

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 7033

**AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT TO
CONVEY 1.79 ACRES OF REAL PROPERTY IN THE INTERSTATE
CORRIDOR URBAN RENEWAL AREA TO MAJESTIC REALTY COMPANY
FOR \$502,160**

WHEREAS, Portland Development Commission (“PDC”) is the owner of a 1.79 acre parcel in the Interstate Corridor Urban Renewal Area, made up of eight separate tax lots on Block 25, known as MLK-South, which is bounded by NE Martin Luther King, Jr. Blvd., NE Alberta, NE Garfield, and NE Sumner streets (the “Property”);

WHEREAS, the Albina Community Plan, adopted by the City of Portland (“City”) in July 1993, directed the City to “revive commerce on NE Martin Luther King, Jr. Blvd. and foster the development of strong commercial nodes at the intersections of NE Martin Luther King, Jr. Blvd. and NE Killingsworth/NE Alberta;”

WHEREAS, PDC acquired the Property, along with Lot 1 on Block 25, and the full block to the north (“Vanport Square”) to implement a multi-block mixed-use development pursuant to the Albina Community Plan and the PDC-developed King Neighborhood Commercial Development Strategy (“Strategy”) with the intent of catalyzing significant retail and commercial development along this section of NE Martin Luther King, Jr. Blvd.;

WHEREAS, development of the Property constitutes the final phase of a three-phased redevelopment project where the first two phases have been successfully completed (with 16 commercial condominiums and 10 fee-simple homes on the block to the north) and have supported the PDC goals of wealth creation and revitalization of NE Martin Luther King, Jr. Blvd.;

WHEREAS, the Vanport Project Advisory Committee, originally convened in 2000 to guide the implementation of the Strategy and Vanport Square, has expressed consistent interest in the Property being developed with an anchor grocery store that brings fresh, affordable, high-quality food to the neighborhood;

WHEREAS, in 2011, the City identified the area surrounding the Property as underserved by any full service grocery store, offering fresh produce and healthy foods, and issued a Request for Interest (“RFI”) to the development community for interest in developing grocery stores throughout underserved areas of Portland, including the area surrounding the Property;

WHEREAS, PDC desires to sell the Property to a developer who will commit to constructing a commercial center anchored by a full service grocery in order to meet the needs of the neighborhood and the community;

WHEREAS, Majestic Realty Company (“Developer”), a developer with extensive experience in property development and the management of commercial real estate in several states and the Portland metropolitan area, expressed interest in developing this site in alignment with the RFI;

WHEREAS, a nationally recognized grocery chain executed a Letter of Intent with the Developer, describing its interest in locating at the Property and being part of a larger commercial project;

WHEREAS, PDC and the Developer commenced negotiations for the sale of the Property and the subsequent commercial development of the Property with the nationally recognized grocer as the anchor tenant;

WHEREAS, during the negotiations, it was determined that PDC’s land sale requirements (that the development of the Property include a grocery store and liner retail) limit the total potential economic return of the development, relative to other permitted land uses;

WHEREAS, it has been determined that the land sale price described below is an adequate and fair adjustment for the land use requirements of PDC; and

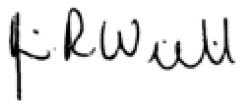
WHEREAS, PDC and Developer have negotiated a Disposition and Development Agreement (“DDA”) substantially in the form attached hereto as Exhibit A to convey the Property to the Developer for a purchase price of \$502,160.

NOW, THEREFORE, BE IT RESOLVED that the PDC Board of Commissioners authorizes the Executive Director to execute the DDA with the Developer;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the DDA, if such changes do not materially change the terms of the agreement and 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 30 days after its adoption.

Adopted by Portland Development Commission on November 13, 2013



Gina Wiedrick, Recording Secretary

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

RESOLUTION NO. 7033

EXHIBIT A

**AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT TO
CONVEY 1.79 ACRES OF REAL PROPERTY IN THE INTERSTATE
CORRIDOR URBAN RENEWAL AREA TO MAJESTIC REALTY COMPANY
FOR \$502,160**

Exhibit A includes this cover page and contains 85 pages:

- Agreement for Disposition and Development of Property in the Interstate Corridor Urban Renewal Area between the Portland Development Commission and Majestic Realty Company
 - Exhibit A: Description of the Property
 - Exhibit B: Scope of Development
 - Exhibit C: Project Budget
 - Exhibit D: Schedule of Performance
 - Exhibit E: Form of Deed
 - Exhibit F: Form of Certificate of Completion
 - Exhibit G: List of Environmental Due Diligence Reports
 - Exhibit H: Business Equity Program
 - Exhibit I: Workforce Equity Program
 - Exhibit J: Green Building Policy
 - Exhibit K: Compliance Agreement
 - Exhibit L: Form of Quitclaim Deeds and Escrow Instructions
 - Exhibit M: Form of Memorandum of Agreement

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

IN THE INTERSTATE CORRIDOR URBAN RENEWAL AREA

between

THE PORTLAND DEVELOPMENT COMMISSION

and

MAJESTIC REALTY COMPANY

dated

November __, 2013

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

This AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY is made and entered this ___ day of November 2013 (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 MAJESTIC REALTY COMPANY, a California corporation ("Developer"). PDC and Developer may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

RECITALS

- A. PDC, finding it in the public interest to implement the Urban Renewal Plan for the Interstate Corridor Urban Renewal Area ("URA"), acquired certain real property within the URA pursuant to the *King Neighborhood Commercial Development Strategy* (the "Development Strategy"). The intent of the Development Strategy was to identify ways to catalyze significant retail and commercial development along this section of NE Martin Luther King Jr. Boulevard;
- B. PDC acquired seven vacant parcels and a single-family residential property that make up approximately 77,931 feet (1.79 acres) at the northwest corner of NE Alberta Street and NE Martin Luther King, Jr. Boulevard commonly known as the MLK South Commercial Site and more fully described in Section 2.2 and Exhibit A (the "Property") in the URA to implement the Development Strategy;
- C. PDC and Developer entered into a Memorandum of Understanding ("MOU") on June 29, 2012, to allow Developer an exclusive opportunity to evaluate the Property for future acquisition and development. That MOU expired in August 2012, but Developer re-approached PDC with a letter of intent (dated March 21, 2013) from a specific anchor tenant and PDC entered into a new MOU with Developer to develop the Property;
- D. Developer's development of the Property (the "Project") shall consist of approximately 12,000 s.f. of space for a grocery store to be occupied by the aforementioned anchor tenant ("Anchor Tenant") and 10,000 s.f. of retail space in multiple buildings. The Project is more specifically described in the Scope of Development attached as Exhibit B;
- E. The completion of the Project according to the terms of this Agreement, including the Scope of Development and the Schedule of Performance attached as Exhibit D, is a material inducement to PDC to enter into this Agreement; and
- F. PDC finds that Developer's development of the Property, pursuant to this Agreement, will help achieve the community and City goals for neighborhood revitalization and further the city's Development Strategy. PDC also finds that the fulfillment, generally, of this Agreement, and the intentions set forth herein, are in the 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; provided, however, that once a term is defined it may be used as the first word of a sentence. A defined term has the meaning given it when it is first defined in this Agreement.

