

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6984**

**AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT TO  
CONVEY 0.76 ACRES OF REAL PROPERTY IN THE CENTRAL EASTSIDE  
URBAN RENEWAL AREA TO KEY DEVELOPMENT CORPORATION FOR  
\$1,650,000**

**WHEREAS**, the Portland Development Commission (“PDC”) is undertaking the Central Eastside Urban Renewal Plan, adopted August 27, 1986, and subsequently amended (the “Plan”);

**WHEREAS**, PDC is the owner of a 0.76 acre parcel, known as Burnside Bridgehead Block 67, which is bounded by East Burnside Street, NE 3<sup>rd</sup> Avenue, and NE 2<sup>nd</sup> Avenue (the “Property”);

**WHEREAS**, PDC acquired the Property, along with Blocks 68, 76, and portions of Blocks 69 and 75 (the “Burnside Bridgehead Property”), to implement a multi-block mixed-use development;

**WHEREAS**, the City of Portland’s Economic Development Strategy, a Five-Year Plan for Promoting Job Creation and Economic Growth, identifies the Burnside Bridgehead Property as a key catalytic site within the Central City and calls for the creation of a significant mixed-use gateway development at this location;

**WHEREAS**, the Burnside Bridgehead Framework Plan, adopted by the PDC Board on May 26, 2010, by Resolution No. 6800, established a strategic design approach for the redevelopment of the Burnside Bridgehead Property;

**WHEREAS**, PDC issued a Request for Interest (“RFI”) on July 15, 2010, seeking offers from qualified development teams to purchase and redevelop portions of the Burnside Bridgehead Property, including the Property; a total of ten statements of interest were submitted in response to the RFI, including two statements of interest that were specific to the Property;

**WHEREAS**, the PDC Executive Director approved the selection of Key Development Corporation (“KDC”) on October 8, 2010, and authorized staff to enter into negotiations leading to a Memorandum of Understanding (“MOU”) and Disposition and Development Agreement (“DDA”);

**WHEREAS**, PDC and KDC entered into a MOU on April 3, 2011, which set forth the mutual understandings and intentions to complete a series of due diligence scope items while negotiating the terms of a binding DDA; and

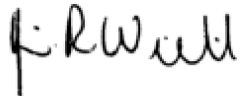
**WHEREAS**, PDC and KDC have negotiated a DDA substantially in the form attached hereto as Exhibit A (the “Block 67 Disposition and Development Agreement”) to convey the Property to KDC for a purchase price of ONE MILLION SIX HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,650,000).

**NOW, THEREFORE, BE IT RESOLVED** that the PDC Board of Commissioners authorizes the Executive Director to execute the Block 67 Disposition and Development Agreement;

**BE IT FURTHER RESOLVED** that the Executive Director may approve changes to the Block 67 Disposition and Development Agreement, if such changes do not materially increase PDC’s obligations or risks, as determined by the Executive Director in consultation with PDC’s General Counsel; and

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

**Adopted by Portland Development Commission on December 12, 2012**



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Gina Wiedrick, Recording Secretary

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6984**

**EXHIBIT A**

**AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT TO  
CONVEY 0.76 ACRES OF REAL PROPERTY IN THE CENTRAL EASTSIDE  
URBAN RENEWAL AREA TO KEY DEVELOPMENT CORPORATION FOR  
\$1,650,000**

Exhibit A includes this cover page and contains 82 pages:

- Agreement for Disposition and Development of Property in the Central Eastside Urban Renewal Area between the Portland Development Commission and Key Development Corporation
  - Exhibit A – Description of the Property
  - Exhibit B – Glossary
  - Exhibit C – Couch Street CC&Rs
  - Exhibit D – Project Budget
  - Exhibit E – Form of Deed
  - Exhibit F – Scope of Development
  - Exhibit G – Schedule of Performance
  - Exhibit H – Form of Certificate of Completion
  - Exhibit I – Environmental Due Diligence Reports
  - Exhibit J – Business and Workforce Equity Policy
  - Exhibit K – Form of Quitclaim Deeds and Escrow Instructions
  - Exhibit L – Form of Memorandum of Agreement

**AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY**

**IN THE CENTRAL EASTSIDE URBAN RENEWAL AREA**

**between**

**THE PORTLAND DEVELOPMENT COMMISSION**

**and**

**KEY DEVELOPMENT CORPORATION**

**dated**

**\_\_\_\_ 2012**

## AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

This AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY is made and entered this \_\_\_ day of \_\_\_\_\_ 2012 (the “Effective Date”), by and 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 KEY DEVELOPMENT CORPORATION, an Oregon corporation (“Developer”). PDC and Developer may be referred to jointly in this Agreement as the “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 within the city limits and in connection therewith prepared and approved an Urban Renewal Plan for the Central Eastside Urban Renewal Area (the “URA”), which was approved by the City Council of the City on August 27, 1986 by Ordinance No. 158940 (as amended from time to time, the “Urban Renewal Plan”);
- B. PDC, finding it necessary and in the public interest to implement the Urban Renewal Plan, acquired certain real property within the URA pursuant to the *Eastbank at Burnside: Lower East Burnside Redevelopment Plan* (the “Redevelopment Plan”). The intent of the Redevelopment Plan was to provide a basis for urban design, architectural and economic analysis, and guide the development of actions, policies and strategies for improving this part of the central city;
- C. PDC acquired Blocks 67, 68, and 76, and portions of Blocks 69 and 75 (collectively, the “Burnside Bridgehead Site”) in the URA to implement the Redevelopment Plan;
- D. The PDC Board of Commissioners (the “Board”) adopted the Framework Plan (the “Framework Plan”) as the guiding document for the evaluation of future development of the Burnside Bridgehead Site. The adopted Framework Plan for the Burnside Bridgehead Site included extensive public participation consistent with PDC’s Public Participation Policy;
- E. Developer, as a result of a Request for Information process, was selected to develop a portion of the Burnside Bridgehead Site commonly known as Block 67 and located at 123 NE 3<sup>rd</sup> Avenue, Portland, Oregon 97232 and more particularly described in Section 2.2 herein, including Exhibit A attached hereto (the “Property”);
- F. Developer’s development of the Property shall consist of, among other things, a privately-owned, mixed-use development with active uses on NE 3<sup>rd</sup> Avenue and the Couch Street Improvements (as hereinafter defined) and including market rate housing, office, and/or live/work units and ground-level commercial frontage on

NE 3<sup>rd</sup> Avenue (collectively, the “Project”). The Project is more specifically described in the Scope of Development (as hereinafter defined);

- G.** The Project will be adjacent to certain public improvements at the northern portion of the Property at Couch Street providing public access between NE 2<sup>nd</sup> Avenue and NE 3<sup>rd</sup> Avenue through the Burnside Bridgehead Site (the “Couch Street Improvements”);
- H.** The completion of the Project according to the terms of this Agreement, including the Scope of Development and the Schedule of Performance (as hereinafter defined), is a material inducement to PDC to enter into this Agreement; and
- I.** 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.

## **AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### **1. DEFINED TERMS**

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Agreement. Some defined terms are first defined in the text of this Agreement and some are first defined in Exhibit B, which is a glossary of defined terms not defined in the text of this Agreement. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. If there is any difference between the definition of a defined term in the text of this Agreement and a definition of that term in Exhibit B, the definition in the text controls. Defined terms may be used in the singular or the plural.

### **2. GENERAL TERMS OF CONVEYANCE**

**2.1. Agreement for Disposition and Development.** PDC agrees to sell and convey the Property to Developer, and Developer agrees to purchase from PDC, and develop the Property upon the terms and conditions set forth in this Agreement.

**2.2. Description of the Property.** The Property which is subject to this Agreement consists of the following: The land located at the southwest corner of NE 3<sup>rd</sup> Avenue and NE Couch Street, Portland, Oregon, commonly known as Block 67 as more particularly described in Exhibit A attached hereto (the “Land”), together with: (i) all rights, privileges, licenses, and easements appurtenant to the Land owned by PDC, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the Land, as well as development rights, air rights, water rights related to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land; (ii) all improvements, equipment, fixtures or other personal property of every kind located on the Land, including, without limitation all buildings and structures

presently located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the improvements and fixtures; and (iii) any and all permits, warranties, intangible property and any other personal property assets owned by PDC with respect to the Land and the improvements thereon.

**2.3. Couch Street Improvements.** PDC shall cause to be recorded against the Property and all other real property that comprises the Burnside Bridgehead Site, a Declaration of Covenants, Conditions and Restrictions in the form attached as Exhibit C (the “Couch Street CC&Rs”), pursuant to which, among other things, the developer of the Couch Street Parcel shall have the obligation to maintain, operate, manage, repair and replace the Couch Street Improvements and each developer of property located within the Burnside Bridgehead Site, including Developer, shall be responsible for their respective pro rata share of the cost of the maintenance, operation, management, repair and replacement of the Couch Street Improvements.

**2.4. Earnest Money Deposit.** Within ten (10) days of the Effective Date and subject to the terms of this Section 2.4, Developer shall deposit with the Escrow Agent EIGHTY NINE THOUSAND FIVE HUNDRED DOLLARS (\$89,500) (the “Escrow Deposit”). The Escrow Deposit shall be fully refundable to Developer, except as provided below. The Escrow Agent will invest the Escrow Deposit in a federally insured, interest-bearing account. The accrued interest will be treated as part of the Escrow Deposit and shall be disbursed pursuant to the terms of this Agreement and the Escrow Instructions.

**2.5. Purchase Price.** The purchase price for the Property is an amount equal to the appraised value of the Property as determined by an appraisal mutually acceptable to PDC and Developer dated no later than twelve (12) months prior to the date of this Agreement, which amount is ONE MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS(\$1,650,000) (the “Purchase Price”).

**2.6. AS IS Sale.** Developer has, or shall have prior to Closing, examined and investigated the Property to its own satisfaction and shall have formed its own opinion as to the condition (including the environmental condition) and value thereof. Developer has not relied on any statements or representations from PDC or any person acting on behalf of PDC concerning any of the following: (i) the size or area of the Property; (ii) the location of corners or boundaries of the Property; (iii) the condition of the Property, including but not limited to, physical or geotechnical properties above or below the surface of the Property or the Environmental Condition adjacent, above or below the surface of the Property (including without limitation releases or threatened releases of hazardous or regulated substances) or compliance with Environmental Laws and other governmental requirements; (iv) the availability of services to the Property; or (v) the ability of Developer to use the Property or any portion thereof for any intended purpose, including the Project. Developer is acquiring the Property, in the condition existing at the time of Closing, AS IS, with all defects, if any. Developer waives, releases and forever discharges PDC and PDC’s successors and assigns, of and from all claims, actions, causes of action, fines, penalties, damages (including consequential, incidental and special damages), costs (including the cost of complying with any judicial or governmental order), and expenses (including attorney fees), direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property. The provisions of this

section shall be included in the Deed, and shall survive the Closing and shall be binding on the Developer and Developer's successors and assigns.

## **2.7. Access, Inspection and Due Diligence Materials**

**2.7.1. Access and Inspection.** The Parties acknowledge that they have entered into a Permit of Entry granting Developer and its authorized agents or representatives access to the Property to make such investigations, studies and tests as Developer deems necessary or advisable.

**2.7.2. Due Diligence Materials.** PDC agrees to provide Developer: (a) a Preliminary Title Report or Reports covering the Property, and exception documents referenced in the Preliminary Title Report or Reports (collectively, the "Title Report") within ten (10) days of the Effective Date; and (b) copies of all studies, reports, site analyses, engineers certificates, existing surveys, existing title insurance policies, contracts, leases, licenses and permits with respect to the Property that PDC has in its possession, or that it has access to, including, without limitation: (i) any site analyses with respect to oil, asbestos, underground storage tanks, Hazardous Materials, lead paint, or lead plaster; or (ii) any reports regarding compliance with laws (including, but not limited to, ADA, zoning and all other land use matters) (collectively, the "Due Diligence Materials"). Unless otherwise indicated, during the Due Diligence Period (as hereinafter defined), PDC agrees to make such items available to Developer and Developer's agents, at reasonable times at the mutual convenience of Developer and PDC.

**2.7.3. Due Diligence Period.** Developer shall notify PDC no later than one hundred twenty (120) days after Effective Date (the "Due Diligence Period") of the results of its due diligence. In the event that Developer's due diligence shall reveal any matters which are not acceptable to Developer, in Developer's sole discretion may elect, by written notice to PDC, on or before 5:00 p.m. on the expiration of the Due Diligence Period, not to proceed with the transaction contemplated herein, in which event this Agreement shall be null and void without recourse to either Party and the Escrow Deposit shall be refunded to Developer. Developer's failure to so notify PDC of the results of its due diligence on or before the expiration of the Due Diligence Period shall be deemed as Developer's acceptance of the results of its due diligence and intention to proceed with the transaction herein upon which the Escrow Deposit shall be nonrefundable to Developer unless otherwise contemplated herein.

## **2.8. Title Review.**

**2.8.1.** Developer will have until the expiration of the Due Diligence Period to notify PDC in writing if Developer objects to any item in the Title Report. Those items to which Developer does not object are "Permitted Exceptions". If Developer objects to any item, then PDC shall have twenty (20) 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 Closing. If PDC does not respond to Developer's objections within the twenty (20) day time period or if PDC refuses to remove any such objected to exceptions, Developer shall have twenty (20) days to terminate this Agreement by written notice to PDC. If Developer terminates this Agreement under this section, no remedies shall accrue to either Party and all rights



and obligations of the Parties under this Agreement shall terminate 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 and the Escrow Deposit shall be refunded to Developer. If this Agreement is not so terminated, the Permitted Exceptions shall also include those exceptions, if any, that Developer originally objected to and that PDC refused to remove or failed to respond to.

