

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6703

AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE THE FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT WITH WESTON INVESTMENT COMPANY FOR PDC-OWNED PROPERTY LOCATED AT 1010-1034 NE GRAND AVE. (BLOCK 45, LOTS 1-4) IN THE OREGON CONVENTION CENTER URBAN RENEWAL AREA

WHEREAS, On April 25, 2007 the Portland Development Commission's (PDC) Board of Commissioners through Resolution No. 6476 authorized a disposition and development agreement (DDA) with Weston Investment Company (WIC) for the purchase and redevelopment of Block 45, Lots 1-4 in the Oregon Convention Center Urban Renewal Area (OCCURA);

WHEREAS, the DDA between WIC and PDC was executed June 6, 2007;

WHEREAS, WIC has diligently pursued its obligations as specified in the DDA;

WHEREAS, as of April 2009, WIC has spent over \$1 Million on design and completed 90% of design development;

WHEREAS, WIC continues to express an interest in constructing the approximately 200 unit condominium project called the Cosmopolitan Tower;

WHEREAS, the ability of individuals to obtain mortgages for condominiums has been negatively impacted by the current recession;

WHEREAS, the ability for development firms to obtain construction financing for condominium projects has been negatively impacted by the current recession;

WHEREAS, there is a multi-year over-supply of condominiums on the Portland market; and

WHEREAS, WIC has submitted a request to amend the Schedule of Performance in the DDA to extend the deadlines for the tasks remaining to be completed under the DDA.

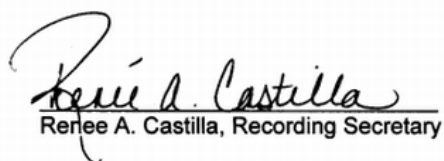
NOW, THEREFORE, BE IT RESOLVED that the Executive Director is authorized to execute the First Amendment to Agreement for Disposition and Development of Property (Cosmopolitan Tower) with Weston Investment Co. LLC, substantially in the form attached hereto as Exhibit A (First Amendment);

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

BE IT FURTHER RESOLVED that the Executive Director is authorized to take such further action and execute such additional documents as are contemplated by the First Amendment; and

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

Adopted by the Portland Development Commission on May 14, 2009.



Renee A. Castilla
Renee A. Castilla, Recording Secretary

EXHIBIT A
FIRST AMENDMENT TO AGREEMENT FOR DISPOSITION AND DEVELOPMENT
OF PROPERTY
COSMOPOLITAN TOWER

This First Amendment to Disposition and Development of Property is made as of _____, 2009 (“First Amendment”) between the 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 (“PDC”), and Weston Investment Co. LLC, an Oregon limited liability company (“Developer”). PDC and Developer are referred to jointly in this First Amendment as “Parties” and individually as a “Party.”

RECITALS

1. PDC and Developer entered into that certain Agreement for Disposition and Development of Property (Cosmopolitan Tower) dated June 6, 2007 (the “Original DDA”) pursuant to which PDC agreed, under certain terms and conditions, to sell certain real property to Developer and Developer agreed, under certain terms and conditions, to purchase the property from PDC and construct a residential tower thereon (the “Original DDA”). A memorandum of the Original DDA was recorded as Fee No. _____ in the real property records of Multnomah County.
2. PDC and Developer desire to amend the Original DDA to modify the Schedule of Performance and provide for subsequent additional modifications to the Schedule of Performance under certain circumstances.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Schedule of Performance. The Schedule of Performance set forth in Exhibit B of the Original DDA, is hereby deleted in its entirety and replaced with the Schedule of Performance set forth in Exhibit B, attached hereto and incorporated herein by this reference.
2. Further Changes in the Schedule of Performance. The following paragraph is hereby added to the end of Section 9.15:

Notwithstanding the foregoing, each of the dates contained in the Schedule of Performance shall be automatically extended by 12 months if (a) Developer submits a written request for the extension to PDC no more than 90 and no fewer than 60 days before April 4, 2011; (b) includes with the request a written report explaining why proceeding with the Project under the existing Schedule of Performance is not feasible and addressing each of the following factors: (i) the condition of Portland's central city condominium market, particularly condominium absorption, (ii) the condition of the financial markets, especially lending for projects of the type and scale contemplated by this Agreement, (iii) the status of the Grand Avenue streetcar line, (iv) the status of the Convention Center hotel project, and (v) the status of the project proposed for PDC Blocks 47 and 49 in the Oregon Convention Center Urban Renewal Area; and (c) Developer executes and delivers to PDC no later than April 4, 2011, an appropriate amendment to this Agreement, prepared by PDC and implementing the 12 month extension in the Schedule of Performance.