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 northwest corner of NE Alberta Street and MLK Jr. Boulevard, Portland, Oregon, commonly known as MLK South Commercial Site as more particularly described in Exhibit A attached hereto (the "Land"), together with: (i) all rights, privileges, licenses, and easements appurtenant to the Land; and (ii) all real property improvements and fixtures located on the Land.
- 2.3. Earnest Money Deposit.** Within five (5) days of the Effective Date and subject to the terms of this Section 2.3, Developer shall deposit with the Escrow Agent SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) (the "Escrow Deposit"). The Escrow Deposit shall be fully refundable to Developer, except as provided in this Agreement. 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.
- 2.4. Purchase Price.** The cash purchase price for the Property payable at Closing is an amount equal to FIVE HUNDRED TWO THOUSAND ONE HUNDRED SIXTY DOLLARS (\$502,160), which is a negotiated sum below the appraised value of the Property because of the undertakings of the Developer and PDC set forth in this Agreement (the "Purchase Price").
- 2.5. 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. Except for any representation and warranty of PDC contained in this Agreement, 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 Substances which are defined in Section 3.1.2) or compliance with Environmental Laws (defined in Section 8.5) 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. Except as set forth in Section 3.1, 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.
- 2.6. Access, Inspection and Due Diligence Materials**
- 2.6.1. Access and Inspection.** The Parties acknowledge that they have entered into a separate 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.

- 2.6.2. Due Diligence Materials.** PDC has provided to Developer 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 Substances, 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.
- 2.6.3. Due Diligence Period.** Developer shall notify PDC no later than thirty (30) 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, it 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 decision to terminate this Agreement in which event the Escrow Deposit shall be refunded to Developer.

2.7. Title Review.

- 2.7.1.** Developer has or promptly will obtain a Preliminary Title Report or Reports covering the Property, and exception documents referenced in the Preliminary Title Report or Reports (collectively, the "Title Report") and shall have ten (10) days after the Effective Date 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 ten (10) 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 ten (10) day time period or if PDC refuses to remove any such objected to exceptions, Developer shall have ten (10) 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.
- 2.7.2.** 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 ten (10) days after receiving an updated Title Report, Developer shall give PDC notice, in writing, of any objections to the exceptions (that are not Permitted Exceptions) to title that appear on the updated Title Report. Within ten (10) 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 ten (10) day time period or if PDC refuses to remove any such objected to exceptions, Developer shall have ten (10) 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; provided, that

nothing contained herein shall limit Developer's rights or remedies with respect to PDC placing an additional voluntary lien on the Property subsequent to the date of execution of this Agreement. 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.

2.8. 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 shall 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

3.1. PDC Representations and Warranties. PDC's representations under this Agreement are limited to the following. PDC hereby 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.
- 3.1.2.** Except as has been disclosed to Developer in the Environmental Due Diligence Reports attached as Exhibit I, to PDC's knowledge (which for the purposes of this Agreement means the actual current knowledge of the PDC's Senior Project Manager, Estee Segal, and PDC's Construction & Environmental Services Manager, David Obern, without any duty of inquiry or investigation), PDC has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, Released or produced Hazardous Substances (defined below) on or under 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. For purposes of this paragraph, "Hazardous Substances" is defined to mean all petroleum-based products, radon, asbestos, PCB's and all substances, wastes and materials that are so defined in the Comprehensive Environmental Response, Compensation and Liability Act., 42 U.S.C. secs. 9601-9675; the Resource Conservation and Recovery Act, 42 U.S.C. secs. 6901-6992K; the Hazardous Materials Transportation Act, 49 U.S.C. secs. 5101-5128; and any Environmental Law referenced in Section 8.5.
- 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, 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.** 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.
- 3.1.8.** 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.
- 3.1.9.** 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.
- 3.1.10.** 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.
- 3.1.11.** 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.** Developer's representations 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.** Edward P. Roski is the President/Chairman of the Board of the Developer. Phillip C. Brown is the Vice President of the Developer. Developer is a corporation duly formed and existing in good standing in the State of California and qualified to do business in Oregon.
- 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.** 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.
- 3.2.4.** Developer enters into this Agreement without reliance on verbal representations by PDC, its employees, agents or consultants, regarding any aspect of the Property, the Project, its feasibility, financing, or compliance with any governmental regulation.
- 3.2.5.** 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. Unless otherwise expressly provided herein, 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 (each as defined in the Scope of Development, Exhibit F) 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 2.8, 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 those building permits that are required to commence the construction of the Project, subject only to Developer's ownership of the Property.
- (ii) If requested by PDC, Developer has provided to PDC documentation that:
 - (a) Developer is a California 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 which shall be an updated and revised estimate of the sources and uses of funds, cash flow and budget (the "Project Budget" attached as Exhibit C) 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 material 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 material default of Developer under this Agreement.
 - (vii) Developer shall have selected a general contractor for the Project that is reasonably satisfactory to PDC and such contractor shall have provided a plan to PDC's reasonable satisfaction that the contractor and its subcontractors will comply with PDC's equity policies outlined in Section 10.1 in hiring minority-owned, women-owned and emerging small businesses in the performance of work on the Project.
 - (viii) Developer has executed a lease with Anchor Tenant.
 - (ix) Developer has provided a leasing strategy and marketing plan for balance of retail space.

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; provided, however, 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:

- (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 13.8.3, 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. Notwithstanding any of the foregoing, if Closing has not occurred on or before July 1, 2015 this Agreement shall terminate.

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 thirty (30) days after the issuance of all land use permits and building permits required for the development and operation of Developer's proposed development of the Property have been issued and all appeals periods have expired without any appeals having been filed (the "Closing Date").
- 5.2.2. The Closing Date may not be extended without the consent of both Parties, unless extended pursuant to Section 13.8.

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. If requested by Developer or Escrow Agent prior to or as part of Closing, an original certificate of non-foreign person duly executed by PDC and notarized.