**2.8.2.** Developer may obtain an update to the Title Report on the Property at any time prior to the Closing. Developer shall promptly give to PDC a copy of any updated Title Report. Within twenty (20) 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 twenty (20) 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 Closing. If PDC does not give its response to Developer's objections within the twenty (20) day time period or if PDC refuses to remove any such objected to exceptions, Developer shall have twenty (20) days to terminate this Agreement by written notice to PDC. If Developer terminates this Agreement under this section, no remedies shall accrue to either Party and all rights and obligations of the Parties under this Agreement shall terminate 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, and the Escrow Deposit shall be refunded to Developer. If this Agreement is not so terminated, the exceptions that Developer objected to and that PDC refused to remove or failed to respond to will be included along with the Permitted Exceptions as the Final Permitted Exceptions.

**2.9. Title Insurance.** PDC will cover the cost of a standard coverage Owner's Policy of Title Insurance, issued by Escrow Agent, covering the Property when conveyed, and insuring Developer in the amount of the Purchase Price, 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.

### **3. REPRESENTATIONS AND WARRANTIES**

**3.1. PDC Representations and Warranties.** PDC's representations and warranties under this Agreement are limited to the following. PDC hereby warrants and represents to Developer as of the Effective Date and as of the Closing Date the following:

**3.1.1.** PDC has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein; and all requisite action has been taken by PDC in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of creditor, investor, judicial or administrative body, governmental authority or other party is required.

- 3.1.2.** To PDC's knowledge, except as has been disclosed to Developer in the Environmental Due Diligence Reports, PDC has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, Released or produced Hazardous Substances on the Property, and no underground storage tanks exist 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.
- 3.1.3.** PDC is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.
- 3.1.4.** To PDC's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, or PDC's ability to perform its obligations under this Agreement;
- 3.1.5.** To PDC's knowledge and except as otherwise disclosed in writing to Developer before the Effective Date, during PDC's ownership of the Property, the Property has been operated in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements ("Laws").
- 3.1.6.** PDC has not received any notice stating that the Property is in violation of any applicable laws, rules, regulations, ordinances or other governmental requirements.
- 3.1.7.** To PDC's knowledge, utility connections are available to the Property.
- 3.1.8.** PDC is the legal and beneficial fee simple titleholder to the Property and the Property is free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, or judgments, except as disclosed by the Title Report.
- 3.1.9.** To PDC's knowledge, there are no leases or service contracts that affect the Property that are not terminable at the Closing and there are no options to purchase the Property or rights of first refusal to purchase the Property.
- 3.1.10.** This Agreement and all documents required to be executed by PDC are and shall be valid, legally binding obligations of and enforceable against PDC in accordance with their terms.
- 3.1.11.** Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which PDC is a party.
- 3.1.12.** 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.

**3.1.13.** The persons executing this Agreement and the instruments referred to herein on behalf of PDC have the legal power, right and actual authority to bind PDC to the terms and conditions of this Agreement.

**3.2. Developer Representations and Warranties.** Developer's representations and warranties under this Agreement are limited to the following. Developer hereby warrants and represents to PDC as of the Effective Date and as of the Closing Date the following:

**3.2.1.** Jeff Pickhardt is the President of the Developer.

**3.2.2.** Developer has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Developer in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.

**3.2.3.** This Agreement and all documents required to be executed by Developer are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms.

**3.2.4.** Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Developer is a party.

**3.2.5.** 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.

**3.2.6.** 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, its feasibility, financing, or compliance with any governmental regulation.

**3.2.7.** 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.

**3.2.8.** The persons executing this Agreement and the instruments referred to herein on behalf of Developer have the legal power, right and actual authority to bind Developer to the terms and conditions of this Agreement.

#### **4. CONDITIONS PRECEDENT TO CLOSING**

**4.1. Conditions.** Developer and PDC are not obligated to proceed with the conveyance of the Property to the Developer unless the following conditions are satisfied prior to Closing. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied. To the extent the failure of a condition to be satisfied occurs and such failure of the satisfaction of such condition constitutes a default under this Agreement, the non-defaulting party shall have all rights and remedies against the defaulting party that are available to such non-defaulting party under this Agreement.

**4.1.1.** To the reasonable satisfaction of both PDC and Developer, which conditions must be waived in writing by both PDC and Developer if not satisfied:

- (i) Both the Design Development Drawings and Final Construction Plans and Specifications have been approved by all required governmental entities and/or agencies, including PDC's design review pursuant to Section 7.2 below.
- (ii) 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.
- (iii) All financing necessary to construct the Project has closed and/or Developer has obtained non-contingent commitments for such financing.
- (iv) No litigation is pending that prevents PDC or Developer from performing their respective obligations under this Agreement.

**4.1.2.** To Developer's reasonable satisfaction, which conditions may be waived in writing solely by Developer if not satisfied:

- (i) PDC is not in default under this Agreement and 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.
- (ii) No material adverse change in the physical or legal condition of the Property has occurred.
- (iii) Title Company is prepared to issue to Developer the form of Title Insurance selected by Developer under Section 2.9, covering the Property in an amount equal to the Purchase Price, subject only to the Final Permitted Exceptions.

**4.1.3.** To PDC's reasonable satisfaction, which conditions may be waived in writing solely by PDC if not satisfied:

- (i) PDC has received documentation indicating that the City of Portland Bureau of Development Services is ready to issue the building permits that are required to construct the Project, subject only to Developer's ownership of the Property.
- (ii) Developer has provided to PDC documentation that:
  - (a) Developer is an Oregon corporation qualified to do business in the state of Oregon;
  - (b) The Articles of Incorporation of Developer have not been altered since the Effective Date in any manner that may materially adversely affect PDC's interests after the Closing;
  - (c) Developer has provided corporate resolutions authorizing Developer to enter into and perform its obligations under this Agreement; and
  - (d) This Agreement has been executed and delivered, for and on behalf of Developer, by an authorized individual.
- (v) PDC has approved the Final Project Budget and Developer has 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; and
  - (b) Written evidence of necessary equity commitments to the Project as further described in Section 7.1 below.
- (v) Developer has registered the Project for LEED certification and has provided PDC with documentation of the Project's LEED credits, evidencing anticipated credits sufficient to reach at least LEED silver certification.
- (vi) Developer is not in default under this Agreement and 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) Developer shall have entered into, or shall be prepared to enter into at Closing, a non-remonstrance agreement with respect to the anticipated Local Improvement District ("LID") on Davis Street and any other LIDs contemplated for the Burnside Bridgehead Site, including, but not limited to, the Streetcar LID.
- (viii) Developer shall have formulated a transportation management plan that addresses the transportation impacts of the Project, including a description of anticipated building tenant and public parking for presentation to the [Central Eastside Industrial Council \("CEIC"\)](#) or [similar appropriate neighborhood organization](#). The transportation management plan should encourage the use of mass transit and will explore the use of methods including, without limitation, the implementation of TriMet's PassPort program, providing bike locker

and showers for bike commuters, electric vehicle charging stations, and encouraging carpooling and use of Zipcar or other similar short term rental service.

**4.2. Elections upon Non-Satisfaction of Conditions.** If any condition in this Section 4 is not fulfilled to the satisfaction of the benefited Party or Parties as of the Closing Date (or such later date, if any, designated pursuant to Section 4.2(c) below or determined in accordance with Section 4.3), then such benefited Party or Parties may elect as follows:

- (a) Terminate this Agreement by and effective upon written notice to the other Party; or
- (b) Waive in writing the benefit of that condition and proceed in accordance with the terms hereof; or
- (c) Designate in writing a later date for the 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.

**4.3. Final Termination Date.** If all of the conditions precedent to the Closing set forth in Section 4 have not been satisfied or waived by the later of (a) the Closing Date or (b) such later date, if any, designated pursuant to Section 4.2(c) or determined in accordance with Section 15.8.3, then this Agreement shall terminate sixty (60) days after written notice from the Party seeking termination unless the specified condition shall have been satisfied or waived and Closing shall have occurred within such 60-day period.

**4.4. 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 the 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 this Agreement terminates or is terminated for failure of fulfillment of the conditions precedent to the Closing and Developer is not in default under this Agreement, then PDC shall refund to Developer the Escrow Deposit. 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.

## **5. CLOSING**

### **5.1. Manner of Closing.**

**5.1.1.** The Closing of the purchase and sale of the Property will occur in an escrow to be administered by the Escrow Agent.

**5.1.2.** The Parties agree to provide the Escrow Agent with escrow instructions (the "Escrow Instructions") consistent with the terms of this Agreement.

**5.1.3.** On the Closing Date, the Escrow Agent shall deliver or cause to be delivered the sums and documents pursuant to the Escrow Instructions. In the event that the Escrow Agent cannot, or refuses to, handle this transaction, the Parties shall appoint an escrow company mutually satisfactory to the Parties, which is licensed in the state of Oregon.

## **5.2. Closing Date.**

**5.2.1.** The Closing shall occur on or before the date that is eighteen (18) months after the Effective Date (the “Closing Date”).

**5.2.2.** The Closing Date may not be extended without the consent of both Parties, unless extended pursuant to Section 15.1 or Section 15.8.3. If the Parties agree to extend the date for Closing six months or more beyond the date set forth above in paragraph 5.2.1, then the Purchase Price shall be increased by: (i) the percentage increase in the Consumer Price Index between the Effective Date and the adjusted Closing Date; or (ii) the increase reflected in an updated appraisal, the cost of such updated appraisal shall be at Developer’s sole cost and expense. In no event shall the Purchase Price be lower than the amount set forth above in Section 2.3.

**5.3. Payment of the Purchase Price.** Subject to satisfaction of the Conditions Precedent to Closing set forth above, and subject to a credit for the Escrow Deposit and the adjustments specified herein, at the Closing Developer shall pay the Purchase Price to PDC in immediately available funds..

**5.4. Conveyance by Deed.** Subject to satisfaction of the Conditions Precedent to Closing set forth above and upon Developer’s compliance with the terms of Section 5.3 above, at the Closing PDC will convey the Property to Developer by a statutory Bargain and Sale Deed, substantially in the form attached hereto as Exhibit E (the “Deed”).

**5.5. Documents to Be Deposited Into Escrow by PDC.** On or before the Closing Date, PDC shall deposit into Escrow all of the following:

**5.5.1.** A duly executed and acknowledged Deed.

**5.5.2.** An original certificate of non-foreign person duly executed by PDC and notarized.

**5.5.3.** Such documents as the Escrow Agent may require to establish the authority of PDC to complete the sale of the Property as contemplated by this Agreement, and to issue title insurance in the form required by Developer.

**5.5.4.** Such documents as the Escrow Agent may require to complete the sale of the Property as contemplated by this Agreement.

**5.6. Documents and Sums to Be Deposited Into Escrow by Developer.** On or before the Closing Date, Developer shall deposit into Escrow such funds (by wire transfer) as are necessary to complete payment of the Purchase Price in accordance with Section 2.3 of this Agreement and to pay Developer’s portion of the Closing costs. Developer shall also deposit into Escrow the following:

**5.6.1.** Such documents as the Escrow Agent may require to complete the sale of the Property as contemplated by this Agreement.

## **5.7. Prorations and Costs.**

**5.7.1. Closing Costs.** The costs for recording a Memorandum of this Agreement (as hereinafter defined) and the Deed shall be paid by PDC. The costs for recording 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 Ticor Title Company (the "Escrow Agent"). The cost of Title Insurance shall be paid in accordance with Section 2.9. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Multnomah County.

**5.7.2. Prorations of Taxes.** All property taxes attributable to the year in which the Closing occurs shall be prorated and adjusted as of the Closing Date as an adjustment at the Closing (regardless of whether such taxes and special assessments are then due and payable or delinquent). PDC agrees that any taxes, assessments and encumbrances that will be a lien against the Property at the Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied by PDC. If PDC shall fail to do so, Developer may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price of the Property. Regular real property taxes payable during the year in which the Closing occurs and any rents or income applicable to the Property shall be prorated as of the Closing Date. 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.

**5.7.3. Utilities.** PDC shall cause all meters for electricity, gas, water, sewer or other utility usage at the Property, if any to be read on the Closing Date, and PDC shall pay all charges for such utility charges that have accrued on or prior to the Closing Date. If the utility companies are unable or refuse to read the meters on the Closing Date, all charges for such utility charges to the extent unpaid shall be prorated and adjusted as of the Closing Date based on the most recent bills therefore.

**5.7.4. Other Prorations and Costs.** Except as otherwise provided herein, all other items to be prorated, including rents, operating expenses, revenues, and other income, if any, shall be prorated as of the Closing Date. For the purpose of calculating prorations, the Developer shall be deemed to be entitled to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date. PDC shall pay only the annual payments due through the Closing Date for the Property's pro rata 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 and the PDC shall each pay their own legal and professional fees of other consultants incurred by Developer and PDC, respectively.

