Cost Overrun Financing, and (v) the 2008 PDC Project Loan.
- G. Developer has requested that PDC consent to certain mezzanine loans to Property Owner (collectively, the “**Ownco Mezzanine Loan**”) in an aggregate amount not to exceed \$2,294,777, to be funded by Sage Portland, LLC (“**Sage Portland**”) and Urban Heritage Portland Hotel Acquisition, LLC (“**Acquisition**”), in such respective portions as shall be agreed upon by Sage Portland and Acquisition.
- H. Developer intends to repay in full the entire 2008 PDC Project Loan made to Developer, which has a current outstanding balance of \$3,111,022.90, and has requested that,

immediately following such repayment, PDC provide to Property Owner a term loan for the Hotel Project in the amount of \$3,111,022.90.

- I. Developer has requested that PDC enter into amendments to certain existing PDC Loan Documents (the “**PDC Loan Document Amendments**”) to provide for interest accruals on certain PDC Loans, as more particularly described in the PDC Loan Document Amendments.
- J. Developer has requested that PDC consent to certain changes with respect to the ownership interests of Property Owner, Investment Fund, and Developer, including the appointment of a new managing member for Developer and Investment Fund. Furthermore, Developer has asked that PDC acknowledge changes to the ownership interests of CDE, as well as the appointment of a new managing member for CDE.
- K. Developer has requested that PDC consent to the foregoing transactions, as referenced in Recitals F-J.
- L. The parties now desire to further amend the Existing Development Agreement as provided in this Amendment.

NOW THEREFORE, in consideration of the premises and the agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### **DEFINITIONS**

Except as otherwise provided below, the capitalized terms used herein shall have the respective meanings ascribed thereto in the Existing Development Agreement:

- 1. “**2006 Upper Tier Intercreditor Agreement**” means that certain Subordination and Intercreditor Agreement dated as of March 31, 2006 by and between Washington Street Investments LLC and PDC.
- 2. “**2009 Closing**” means the execution of all documents necessary, among other things, to close and fund the Buildco Mezzanine Loan, close and fund the Ownco Mezzanine Loan, retire

the entire Prudential-Buildco Loan, retire the entire Sage-Buildco Mezzanine Loan, retire the 2008 PDC Project Loan, and fund the 2009 PDC Project Loan.

3. **“2009 Intercreditor Agreement”** means that certain Third Amended and Restated Intercreditor Agreement to be executed by and among the CDE, the Mezzanine Lender, Sage Portland, Acquisition, PDC, Developer, Property Owner and Portland Hotel Lease Manager, LLC in connection with the 2009 PDC Closing.

4. **“2009 Master Lease Amendment”** means that certain First Amendment to Master Lease Agreement to be executed by and between Developer and Master Lessee in connection with the 2009 Closing which evidences, among other things, an increase in rental payments by the Master Lessee under the Master Lease by such amounts as shall be necessary to ensure timely payment of all debt service requirements on (a) the 2009 PDC Project Loan and (b) all other debt or obligations which are senior in priority to repayment of the 2009 PDC Project Loan pursuant to the terms of the 2009 Intercreditor Agreement.

5. **“2009 Mezzanine Lender Commitment Amendment”** means that certain letter agreement modifying the terms of the Mezzanine Lender Commitment to be executed by the Mezzanine Lender and acknowledged by Developer, in connection with the 2009 Closing.

6. **“2009 PDC Closing”** means the execution of all documents (including without limitation, the 2009 Transaction Documents) necessary to close and fund the 2009 PDC Project Loan in accordance with the terms of this Amendment.

7. **“2009 PDC Closing Date”** means the date on which funds from the 2009 PDC Project Loan are made available to Property Owner pursuant to the terms of the applicable 2009 Transaction Documents.

8. **“2009 Nondisturbance and Attornment Agreement”** means that certain Second Amended and Restated Master Subordination, Nondisturbance and Attornment Agreement to be executed by CDE, the Mezzanine Lender, PDC, Developer, Property Owner, Master Lessee and HTCIF in connection with the 2009 Closing.