5.5.3. Such documents as the Escrow Agent may reasonably 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 2.4 of this Agreement and to pay Developer's portion of the Closing costs and pro rations as described in Section 5.7 pursuant to a closing or settlement statement prepared by Escrow Agent and approved and signed by Developer.

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 2.8. 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). 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 property taxes on the Property from and after the Closing.

5.7.3. Utilities. If applicable, 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

6.1. Infrastructure Improvements. As part of the Project, Developer, at its own cost, will design, connect, construct, upgrade, fund and obtain permits for all 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 (collectively, "Infrastructure") as further described in the Scope of Development set forth in Exhibit B.

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.

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. Developer shall provide PDC with a copy of a conditional approval letter from Developer's lender with respect to providing financing for Developer's purchase of the Property.

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

7.2.1. Design Objectives, Review and Approval. Developer has prepared site drawings for the Project including schematic, massing, feasibility and preliminary cost estimates for the Project (the "Preliminary Design Documents") that are the basis for entering into this Agreement. Developer shall prepare such further detailed plans for design development, construction drawings and technical specifications as shall be required for submittal to the City for its Design Review process. Developer shall be obligated to submit such detailed plans to PDC for review and approval prior to submittal to the City for Design Review. Review meetings with the Developer's design team and PDC representatives are encouraged to facilitate the review and approval process. 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. In connection with the review of any Drawings, the approval of such Drawings by PDC shall not be unreasonably withheld, conditioned or delayed. The Drawings shall 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. Particularly, along the Martin Luther King Boulevard frontage, the design should incorporate at least one plaza/gathering space to break up the buildings and make that frontage more pedestrian friendly.
- (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. To gain an understanding of the foregoing that should be reflected in the Drawings, and prior to submittal of any Drawings for City Design Review, the Developer will be expected to make outreach efforts to meet with local neighborhood and business groups, particularly, the King Neighborhood Association, immediate-area Garfield Street residents, and the Vanport Square business owners. 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, and to the extent PDC has approved of any portion of the design of the Project, in any subsequent review of the design of the Project, PDC cannot object to such previously approved portion of the design of the Project:

- (a) **Final Design Development Drawings (100% DD) at least 1 week prior to submitting for Design Review.** 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.
- (b) **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.

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. If the approval of PDC is sought under this Section, such approval shall not be unreasonably withheld, conditioned or delayed.

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 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 or its designee 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.

7.2.7. If PDC does not provide its approval or rejection of any requests for any approvals required of PDC pursuant to Section 7 of this Agreement within five (5) business days of the request for such approval, and Developer sends PDC a second notice seeking such approval and such second notice says "Second Notice – Failure to responds to this approval request within five (5) business days shall be deemed approval" and PDC fails to respond within such five (5) business days to such second request, then such approval shall be deemed granted by PDC.

7.3. Diligent Completion. Subject to the terms and conditions of this Agreement (including any Unavoidable Delay as defined in Section 13.8), Developer covenants to use commercially reasonable efforts 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. Subject to delays permitted in accordance with the terms of this Agreement, Developer shall use commercially reasonable efforts to 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 13.2. 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. The Parties hereby acknowledge that the Project shall be deemed a "public work" subject to the Oregon Prevailing Wage Law because Developer will be receiving \$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"). Accordingly, the Parties shall enter into, and shall perform and discharge their obligations under, that certain Compliance Agreement (Exhibit K) 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, Developer and/or Developer's employees, agents and consultants shall be allowed access to the Property in reasonable furtherance of the transaction contemplated in this Agreement pursuant to the written permit of entry described in Section 2.6.1.

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 to the extent such cause is due to Developer's construction work, except to the extent caused the acts or omissions of PDC or its agents, employees, contractors or invitees. In no event shall Developer be required to indemnify PDC for any pre-existing conditions. 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 thirty (30) 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. Certificate of Completion.

7.9.1. When Developer is Entitled to Certificate of Completion. Upon substantial completion of the Project as described in this Section 7.9.1 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. Developer has completed all environmental remediation and abatement on the Property, if any, required of Developer under Section 8;
- ii. The City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project; and
- iii. 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.
- iv. Developer has executed a lease for the north corner space to a food establishment.

7.9.2. Form and Effect of the Certificate of Completion. A Certificate of Completion shall be substantially in the form of Exhibit F 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.

7.9.3. Procedure Where PDC Refuses to Issue. If PDC refuses or fails to provide a Certificate of Completion in accordance with this Section 7.9, 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. If PDC fails to furnish Developer with such detailed written statement within such thirty (30) day period, and Developer sends PDC a second notice seeking such written statement and such second notice says "Second Notice – Failure to respond to this request for explanation for withholding of the Certificate of Completion within five (5) business days shall be deemed approval" and PDC fails to respond within such five (5) business days to such second request, then PDC shall be deemed to have granted 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 G, other than the Phase 1 Environmental Site Assessment described in Section 8.2 below.

8.2. Phase I Environmental Site Assessment. During the Due Diligence Period, Developer is encouraged to 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 instruct its environmental contractor conducting a Phase I and Phase II or other investigation efforts, if any, to provide a draft copy of the such investigative reports to PDC for review and comment prior to issuance of any final report(s) and shall provide PDC with a copy of the final report (s), 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 (but not Unforeseen Environmental Conditions) on the Property (each as defined below). Developer shall defend (at PDC's request), indemnify and hold harmless PDC, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by PDC, its successors or assigns, or asserted against PDC, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer or Developer's failure to complete any require environmental remediation or Recognized Environmental Conditions (but not remediation or abatement of any 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, but Developer specifically reiterates and acknowledges the AS-IS provisions of Section 2.5 which does limit the rights of Developer and Developer's successors and assigns as to any claims they may have against PDC and PDC's successors and assigns. The indemnity is intended only as an allocation of responsibility between the Parties.

8.5. For purposes of this Agreement, (i) “Environmental Laws” shall mean 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 Section 3.1.2), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.; “Recognized Environmental Conditions” means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing Release (defined to mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping), 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; and (iii) “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.

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. Additionally, because of the favorable purchase price made available to Developer to undertake this Project and because 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 sale, master lease or ground lease agreements for the entire Project (or substantially all of the Project) prior to issuance of a Certificate of Completion, provided closing is conditioned upon Developer obtaining the Certificate of Completion.

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. For this purpose, a controlling ownership interest shall mean a single identified person or entity is in a position to control the decision of the business entity because, even if all other stakeholders vote in opposition to a decision supported by the identified person or entity,

their collective strength will not be sufficient to alter the decision. 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 Project, or Developer's interest in this Agreement without the consent or approval of PDC.