## **6. INFRASTRUCTURE, UTILITIES AND LAND CONDITION**



- 6.1. Infrastructure Improvements.** As part of the Project, Developer, at its own cost, will design, construct, fund and obtain permits for all Infrastructure.
- 6.2. Site Preparation.** As part of the Project, Developer will, at its own cost, complete all necessary site preparation generally in accordance with the Schedule of Performance.
- 6.3. Utility Service.** As part of the Project, Developer shall install, connect, and upgrade new and existing utilities necessary to serve the Project.
- 6.4. Subsurface and Surface Conditions.** PDC shall convey the Property to Developer, and Developer shall accept the Property, in “AS IS” condition on the Closing Date, without warranty of any kind except as otherwise specifically set forth in this Agreement and in the conveyance documents executed by PDC at the Closing. In particular, except as otherwise specifically set forth in this Agreement and in the conveyance documents executed by PDC at the Closing, 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, except as specifically set forth in this Agreement. 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 had free access to PDC’s records with respect to the condition of the Property, specifically including the Environmental Due Diligence Reports.

## **7. DEVELOPMENT**

**7.1. Project Financing.** Developer will be responsible for obtaining from third parties all funds and financing necessary to acquire the Property and construct and operate the Project. The Parties anticipate that the Project financing will be structured generally as shown in the Project Budget. 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. To the extent required by Developer’s private lender, Developer shall provide its private lender with a completion guarantee and a repayment guarantee for the full amount of the Project construction and provide copies of the same to PDC.

### **7.2. Plans, Drawings and PDC Design Review and Approval.**

**7.2.1. Design Objectives, Review and Approval.** The Scope of Development is described in Exhibit F. Developer has prepared Preliminary Design Documents for the Project that are 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 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 approval process. PDC approval of Design Development Drawings must be obtained prior to submission for City Design Review. All plans and specifications referred to in this Section 7.2 are referred to herein as the “Drawings.”

**7.2.2. Standards for PDC Design Review and Approval.** PDC will not withhold its approval of any Drawings for the Project that, in PDC’s sole discretion, adequately address the following design objectives:

- (a) **Urban and Pedestrian Environment.** The Project should be designed to foster active pedestrian environments that enhance 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.
- (b) **Neighborhood Compatibility.** The Project should be designed such that the buildings, site improvements, and landscaping 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 the existing building forms, incorporating high-quality, durable materials and colors.
- (c) **Green Building Principles.** The Project should be designed to achieve at least LEED silver certification incorporating Green Building, energy efficiency and sustainability practices and designs.

**7.2.3. Limitations on Review of Design.** PDC's review and approval of Drawings will occur in stages and approvals will be progressive in nature, but limited to the following elements:

- (a) **Preliminary 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, depicted in the draft Design Development Drawings (50%) 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 Design Development Drawings material and color samples, and final Design Development Drawings cost estimate, depicted in the final Design Development Drawings that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved draft Design Development Drawings (50%);
- (c) **Preliminary 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, depicted in the draft Construction Drawings and Technical Specifications (50%) that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Draft Design Drawings;
- (d) **Preliminary Construction Drawings and Technical Specifications (90% CD).** Elements, including Green Building elements, draft Construction Drawings and Technical Specifications (90%) cost estimate, and material and color samples, depicted in the draft Construction Drawings and Technical Specifications (90%) 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%);

- (e) **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, depicted in the final Construction Drawings and Technical Specifications 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 (90%).

**7.2.4. Changes in Approved Drawings.** The Developer shall submit to PDC for review any substantial changes to any previously approved Drawings. A substantial 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 approved the changes. PDC shall assist Developer throughout any City 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.

**7.2.5. 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 and another set of copies upon completion of final Design Development Drawings after completion of City Design Review if changes are made during the review process.

**7.2.6. 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 process. The Parties agree that efficient communication between all concerned is necessary to resolve design issues in a timely manner. PDC staff shall be notified in advance and may attend regularly scheduled design meetings for the Project. 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 the resolution of design and related issues. The scope of PDC's review will be consistent with Sections 7.2 of this Agreement. If PDC does not provide its approval or rejection of any Drawings by the due date for such Drawings set forth in the Schedule of Performance, then such Drawings shall be deemed approved by PDC.

**7.2.7. Phase II Project.** The Parties acknowledge and agree that while the Project will only utilize a portion of the Property, the balance of the Property will eventually be developed in accordance with the Vision, Objectives and Principles of the Framework Plan, to the extent feasible (the "Phase II Project").

**7.3. Diligent Completion.** Subject to the terms and conditions of this Agreement (including any Unavoidable Delay as defined in Section 15.8), 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 attached hereto as Exhibit G (the “Schedule of Performance”). Subject to delays permitted in accordance with the terms of this Agreement, Developer shall complete development of the Project no later than the date for completion of construction set forth in the Schedule of Performance. To the extent that Developer misses a pre-Closing deadline for performance set forth in the Schedule of Performance by more than thirty (30) days, such failure shall be deemed a material breach of this Agreement and PDC may elect to exercise its remedies under Section 15.2. Notwithstanding the foregoing sentence, PDC shall not declare Developer in default for those deadlines missed through no fault of Developer or outside of Developer’s control. 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:

**7.3.1.** Entering into all necessary architectural and construction contracts;

**7.3.2.** Securing all necessary public entitlements and building permits;

**7.3.3.** Securing all financing necessary to complete the Project, consistent with the Final Project Budget.

**7.4. Oregon Prevailing Wage Law.** To the extent that Developer receives \$750,000 or more in “funds of a public agency,” as that phrase is used in ORS 279C.800 to 279C.870 and the administrative rules adopted thereunder (the “Oregon Prevailing Wage Law”), the Parties hereby acknowledge that the Project shall be deemed a “public work” subject to the Oregon Prevailing Wage Law. Accordingly, the Parties shall enter into, and shall perform and discharge their obligations under, that certain Compliance Agreement of even date herewith, which is hereby incorporated into this Agreement by this reference, to implement their compliance with the Oregon Prevailing Wage Law with respect to the Project.

**7.5. Inspection and Property Access.**

**7.5.1. Before Closing.** Before Closing, PDC may allow Developer and/or Developer’s employees, agents and consultants to enter upon the Property in reasonable furtherance of the transaction contemplated in this Agreement pursuant to a written permit of entry.

**7.5.2. After Closing.** After Closing, during construction of the Project, and until the Certificate of Completion is issued, Developer’s work 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. In connection with any entry onto the Property after Closing, PDC agrees to: (i) coordinate access with Developer or Developer’s contractor to reduce the risk of injury; and (ii) follow all reasonable safety rules of Developer or Developer’s contractor.

**7.6. Safety Matters and Indemnification.** Developer shall:

**7.6.1. Safety.** Comply with all safety laws and take all reasonable safety measures necessary to protect its employees and PDC’s employees, agents, contractors, subcontractors, licensees and invitees, their personal property, and improvements of

each, from injury or damage caused by or resulting from the performance of its construction.

**7.6.2. 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 during the process of the construction work or the performance of Developer's other obligations under this Agreement, except to the extent: (a) caused solely by PDC or its employees, agents, contractors, subcontractors, licensees or invitees; or (b) caused by the gross negligence or willful misconduct of PDC or its employees, agents, contractors, subcontractors, licensees or invitees. The indemnity set forth in this Section 7.6.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

**7.6.3. 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 7.6.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

**7.7. Liens.** If any statutory lien shall be filed prior to PDC's issuance of the Certificate of Completion against any portion of 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 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), so that 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; provided, 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.

**7.8. Compliance with Laws and Use Restrictions.** Developer will comply with, or cause the Project to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Developer, the Project, or the operation thereof, including, without limitation:

**7.8.1.** All applicable health and safety, environmental, and zoning laws, and

**7.8.2.** All requirements or restrictions pertaining to the construction, use, occupancy or operation of the Project arising from the original source of any funds used by Developer to complete the Project.

**7.9. Prohibited Uses.** For a term of five (5) years after PDC's issuance of a Certificate of Completion, the following user types are specifically prohibited: vehicle servicing or repair, self-service storage, heavily industrial uses and drive-thrus. PDC may institute legal action to void any lease entered into contrary to these provisions.

**7.10. Certificate of Completion.**

**7.10.1. When Developer is Entitled to Certificate of Completion.** Upon substantial completion of the Project as described in this Section 7.10.1 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. The Project will be deemed to be substantially complete when:

- i.** PDC reasonably determines that the Project is complete 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 Section 8;
- iii.** The City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project; and
- iv.** Developer has submitted all materials to the United States Green Building Council necessary to obtain LEED silver certification required by the Green Building Policy with respect to the Project.

**7.10.2. Form and Effect of the Certificate of Completion.** A Certificate of Completion shall be substantially in the form of Exhibit H and in a form that can be recorded in the real property records of Multnomah County. 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. At Developer's request, the Certificate of Completion shall state which terms and conditions of this Agreement are of no further force and effect.

**7.10.3. Procedure Where PDC Refuses to Issue.** If PDC refuses or fails to provide a Certificate of Completion in accordance with this Section 7.10, then PDC, within thirty (30) 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 thirty (30) day period shall be deemed PDC's approval of Developer's request for the Certificate of Completion.

## **8. ENVIRONMENTAL CONDITION OF THE PROPERTY AND PARTIES' RESPONSIBILITIES**

**8.1. Environmental Due Diligence Reports.** Developer acknowledges receipt of copies of the Environmental Due Diligence Reports, as set forth in Exhibit I, other than the Phase I Environmental Site Assessment described in Section 8.2 below.

**8.2. Phase I Environmental Site Assessment.** During the Due Diligence Period, Developer shall cause completion of a Phase I Environmental Site 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). Developer shall provide a copy of the Phase I Environmental Site Assessment to PDC, promptly after Developer's receipt thereof.

**8.3. Indemnification.** Developer shall be responsible for compliance with all Environmental Laws with respect to the Property, its business and the operation of the Project from and after Closing, 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 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. 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 Environmental Conditions, Recognized Environmental Conditions or Unforeseen Environmental Conditions on the Property. The indemnity set forth in this Section 8.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

**8.4. 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.

## **9. ASSIGNMENT AND TRANSFER PROVISIONS**

**9.1. Restrictions on Transfer of the Property and Assignment of the Agreement Prior to Issuance of Certificate of Completion.** 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. The anti-assignment provisions of this Section 9.1 are reasonable and necessary to provide to each Party the benefit of the transaction implemented through this Agreement.

**9.1.1.** Except as provided in this Section 9.1.1 and as provided in Section 9.2, prior to the issuance of a Certificate of Completion, 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 equal to or superior to that of Developer, or (c) the transfer or disposition will cause a material delay in completion of the Project.

Notwithstanding the foregoing, the prohibition in this Section 9.1.1 shall not prohibit Developer from entering into leases or sale agreements prior to issuance of a Certificate of Completion, provided the following terms apply: (a) if a sale agreement, closing is conditioned upon Developer obtaining the Certificate of Completion; and (b) the lease or sale relates to less than the entire Project.

**9.1.2.** Jeff Pickhardt (“Developer’s Principal”) shall retain a Controlling Ownership Interest in the Developer and retain control of the operations of the Developer.

**9.2. Approved Transfers Prior to Issuance of Certificate of Completion.** Notwithstanding Section 9.1 above, and provided that Developer provides PDC with copies of all agreements related to the transfer at least ten (10) Business 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:

**9.2.1.** 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’s Principals hold a Controlling Ownership Interest in the assignee, are the managing members or general partners of such assignee and retain control of the operations of the assignee. Notwithstanding an assignment under this Section 9.2.1, Developer shall remain fully responsible to PDC for performance of this Agreement.

**9.2.2.** Any Mortgage, including any assignment of rights under this Agreement to any Mortgagee, as reasonably approved by PDC.

**9.3. Transfers After Issuance of the Certificate of Completion.** After PDC’s issuance of the Certificate of Completion, Developer may transfer or dispose of any portion of the Property or the Project, or Developer’s interest in this Agreement without the consent or approval of PDC only upon completion of the Feasibility Study.

## **10. COMPLIANCE WITH PDC POLICIES**

**10.1. Business and Workforce Equity Policy.** PDC has adopted the Business and Workforce Equity Policy to ensure fair and equitable opportunities to Portland’s diverse populations, promote prosperity in all segments of Portland’s diverse communities, foster economic growth, and expand competition in the market. The Business and Workforce Equity Policy is set forth in Exhibit J. The Business and Workforce Equity Policy is comprised of two (2) separate and distinct programs:

- The Business Equity Program; and
- The Workforce Equity Program



Within ten (10) days of the Effective Date, Developer shall contact the PDC Contracts Coordinator to obtain the Business Equity Program Specifications and the Workforce Equity Program Specifications (each, the “Specifications”) that outline the procedural requirements of the respective programs, including the reporting requirements to the City. The Project is subject to both the Business Equity Program and the Workforce Equity Program as follows:

**10.1.1. Business Equity Program.** The purpose of the Business Equity Program is to ensure that PDC provides professional, supplier and construction contracting opportunities to State certified minority-owned, women-owned and emerging small businesses (collectively, “Certified Firms”) and to encourage the participation of businesses owned by veterans in connection with PDC projects. The utilization goal for Certified Firms in connection with the Project is twenty percent (20%) of the Project’s hard construction costs. The Developer shall comply with the Business Equity Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the Specifications of the Business Equity Program and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the Specifications in connection with the Project. Developer shall also comply with all portions of the Business Equity Program applicable directly to Developer. The failure of Developer or Developer’s General Contractor, or the subcontractors thereof, to comply with the Specifications within the applicable notice and cure periods shall constitute a breach of a material provision of this Agreement. Provided that the Specifications are followed, failure to meet the specific utilization goal for Certified Firms shall not constitute a breach of a material provision of this Agreement.