9. **“2009 Project Cash Management Agreement”** means that certain Third Amended and Restated Project Cash Management Agreement to be executed by and among U.S. Bank National Association, CDE, Prudential, the Mezzanine Lender, PDC, Developer, Property Owner, the Master Lessee, Portland Hotel Lease Manager, LLC, Sage Portland, Acquisition and Sage Client 297, LLC, in connection with the 2009 PDC Closing.

10. **“2009 PDC Project Loan”** shall have the meaning ascribed thereto in Subsection 2.2.7 of the Agreement.

11. **“2009 PDC Project Loan Documents”** shall have the meaning ascribed thereto in Subsection 2.2.7 of the Agreement.

12. **“2009 Transaction Documents”** means the documents required by PDC as conditions precedent to closing and funding the 2009 PDC Project Loan in accordance with the terms of this Amendment, and will include, without limitation, (a) the 2009 Intercreditor Agreement, (b) the 2009 PDC Project Loan Documents, (c) the 2009 Project Cash Management Agreement, (d) 2009 Upper Tier Cash Management Agreement, (e) the 2009 Nondisturbance and Attornment Agreement, and (f) the 2009 Mezzanine Lender Commitment.

13. **“2009 Upper Tier Cash Management Agreement”** means that certain Amended and Restated Cash Management Agreement to be executed by and among U.S. Bank National Association, Washington Street Investments LLC, PDC, CDE, and Investment Fund, in connection with the 2009 PDC Closing.

14. **“Agreement”** means collectively, the Third Amended and Restated Development Agreement, as amended by the First Amendment, this Amendment, and all subsequent amendments thereto.

15. **“Buildco Mezzanine Loan”** shall have the meaning ascribed thereto in **Recital F** to this Amendment.

16. **“HTCIF”** shall mean Portland Hotel Historic Tax Credit Investment Fund, LLC (as successor in interest to Washington Street Investments LLC).



17. “**Mezzanine Commitment Amendments**” shall mean, collectively, the 2008 Mezzanine Lender Commitment Amendment and 2009 Mezzanine Lender Commitment Amendment.

18. “**Ownco Mezzanine Loan**” shall have the meaning ascribed thereto in **Recital G** to this Amendment.

19. “**PDC Loan Documents**” mean collectively the Seismic Loan Documents, the Project Loan Documents, and the Bridge Loan Documents, all as amended by the PDC Loan Document Amendments, and the 2009 PDC Project Loan Documents.

20. “**PDC Loans**” mean collectively, the 2006 PDC Seismic Loan, the 2006 PDC Project Loan, the Bridge Loan and the 2009 PDC Project Loan.

## **AGREEMENT**

1. **AMENDMENT OF SECTION 1.2 OF THE EXISTING DEVELOPMENT AGREEMENT.** Section 1.2 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

**1.2 PDC Financial Participation.** In consideration of Developer’s performance of the Developer obligations, PDC agrees to make a total net amount of \$17,036,022.90 available to Developer in support of the public benefits of the Hotel Project, as loan funds, in the form of a 2006 PDC Seismic Loan to the Property Owner, a 2006 PDC Project Loan to the Property Owner, a Bridge Loan to the Investment Fund, a 2008 PDC Project Loan to Developer (which as part of the 2009 Closing will be repaid in full) and a 2009 PDC Project Loan to the Property Owner, all in accordance with the terms of this Agreement, specifically Section 2 below.

2. **AMENDMENT OF SECTION 1.3 OF THE EXISTING DEVELOPMENT AGREEMENT.** Section 1.3 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

### **1.3 General Financing Structure.**

1.3.1 Developer has paid for the acquisition of the property and development of the Hotel Project using funds derived from multiple sources, including (a) the CDE-Ownco Loan, (b) the First CDE-Buildco Loan, (c) the Second CDE-Buildco Loan, (d) the 2006 PDC Project Loan, (e) the 2006 PDC Seismic Loan, (f) the 2008 PDC Project Loan (which is being repaid in full as part of the 2009 Closing), (g) the Prudential-Buildco Loan (which is being repaid in full as part of the 2009 Closing), (h) the Sage-Buildco Mezzanine Loan (which is being repaid in full as part of the 2009 Closing), (i) the Sage Cost Overrun Contribution, (j) the Additional Construction Financing (which is being repaid in full as part of the 2009 Closing), and (k) the Future Cost Overrun Financing (which is being repaid in full as part of the 2009 Closing).