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 comprised of two (2) separate and distinct programs:

- The Business Equity Program (Exhibit H); and
- The Workforce Equity Program (Exhibit I)

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 disadvantaged, 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 goal is calculated as 20% of the project's Hard Construction Costs and 20% of Professional Services Costs, specifically architectural or engineering, if applicable (excluding overhead, administration or taxes). 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 (Exhibit J). 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. 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 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. CONTINUING COVENANTS SURVIVING TERMINATION OF AGREEMENT OR COMPLETION OF CONSTRUCTION

11.1. Surviving Sections. The following Sections of this Agreement shall survive and remain in effect for the periods identified herein notwithstanding issuance of the Certificate of Completion: Section 2.5 (AS IS), Section 7.6.2 (INDEMNITY FROM LIABILITY CLAIMS), Section 7.6.3 (INDEMNITY FROM LIENS), and Section 8.3 (INDEMNIFICATION).

12. MORTGAGEE PROTECTION PROVISIONS

12.1. 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.

12.2. Mortgagee Not Obligated To Construct. Notwithstanding any of the provisions of the Agreement, 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.

12.3. 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.

12.4. 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 sixty (60) days after passage of the latest date for Developer's cure or remedy of the default, to commence the cure or remedy the default itself and thereafter diligently pursue such cure to completion; provided, however, that such sixty (60) day cure period shall be tolled during any period that Mortgagee is legally precluded from acting (such as an automatic stay period under the US Bankruptcy Code). If a Mortgagee does commence to cure or remedy the default within said sixty (60) 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 Drawings. 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 7.9 above.

12.5. 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.

13. DEFAULT AND REMEDIES

13.1. Default and Cure.

13.1.1. Default by Developer.

- (a) Developer shall be in default under this Agreement if Developer breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from PDC specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Developer shall be in default under this Agreement if Developer does not commence the cure of the breach within thirty (30) days after Developer receives written notice from PDC and thereafter diligently prosecute to completion such cure 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 if, without the prior written consent of PDC (which consent shall not be unreasonably withheld, conditioned or delayed), Developer constructs any portion of the Project in a manner materially inconsistent with the final Drawings.

13.1.2. 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.

13.2. PDC's Pre-Conveyance Remedies. If a Developer default (as described in Section 13.1.1) occurs before the Property is conveyed to Developer, PDC may, as its sole remedy, at its option terminate this Agreement by written notice to Developer and retain the Escrow Deposit. If PDC terminates this Agreement as provided in this Section 13.2, then Developer shall deliver to PDC, without any representation or warranty, within thirty (30) days of PDC's notice thereof, copies of Project market research, all reports on the physical condition of the Property 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. Notwithstanding the preceding sentence, PDC shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from Developer in connection with Developer's default.

13.3. PDC's Post-Conveyance Remedies. If a Developer default (as described in Section 13.1.1) occurs during the period commencing on the date the Property is conveyed to Developer and ending on the date the Project is substantially complete, then PDC shall have the following remedies; provided, that in no event may PDC shall seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from Developer in connection with Developer's default:

13.3.1. 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 revert in PDC) the estate conveyed by the Deed, terminate Developer's right to develop the Project, and resell the Property pursuant to Section 13.4 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 13.1.1), PDC, at its option, may, upon 30 days written notice of termination to Developer and the Escrow Agent and the failure of Developer to commence to cure such default diligently to completion, 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 L. Any delay by PDC in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 13.3 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.

13.3.2. Developer shall deliver to PDC within thirty (30) days after reconveyance of the Property pursuant to Section 13.3.1, without any representation or warranties, 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.

- 13.4. PDC Resale.** If title to the Property reverts in PDC in accordance with the provisions of Section 13.3, 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.
- 13.5. Developer's Pre-Conveyance Remedies.** If a PDC default (as described in Section 13.1.2) 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.
- 13.6. Developer's Post-Conveyance Remedies.** If a PDC default (as described in Section 13.1.2) 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.
- 13.7. 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.
- 13.8. Unavoidable Delay.**
- 13.8.1.** 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, shortages of labor or materials, strike, malicious mischief, or explosion.
- 13.8.2.** 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.
- 13.8.3.** 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.

14. MISCELLANEOUS PROVISIONS

- 14.1. Project Managers.** For the purposes of managing the implementation of the provisions of this Agreement, each of the Parties shall designate a Project Manager. At the Effective Date, the PDC Project Manager is Estee Segal and Developer's Project Manager is Phillip Brown.
- 14.2. 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.
- 14.3. 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) one (1) business day following delivery to a reputable overnight courier, (c) when received if personally delivered, or (d) if simultaneously delivered by another means allowed hereunder, 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:

Majestic Realty Co.
Attn: Phillip Brown
V.P., Acquisitions & Development
13191 Crossroads Parkway North, 6th Floor
City of Industry, CA 91746
pbrown@majesticrealty.com

With a copy to:

Ball Janik LLP
Brad Miller
101 SW Main Street, Suite 1100
Portland, OR 97204
bmiller@bjllp.com

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

Portland Development Commission
Attn: Estee Segal
222 NW 5th Ave.
Portland, OR 97209
segale@pdc.us

with a copy to:

Portland Development Commission
Attn: General Counsel
222 NW 5th 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.

- 14.3.1.** If either Party's notice contact person or address changes, that Party shall provide the other Party with the updated contact information.
- 14.4. 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.

- 14.5. 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.
- 14.6. 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. Each Party may rely upon the signature of any other Party on this Agreement that is transmitted by facsimile or other commonly utilized electronic imaging method as constituting the duly authorized, irrevocable, actual, current delivery of this Agreement that is deemed equivalent to an original ink signature of the transmitting Party, but if any Party so requests, an original ink version will be supplied as well.
- 14.7. 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.
- 14.8. 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.
- 14.9. 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.
- 14.10. Calculation of Time.** All periods of time referred to herein shall be measured in calendar days and 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.
- 14.11. 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.
- 14.12. 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.
- 14.13. Entire Agreement.** This Agreement and its exhibits (which are incorporated herein and made a part of this Agreement) 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.