3. Except as expressly modified by this First Amendment, the Parties agree and acknowledge that the Original DDA is and remains in full force and effect and binding on the Parties.
4. This First Amendment may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this First Amendment so executed shall constitute an original. This First Amendment may not be modified except by a writing signed by the Parties.
5. Capitalized terms used but not defined in this First Amendment shall have the meanings ascribed thereto in the Original DDA.

IN WITNESS WHEREOF, the Parties hereto execute this First Amendment effective as of the date first set forth above.

[Recording?]

PDC:

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: _____
Bruce A. Warner,
Executive Director

APPROVED AS TO FORM

David J. Elott,
PDC Deputy General Counsel

DEVELOPER:

WESTON INVESTMENT CO. LLC, an Oregon limited liability company

By: WESTON TRUST CORP., an Oregon corporation, its Managing Member

By:

Joseph E. Weston, President

EXHIBIT B

SCHEDULE OF PERFORMANCE

TASK	DUE DATE
1. PDC to provide Preliminary Title Report to Weston	Complete
2. Execute Memorandum of Understanding	Complete
3. Substantial Draft DDA	Complete
4. Commission Approval of DDA	Complete
5. Weston to submit to the City of Portland Bureau of Development Services, a Design Advice Request (DAR)	Complete
6. Weston to re-submit to the City of Portland Bureau of Development Services, a second Design Advice Request (DAR)	Complete
7. Weston to provide Development Program and Concept Documents	Complete
8. PDC to complete review of Development Program and Concept Documents	Complete
9. Weston to submit to the City of Portland Bureau of Development Services application for Design Review Approval	Complete
10. Weston to provide 50% Schematic Drawings	Complete
11. PDC to complete review of 50% Schematic Drawings	Complete
12. Weston to provide 90% Schematic Drawings	Complete
13. PDC to complete review of 90% Schematic Drawings	Complete
14. West to provide estimate of number of Affordable Units	Complete
15. Weston to provide 50% Design Development Documents & Project Budget	Complete
16. PDC to complete review of 50% Design Development Documents & Project Budget	Complete
17. Weston to provide 90% Design Development Documents & Project Budget	Complete
18. PDC to complete review of 90% Design Development Documents & Project Budget	Complete
19. Weston to provide 50% Construction Documents & Project Budget	April 4, 2011
20. PDC to complete review of 50% Construction Documents & Project Budget	April 25, 2011
21. Weston to provide 90% Construction Documents & Project Budget	September 5, 2011
22. PDC to complete review of 90% Construction Documents & Project Budget	September 26, 2011
23. Weston to provide Final Construction Plans and Specifications & Project Budget	March 12, 2012
24. PDC to complete review of Final Construction Plans and Specifications & Project Budget	April 2, 2012
25. Weston to provide Articles of Organization, Operating Agreement, Certificate of Good Standing, and Authorizing Resolution	May 7, 2012
26. PDC to provide final form of deed	May 7, 2012
27. Weston secures Building Permits (Shoring & Excavation at minimum)	May 7, 2012

TASK	DUE DATE
from BDS	
28. Weston to provide evidence/commitment of construction financing for Project	May 7, 2012
29. Closing/Conveyance of Property to Weston Properties	May 21, 2012
30. Weston begins construction	May 21, 2012
31. Final Termination Date (if Closing does not occur by May 21, 2012)	July 16, 2012
32. Completion of construction/Weston to secure Certificate of Occupancy for the Project	June 18, 2014
33. Weston Properties requests Certificate of Completion from PDC	June 18, 2014
34. PDC issues Certificate of Completion	July 2, 2014

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6703

Title:

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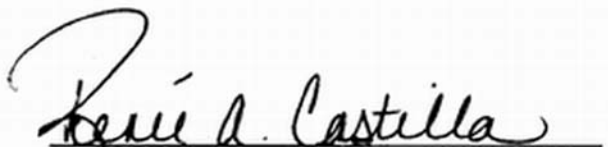
Adopted by the Portland Development Commission on May 14, 2009.

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

Certification

The undersigned hereby certifies that:

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


Renee A. Castilla, Recording Secretary

Date: June 4, 2009