1.3.2 Developer shall also utilize net proceeds (including without limitation, the 2008 Additional HTC-Generated Net Proceeds) derived from the syndication of New Markets Tax Credits, Historic Tax Credits, and BETC's in connection with financing the Hotel Project. To effect the investment of funds into the Hotel Project through a New Markets Tax Credit financing structure, (x) PDC has made a Bridge Loan to the Investment Fund, (y) Washington Street Investments LLC has made a bridge loan in the amount of \$46,500,000 to the Investment Fund and (z) Washington Street Investments LLC has made a bridge loan in the amount of \$787,000 to the Investment Fund, and the Investment Fund has made a Qualified Equity Investment as equity into the CDE. CDE has made Real Estate Loans to and equity investments in the Property Owner and Developer. The Property Owner and Developer have used the proceeds of the Real Estate Loans to develop the Hotel Project.

1.3.3 PDC hereby consents to the closing and funding of the Buildco Mezzanine Loan as part of the 2009 Closing pursuant to the terms of the Mezzanine Lender Commitment, as amended by the Mezzanine Commitment

Amendments, for the primary purpose of, together with payments from Master Lessee to Developer and equity contributions to Developer, (a) repaying or refinancing (i) the Sage-Buildco Mezzanine Loan, (ii) the Prudential-Buildco Loan, (iii) the Additional Construction Financing, (iv) the Future Cost Overrun Financing, and (v) the 2008 PDC Project Loan, and (b) redeeming the membership interests in Property Owner currently held by CDE and Sage Portland S Corp.

1.3.4 PDC hereby consents to the closing and funding of the Ownco Mezzanine Loan as part of the 2009 Closing.

3. **AMENDMENT OF SECTION 2.2 OF THE EXISTING DEVELOPMENT AGREEMENT.** Section 2.2 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

**2.2 Public Participation in Hotel Project Financing.** PDC shall financially participate in the Hotel Project by funding \$17,036,022.90 of the Development Costs as described below. The specifics of each loan will be subject to approval by the PDC Loan Committee and will be reviewed for consistency with PDC Loan Guidelines and the terms of this Section 2.2. Notwithstanding anything to the contrary contained herein, in the event of a conflict between the terms of the PDC Loan Documents and this Agreement, the terms of the PDC Loan Documents shall control.

4. **AMENDMENT OF PARAGRAPH 2.2.2(C) OF THE EXISTING DEVELOPMENT AGREEMENT.** Paragraph (c) of subsection 2.2.2 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

(c) *Payments* – Property Owner shall make interest only payments until March 31, 2009 to the extent of net cash flow from the operation of the Hotel Project. Beginning on April 1, 2009 and continuing through March 31, 2015, Property Owner shall make monthly principal and interest payments (based on a 32-

year amortization schedule) to the extent of Property Owner's net cash flow from the operation of the Hotel Project. From and after April 1, 2015, Property Owner shall make monthly principal and interest payments (based on a 32-year amortization schedule) from the operation of the Hotel Project with a balloon payment at maturity.

5. **AMENDMENT OF PARAGRAPH 2.2.3(C) OF THE EXISTING DEVELOPMENT AGREEMENT.** Paragraph (c) of subsection 2.2.3 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

(c) *Payments* – The Investment Fund shall make interest only payments to the extent of net cash flow from the operation of the Hotel Project for the entire term of the Bridge Loan. The Investment Fund will make \$100,000 annual principal payments to the extent of net cash flow available to the Investment Fund beginning on April 1, 2009 and on each April thereafter during the term of the Bridge Loan. The entire balance, including all accrued and unpaid interest, on the Bridge Loan will be due at maturity.