**10.1.2. Workforce Equity Program.** The purpose of the Workforce Equity Program is to maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and women and encourage the employment of people with disabilities and veterans in connection with PDC projects. In connection with the Project, Developer shall comply with the Workforce Equity Program by: (i) including provisions in its contract with its General Contractor that require the General Contractor to comply with the Workforce Equity Program Specifications and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the Workforce Equity Program in connection with the Project; and (ii) complying with all portions of the Workforce Equity Program applicable directly to Developer. Projects subject to the Workforce Equity Program require contractors to ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the General Contractor and subcontractors are worked by state-registered apprentices. The failure of Developer or Developer’s General Contractor, or the subcontractors thereof, to comply with the Specifications or to meet the required percentage of apprentice hours (not the specific goals for participation by People of Color or women on the Project) of the Workforce Equity Program within the applicable notice and cure period shall constitute a breach of a material provision of this Agreement.

**10.2. Green Building Policy.** In connection with the Project, Developer shall comply with PDC’s Green Building Policy. Among other things, this policy requires Developer to construct the Project in the manner necessary to meet the applicable Green Building standard set forth in the Green Building Policy. Within ten (10) days after the Effective

Date, Developer shall provide PDC with the initial Green Building Progress Report, and Developer shall submit subsequent Green Building Progress Reports to PDC every thirty (30) days thereafter until PDC has issued a Certificate of Completion for the Project. If the applicable Green Building standard is some level of LEED certification, then Developer shall submit all materials necessary to obtain LEED silver certification for the Project to the United States Green Building Council prior to PDC's issuance of a Certificate of Completion for the Project and submission of such materials is a condition precedent to PDC's obligation to issue the Certificate of Completion. Developer will cooperate with PDC staff in the follow-up and monitoring of the effectiveness of the green building standards, and will provide PDC access to the building utility bills.

**10.3. EEO Certification.** Developer shall comply with the City's EEO Certification Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the EEO Certification Program and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the EEO Certification Program. Developer shall also comply with all portions of the EEO Certification Program applicable directly to Developer and with all applicable provisions of Federal or state statutes and regulations and City ordinances concerning equal employment opportunities for persons engaged in the Project. The failure of Developer or Developer's General Contractor, or the subcontractors thereof, to comply with the EEO Certification Program or other applicable equal employment opportunity law shall constitute a breach of a material provision of this Agreement.

**10.4. Funding Acknowledgement / Signage.** Developer shall display a sign, provided by PDC, near the Project, readily visible to the public, specifying that the Project is being done "*in partnership with the Portland Development Commission*". The sign shall remain in place until PDC issues the Certificate of Completion.

**11. RESERVED**

**12. RESERVED**

**13. CONTINUING COVENANTS SURVIVING TERMINATION OF AGREEMENT OR COMPLETION OF CONSTRUCTION**

**13.1. Surviving Sections.** The following Sections of this Agreement shall survive and remain in effect notwithstanding issuance of the Certificate of Completion: Section 2.6 (AS IS), Section 7.6.2 (INDEMNITY FROM LIABILITY CLAIMS), Section 7.6.3 (INDEMNITY FROM LIENS), Section 7.2.7 (Phase II Project), Section 7.9 (PROHIBITED USES), and Section 8.3 (INDEMNIFICATION).

**14. MORTGAGEE PROTECTION PROVISIONS**

**14.1. 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 subordinate to, subject to and limited by, and shall not defeat, render invalid, or limit in any way, except as expressly set forth herein, any Mortgage.

**14.2. Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of the Agreement, except the covenants set forth in the Deed, 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 Project or to guarantee such construction or completion.

**14.3. 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.

**14.4. Mortgagee's Options to Cure Defaults.** After Developer's default of this Agreement and if Developer fails to cure or remedy said default 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 default, to cure or remedy the default itself, if cure or remedy thereof is permitted by this Agreement. If a Mortgagee does cure or remedy the default 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 default is with respect to construction of 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 7.10 above.

**14.5. 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.

## **15. DEFAULT AND REMEDIES**

### **15.1. Default and Cure.**

#### **15.1.1. 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; provided, however, in the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Developer shall not be in default hereunder *if and so long as* Developer commences the cure within thirty (30) days after Developer receives written notice from PDC and thereafter diligently prosecutes such cure to completion.
- (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.

**15.1.2. Default by PDC.** PDC shall be in default under this Agreement if PDC 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 PDC receives written notice from Developer specifying the breach; provided, however, in the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, PDC shall not be in default hereunder *if and so long as* PDC commences the cure within thirty (30) days after PDC receives written notice from Developer and thereafter diligently prosecutes such cure to completion.

**15.2. PDC's Pre-Conveyance Remedies.** If a Developer default (as described in Section 15.1.1) occurs before the Property is conveyed to Developer, PDC may, at its option: (i) terminate this Agreement by written notice to Developer and retain the Escrow Deposit, (ii) seek monetary damages against Developer, or (iii) specifically enforce the obligations of Developer under this Agreement. If PDC terminates this Agreement as provided in this Section 15.2, then Developer shall deliver to PDC within thirty (30) days after 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.

**15.3. PDC's Post-Conveyance Remedies.** If a Developer default (as described in Section 16.1.1) after the Property is conveyed to Developer, including but not limited to Developer's failure to complete the Project as required by Section 7.3, then PDC shall have the following remedies:

**15.3.1.** Subject to the Mortgagee protections specified in Section 14, 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 15.4 below. The conveyance of the Property to Developer shall be made upon, and the Deed shall provide for, a condition subsequent to the effect that, in the event of a Developer default (as described in Section 15.1.1), PDC, at its option, may, upon 30 days written notice of termination to Developer and the Escrow Agent declare a termination of Developer's rights, title, 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 the 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 K. Any delay by PDC in instituting or prosecuting any such actions or

proceedings or otherwise asserting its rights under this Section 15.3 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. After a Certificate of Completion has been issued, and upon request by Developer, PDC shall provide such written instruments in such form as may be reasonably necessary to indicate satisfaction of the conditions subsequent contained in the Deed.

**15.3.2.** Developer shall deliver to PDC within thirty (30) days after reconveyance of the Property pursuant to Section 15.3.1, 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.

**15.4. PDC Resale.** If title to the Property reverts in PDC in accordance with the provisions of Section 15.3, 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) 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:

**15.4.1. 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;
- (c) Any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property 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

successors 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 (or, in the event the Property is exempt from taxation or assessment of such charges during the period of ownership thereof by PDC or Developer, an amount equal to such taxes, assessment, or charges, as determined by the County assessing official, as would have been payable if the Property were not so exempt); 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.

**15.4.2. Developer Reimbursement.** Second, to reimburse Developer, its successor or transferee, 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 or part thereof paid by Developer, or for which Developer remains liable, that were not funded by PDC less any gains or income withdrawn or made as to the Project.

**15.4.3. Balance to PDC.** Third, any balance remaining after the reimbursements described above shall be retained by PDC.

**15.5. Developer's Pre-Conveyance Remedies.** If a PDC default (as described in Section 15.1.2) occurs before PDC conveys the Property to Developer, Developer may, at its option: (i) terminate this Agreement by written notice to PDC without waiving any cause of action Developer may have against PDC, (ii) specifically enforce the obligations of PDC under this Agreement, or (iii) seek monetary damages against PDC.

**15.6. Developer's Post-Conveyance Remedies.** If a PDC default (as described in Section 15.1.2) 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.

**15.7. 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. Notwithstanding any other provisions of this Agreement, in no event shall either Party seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from the breaching party in connection with the breaching party's default.

**15.8. Unavoidable Delay.**

**15.8.1.** Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation ("Unavoidable Delay") is a result of conditions unforeseeable, beyond the Party's reasonable control, and without the Party's fault or negligence, including, events such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, strike, malicious mischief, or explosion.

**15.8.2.** A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party's obligation must, 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 estimated time of correction. The Party must thereafter do everything in its power to resume performance of the delayed obligation.

**15.8.3.** Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay. In no event will the time or times for performance of an obligation be extended for more than 180 days in the aggregate.

## **16. MISCELLANEOUS PROVISIONS**

**16.1. 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 Project Manager is Geraldene Moyle.

**16.2. 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.

**16.3. 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, (b) when received if personally delivered, or (c) if sent by e-mail or other form of electronic transmission, with receipt of confirmation that such transmission has been received, and:

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

Key Development Corporation  
Attn: Jeff Pickhardt  
P.O. Box 208  
Bend, OR 97709

With a copy to:

Ball Janik LLP  
Attn: Laura Craska Cooper  
15 SW Colorado Ave., Suite 3  
Bend, OR 97702

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

Portland Development Commission  
Attn: Eric Jacobson  
222 NW 5<sup>th</sup> Ave.  
Portland, OR 97209  
jacobsone@pdc.us

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.

**16.3.1.** If either Party's notice contact person or address changes, that Party shall provide the other Party with the updated contact information.

**16.4. 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.

**16.5. 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.

**16.6. Counterparts.** This Agreement 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.

**16.7. 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.

**16.8. Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, 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. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

**16.9. 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.

**16.10. 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.

**16.11. 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.

**16.12. Legal Purpose.** Developer agrees to use the Project solely for lawful purposes.

**16.13. 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.

**16.14. Entire Agreement.** This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.

**16.15. Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties, with the approval of the Board, if required. Notwithstanding this general requirement, the PDC Executive Director may approve minor modifications to this Agreement without Board approval. Any modifications to this Agreement made without the approval of the Board must include an acknowledgement by PDC's General Counsel that such approval is not necessary.

**16.16. Successors and Assigns.** Subject to the provisions of Section 9.1, 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.

**16.17. 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.

**16.18. 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.

**16.19. 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 an 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.

**16.20. 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.

**16.21. Time of Essence.** Time is of the essence of this Agreement.

**16.22. 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.

**16.23. Recording of Memorandum of Agreement.** PDC shall record a memorandum of this Agreement ("Memorandum of Agreement") within ten (10) days after the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit L to this Agreement. 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.

**16.24. Incorporation.** The exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

**16.25. 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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND

SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

(signatures appear on the following page)

Executed in multiple counterparts as of the Effective Date.

**PDC:**

**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: \_\_\_\_\_

Patrick Quinton, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_

Lisa Gramp, Assistant General Counsel

**DEVELOPER:**

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

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

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

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

## **EXHIBITS**

<b>Exhibit A.</b>	Description of the Property
<b>Exhibit B.</b>	Glossary
<b>Exhibit C.</b>	Couch Street CC&Rs
<b>Exhibit D.</b>	Project Budget
<b>Exhibit E.</b>	Form of Deed
<b>Exhibit F.</b>	Scope of Development
<b>Exhibit G.</b>	Schedule of Performance
<b>Exhibit H.</b>	Form of Certificate of Completion
<b>Exhibit I.</b>	Environmental Due Diligence Reports
<b>Exhibit J.</b>	Business and Workforce Equity Policy
<b>Exhibit K.</b>	Form of Quitclaim Deeds and Escrow Instructions
<b>Exhibit L.</b>	Form of Memorandum of Agreement

## EXHIBIT A

### DESCRIPTION OF PROPERTY

#### Parcel I

A tract of land located in the Southeast 1/4 of Section 34, Township 1 North, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon; being a portion of those properties conveyed to City of Portland, by and acting through the Portland Development Commission, in Multnomah County Deed Records, Document No. 2006-103707 (recorded June 06, 2006); being all of Lots 1 and 2 (also being known as "Tract C1" of recent City of Portland Property Line Adjustment approval file No. 12-117554-PR) and all of Lot 3, all within Block 67, "East Portland", together with that portion of Lot 4, said Block 67, lying North of the North line of that property conveyed for Right-of-Way Purposes by Document No. 2006-232264 (recorded December 15, 2006), Multnomah county Deed Records.

#### Parcel II

A tract of land located in the Southeast 1/4 of Section 34, Township 1 North, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon; being a portion of those properties conveyed to City of Portland, by and acting through the Portland Development Commission, in Multnomah County Deed Records, Document No. 2006-103707 (recorded June 06, 2006) and in Multnomah County Deed Records, Document No. 99133656 (recorded July 09, 1999); being all of Lot 6 and all of Lots 7 and 8 (also being known as "Tract B1" of recent City of Portland Property Line Adjustment approval file No. 12-117550-PR), Block 67, "East Portland", together with that part of Lot 5, of said Block 67, lying North of a line drawn from a point in the East line of Lot 5, 18.8 feet South of the Northeast corner thereof, to a point in the West line of Lot 5, 16.4 feet South of the Northwest corner thereof.