- 14.14. Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties (in the manner required of such Party by its own governing documents which may mean board or other internal authorization as the case may be). Notwithstanding this general requirement, the PDC Executive Director may approve minor modifications to this Agreement without PDC Board approval. Any modifications to this Agreement made without the approval of the PDC Board must include an acknowledgement by PDC's General Counsel that such approval is not necessary.
- 14.15. 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.
- 14.16. 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.
- 14.17. 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.
- 14.18. 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. 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.
- 14.19. Time of Essence.** Time is of the essence of this Agreement.
- 14.20. 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.
- 14.21. 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 M 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.
- 14.22. 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:

Eric Iverson, General Counsel

DEVELOPER:

MAJESTIC REALTY COMPANY, a California corporation

By: _____

Name: _____

Title: _____

EXHIBITS

Exhibit A.	Description of the Property
Exhibit B.	Scope of Development
Exhibit C.	Project Budget
Exhibit D.	Schedule of Performance
Exhibit E.	Form of Deed
Exhibit F.	Form of Certificate of Completion
Exhibit G.	List of Environmental Due Diligence Reports
Exhibit H.	Business Equity Program
Exhibit I.	Workforce Equity Program
Exhibit J.	Green Building Policy
Exhibit K.	Compliance Agreement
Exhibit L.	Form of Quitclaim Deeds and Escrow Instructions
Exhibit M.	Form of Memorandum of Agreement

EXHIBIT A

DESCRIPTION OF PROPERTY

Lots 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, Block 25, WALNUT PARK, in the City of Portland, County of Multnomah and State of Oregon.

EXHIBIT B

SCOPE OF DEVELOPMENT

The site will be developed with an urban retail shopping center consisting of approximately 20,000 +/- square feet of gross leasable area and comprised of two separate buildings. The project will be anchored by a grocery store in one building and have commercial/retail lease space to house between 4-10 businesses in the other building. There will be approximately 100 parking spaces with access from Alberta, Sumner and Garfield Streets.

The project will be LEED Silver certified and will represent new construction techniques along with old world looks and salvaged building material re-use where feasible and possible. Walkways will provide pedestrian connections from the street to both retail buildings, with ample bike rack space provided for commuters and local neighborhood patrons frequenting the shops. Outdoor areas will possess indigenous landscaping and provide a sense of place. A blend of local and regional tenants will be sought to fill the retail space, showcasing the growth of the area and its uniqueness.

Site improvements will include utility services for the commercial buildings, as well as landscaping to meet City of Portland code requirements.

EXHIBIT C
PROJECT BUDGET

Sources:	
Senior Lender	6,024,689
Developer Equity	1,996,644
Total Sources:	8,021,333
Uses:	
Land Cost	502,160
Hard Construction Costs	
Shell Cost	4,130,000
Tenant Improvements	652,000
Soft Costs	
Site Improvements	868,521
Architectural & Engineering	74,600
Leasing/Tenant Improvement Fees	493,632
City Development Fees	256,060
Legal Fees	100,000
Development Fees	281,266
Financing Costs	488,048
Contingency	175,046
Total Uses:	8,021,333

EXHIBIT D

SCHEDULE OF PERFORMANCE

PRE-CLOSING

TASK	DUE DATE
1. Execute Memorandum of Understanding	Complete
2. Developer to submit materials to PDC to issue Permit of Entry for Access and Inspection	Complete
3. Commission Approval of DDA	November 13, 2013
4. DDA Executed (the "Effective Date")	November 22, 2013
5. Developer to enter into Oregon Prevailing Wage Law Compliance Agreement	November 22, 2013
6. Developer to provide Earnest Money deposit to PDC, as per Section 2.3 of DDA	Within 5 days of Effective Date
7. PDC records Memorandum of DDA	Within 10 days of Effective Date
8. PDC to provide Due Diligence Materials to Developer, as per Section 2.6.2	Complete
9. Developer to notify PDC of any objections in Preliminary Title Report – Section 2.7.1	Within 10 days of Effective Date
10. Developer to contact the PDC Contracts Coordinator to obtain Business Equity Program and Workforce Equity Program specifications – Section 10.1	Within 10 days of Effective Date
11. Completion of Due Diligence Period Developer Notification of Results – Section 2.6.3	Within 30 days of Effective Date
12. Developer to meet with local neighborhood and business groups, as specified in Section 7.2.2(b) and prior to application submittal of Final Design Development Drawings (100%DD) for Design Review Approval	November 15, 2013
13. Developer to submit Final Design Development Drawings (100%DD) to PDC for review, as per Section 7.2.3 (a)	November 22, 2013 <i>[At least 1 week prior to submitting to City of Portland Design Review]</i>

14. Developer to submit Final Design Development Drawings and Application for City of Portland Design Review Approval	November 29, 2013
15. Developer to execute a lease with Anchor Tenant, as per Section 4.1.3(vii)	December 15, 2013
16. Developer to provide leasing strategy and marketing plan for balance of retail space, as per Section 4.1.3(viii)	January 15, 2014
17. Developer to provide Articles of Incorporation and corporate resolutions, as per Section 4.1.3(ii)	January 15, 2014
18. Developer to provide to PDC Final Construction Drawings and Technical Specifications & Project Budget, as per Section 7.2.3(b)	February 14, 2014
19. Developer to select and inform PDC of general contractor and such contractor to provide a plan to PDC to comply with PDC's equity policies outlined in Section 10.1, as per Section 4.1.3(vi)	May 5, 2014
20. Developer to secure land use approvals and permits, as per Sections 4.1.1(ii) and 4.1.3(i)	May 20, 2014
21. Developer to provide documentation of required financing, as per Section 4.1.1(iii)	May 20, 2014
22. Developer to submit final project budget, copies of binding commitment letters and evidence of equity commitments, as per Section 4.1.3(iii)	May 20, 2014
23. Developer to provide LEED documentation, as per Section 4.1.3 (iv)	May 20, 2014
24. PDC to provide final form of Deed	May 20, 2014
25. PDC to complete review of final project budget, copies of binding commitment letters and evidence of equity commitments, as per Section 4.1.3(iii)	June 18, 2014 <i>[30 days after Developer submission of items in #22]</i>
26. Closing/Conveyance of Property to Developer – Section 5	June 20, 2014 <i>[within 30 days of issuance of land use/building permits]</i>
27. Final Termination Date - Section 4.3	July 1, 2015

POST-CLOSING

TASK	DUE DATE
1. Developer to commence construction	June 30, 2014
2. Developer to complete construction	May 20, 2015
3. Developer to request PDC Certificate of Completion from PDC – Section 7.9.1	May 20, 2015
4. PDC to issue PDC Certificate of Completion (assuming compliance with DDA) – Section 7.9.1	June 30, 2015
5. PDC to collect post-construction metrics	June 30, 2015

EXHIBIT E
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. Except with respect to the express representations and warranties made by PDC in the DDA, 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. By accepting this Deed, Developer agrees that these provisions shall be binding on Developer and Developer's successors and assigns.