6. **AMENDMENT OF SUBSECTION 2.2.5 OF THE EXISTING DEVELOPMENT AGREEMENT.** Subsection 2.2.5 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

**2.2.5 Intercreditor Agreements.** The security of each of the PDC Loans (other than the Bridge Loan) shall be subject to the terms of the 2009 Intercreditor Agreement. The security of the Bridge Loan shall be subject to the 2006 Upper Tier Intercreditor Agreement. PDC's priorities and rights will be described in the 2009 Intercreditor Agreement and the 2006 Upper Tier Intercreditor Agreement.

7. **ADDITION OF NEW SUBSECTION 2.2.7 TO THE EXISTING DEVELOPMENT AGREEMENT.** A new Subsection 2.2.7 is hereby added to the Existing Development Agreement to read as follows:

**2.2.7 2009 PDC Project Loan.** At the 2009 PDC Closing, PDC will loan to the Property Owner Three Million One Hundred Eleven Thousand Twenty Two and 90/100 Dollars (\$3,111,022.90) (“**2009 PDC Project Loan**”). The 2009 Project Loan shall constitute a term mortgage loan. The Developer agrees to cause the Property Owner and other affiliates of Property Owner, as applicable, to execute such documents as are reasonably required by PDC and the PDC Loan Committee in connection with the 2009 PDC Project Loan, including but not limited to (1) a promissory note, (2) an amended and restated loan agreement covering the 2009 PDC Project Loan as well as the 2006 Seismic Loan and the 2006 Project Loan, (3) a deed of trust, (4) an amended and restated assignment of leases and rents covering the 2009 PDC Project Loan as well as the 2006 Seismic Loan and the 2006 Project Loan, and (5) UCC financing statements (“**2009 PDC Project Loan Documents**”), that are based on the following general loan terms:

(a) **2009 PDC Project Loan Term:** The term of the 2009 PDC Project Loan shall begin at the 2009 PDC Closing Date and end on November 1, 2015.

(b) **Interest Rate:** The interest rate on the 2009 PDC Project Loan shall be five percent (5.00%) simple interest per annum.

(c) **Payments:** Property Owner shall make interest only payments through March 31, 2015 to the extent of Property Owner’s net cash flow from the operation of the Hotel Project. From and after April 1, 2015, Property Owner shall make monthly interest only payments from the operation of the Hotel Project with a balloon payment at maturity.

(d) **2009 PDC Project Loan Security.** Security for the 2009 PDC Project Loan shall be a deed of trust on the Hotel Condominium Unit. The Property Owner agrees to include in the deed of trust a prohibition against the Property Owner recording or permitting the recording of any encumbrances on the Hotel Condominium Unit after the 2009 PDC Closing without the prior written consent of PDC, which may be withheld in its reasonable discretion;

provided, however, that prior written consent of PDC shall not be required for security interests granted to a lender for the CDE-Ownco Loan, the First CDE-Buildco Loan, the Second CDE-Buildco Loan, the Buildco Mezzanine Loan or the Ownco Mezzanine Loan (or the refinancing of all or any part of the foregoing), provided that all such debt does not exceed the maximum total amount of \$86,012,858 in aggregate at any time and does not negatively impact the Property Owner's repayment obligations with respect to the 2009 PDC Project Loan. The deed of trust to be executed in connection with the 2009 PDC Project Loan will acknowledge that PDC may not foreclose its security interest in the Hotel Condominium Unit during the New Markets Tax Credit compliance period.

(e) Sale of Hotel Condominium Unit. The 2009 PDC Project Loan will be due and payable in the event of a "Third Party Sale" prior to the maturity date of the 2009 Project Loan.

(f) Disbursement of 2009 PDC Project Loan Proceeds. Disbursement of 2009 PDC Project Loan proceeds will be described more fully in the 2009 PDC Project Loan Documents.

(g) Final Form of 2009 PDC Project Loan Documents. Property Owner shall execute the 2009 PDC Project Loan Documents, in form and substance acceptable to all parties.