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## EXHIBIT B

### GLOSSARY

The following words and phrases have the designated meanings in this Agreement:

1. **“Agreement”** has the meaning set forth in the caption of this Agreement.
2. **“Board”** has the meaning set forth in Recital F.
3. **“Burnside Bridgehead Site”** has the meaning set forth in Recital D.
4. **“Certificate of Completion”** means a certificate issued by PDC to Developer pursuant to Section 7.10 of this Agreement.
5. **“City”** means the municipal corporation of the City of Portland, Oregon and its constituent bureaus and agencies, except PDC.
6. **“City Design Review”** means review by the City of Portland, Bureau of Development Services in accordance with Title 33.825 of the Code of the City of Portland.
7. **“Closing”** means the transfer of any portion of the Property to Developer by PDC by recording of the Deed and handling of all other necessary documentation by the Escrow Agent.
8. **“Closing Date”** has the meaning set forth in Section 5.2.1.
9. **“Compliance Agreement”** means
10. **“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, 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.
11. **“Controlling Ownership Interest”** means a single identified person or entity is in a position to control the decision of the business entity because, even if all other shareholders vote in opposition to a decision supported by the identified person or entity, their collective strength will not be sufficient to alter the decision.
12. **“Conveyance”** means the transfer of fee simple title to any portion of the Property by PDC to Developer.
13. **“Couch Street CC&Rs”** has the meaning set forth in Recital J.
14. **“Couch Street Improvements”** has the meaning set forth in Recital I.
15. **“Couch Street Parcel”** means the parcel on which the Couch Street Improvements are located.
16. **“Design Development Drawings”** means the detailed plans submitted for City Design Review, 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 site 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; and
  - A preliminary Exterior Finish Schedule.
17. **“Deed”** has the meaning set forth in Section 2.6.1
18. **“Due Diligence Materials”** has the meaning set forth in Section 2.7.2.

19. **“DEQ”** means the Oregon Department of Environmental Quality.
20. **“Due Diligence Period”** has the meaning set forth in Section 2.7.3.
21. **“EEO Certification Program”** means the program run by the City requiring contractors to certify that they do not discriminate against any employee or applicant on the basis of race, religion, color, sex, marital status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, and that they take steps to ensure equal opportunity in all aspects of employment aspects including, but not limited to, hiring, promotion, transfer, advertising, layoff, termination, rates of pay, training (including apprenticeship), and terms and conditions of employment.
22. **“Effective Date”** has the meaning set forth in the caption of this Agreement.
23. **“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.
24. **“Environmental Due Diligence Reports”** means 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 is attached as Exhibit I and incorporated herein by reference.
25. **“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.
26. **“Escrow Agent”** has the meaning set forth in Section 2.6.1.
27. **“Escrow Deposit”** has the meaning set forth in Section 2.4.1.
28. **“Escrow Instructions”** has the meaning set forth in Section 5.1.2.
29. **“Feasibility Study”** has the meaning set forth in Section .
30. **“Final Project Budget”** means the updated and revised estimated sources and uses of funds, cash flow, and Project Budget, submitted by Developer to PDC prior to Closing.
31. **“Framework Plan”** has the meaning set forth in Recital E.
32. **“General Contractor”** means \_\_\_\_\_ or any other contractor as Developer may elect consistent with this Agreement.
33. **“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.
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 F attached hereto and incorporated herein by this reference.

35. **“Land”** has the meaning set forth in Section 2.2.
36. **“Laws”** has the meaning set forth in Section 3.1.5.
37. **“LEED”** means
38. **“Loan Documents”** has the meaning set forth in Section 2.5.
39. **“Mortgage”** means a mortgage, deed of trust or master lease 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.
40. **“Mortgagee”** means the holder of any Mortgage, including a master lease and trust deed, 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.
41. **“NFA Letter”** means the No Further Action Letter issued by DEQ pertaining to the Property, dated [date].
42. **“Notice”** means 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.
43. **“PDC’s knowledge”** means the actual current knowledge of the PDC Project Manager, without any duty of inquiry or investigation.
44. **“Preliminary Design Documents”** means the site drawings for the Project including schematic, massing, feasibility and preliminary cost estimates for the Project in the form approved by PDC and that were the basis for entering into this Agreement.
45. **“Project”** has the meaning set forth in Recital H and the Scope of Development.
46. **“Project Budget”** means the summary financial analysis for the Project set forth in Exhibit D, attached hereto and incorporated herein by this reference. The Project Budget represents the estimated sources and uses of funds, cash flow and Project costs as of the Effective Date.
47. **“Public Participation Policy”** means the policy adopted by the Board Resolution 6266 on June 22, 2005.
48. **“Purchase Price”** has the meaning set forth Section 2.4.
49. **“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.
50. **“Release”** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
51. **“Schedule of Performance”** means the document describing the schedule by which construction and development of the Project will occur, attached hereto as Exhibit G and incorporated herein by this reference.

52. **“Scope of Development”** means the description of the improvements to be built comprising the Project, attached hereto as Exhibit F.
53. **“Title Report”** has the meaning set forth in Section 2.8.1.
54. **“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.
55. **“URA”** has the meaning set forth in Recital A.
56. **“Urban Renewal Plan”** has the meaning set forth in Recital A

**EXHIBIT C**

COUCH STREET CC&Rs

AFTER RECORDING, RETURN TO:

Bradley S. Miller  
Ball Janik LLP  
101 SW Main Street, Suite 1100  
Portland, Oregon 97204

Multnomah County Official Records  
R Weldon, Deputy Clerk

2012-129362

10/10/2012 02:48:26 PM

1R-CCR Pgs=13 Str=1 ATWJH  
\$65.00 \$11.00 \$10.00 \$15.00

\$101.00

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR  
COUCH STREET IMPROVEMENT PARCEL**

Recorded by TICOR TITLE 3/26/04 2402AMS

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made effective as of the 10 day of October, 2012, by BRIDGEHEAD DEVELOPMENT LLC, an Oregon limited liability company ("Declarant"). The 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 ("PDC") is also executing a Joinder of this Declaration for the sole purpose of submitting that certain real property in Multnomah County, Oregon, legally described on the attached Exhibit C (the "Bridgehead Parcels") to the terms and provisions of this Declaration.

Concurrently herewith, Declarant has acquired fee title from PDC of the real property in Multnomah County, Oregon, legally described on the attached Exhibit A (the "Couch Street Improvement Parcel"). The Couch Street Improvement Parcel is a separate legally subdivided parcel that is part of a larger development known as the Convention Plaza project located on the real property owned by Declarant in Multnomah County, Oregon, legally described on the attached Exhibit B (the "Convention Plaza Parcel"). Declarant owns fee title to the entire Convention Plaza Parcel. The Convention Plaza Parcel and the Bridgehead Parcels are collectively referred to herein as the "Bridgehead Site". Through this Declaration, Declarant and PDC seek, among other things, to assign responsibility for the construction, maintenance, operation, management, repair and replacement of improvements on the Couch Street Improvement Parcel and to provide for an allocation of the costs of such construction, maintenance, operation, management, repair and replacement costs among the owners of the real property located within the Bridgehead Site.

Declarant (and PDC solely for the purposes of the Bridgehead Parcels) hereby declares that the Bridgehead Site (including the Couch Street Improvement Parcel) and all parts thereof shall be held, used, mortgaged, and conveyed subject to the terms of this Declaration, which shall run with the Bridgehead Site and shall be binding upon and inure to the benefit of all Persons (defined in Section 1.1) having or acquiring any right, title, or interest in or to the Bridgehead Site or any part thereof.

1. Definitions.

1.1 Certain Defined Terms.

As used in this Declaration, the terms set forth below shall have the following respective meanings:

"Common Facilities" means the stairway, improvements, landscaped areas, drainage facilities, water quality facilities, and any other similar facilities to be constructed and located on the Couch Street Improvement Parcel from time to time.

"County" means Multnomah County, Oregon.

"County Records" means the official records of Multnomah County, Oregon.

"Declarant" means Bridgehead Development LLC, an Oregon limited liability company, or any successor or assign who has or takes title to the Couch Street Improvement Parcel.

"Occupant" means any Person entitled to the use and occupancy of any portion of a building in the Bridgehead Site under an ownership right or any lease, sublease, license or similar occupancy agreement.

"Operating Expenses" means Declarant's total costs (as determined in Declarant's business judgment and including appropriate reserves and management fees) for operating, managing, administering, maintaining, constructing, repairing, replacing, or improving the Common Facilities and all real estate taxes and assessments and insurance costs attributable to the Common Facilities.

"Owner" means the Person(s) who holds the record title to any Parcel, excluding any Person(s) who holds an interest merely as security for the performance of an obligation. If a Parcel is sold pursuant to a real estate contract utilized as a financing device, then, upon the recording of such contract or a memorandum thereof, the vendee thereunder (rather than the fee owner) will be considered the Owner of such Parcel.

"Parcel" means any portion of the Bridgehead Site, whether improved or unimproved, which may legally be independently owned and conveyed.

"Person" means a natural person, a corporation, a partnership, a limited liability company, an unincorporated association, a trust, or any other legal entity.

"Pro-Rata Share" means with respect to Operating Expenses the total of such Operating Expenses multiplied by a fraction, the numerator of which shall equal the total number of square feet of land area on such Owner's Parcel and the denominator of which shall equal the total number of square feet of land area in the Bridgehead Site.

#### 1.2 Interpretation.

The captions or headings of Sections of this Declaration are intended for ease of reference only and shall have no effect whatsoever on the construction or interpretation of any provision of this Declaration. The term "including," as used in this Declaration, is not limiting and means "including without limitation." References to any Section or Exhibit are references to Sections of or Exhibits to this Declaration, unless otherwise specified.

2. Restrictions on Use.

2.1 Owners' Acknowledgment.

By accepting a deed to or entering into a recorded contract of sale for a Parcel, each Owner acknowledges and agrees that the use, enjoyment, and marketability of such Owner's Parcel may be affected by the provisions of this Declaration.

2.2 General Restrictions.

Each Parcel may be used only for purposes permitted by applicable law.

3. Easements.

3.1 Easements for Pedestrian Ingress and Egress.

Non exclusive permanent easements are hereby granted to the Owners of the Parcels for pedestrian ingress and egress to, from, over and across the Couch Street Improvement Parcel subject to such rules and regulations as Declarant may from time to time adopt.

3.2 Easements for Utilities.

Non-exclusive permanent access and maintenance easements are hereby reserved for each Owner of a Parcel on, across, over, and under all of the Couch Street Improvement Parcel to the extent reasonably necessary for the purpose of installing, replacing, repairing, and maintaining drainage systems, street lights, signage, and all other utilities (including water, sewer, telephone, gas, and electricity) and facilities and equipment related to any of the foregoing. The easements reserved pursuant to this Section 3.2 shall require that any damage to any Improvement resulting from the exercise of any such easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of any easement reserved pursuant to this Section 3.2 shall not interfere unreasonably and substantially with the use of the Couch Street Improvement Parcel or the Convention Plaza Parcel and, except in an emergency, entry onto the Couch Street Improvement Parcel for such use shall be made only after reasonable notice to the Owner or Occupant thereof.

3.3 Easements for Drainage.

Permanent easements are hereby reserved to the Owners of the Parcels over the portions of the Couch Street Improvement Parcel in which no structures are existing for natural drainage of storm water runoff. No Person shall alter the natural drainage on or over any Parcel so as to increase materially the drainage of storm water onto the Couch Street Improvement Parcel without the consent of the Owner of the affected Parcel.

4. Construction, Maintenance and Repair.

From and after the date hereof, Declarant shall construct and maintain the Common Facilities, or cause them to be constructed and maintained, in good order, condition and repair. Declarant shall have the right, from time to time, to select another Person to maintain the Common Facilities, provided that Declarant shall remain responsible at all times for the maintenance of the Common Facilities except to the extent specifically set forth herein. In the event Owners owning more than sixty-seven percent (67%) of the land area of the Bridgehead Site determine that Declarant's performance under this Section is inadequate, such Owners shall give notice of such dissatisfaction to Declarant and if

Declarant does not present to such Owners reasonable evidence within thirty (30) days of receipt of such notice that either the cause of such dissatisfaction has been remedied or that Declarant has commenced a cure and will diligently pursue a cure until completed, such Owners shall have the right, but not the obligation, to appoint an Owner which has been approved by Owners owning more than sixty-seven percent (67%) of the land area of the Bridgehead Site to assume control of the management of the Common Facilities.

5. Operating Expense Assessments.

5.1 Payment.

Each Owner shall pay to Declarant in advance, without demand, deduction or setoff, on the first (1st) day of each and every calendar month, the monthly installment of such Owner's Pro-Rata Share of Operating Expenses. The portion of the Operating Expenses required to be paid by each Owner shall be based upon Declarant's estimate thereof. After the end of each calendar year, the exact amount of each Owner's Pro-Rata Share of the Operating Expenses for such calendar year shall be determined by Declarant and a statement thereof shall be submitted to each Owner. If the total amount of Operating Expenses for which each Owner is responsible is more than the actual amount received from such Owner during such year, such Owner shall pay to Declarant the difference between the amount paid and the actual amount due within ten (10) days after demand therefor by Declarant; and if the total amount paid by such Owner for such Operating Expenses for such year shall exceed such actual amount due from such Owner for such year, such excess shall be credited against payments hereunder next due or if no payments are next due, refunded by Declarant. In the event of any dispute as to the final amount of the Operating Expenses payable by such Owner, a determination by a public accounting firm of national standing selected by Declarant as to the amount thereof shall be binding and conclusive upon both Declarant and such Owner.

5.2 Default in Payment of Assessments: Enforcement of Lien.

If an assessment levied pursuant to this Section 5 is not paid within thirty (30) days after its due date, such assessment or charge shall become delinquent and shall bear interest from the due date until paid at the rate set forth in Section 5.3. In addition, Declarant may: (i) file a statement of lien against such Owner's Parcel (which lien shall be subject to the terms of this Declaration) and foreclose the lien to the extent allowable under Oregon law; (ii) bring an action to recover monetary damages; and/or (iii) exercise any other right or remedy available to it at law, in equity, or under this Declaration.