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 Portland Development Commission, the duly designated Urban Renewal Agency of the City of Portland, 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 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 F

FORM OF CERTIFICATE OF COMPLETION

After recording return to:

CERTIFICATE OF COMPLETION

The CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland ("PDC") hereby 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 Drawings, 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 2.5 (AS IS), Section 7.6.2 (INDEMNITY FROM LIABILITY CLAIMS), Section 7.6.3 (INDEMNITY FROM LIENS), 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

MLK-South/Majestic Final Draft Disposition and Development Agreement for Board, 10-25-13

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

EXHIBIT G

LIST OF ENVIRONMENTAL DUE DILIGENCE REPORTS

Phase II Environmental Site Assessment
Waste Oil Underground Storage Tank Removal, Tank D
Report of Tank Assessment Activities
Phase I Environmental Site Assessment and Limited Building Survey
Phase II Environmental Site Assessment
DEQ Underground Storage Tank Letter
Expanded Phase II Environmental Assessment Report
Regulated Building Materials Survey
Regulated Building Materials Survey
Phase I Environmental Site Assessment
Vanport Site Closure Report
Design Level Regulated Building Materials Survey
No Further Action Concurrence
Varchan UST Decommissioning Report
Phase I Environmental Site Assessment
Phase I Environmental Site Assessment
No Further Action Letter Leaking Underground Oil Tank 26-07-1242

EXHIBIT H

BUSINESS EQUITY PROGRAM

BUSINESS EQUITY PROGRAM SPECIFICATIONS

LOAN AGREEMENT/DEVELOPMENT AGREEMENT PROCESS REQUIREMENTS

1. PURPOSE OF THE PROGRAM

The Portland Development Commission (“PDC”) has a compelling interest to ensure that PDC projects provide opportunities for State of Oregon certified Minority-Owned, Women-Owned, Disadvantaged and Emerging Small Businesses (M/W/D/ESBs) in order to promote economic growth, to increase capacity and to expand competition in the market. Therefore, PDC has established a 20% M/W/D/ESB utilization goal for PDC-supported projects receiving more than \$200,000 in PDC resources, provided the project’s hard construction costs are greater than \$200,000. **The goal is calculated as 20% of the project’s Hard Construction Costs and 20% of Professional Services Costs, specifically architectural or engineering, if applicable (excluding overhead, administration or taxes).** The Developer/Borrower through their prime contractor/*consultant* is required to submit proof showing that good faith has been made to contract with M/W/D/ESB subcontractors *and/or subconsultants*. Also, while not required, the Developer/Borrower is encouraged to submit a plan that addresses proposed methods of implementing the Business Equity Program on large construction or design projects.

2. EFFORTS REQUIRED REGARDING M/W/D/ESBs

Developers/Borrowers through their Prime Contractors *and Prime Consultants* are required to make good faith efforts to contract with M/W/D/ESB firms for each scope of work anticipated to result in a subcontract of \$2,500 or greater. Outreach is encouraged for all subcontract, subconsultant and supplier opportunities.

Prime Contractors and Prime Consultants are required to contact PDC for approval for any scope of work that will be performed by the Prime Contractor’s/Prime Consultant’s own forces. These requirements are contractual obligations and are included in the development/loan agreement. Failure to comply may result in a finding of breach of contract, disqualification of the Developer/Borrower to receive PDC funds in the future, or a claim for damages.

Who to contact

For *each* scope of work identified in these documents that will be performed by a subcontractor *and/or subconsultant*, unless an M/W/D/ESB certified subcontractor *and/or subconsultant* is directly selected for the work, the Prime Contractor *and/ or Prime Consultant* must contact:

Every M/W/D//ESB firm that attended the pre-bid meeting (if one was held) *or requested a Request for Proposal (RFP)* which specializes in a scope of work that will be subcontracted, , *and*

In addition to the above, a minimum of three (3) M/W/D/ESB firms from the Office of Minority, Women and Emerging Small Business Certification list must be contacted in each division of work identified for subcontracting *and/or subconsulting*. If there are less than 3 firms listed for a particular scope of work, *all* of the contractors *or consultants* in that scope must be contacted.

NOTE: Documented outreach is not required for scopes of work anticipated to result in a subcontract of \$2,500 or less under these provisions but is encouraged.

How to contact

First Contact: Prime Contractors *and/ or Prime Consultants*, shall contact M/W/D/ESB subcontractors *and/or subconsultants* by letter, fax or E-mail to advise them of potential subcontracting *and/or subconsulting* opportunities. Contact must be made early enough to allow the M/W/D/ESB subcontractor *and subconsultants* sufficient time to prepare and submit a sub-bid/fee.

Follow-up: Prime Contractors and Prime Consultants, shall follow up with telephone calls to each M/W/D/ESB firm contacted to determine if a sub-bid/fee will be submitted or if further information is required. A firm need not be contacted if that firm responds to the first contact with a statement that the firm will not sub-bid or submit a fee on this project.

Information that must be provided

Prime Contractors and Prime Consultants must provide project information, including dates and times of sub-bids/fees due, to M/W/D/ESB firms. Sufficient sub-bid/fee preparation time must be given to subcontractors and subconsultants to allow for equal sub-bid/fee opportunities.

3. SUBSTITUTION OR ADDITION OF SUBCONTRACTORS/SUBCONSULTANTS

The Prime Contractor and or Prime Consultant will not be permitted to substitute a new subcontractor and/or subconsultant for an M/W/D/ESB subcontractor/ and/or subconsultant without the written consent of PDC.

If any 1st tier subcontractor or subconsultant is added or replaced after the Subcontracting/ Subconsulting Plan/ (FORM 1) has been submitted, the Prime Contractor and Prime Consultant, shall make good faith efforts to contract with a M/W/D/ESB for the work to be performed by that subcontractor and/or subconsultant. Documentation of these efforts is required, and must be submitted to PDC. If the Prime Contractor or Prime Consultant finds cause to replace an MBE or WBE or DBE. PDC strongly encourages substitution with either an MBE or WBE or DBE subcontractor or subconsultant. The Prime Contractor or Prime Consultant shall report substitutions to PDC for the purposes of tracking and reporting overall M/W/D/ESB utilization.

NOTE: For the purposes of the M/W/D/ESB Recruitment Guidelines / Good Faith Effort Process Requirements a first tier subcontractor/subconsultant is any construction contractor or consultant who has (or is anticipated to have) a direct contractual relationship to the prime contractor/prime consultant, specific to this project.