8. **ADDITION OF NEW SECTION 2.9 TO THE EXISTING DEVELOPMENT AGREEMENT.** A new Section 2.9 is hereby added to the Existing Development Agreement to read as follows:

**2.9 Conditions Precedent to Closing 2009 PDC Project Loan.**

**2.9.1 Conditions Precedent to Closing 2009 PDC Project Loan.** Property Owner and PDC are not obligated to close unless the following conditions are satisfied to the reasonable satisfaction of the benefited party, as set forth below. 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.

**(i) To the Satisfaction of PDC, Property Owner and Developer**

(1) Fully executed original counterparts of all 2009 Transaction Documents shall have been delivered to the Escrow Agent or another agreed upon escrowee for the 2009 PDC Closing.

(2) There shall be no litigation pending that prevents PDC or Developer from performing their respective obligations under the Agreement.

(3) Neither PDC nor Developer shall be in default under any material term or condition of the Agreement. Each party represents to the other that, as of the date hereof, there are no material defaults under the Agreement or events, that now or with the passage of time, would constitute a material default under the Agreement.

(4) Developer shall have obtained all consents, including without limitation, consents from all lenders and investors providing financing to the Hotel Project, as shall be necessary in order to close the 2009 PDC Project Loan in accordance with the terms contemplated by the Agreement and the 2009 PDC Project Loan Documents.

(5) Chicago Title Insurance Company shall have delivered to Developer and PDC a binding commitment satisfactory to PDC, as lender, to issue a Lender's Extended Title Insurance Policy in the amount of the 2009 PDC Project Loan, showing that PDC will have a

security interest in the Hotel Condominium Unit to be encumbered by the PDC trust deed for the 2009 PDC Project Loan. **[PDC TO CONFIRM THAT THEY ARE WORKING WITH CHICAGO TITLE ON THIS MATTER.]**

(6) Neither party shall be in default under any material term or condition of the Transaction Documents or the 2009 Transaction Documents. Each party represents to the other that, as of the date hereof, there are no material defaults under the Transaction Documents or the 2009 Transaction Documents or events that, now or with the passage of time, would constitute a material default under the Transaction Documents or the 2009 Transaction Documents.

**(ii) To the Satisfaction of Developer and Property**

**Owner:**

(1) PDC's representations and warranties stated in Section 2.10 of the Agreement shall be true and correct as of the 2009 PDC Closing Date.

**(iii) To PDC's Satisfaction:**

(1) Developer shall have provided to Escrow Agent a certified copy of the Resolution adopted by the governing body of Property Owner authorizing the execution of the applicable 2009 Transaction Documents and the performance of all obligations therein.

(2) Developer shall have provided to Escrow Agent certified copies of Property Owner's articles of organization, bylaws and a certificate of good standing



from the Secretary of State of the State of Delaware dated no earlier than forty-five (45) days prior to the 2009 PDC Closing Date.

(3) Property Owner and Developer shall have each provided evidence of all insurance coverage required by the 2009 PDC Project Loan Documents.

(4) Developer's representations and warranties stated in Section 2.11 of the Agreement are true and correct as of the 2009 PDC Closing Date.

(5) At least five (5) days prior to the 2009 PDC Closing Date, Developer shall have provided to PDC for review and approval updated economic models to be prepared by C-Biz for the Hotel Project no earlier than 30 days prior to the 2009 PDC Closing Date.

**2.9.2 Elections upon Non-Occurrence of Conditions.** Except as provided below, if any condition in Section 2.9.1 is not fulfilled to the satisfaction of the benefited party or parties on the earlier of (i) the date designated for satisfaction of the condition, or (ii) on the date scheduled for the 2009 PDC Closing, subject to any extension that may have been granted pursuant to this Section 2.9.2, then such benefited party or parties may elect to:

(a) Terminate this Amendment, which termination shall become effective sixty (60) days after the notice of termination is sent ("**Termination Date**") unless, before the sixty (60) day period ends, the other party fulfills such condition or conditions to the reasonable satisfaction of the benefited party or parties:

(b) Waive in writing the benefit of that condition precedent to its obligation to perform under this Amendment, and proceed in accordance with the terms thereof; or

(c) Extend the Termination Date by which the applicable condition may be satisfied, and if the other party agrees in writing to the extension.