5.3 Interest and Late Charges.

Any assessment or other charge which is delinquent pursuant to Section 5.2 shall bear interest from the due date until paid at a rate of eighteen percent (18%) per annum or, if less, at the maximum rate which may be charged under applicable law. In addition, a late charge may be imposed for each delinquent assessment in an amount established from time to time by Declarant; provided that such late charge shall not exceed 10% of the delinquent amount.

6. Enforcement of Covenants.

6.1 Limitations on Liability.

Reasonable and good faith exercise of any rights of entry set forth in the Declaration shall not subject Declarant or its members, managers, agents, employees, or contractors to any liability for trespass, conversion, or other claim for damages. Neither Declarant, nor its members, managers, agents,



employees, or contractors shall be liable to any Owner or other Person for failure at any time to enforce any of the Declaration.

6.2 Recovery of Costs and Fees.

In the event any suit, action, or other proceeding is instituted to enforce any of the Declaration or in connection with any dispute arising thereunder, the prevailing party shall be entitled to recover its costs and expenses incurred in connection therewith, including such amount as the court may determine to be reasonable as attorneys' fees at trial and on any appeal or review.

6.3 Remedies Not Exclusive.

An election to pursue any remedy provided for violation of the Declaration shall not prevent concurrent or subsequent exercise of other rights or remedies permitted thereunder. The remedies provided in this Declaration are not exclusive, but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under at law or in equity.

7. Declarant's Rights.

Any or all of the special rights and obligations of Declarant set forth in this Declaration may be transferred to other Persons, without the consent of any Owner. No such transfer shall be effective unless it is reflected in a written instrument signed by Declarant and recorded in the County Records.

8. General Provisions.

8.1 Term.

This Declaration shall run with and bind each Parcel in the Bridgehead Site and shall inure to the benefit of and shall be enforceable as provided herein by Declarant, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded. After such period, this Declaration shall automatically be extended for successive periods of ten (10) years each, unless a written instrument, signed by Owners owning at least sixty-seven percent (67%) of the land area of the Bridgehead Site, is recorded in the County Records within one year prior to the end of any such extension period providing for the termination of this Declaration, in which case this Declaration shall terminate as provided therein.

8.2 Amendment.

8.2.1 By Owners.

This Declaration may be amended at any time and from time to time upon the affirmative vote or written consent, or any combination thereof, of Owners owning at least sixty-seven percent (67%) of the land area of the Bridgehead Site; provided, further no amendment may limit or terminate any easement contained herein without the consent and approval of the Owner of each Parcel benefited by such easement. No amendment to this Declaration may remove, revoke, or modify any right or privilege of Declarant hereunder without the written consent of Declarant and any assignee of such right or privilege.

8.2.2 Validity and Effective Date of Amendments.



Amendments to this Declaration shall become effective upon recordation in the County Records, unless a later effective date is specified therein. Any procedural challenge to an amendment shall be made within one year after the date of its recordation or such amendment shall be conclusively presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of this Declaration.

8.3 Severability.

Invalidation of any provision of this Declaration, in whole or in part, or of any application of a provision of this Declaration, by judgment or court order shall in no way affect other provisions or applications.

8.4 Notices.

All notices pursuant to this Declaration shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery, or three days after deposit in the U.S. Mail, certified, return receipt requested, addressed to the address of such Owner on file in the records of the Declaration at the time of such mailing. Notice to Declarant shall be considered delivered and effective upon personal delivery, or three days after deposit in the U.S. Mail, certified, return receipt requested, addressed to the Declarant at such address as may be established by the Declarant from time to time by notice to the Owners.

8.5 Not a Public Dedication.

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Bridgehead Site or of any Parcel or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Person hereto shall inure to the benefit of any third-party Person.

8.6 Declaration Shall Continue Notwithstanding Breach.

It is expressly agreed that no breach of this Declaration shall entitle any Person to cancel, rescind, or otherwise terminate this Declaration, or defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Bridgehead Site. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

8.7 Time.

Time is of the essence of this Declaration.

8.8 Waiver.

No failure on the part of Declarant to give notice of default or to exercise any right or remedy, nor any delay in exercising any right or remedy, shall operate as a waiver. No waiver shall be effective against Declarant unless it is in writing, signed, by Declarant.

IN WITNESS WHEREOF, Declarant has executed this Declaration effective as of the date set forth above.


**BRIDGEHEAD DEVELOPMENT LLC**, an Oregon limited liability company

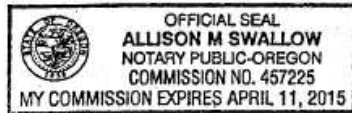
By: Bridgehead Equities, LLC, Oregon limited liability company, its Manager

By:   
Bradley J. Malsin, Manager

STATE OF OREGON        )  
  ) ss.  
County of Multnomah    )

This instrument was acknowledged before me this 10 day of October, 2012, by Bradley J. Malsin as the Manager of Bridgehead Equities, LLC, which is the Manager of Bridgehead Development LLC, an Oregon limited liability company.

  
Notary Public of Oregon  
My Commission Expires:



**JOINDER OF CITY**

The 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 owns fee title to that certain real property in Multnomah County, Oregon, legally described on the attached Exhibit C and hereby joins and acknowledges the terms and provisions of this certain DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR COUCH STREET IMPROVEMENT PARCEL (the "CCRs") to which this is attached for the sole purpose of submitting such real property to the terms and provisions of the CCRs.

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: *Patrick Quinton*  
Patrick Quinton, Executive Director

*J. J.*

STATE OF OREGON            )  
  )ss.  
County of MULTNOMAH    )

On this day personally appeared before me Patrick Quinton to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this 23<sup>rd</sup> day of September, 2012.

*Emily Rae Swensen*  
Notary Public in and for the State of Oregon  
Residing at Portland, Oregon  
My Commission Expires: June 1, 2014



**EXHIBIT "A"**

**Legal Description of Couch Street Improvement Parcel**

**PARCEL III:**

A parcel of land located in the Southeast one-quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, City of Portland, Multnomah County, Oregon, being a portion of that property conveyed to City of Portland, by and acting through the Portland Development Commission in Multnomah County Deed Records, Document No. 2006-103707 (recorded June 6, 2006), being the Southerly 59.5 feet of vacated NE Couch Street (as per Ordinance No. 159613, recorded April 22, 1992, Fee No. 42820, Book 2533, Page 1523, amended by Ordinance No. 160550, recorded April 22, 1992, Fee No. 42821, Book 2533, Page 1531), which inured to Lots 1 and 8, Block 67, EAST PORTLAND, and to Lots 4 and 5, Block 68, EAST PORTLAND.

(Said tract of land also being the combination of Tract A2, Tract B2 and Tract C2 of recent City of Portland Property Line Adjustment approvals, File Nos. 12-117536-PR, 12-117550-PR and 12-117554-PR).

**EXHIBIT "B"**

**Legal Description of Convention Plaza Parcel**

**PARCEL I:**

The West 55 feet of Lots 1, 2, 3 and 4, Block 69, EAST PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH those portions of NE Davis Street which inured to said tract by reason of the vacation thereof under City of Portland Ordinance No. 159613, recorded April 22, 1992, in Book 2533, Page 1523, Fee 92-042820, as amended April 2, 1992, in Book 2533, Page 1531, Fee No. 92-042821

**PARCEL II:**

A tract of land located in the Southeast one-quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, City of Portland, Multnomah County, Oregon, being a portion of that property conveyed to City of Portland, by and acting through the Portland Development Commission in Multnomah County Deed Records, Document No. 2006-103707 (recorded June 6, 2006), being all of Lots 1, 2, 3, 6, 7 and 8, Block 68, EAST PORTLAND, together with the South 30 feet of vacated NE Davis Street (as per Ordinance No. 159613, recorded April 22, 1992, Fee No. 42820, Book 2533, Page 1523, amended by Ordinance No. 160550, recorded April 22, 1992, Fee No. 42821, Book 2533, Page 1531), which inured to said Lots 1 and 8, and all of Lots 4 and 5, said Block 68, together with the Northerly one-half foot (0.5') of vacated NE Couch Street (as per Ordinance No. 159613, recorded April 22, 1992, Fee No. 42820, Book 2533, Page 1523, amended by Ordinance No. 160550, recorded April 22, 1992, Fee No. 42821, Book 2533, Page 1531), which inured to said Lots 4 and 5 (said Lots 4 and 5 and the Northerly one-half foot of vacated NE Couch Street portion also being known as Tract A1 of recent City of Portland Property Line Adjustment approval file No. 12-117536-PR).

**PARCEL III:**

A parcel of land located in the Southeast one-quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, City of Portland, Multnomah County, Oregon, being a portion of that property conveyed to City of Portland, by and acting through the Portland Development Commission in Multnomah County Deed Records, Document No. 2006-103707 (recorded June 6, 2006), being the Southerly 59.5 feet of vacated NE Couch Street (as per Ordinance No. 159613, recorded April 22, 1992, Fee No. 42820, Book 2533, Page 1523, amended by Ordinance No. 160550, recorded April 22, 1992, Fee No. 42821, Book 2533, Page 1531), which inured to Lots 1 and 8, Block 67, EAST PORTLAND, and to Lots 4 and 5, Block 68, EAST PORTLAND.

(Said tract of land also being the combination of Tract A2, Tract B2 and Tract C2 of recent City of Portland Property Line Adjustment approvals, File Nos. 12-117536-PR, 12-117550-PR and 12-117554-PR).

**EXHIBIT "C"**

**Legal Description of the Bridgehead Parcels**

Lots 1, 2, 3, 4, 5 and 6, Block 75, EAST PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

EXCEPTING THEREFROM that portion taken for the widening of NE Union Avenue (Martin Luther King Jr. Boulevard) by Ordinance No. 57513 dated August 10, 1929.

Lots 1,2,3,4,5,6,7 and 8, Block 76, EAST PORTLAND, in the City of Portland, Multnomah County, Oregon.

EXCEPTING therefrom any portion of the above described property lying within any public roads, streets and highways.

EXHIBIT "C", continued

Tract 67W  
Portland Development Commission  
Project No. 1750-018  
February 29, 2012

**PROPERTY DESCRIPTION**

A tract of land located in the Southeast 1/4 of Section 34, Township 1 North, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon; being a portion of those properties conveyed to City of Portland, by and acting through the Portland Development Commission, in Multnomah County Deed Records, Document No. 2006-103707 (recorded June 08, 2006); being all of Lots 1 and 2 (also being known as "Tract C1" of recent City of Portland Property Line Adjustment approval file No. 12-117554-PR) and all of Lot 3, all within Block 67, "East Portland", together with that portion of Lot 4, said Block 67, lying North of the north line of that property conveyed for Right-of-Way Purposes by Document No. 2006-232264 (recorded December 15, 2006), Multnomah County Deed Records.

Containing 0.386 acres, more or less.



*Lead 12/31/13*

EXHIBIT "C", continued

Tract 67E  
Portland Development Commission  
Project No. 1750-019  
February 29, 2012

**PROPERTY DESCRIPTION**

A tract of land located in the Southeast 1/4 of Section 34, Township 1 North, Range 1 East, Willamette Meridian, City of Portland, Multnomah County, Oregon; being a portion of those properties conveyed to City of Portland, by and acting through the Portland Development Commission, in Multnomah County Deed Records, Document No. 2006-103707 (recorded June 06, 2006) and in Multnomah County Deed Records, Document No. 99133658 (recorded July 09, 1999); being all of Lot 6 and all of Lots 7 and 8 (also being known as "Tract B1" of recent City of Portland Property Line Adjustment approval file No. 12-117550-PFR), Block 67, "East Portland", together with that part of Lot 5, of said Block 67, lying North of a line drawn from a point in the East line of Lot 5, 18.8 feet South of the Northeast corner thereof, to a point in the West line of Lot 5, 16.4 feet South of the Northwest corner thereof.

Containing 0.395 acres, more or less.



*Revised 12/31/13*



**EXHIBIT D**

**FORM OF DEED**

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

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

**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 (together with any successor public agency designated by or pursuant to law, "PDC"), conveys to \_\_\_\_\_, a \_\_\_\_\_ ("Developer"), the following described real property (herein called the "Property"):

\_\_\_\_\_

The conveyance is made pursuant to that certain Agreement for Disposition and Development of Property (\_\_\_\_\_), between Developer and PDC, dated \_\_\_\_\_ 20\_\_, a Memorandum of which was recorded on \_\_\_\_\_, 20\_\_ as Document No. \_\_\_\_\_, Records of Multnomah County, Oregon (the "DDA"). Any capitalized terms in this Deed shall have the meanings set forth in the DDA, unless otherwise defined herein. 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 (as defined by the DDA) by Developer 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 Developer fails to remedy, end, or abrogate such default within the applicable cure period, Developer or its successors or assigns shall reconvey the Property to PDC by quitclaim deed, pursuant to the Escrow Instructions in Exhibit I 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.
3. Developer is acquiring the Property, in the condition existing at the time of Closing, AS IS, with all defects, if any. Developer waives, releases and forever discharges PDC and PDC's successors and assigns, of and from all claims, actions, causes of action, fines, penalties, damages (including consequential, incidental and special damages), costs (including the cost of complying with any judicial or governmental order), and expenses (including

attorney fees), direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way growing out of or in connection with any physical characteristic or condition of the Property, including any surface or subsurface condition, or any law, rule or regulation applicable to the Property.

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 \_\_\_\_\_ 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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

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

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 \_\_\_\_\_ as Chairman of the City of Portland Development Commission, on its behalf.