4. DOCUMENTATION OF GOOD FAITH EFFORTS

Prior to Construction Start:

- Business Equity (FORM 1) Submit a Subcontracting/ Subconsultant Plan on FORM 1 (or equivalent) showing all first-tier subcontractors and subconsultants and first-tier material suppliers to be used on this contract. Suppliers will be calculated as part of the 20% M/W/D/ESB utilization. M/W/D/ESB 2nd tier subcontractors and subconsultant and 2nd tier suppliers may be considered as part of the good faith effort requirements if 20% goal is not attained. M/W/D/ESB 2nd tier subcontractors and subconsultants and 2nd tier suppliers should be listed on Form 1 and Form 4 (monthly report) with a clear indication of which first tier subcontractor and subconsultant they are working for on this project.
- Log of contacts with 1st tier M/W/D/ESB firms (FORM 2) Submit a completed log of contacts with M/W/D/ESB firms on FORM 2 (or equivalent).
- Copy of letter, email or fax sent to M/W/D/ESB firms. Submit one copy of the letter, email or fax sent to M/W/D/ESB firms to solicit sub-bids/fees for this project. If more than one form of letter, email or fax was sent, submit a copy of each form sent.
- List of 1st tier M/W/D/ESB Bids/Fees (FORM 3): Submit FORM 3 (or equivalent) providing the requested information.

NOTE: Outreach documentation can be submitted after the construction/design start date for projects with a phased bid or fee process. Failure to provide all requested good faith effort documentation by the Developer/Borrower may affect the Developer/Borrower's eligibility to participate on future PDC-supported projects.

5. DOCUMENTATION TO BE SUBMITTED MONTHLY DURING THE PROJECT: Documentation to be submitted monthly during project:

- Monthly Subcontracting/ Subconsultant Payment and Utilization Report: (Form 4): The selected Contractor/Prime Consultant shall list the contract amounts and payment amounts on Form 4 to all subcontractors and subconsultants (including MBE/WBE/DBE/ESB subcontractors and/or subconsultants) previously listed on Form 1.
- Report Submission: Monthly reports are due by the 15th day of the month for work performed the prior month. Developer/Borrower, as part of the final disbursement/payment, shall submit a Final Report documenting all

subcontracting *and subconsulting*. Failure to submit timely Subcontracting/*Subconsulting* Payment and Utilizations Reports may result in a delay in processing applications for disbursement/payment.

6. OPTIONAL GOOD FAITH EFFORTS

Prime Contractors/*Prime Consultants* should also consider efforts such as:

- Advertisements in M/W/D/ESB newspapers.
- Alternative methods of participation in Minority, Women, Disadvantaged or Emerging small businesses through arrangements such as joint ventures, negotiated subcontract agreements and competitive bids.
- Providing information on subcontracting and *subconsulting* opportunities to PDC for posting on the PDC website and distributing to interested M/W/D/ESB businesses.

**BUSINESS EQUITY PROGRAM
(FORM 1)**

Prime Contractor/Prime Consultant Name: _____ Total Hard Construction/Professional Service Costs: _____

Project Name: _____

Date: _____

We have elected to subcontract/*subconsult* work in the following areas to the following subcontractors/subconsultants. List ALL first-tier subcontractors and subconsultants and first tier material suppliers (including M/W/D/ESBs), their telephone numbers, the type of work to be done and the dollar amount of the subcontract/fee.

SUBCONTRACTORS/SUBCONSULTANTS/ SUPPLIERS (Please Print)	SCOPE OF WORK	DOLLAR AMOUNT OF SUBCONTRACT/ FEE	Certified Firms M/W/D/ESB Yes/No (If "yes", fill in cert#)			
			MBE	WBE	DB E	ES B
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
				Cert#		
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
				Cert#		
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
				Cert#		
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
				Cert#		
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
				Cert#		

Minority, Women, Disadvantaged and Emerging Small Business Utilization

Total Amount of M/W/D/ESB subcontract and subconsultant dollars
\$ _____

Total Hard Construction/Professional Service Costs (excluding overhead, administration or taxes, or other professional services) \$ _____

M/W/D/ESB as a percent of the hard construction costs _____
(goal = 20 %)

M/W/D/ESB 2nd tier Subcontractors/*Subconsultants* and 2nd tier Suppliers may be considered as part of the good faith effort requirements if 20% goal is not attained. M/W/D/ESB 2nd tier Subcontractors, 2nd and 2nd tier Suppliers should be listed on Form 1 with a clear indication of which first tier Subcontractor/ *Subconsultant* they are working for on this project.

BUSINESS EQUITY PROGRAM (FORM 1)
(Additional Page to Be Used as Needed)

SUBCONTRACTORS/SUBCON- SULTANTS/ SUPPLIERS (Please Print)	SCOPE OF WORK	DOLLAR AMOUNT OF SUBCONTRACT/ FEE	Certified M/W/D/ESB Yes/No (If "yes", fill in cert#)			
			MBE	WBE	DB E	ESB
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
			Cert#			
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
			Cert#			
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
			Cert#			
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
			Cert#			
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
			Cert#			
Name Address City/St/Zip Phone# CCB# Federal Tax ID:						
			Cert#			
			Cert#			

Office of Minority, Women, and Emerging Small Businesses
Equity
State of Oregon, Executive Department
www4.cbs.state.or.us/ex/dir/omwesb/
Portland Field Office (503) 887-4349
Salem Office (503) 947-7922
weekleyp@pdc.us

Patricia Weekley, Business and Workforce

Portland Development Commission
222 NW 5th Ave.
Portland, OR 97209
(503) 823-3309 Fax# (503) 865-3688 Email:

**BUSINESS EQUITY PROGRAM (FORM 2)
M/W/D/ESB CONTACT LOG**

Prime Contractor/Prime Consultant Name _____
Project Name _____

Prime Contractors/Prime Consultants should record their contacts with potential M/W/ESB subcontractors through use of this log or equivalent. Additional forms may be copied if needed.

Scope of Work	Name of Subcontractor/ Subconsultant	Certified Firms M/W/D//ESB Yes/No			Date of Fax or Letter	Phone Contact				Able to Make Contact		Submitting Quote		Quote Received	
		MBE	WBE	ESB		Date of Call	Time of Call	Name of Person Placing Call	Name of Person Receiving Call	Yes	No	Yes	No	Yes	No

Submit to: Patricia Weekley, Business and Workforce Equity, Portland Development Commission, 222 NW 5th Ave. Portland, OR 97209
(503) 823-3309 Fax (503) 865-3368, E-mail: weekleyp@pdc.us

MONTHLY SUBCONTRACTOR/SUBCONSULTANT PAYMENT AND UTILIZATION REPORT (FORM 4)

Project Name _____ Prime Contractor/
Prime Consultant _____

Hard Construction/Professional Service Cost\$ _____ Report Dates (Beginning & Ending)

List all First Tier Subcontracts/Fees & First Tier Suppliers*	Original Subcontract/Subconsultant \$Amount	Amended Subcontract/Subconsultant \$Amount	Payments made this month	Retainage this Month	Payments Made to Date	Retainage to Date

IT IS HEREBY CERTIFIED THAT THE ABOVE LISTED FIRMS HAVE BEEN UTILIZED BY OUR COMPANY IN THE AMOUNTS REPRESENTED ABOVE AND THAT THE INFORMATION CONTAINED HEREIN IS COMPLETE AND ACCURATE.