9. **ADDITION OF NEW SECTION 2.10 TO THE EXISTING DEVELOPMENT AGREEMENT.** A new Section 2.10 is hereby added to the Third Amended and Restated Development Agreement to read as follows:

**2.10 PDC Representations and Warranties.** PDC represents that:

2.10.1 PDC has full power and authority to enter into and perform this Amendment in accordance with its terms, and all requisite action has been taken by PDC in connection with the execution of this Amendment and the transactions contemplated hereby.

2.10.2 PDC is not a "foreign person" within the meaning of Section 1445(f) (3) of the Internal Revenue Code of 1986, as amended.

2.10.3 To the best of PDC's knowledge, there is no litigation, action, suit, or other government proceeding pending or threatened, which may affect the PDC's ability to perform its obligations under this Amendment.

2.10.4 No representation, warranty or statement of PDC in this Amendment or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

2.10.5 As of the date hereof, there are no defaults by PDC under this Amendment or events that with the passage of time would constitute a default of PDC under this Amendment.

2.10.6 “PDC's knowledge” shall mean the actual knowledge of the managerial and supervisory personnel of PDC having responsibility for the negotiation of the 2009 PDC Project Loan.

2.10.7 PDC shall not require Developer, Property Owner or Federated Retail Holdings, Inc. to take any action that would cause a recapture of the Historic Tax Credits for the Hotel Project.

10. **ADDITION OF NEW SECTION 2.11 TO THE EXISTING DEVELOPMENT AGREEMENT.** A new Section 2.11 is hereby added to the Third Amended and Restated Development Agreement to read as follows:

**2.11 Developer Representations and Warranties.** Developer represents that:

2.11.1 Developer has full power and authority to enter into and perform this Amendment in accordance with its terms, and Developer has taken all requisite action in connection with the execution of this Amendment and the transactions contemplated hereby.

2.11.2 No representation, warranty or statement of Developer in this Amendment or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

2.11.3 As of the date hereof there are no defaults by Developer under this Amendment or events that with the passage of time would constitute a default of Developer under this Amendment.

2.11.4 To the best of Developer's knowledge, there is no litigation, action, suit, or other government proceeding pending or threatened, which may affect Developer's ability to perform its obligations under this Amendment.

2.11.5 Developer enters into this Amendment without reliance upon any verbal representation of any kind by PDC, its employees, agents or consultants regarding any aspect of the Hotel Project site, the Hotel Project, its feasibility, financing or compliance with any governmental regulation.

2.11.6 “Developer’s knowledge” shall mean the actual knowledge of the managerial and supervisory personnel of Developer having responsibility for the development of the Hotel Project.

11. **ADDITION OF NEW SECTION 2.12 TO THE EXISTING DEVELOPMENT AGREEMENT.** A new Section 2.12 is hereby added to the Third Amended and Restated Development Agreement to read as follows:

**2.12 Corporate Governance; Ownership Interests of Property Owner, Investment Fund and Developer.**

2.12.1 PDC hereby consents to (a) the ownership interests of Property Owner, Investment Fund, and Developer, all as set forth in the organizational charts attached hereto as Exhibit C (the “**Organizational Charts**”), (b) the appointment of Sage Portland No. 2, LLC, a Delaware limited liability company (“**SP2**”), as the managing member of Developer, and (c) the appointment of SP2 as the managing member of Investment Fund. The foregoing consent satisfies the requirements set forth in (x) Section 7.1 of that certain Amended and Restated PDC Loan Agreement, by and between PDC and Property Owner, dated as of the date hereof, and (y) Section 6.02(b) of the PDC Bridge Loan Agreement, by and between PDC and Investment Fund, dated as of March 31, 2006, as same shall be amended from time to time (the “**Bridge Loan Agreement**”).