\_\_\_\_\_

Notary Public for Oregon

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

STATE OF OREGON )

) ss.

County of Multnomah )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as Secretary of the City of Portland Development Commission, on its behalf.

\_\_\_\_\_

Notary Public for Oregon

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

Schedule 1  
Liens and Encumbrances

**EXHIBIT E**  
**PROJECT BUDGET**

**Burnside Bridgehead Block 67**

Total Area (Parcel) SF	33,184
Number of Units (Residential)	292
Total Area (Residential) SF	192,000
Total Area (Commercial) SF	12,651
Total Area (Structured Parking) SF	80,000
Total Area SF	284,651

	Total	% Total	\$/SF
<b>ACQUISITION</b>			
Land Acquisition	\$ 1,650,000	2.66%	\$ 49.72
<b>HARD COST</b>			
Structured Parking (incl of pricing contingency)	\$ 5,644,800	9.12%	\$ 70.56
Commercial/Retail (inc. of pricing contingency)	\$ 2,355,237	3.80%	\$ 186.17
Tenant Improvements	\$ 632,550	1.02%	\$ 50.00
Residential (incl of pricing contingency)	\$ 35,744,640	57.73%	\$ 186.17
Streetscape (incl of pricing contingency)	\$ 286,069	0.46%	\$ 1.40
Construction contingency	\$ 1,331,317	2.15%	\$ 3.36
Total Hard Cost less contingency	\$ 44,663,296	72.13%	\$ 156.91
Total Hard Cost	\$ 45,994,613	74.28%	\$ 161.58
<b>SOFT COST</b>			
Architectural Fees	\$ 970,932	1.57%	\$ 3.41
Geotechnical	\$ 22,000	0.04%	\$ 0.08
MEP	\$ 282,500	0.46%	\$ 0.99
Civil	\$ 45,500	0.07%	\$ 0.16
Structural	\$ 235,000	0.38%	\$ 0.83
Electrical	\$ 153,500	0.25%	\$ 0.54
Acoustic	\$ 15,000	0.02%	\$ 0.05
Code Consultant	\$ 16,000	0.03%	\$ 0.06
Design energy modeling and EPA	\$ 25,000	0.04%	\$ 0.09
Security and access control	\$ 17,500	0.03%	\$ 0.06
Site Survey	\$ 15,000	0.02%	\$ 0.05
Traffic Engineering	\$ 15,000	0.02%	\$ 0.05
Environmental Level 1	\$ 2,000	0.00%	\$ 0.01
Landscape Architecture	\$ 55,880	0.09%	\$ 0.20
Pre Construction/Contractors	\$ 12,500	0.02%	\$ 0.04
Waterproofing Consultant	\$ 40,000	0.06%	\$ 0.14
SDC and Permit Fees	\$ 3,491,138	5.64%	\$ 12.26
Appraisal	\$ 6,000	0.01%	\$ 0.02
Rent Study	\$ 10,500	0.02%	\$ 0.04
Project Insurance	\$ 20,000	0.03%	\$ 0.07
Legal	\$ 10,000	0.02%	\$ 0.04
Miscellaneous	\$ 7,500	0.01%	\$ 0.03

Lease Up Capital Reserves	\$ 2,381,853	3.85%	\$ 8.37
Branding and Marketing	\$ 100,000	0.16%	\$ 0.35
Deferred Developers Fee	\$ 2,723,931	4.40%	\$ 9.57
Contingency 5% of soft costs	\$ 533,712	0.86%	\$ 1.87
Total Soft Cost less contingency	\$ 10,674,234	17.24%	\$ 37.50
Total Soft Cost	\$ 11,207,946	18.10%	\$ 39.37
<b>Total Hard and Soft Cost</b>	<b>\$ 57,202,559</b>	<b>92.39%</b>	<b>\$ 200.96</b>
<b>FINANCING COST</b>			
Construction Financing Int Cost	\$ 2,059,292	3.33%	\$ 7.23
Construction Financing Arrangement Fee	\$ 572,026	0.92%	\$ 2.01
Permanent Financing Arrangement Fee	\$ 433,069	0.70%	\$ 1.52
<b>Total Financing Cost</b>	<b>\$ 3,064,387</b>	<b>4.95%</b>	<b>\$ 10.77</b>
<b>TOTAL DEVELOPMENT COST</b>	<b>\$ 61,916,946</b>	<b>100.00%</b>	<b>\$ 217.52</b>

## **EXHIBIT F**

### **SCOPE OF DEVELOPMENT**

The Project includes the following:

1. **Residential Building.** A residential, market-rate apartment building consisting of approximately 12 floors and containing approximately 200,000 square feet; 290 apartments; ground-floor retail along NE 3<sup>rd</sup> Avenue and the Couch Street Stairs; and 175 parking spaces. The building may also include commercial office and/or live/work uses.
2. **Infrastructure and Site Improvements.**
  - a. Necessary utility services for the Residential Building.
  - b. Landscaping and other site improvements meeting City of Portland code requirements.

**EXHIBIT G**

**SCHEDULE OF PERFORMANCE**

**PRE-CLOSING**

<b>TASK</b>	<b>DUE DATE</b>
1. Execute Memorandum of Understanding	Complete
2. Commission Approval of DDA	December 12, 2012
3. PDC to provide Due Diligence Materials to Developer - Section 2.7.2	Complete
4. Developer to provide Earnest Money deposit to PDC – Section 2.4	Within ten days after Effective Date
5. Developer to contact the PDC Contracts Coordinator to obtain Business Equity Program and Workforce Equity Program specifications – Section 10.1	Within ten days after Effective Date
6. PDC records Memorandum of DDA	Within ten days after Effective Date
7. PDC to have the Declaration of the Couch Street Covenants, Conditions and Restrictions recorded against the Property – Section 2.3	Complete
8. Completion of Due Diligence Period Developer Notification of Results – Section 2.7.3	Within 120 days after Effective Date
9. Developer to submit to the City of Portland Bureau of Development Services, a Design Advice Request (DAR)	February 1, 2013
10. Developer to submit to the City of Portland Bureau of Development Services, an application for Design Review Approval	April 26, 2013
11. Developer to provide 50% Design Development Drawings & Project Budget - Section 7.2.3(a)	August 12, 2013
12. PDC to complete review of 50% Design Development Drawings & Project Budget	[30 days after Developer submission]
13. Developer to provide final Design Development Drawings & Project Budget - Section 7.2.3(b)	September 27, 2013
14. PDC to complete review of final Design Development Drawings & Project Budget	[30 days after Developer submission]
15. Developer to provide 50% Construction Drawings and Technical Specifications & Project Budget - Section 7.2.3(c).	February 17, 2014
16. PDC to complete review of 50% Construction Drawings and Technical Specifications & Project Budget	[30 days after Developer submission]
17. Developer to provide to provide 90% Construction Drawings and Technical Specifications & Project Budget – Section 7.2.3(d)	March 31, 2014
18. PDC to complete review of 90% Construction Drawings and Technical Specifications & Project Budget	[30 days after Developer submission]



19. Developer to provide Final Construction Drawings and Technical Specifications & Project Budget – Section 7.2.3(e)	May 14, 2014
20. PDC to complete review of Final Construction Drawings and Technical Specifications & Project Budget	[30 days after Developer submission]
21. Developer to secure land use approvals and permits – Sections 4.1.1.i, 4.1.1.ii, and 4.1.3.i	June 14, 2014
22. Developer to secure building permits from BDS – Sections 4.1.1.i, 4.1.1.ii, and 4.1.3.i.	June 14, 2014
23. Developer to provide documentation of required financing – Sections 4.1.1.iii and 4.1.3.iii.	May 14, 2014
24. PDC to provide final form of Deed	June 14, 2014
25. Developer to provide Organizational Documents, Certificate of Existence, and Authorizing Resolution – Section 4.1.3.ii	May 14, 2014
26. Developer to submit Final Project Budget – Section 4.1.3.iii	May 14, 2014
27. PDC to complete review of Final Project Budget – Section 4.1.3.iii	[30 days after Developer submission]
28. Developer to provide LEED documentation – Section 4.1.3.v.	May 14, 2014
29. Developer to submit to the PDC Contracts Coordinator a Business and Workforce Equity contracting/subcontracting plan and/or Good Faith Efforts	May 14, 2014
30. Developer to prepare a transportation management plan for presentation to the Central Eastside Industrial Council (CEIC) or similar appropriate neighborhood organization - Section 4.1.3.viii.	April 14, 2014
31. <b>Closing/Conveyance of Property to Developer – Section 5</b>	<b>Within 18 months after Effective Date</b>
32. <b>Final Termination Date (if Closing does not occur by approximately June 14, 2014) - Section 4.3</b>	<b>60 days after written notice is provided (approximately August 14, 2014)</b>

### POST-CLOSING

TASK	DUE DATE
1. Developer to commence construction	August 1, 2014
2. Developer to complete construction and secure Certificate of Occupancy for the Project – Section 7.10.1	January 30, 2016
3. Developer to request PDC Certificate of Completion from PDC – Section 7.10.1	January 30, 2016
4. PDC to issue PDC Certificate of Completion (assuming compliance with DDA) – Section 7.10.2	February 28,, 2016
5. PDC to collect post-construction metrics	March 30, 2016

**EXHIBIT H**

**FORM OF CERTIFICATE OF COMPLETION**

After recording return to:

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**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 determines that \_\_\_\_\_, a \_\_\_\_\_ (“Developer”), has substantially completed construction of the Project as described in the Agreement for Disposition and Development of Property (\_\_\_\_\_), dated \_\_\_\_\_, 20\_\_ (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 7.10 of the DDA, PDC hereby determines that:

- (i) the Project is complete 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 the DDA,
- (ii) the City of Portland has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project, and
- (iii) Developer has provided PDC evidence that the Project meets the applicable Green Building standard set forth in the Green Building Policy.

This Certificate of Completion constitutes 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 shall automatically cease and become of no further effect, except as otherwise provided in this Certificate of Completion. This Certificate of Completion

represents and determines the completion of Developer's construction obligations described herein as to PDC only.

Further,

- (1) 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
- (2) The following Sections of the DDA shall survive and remain in effect for the periods identified in the DDA notwithstanding issuance of this Certificate of Completion ("Surviving Sections"): Section 2.6 (AS IS), Section 7.6.2 (INDEMNITY FROM LIABILITY CLAIMS), Section 7.6.3 (INDEMNITY FROM LIENS), Section 7.2.7 (Phase II Project), Section 7.9 (PROHIBITED USES), and Section 8.3 (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 re-vest 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 \_\_\_\_\_, 201\_, 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 Oregon  
My commission expires: \_\_\_\_\_

**EXHIBIT I**  
**ENVIRONMENTAL DUE DILIGENCE REPORTS**

“Phase I Environmental Site Assessment, Former Bridgeport Hotel, East Portland Addition Block 67, Lot 6 and Parts of Lot 5 and 7, 5 to 13 NE 3<sup>rd</sup> Avenue, Portland, Oregon,” AGRA Earth & Environmental, Inc., May 26, 1999.

“A Phase I Environmental Site Assessment, Approximate 2.43-Acre Property, 123 NE 3<sup>rd</sup> Avenue, Portland, Oregon,” Hahn and Associates, Inc., April 12, 2003.

“A Phase II Environmental Site Assessment Report, Convention Center Plaza, Approximate 2.43-Acre Property, 123 NE 3<sup>rd</sup> Avenue, Portland, Oregon,” Hahn and Associates, Inc., May 3, 2004.

“Report, Convention Center Plaza, Blocks 66-69, 75, & 76, Portland, Oregon,” Geotechnical Engineering Services, November 10, 2004.

“Remedial Investigation Report, Block 76/67, East Burnside Street and NE Third Avenue, Portland, Oregon,” Hart Crowser, Inc., August 9, 2005.

“No Further Action Determination,” Oregon Department of Environmental Quality, May 12, 2006.

“Underground Storage Tank Decommissioning and Risk-Based Closure Report, Burnside Bridgehead, E Burnside Street and NE 2<sup>nd</sup> Avenue, Portland, Oregon, LUST File #26-08-1328,” Varchan Environmental Construction Inc., November 3, 2008.

“No Further Action Determination,” Burnside Bridgehead, East Burnside St. and NE 2<sup>nd</sup> Avenue, Portland, Oregon, File No. 26-08-1328” Oregon Department of Environmental Quality, September 25, 2009.

“Comfort – Update Letter, Block 67, ESCI#3930,” Oregon Department of Environmental Quality, June 14, 2011.

## EXHIBIT J

### **Business and Workforce Equity Policy (Amended April 28, 2010)**

#### **A. OBJECTIVES OF THE POLICY**

The objective of the **Business and Workforce Equity Policy** (the “Policy”) is to:

- Ensure that the Portland Development Commission’s (“PDC’s) work provides professional, supplier and construction contracting opportunities to small businesses that have been historically underutilized including businesses owned by People of Color, Women and Emerging Small Businesses (collectively, “M/W/ESBs”) and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources including Interagency and Intergovernmental Agreements; and
- Maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and Women and encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

In this way, it is PDC’s aim to ensure fair and equitable opportunities to Portland’s diverse populations, promote prosperity in all segments of Portland’s diverse communities, foster economic growth, and expand competition in the market.