2.12.2 PDC hereby acknowledges receipt of the following organizational documents and consents to the terms therein: (a) Second Amendment to Amended and Restated Operating Agreement of Investment Fund,

and (b) Second Amended and Restated Operating Agreement for Hospitality Fund I, LLC. The foregoing consent satisfies the requirement as set forth in Section 6.02(c) of the Bridge Loan Agreement.

2.12.3 Notwithstanding that its consent is not required, PDC hereby acknowledges (a) the ownership interests of CDE, as set forth in the Organizational Charts, and (b) the appointment of SP2 as the managing member of CDE.

2.12.4 PDC and Developer hereby acknowledge that Property Owner, Investment Fund and CDE are third party beneficiaries of the provisions of this Section 2.12.

12. **AMENDMENT OF SECTION 3.2 OF THE THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT.** Section 3.2 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

3.2 **Hotel Capitalization Overview.** Attached hereto as Exhibit D is the capitalization overview for the Hotel Project as of the date hereof.

13. **AMENDMENT OF SECTION 3.11 OF THE EXISTING DEVELOPMENT AGREEMENT.** Section 3.11 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

3.11 **Reporting Covenant.** Following completion of the Hotel Project, Developer covenants to deliver to PDC for review and approval economic models to be prepared by CBIZ MHM, LLC for the Hotel Project within 30 days after such economic models are made available to Developer by CBIZ MHM, LLC.

14. **AMENDMENT OF SECTION 3.13 OF THE EXISTING DEVELOPMENT AGREEMENT.** Section 3.13 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

**3.13 Covenant regarding Execution of 2009 Master Lease Amendment.** Developer covenants that it shall take all action as shall be necessary to ensure that the 2009 Master Lease Amendment is executed on or before the 2009 Closing.

**15. AMENDMENT OF PARAGRAPH (a) OF SUBSECTION 5.1.1 OF THE EXISTING DEVELOPMENT AGREEMENT.** Paragraph (a) of subsection 5.1.1 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

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

**16. AMENDMENT OF SECTION 5.2 OF THE EXISTING DEVELOPMENT AGREEMENT.** Section 5.2 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

- 5.2 Remedies.** In the event of a party's default, the non-defaulting party shall have any and all rights otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by

the other Party, including, without limitation the right to compel specific performance. In addition, PDC shall have the right to accelerate the payments on the PDC Loan Documents, all according to the terms of this Agreement and the PDC Loan Documents, respectively. The exercise of remedies by PDC pursuant to the PDC Loan Documents shall be subject to the 2009 Intercreditor Agreement and the 2006 Upper Tier Intercreditor Agreement.

17. **AMENDMENT OF SECTION 6.3.2 OF THE EXISTING DEVELOPMENT AGREEMENT.** Section 6.3.2 of the Existing Development Agreement is hereby deleted in its entirety and replaced by the following:

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

Ken Geist  
Portland Hotel Developer, LLC  
1575 Welton Street, Suite 300  
Denver, Colorado 80202  
(720) 944-0426

with a copy to:

J. Kevin Ray  
Campbell Killin Brittan & Ray LLC  
270 St. Paul Street, Suite 200  
Denver, Colorado 80206  
(303) 322-3400

18. **AMENDMENT OF EXHIBIT C TO THE EXISTING DEVELOPMENT AGREEMENT.** Exhibit C of the Existing Development Agreement is hereby deleted in its entirety. The parties hereby acknowledge that the Hotel Project was substantially completed in accordance with the Schedule of Development attached to the First Amendment.

19. **AMENDMENT OF EXHIBIT D TO THE EXISTING DEVELOPMENT AGREEMENT.** Exhibit D of the Existing Development Agreement is hereby deleted in its entirety and replaced by Exhibit B to this Amendment.

20. **MISCELLANEOUS PROVISIONS.**

- (a) **Modification.** This Amendment may not be modified or amended except by the written agreement of the parties.
- (b) **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- (c) **Binding Effect.** The provisions of this Amendment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided that the foregoing shall be subject to the limitations on assignment set forth in Section 5 of the Agreement.
- (d) **Effect of Amendment.** Except as expressly provided in this Amendment, the Existing Development Agreement shall remain unmodified and in full force and effect.