The Policy replaces the existing policy adopted by the Board on December 18, 1997 (Resolution No. 5066) that authorized implementation of the Disparity Study Implementation Plan and policies concerning fair contracting and workforce training, including the Good Faith Effort Program and Workforce Training and Hiring Program.

The Policy objectives are pursued through the establishment of two separate and distinct programs.

- **The Business Equity Program;** and
- **The Workforce Equity Program.**

#### **B. DEFINITIONS**

1. **“Board”** means the PDC Board of Commissioners.
2. **“Business Financial Resource Tools”** means certain PDC business financial assistance programs including, but not limited to, the Quality Jobs Program, the Economic Opportunity Fund, the Direct Tax Increment Loan, and the EDA Revolving Loan and Real Estate Fund.
3. **“Certified Firms”** include M/W/ESB firms that have been certified by the State of Oregon as a Minority-owned business, a Women-owned business or an emerging small business.
4. **“DA” or “DDA”** means, respectively, a Development Agreement or a Disposition and Development Agreement that is typically entered into by and between a developer and PDC that sets forth the terms and conditions of property conveyance, if any, and the requirements for redevelopment of the property.

5. **“Direct Contracting”** included all professional, supplier and construction services purchased directly by PDC.
6. **“Enterprise Zone”** is a 5-year, 100% tax abatement program designed to encourage existing and new industrial firms to invest in new capital outlays in certain designated areas. Participating firms are required to create or retain quality jobs while maximizing the economic benefits for residents of Portland who are currently earning at or below 80% Median Family Income.
7. **“Flexible Service Contract”** is a contract for services that has repetitive requirements on an as-needed basis and may include Personal Services Contracts that have such repetitive requirements.
8. **“Hard Construction Costs”** is the cost to build improvements on a property, including all related construction labor and materials, including fixed and built-in equipment costs. Costs not directly related to the construction of an improvement, such as entity overhead, administration or taxes, or other professional services including architectural or engineering, shall not be considered a part of the Hard Construction Costs.
9. **“Intergovernmental Agreement”** is an agreement between PDC and another government entity, including the City of Portland.
10. **“Land Transactions”** is the sale of real property by PDC at any price for the purpose of a private or public project through a DDA.
11. **“PDC-Owned Construction Contracts”** include contracts where PDC has a direct contractual relationship with the contractor and where PDC is the owner of the project.
12. **“PDC Resources”** include:
  - (i) PDC funds in the form of grants, loans or payments. For purposes of calculating PDC Resources, any PDC funds used by a single entity for a single project in the form of grants, loans or payments shall be combined to determine the total amount of PDC Resources; and
  - (ii) The value of a Land Transaction. For purposes of calculating the value of a Land Transaction the value shall be that specified in the DDA.
13. **“PDC Sponsored Projects”** include all projects that are privately owned and constructed involving a Disposition and Development Agreement, Development Agreement, loan agreement, or other type of financial assistance agreement with PDC.
14. **“People of Color”** as used in this Policy includes persons who self identify as being other than Caucasian.
15. **“Personal Services Contract”** is a contract for specialized skills, knowledge or unique resources in the application of highly-technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Such services include, but are not limited to the services of architects, engineers, surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers.
16. **“Utilization Goal”** shall mean the percentage goals set for Certified Firms and workforce utilization on contracts and projects subject to the Policy.
17. **“Workforce Goals”** means the goals covering construction trades to utilize People of Color and Women as a percentage of total construction hours worked in a PDC Project.

- 18. “Workforce Training and Hiring Program”** means the Workforce Training and Hiring Program originally authorized by the Board on December 18, 1997 (Resolution No. 5066) and further amended on September 16, 1998 (Resolution No. 5171) and reauthorized on February 27, 2008 (Resolution No. 6561) that pertains to apprentice utilization.

### **C. THE BUSINESS EQUITY PROGRAM**

- 1. Purpose of the Business Equity Program.** To ensure PDC provides professional, supplier and construction contracting opportunities to Certified Firms and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.
- 2. Applicability.** Direct Contracting entities, entities involved in a Land Transaction or entities receiving PDC Resources shall be obligated to comply with the Business Equity Program, upon meeting any one of the following criteria:
  - a) A PDC Personal Services Contract for any amount;
  - b) A PDC-Owned Construction Contract greater than \$200,000;
  - c) A PDC Sponsored Project receiving more than \$300,000 of PDC Resources to finance a project with Hard Construction Costs greater than \$300,000; or
  - d) Intergovernmental Agreement with Hard Construction Costs greater than \$200,000 and more than \$100,000 in PDC Resources, whether performed by PDC or another agency. The Executive Director or the Executive Director’s designee may defer to the other agency’s program if its program is similar to PDC’s program. If PDC defers to the other agency’s program, utilization reports shall be provided to PDC by the other agency on a monthly basis.
- 3. Utilization Goals for Certified Firms.** The following Utilization Goals are established upon the initial adoption of the Policy. The Executive Director is responsible thereafter for annually reviewing the Utilization Goals, and is authorized to modify them based on such annual analysis:
  - a) Personal Services Contracts: 25 percent of the payments made under such contracts;
  - b) PDC-Owned Construction Contracts: 20 percent of Hard Construction Costs;
  - c) PDC Sponsored Projects: 20 percent of Hard Construction Costs for residential low-rise construction and 20 percent of the Hard Construction Costs for commercial high-rise construction as calculated by an analysis of availability and capacity of Certified Firms for the specific project;
  - d) Interagency and Intergovernmental Agreements: the PDC program shall apply. However, PDC may defer to the other agency’s program if their program is similar to PDC’s program with monthly reporting provided to PDC; and
  - e) Flexible Service Contracts:
    - (i) 30 percent of the total number of contracts in any fiscal year; AND
    - (ii) 25 percent of the payments made under such contracts.
- 4. Notice and Timing.** Should a party receive PDC Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply



with the Business Equity Program, PDC (the project manager, with assistance from the M/W/ESB Coordinator) may negotiate a Certified Firm participation level that is reasonable and may provide technical assistance to achieve that negotiated Utilization Goal.

- 5. Prompt Payment.** The Contractor and/or Developer shall pay all subcontractors and suppliers within ten calendar days after receiving payment from PDC on all PDC-owned and sponsored construction projects.

## **D. THE PDC WORKFORCE EQUITY PROGRAM**

### **1. Purpose of the Workforce Equity Program.**

- a) To maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and Women on Direct Contracting, Land Transactions and on work utilizing PDC Resources; and
- b) To encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

### **2. Applicability.** Direct Contracting entities, entities entering into a DA or DDA or entities receiving PDC Resources shall be obligated to comply with the Workforce Equity Program upon meeting any one of the following criteria:

- a) On a PDC-Owned Construction Contract or an Intergovernmental Agreement greater than \$200,000, the Workforce Equity Program shall apply to:

- (i) The prime contract; and
- (ii) Any subcontract greater than \$100,000.

(iii) The Executive Director or the Executive Director's designee may defer to the other agency's program if its program is similar to PDC's program. If PDC defers to the other agency's program, utilization reports shall be provided to PDC by the other agency on a monthly basis.

- b) On a PDC Sponsored Project the Workforce Equity Program shall apply if the project receives \$300,000 or more of PDC Resources to finance a project with a Hard Construction Cost greater than \$1,000,000 and shall apply to:

- (i) The prime contract; and
- (ii) Any subcontract greater than \$100,000.

### **3. Requirements.**

- a) Projects subject to the Workforce Equity Program shall:

- (i) Comply with the Workforce Training and Hiring Program to, among other things, ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed by the contractor and subcontractors are worked by state-registered apprentices, as such requirements are further described therein; and
- (ii) Work toward achieving the Workforce Goals phased over a ten-year period as outlined in the table below. The percentage of hours set forth below includes both apprenticeship hours and journey level hours.

## Workforce Goals

Fiscal Year	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
Female	6%	7%	8%	9%	10%	11%	12%	13%	14%	15%
People of Color	25.5%	26%	26.5%	27%	27.5%	28%	28.5%	29%	29.5%	30%

(iii) Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the unions, the apprenticeship programs and other community resources.

b) Projects subject to the Workforce Equity Program are encouraged to employ people with disabilities and veterans.

4. **Notice and Timing.** Should a party receive PDC Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the Workforce Equity Program, PDC (the Project Manager, with assistance from the M/W/ESB Coordinator) may negotiate a level of compliance that is reasonable and may provide technical assistance to achieve that negotiated Workforce Goal.

E. **Equal Employment Opportunity Certification.** Contractors and subcontractors subject to the Policy must be certified by the City of Portland as an Equal Employment Opportunity Employer.

F. **Damages.** The procedural requirements of the Policy are contractual obligations. In the event that PDC determines, in its sole and absolute discretion, that the procedural requirements of the Policy have not been complied with, then PDC's finding may result in one or more of the following:

1. A finding of breach of contract.
2. Disqualification of the developer, contractor or subcontractor to receive future PDC Resources or bid on future PDC solicitations.
3. A claim for liquidated damages.
4. Withholding of progress payments.

G. **Administration.** The Executive Director shall develop and administer administrative procedures and/or guidelines, and make any determinations necessary, to implement and manage the Policy.

H. **Exemptions.**

1. The Policy shall not apply to projects within an Enterprise Zone or PDC Resources derived from Business Financial Resource Tools that are intended to be used for working capital or property acquisition.
2. Any exemption or waiver of requirements of the Policy other than those stated in the Policy shall require approval of the Board.

**EXHIBIT K**

**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**

\_\_\_\_\_, a \_\_\_\_\_ (“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, the duly designated Urban  
Renewal Agency of the City of Portland (together with any successor public agency designated by  
or pursuant to law, “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.

It is intended that the delivery of this Deed shall not effect a merger of the provisions of that  
certain Disposition and Development Agreement for the Project, dated **[date]**, a memorandum of  
which was recorded on **[date]** as Document No. \_\_\_\_, Records of Multnomah County, Oregon (the  
“DDA”). Including, without limitation, Section 16.4 of the DDA, that are intended to continue  
after 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 ORS  
195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424,  
OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS  
2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT  
DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN  
VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE**

Disposition And Development Agreement  
Burnside Bridgehead

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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated 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, the duly designated Urban Renewal Agency of the City of Portland.

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

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

Title: Executive Director

STATE OF OREGON        )  
                                  ) ss.  
County of Multnomah     )

This instrument was acknowledged before me on \_\_\_\_\_, 201\_, 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 \_\_\_\_\_, 201\_, 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 K (Continued)**

**ESCROW INSTRUCTIONS FOR QUITCLAIM DEEDS**

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

\_\_\_\_\_

\_\_\_\_\_

Attention: [INSERT TITLE OFFICER]

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

\_\_\_\_\_, a \_\_\_\_\_ (“Developer”), has entered into that certain Agreement for Disposition and Development of Property in the \_\_\_\_\_ Urban Renewal Area (the “DDA”) with the City of Portland, Oregon, acting by and through the Portland Development Commission (“PDC”) dated as of \_\_\_\_\_, 20\_\_, 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”). The Property is the subject of this escrow and is described in the accompanying quitclaim deed (“Quitclaim Deed”).

Section 16.3 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 of all rights, title 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.

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 promptly return the Quitclaim Deed to Developer. In the event that there still remains in your possession an undisposed Quitclaim Deed by **[insert date twenty-four (24) 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.

Disposition And Development Agreement  
Burnside Bridgehead

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, 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: \_\_\_\_\_

Accepted and agreed to this \_\_\_ day of \_\_\_\_\_, 201\_

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

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

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

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

**EXHIBIT L**

**FORM OF MEMORANDUM OF AGREEMENT**

After recording return to:

Portland Development Commission

222 NW Fifth Avenue

Portland, OR 97209

Attn: \_\_\_\_\_

**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 KEY DEVELOPMENT CORPORATION, An Oregon corporation (“Developer”), with an address of P.O. Box 208, Bend, Oregon 97709, entered into an Agreement for Disposition and Development of Property in the \_\_\_\_\_ Urban Renewal Area, (\_\_\_\_\_) dated as of \_\_\_\_\_, 20\_\_ (“Agreement”) relating to the 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.

The Agreement also imposes several covenants running with the land. Developer covenants and agrees to use the Property only for purposes substantially consistent with this Agreement, including the Scope of Development and Final Construction Plans and Specifications and that prior to the issuance of the PDC Certificate of Completion, the Design Review provisions of Section 7.2 of this Agreement will survive any foreclosure of transfer of the Property by a deed in lieu of foreclosure or any other transfer of the Property. PDC and Developer also declare and agree that these covenants described in this paragraph are covenants running with the land and



shall pass to and be binding on Developer's successors in title, including, without limitation, any Mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property and upon the respective heirs, executors, administrators, devisees, designees, successors, and assigns of any Mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property.

As a condition subsequent to the Property conveyance, in the event of a default by Developer before PDC issues a PDC Certificate of Completion, 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 I attached to the Agreement. After a PDC 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 PDC 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**

**Description of Property**

**RESOLUTION NO. 6984**

**RESOLUTION TITLE:**

AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT TO CONVEY 0.76 ACRES OF REAL PROPERTY IN THE CENTRAL EASTSIDE URBAN RENEWAL AREA TO KEY DEVELOPMENT CORPORATION FOR \$1,650,000

Adopted by the Portland Development Commission on December 12, 2012

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Aneshka Dickson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Steven Straus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Charles Wilhoite	<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 as duly recorded in the official minutes of the meeting.*

	<b>Date:</b>  January 2, 2013
<b>Gina Wiedrick, Recording Secretary</b>	