*[Page intentionally left blank]*



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

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

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

**PORTLAND HOTEL DEVELOPER LLC**, a Delaware limited liability company

By Sage Portland No. 2, LLC, its managing  
: member

By: Sage Investment Holdings, L.L.C.,  
its member

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

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On March \_\_\_\_, 2009, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

My commission expires: \_\_\_\_\_

[seal]

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On March \_\_, 2009, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

My commission expires: \_\_\_\_\_

[seal]

**EXHIBITS**

- |                  |  |
|------------------|--|
| <b>Exhibit A</b> | <b>Legal Description of Hotel Condominium Unit</b>   |
| <b>Exhibit B</b> | <b>Replacement Exhibit D to Third Amended and Restated<br/>Development Agreement – Capitalization Overview</b> |
| <b>Exhibit C</b> | <b>Organizational Charts</b>   |

**EXHIBIT A**

**Legal Description of Hotel Condominium Unit**

**Unit 1, SIX TWENTY ONE S.W. FIFTH AVENUE BUILDING CONDOMINIUM, according to the Declaration of Unit Ownership recorded April 6, 2006, as Recorder's Fee No. 2006-062473, in the City of Portland, County of Multnomah and State of Oregon;**

**TOGETHER WITH 55% of undivided interest in common elements of said condominium and the Declaration;**

**TOGETHER WITH benefits of easements appurtenant to the Unit 1 of the Declaration which Condominium is located on that certain Parcel of land more particularly described as follows:**

**A tract of land situated in the Southwest quarter of Section 34, Township 1 North, Range 1 East and the Northwest quarter of Section 3, Township 1 South, Range 1 East, Willamette Meridian, in the City of Portland, Multnomah County, Oregon, and being Block 173, CITY OF PORTLAND, Multnomah County Plat Records, more particularly described as follows:**

**Beginning at the Initial Point, being the Northeast corner of said Block 173, being referenced by a found brass screw with no washer in the sidewalk which bears North 67°02'13" East 7.08 feet; thence North 67°41'00" West 200.00 feet along the Northerly line of said Block 173 to the Northwest corner thereof; thence South 22°19'00" West 200.00 feet along the Westerly line of said Block 173 to the Southwest corner thereof; thence South 67°41'00" East 200.00 feet along the Southerly line of said Block 173 to the Southeast corner thereof; thence North 22°19'00" East 200.00 feet along the Easterly line of said Block 173 to the initial point.**

**TOGETHER WITH the rights to use dedicated street areas for various building encroachments and spaces as set forth in the City of Portland Revocable Permit No. TR-05-234 which was recorded January 20, 2006, as Fee No. 2006-011763 and subsequently assigned and assumed by instrument recorded April 6, 2006 as Fee No. 2006-062447.**

**EXHIBIT B**

**REPLACEMENT EXHIBIT D TO THIRD AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT**

**CAPITALIZATION OVERVIEW**

(See attachment)

**EXHIBIT C**

**ORGANIZATIONAL CHARTS**

(See attachments)

# PDC

PORTLAND DEVELOPMENT COMMISSION

## Resolution Number 6689

TITLE: AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND AMENDMENT TO THE THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH PORTLAND HOTEL DEVELOPER, LLC; AND TO MODIFY LOAN DOCUMENTS WITHURBAN HERITAGE PORTLAND HOTEL, LLC PORTLAND HOTEL DEVELOPER, LLC AND PORTLAND HOTEL FUND, LLC THAT PROVIDE FOR THE CHANGE IN PAYMENT STRUCTURE FOR TWO LOANS AND AN INCREASE IN LOAN AMOUNT IN ONE LOAN IN CONNECTION WITH THE REHAB OF THE HOTEL PORTION OF THE MEIER FRANK HISTORIC BUILDING IN THE RIVER DISTRICT URBAN RENEWAL AREA

Adopted by the Portland Development Commission on March 25, 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 Ferran	<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.*

  
\_\_\_\_\_  
Emily Swensen, Recording Secretary

3/25/09  
\_\_\_\_\_  
Date