Authorized Signature of Contractor/Consultant Representative _____ **Date** _____

Completed form may be faxed to: Paula Wendorf (503) 823-1090

For additional information contact:
Patricia Weekley, Business and Workforce Equity, Portland Development Commission, 222 NW 5th Ave., Portland, OR 97209
(503) 823-3309 Fax# 503 865-3688 E-mail: weekleyp@pdc.us

*See instructions on next page for 2nd tier subcontractors.

INSTRUCTIONS FOR COMPLETING THE SUBCONTRACTORSUBCONSULTANT PAYMENT AND UTILIZATION REPORT

1. **PROJECT NAME:** Indicate the project name as shown on the contract documents.
2. **PRIME CONTRACTOR/PRIME CONSULTANT:** Indicate the name of the prime contractor.
3. **PRIME CONTRACT AMOUNT:** Indicate the total dollar amount of the prime contract.
4. **REPORT DATES:** Indicate the beginning and ending dates corresponding to the progress payment period or use calendar month.
Example: 1/1/10 thru 1/31/10. Reports should be sequential and not overlap.
5. **SUBCONTRACTOR/SUBCONSULTANT NAME:** List the names of all first-tier subcontractors and first-tier material suppliers having performed work on this project during the reporting period.
6. **ORIGINAL SUBCONTRACT/FEE AMOUNT:** Indicate the dollar amount for each subcontract at time of award.
7. **AMENDED SUBCONTRACT/FEE AMOUNT:** Indicate the cumulative dollar value of each contract with any changes.
8. **PAYMENTS MADE THIS REPORTING MONTH:** Enter payments made to the subcontractor for the reporting month excluding retainage.
9. **RETAINAGE FOR THIS MONTH:** Enter retainage withheld for reporting month.
10. **PAYMENTS MADE TO DATE:** Cumulative payments made to date including amounts for current report excluding any retainage.
11. **RETAINAGE TO DATE:** Cumulative retainage withheld to date including amounts on current report.
12. **SECOND TIER SUBCONTRACTORS/SUBCONSULTANTS:** M/W/D/ESB 2nd tier subcontractors/subconsultants and 2nd tier suppliers may be considered as part of the good faith effort requirements if 20% goal is not attained. M/W/D/ESB 2nd tier subcontractors/subconsultants and 2nd tier suppliers should be listed on Form 1 and Form 4 (monthly report) with a clear indication of which first tier subcontractors/subconsultants they are working for on this project.

The Monthly Subcontractor/Subconsultant Payment and Utilization Reports are due by the 15th day of the month for work performed for the prior month. Completed form may be faxed to: Paula Wendorf (503) 823-1090

For additional Information:

Patricia Weekley (503) 823-3309
Portland Development Commission

Fax (503) 865-3688
E-mail: weekleyp@pdc.us

EXHIBIT I

WORKFORCE EQUITY PROGRAM

Workforce Equity Program Specifications

The PDC Board of Commissioners has directed that all Contractors, Developers and Borrowers conducting work on behalf of the Portland Development Commission (PDC) maximize apprenticeship and employment opportunities for women and people of color in the construction trades. The goal of the Workforce Equity Program (Program) is for the Contractor's workforce to reflect the diversity of the workforce found in the City of Portland, and that PDC contracting dollars provide fair and equal opportunities to the jurisdictions' diverse populations. Also, while not required, the Developer/Borrower is encouraged to submit a plan that addresses proposed methods of implementing the Business Equity Program on large construction projects.

This Program applies to PDC-Owned Construction Contracts greater than \$200,000, to the Prime Contractor on PDC-Sponsored projects with Hard Construction Costs of \$1,000,000 or more and to all subcontracts of \$100,000 or more, at any tier level, provided PDC is providing at least \$300,000 towards the project.
Requirements:

- 1) Projects subject to the Program shall:
 - a) Comply with the Workforce Training & 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 of Oregon registered apprentices, as such requirements are further described therein; and
 - b) Work toward achieving the Workforce goals as outlined in the table below. The percentage of hours set forth, includes both apprenticeship hours and journey level hours. Using the table, the Contractor shall determine the applicable workforce diversity goal, for the project (i.e. if the project will be completed during Fiscal Year 2011/2012, the workforce diversity goals for the project are 9% Women and 27% People of Color). The fiscal year runs from July 1st through June 30th. A person of Color includes members of either sex who are African-Americans, Hispanic Americans, Asian or Pacific Islanders, Native Americans or Alaskan Native Americans.

Fiscal Year	08/ 09	09/10	10/ 11	11/12	12/ 13	13/14	14/ 15	15/16	16/ 17	17/18
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%

- c) 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.
- 2) Contractors subject to the Program are encouraged to employ people with disabilities and veterans.
- 3) Contractors and subcontractors subject to the Program must be certified by the City of Portland as an Equal Opportunity Employer.

**Workforce Training & Hiring Program
Contractor Checklist**

Contractor Checklist

The following Workforce Training & Hiring Program (WTHP) requirements are a summary of the key contractual obligations of contractors working on PDC owned construction projects or PDC sponsored projects. It is the

Contractor's responsibility to read and fully understand this section of the bid specifications and to comply with all provisions of the program, regardless of whether they appear on this checklist. The City administers this program for the Portland Development Commission (PDC).

CHECKLIST:

1. Prime Contractor:

A. Submit Projected Hiring Needs form (Exhibit 2) to Compliance Agency within 15 calendar days after bid opening or prior to contract award, whichever occurs first.

B. Ensure compliance by all subcontractors with subcontracts of \$100,000 or more, and provide them with a copy of the WTHP specifications.

2. Subcontractors, at all tiers, with contracts of \$100,000 or more:

Submit Projected Hiring Needs form (Exhibit 2) prior to beginning work on the project or within 5 days of signing subcontracts, whichever occurs first.

3. Prime Contractor and all subcontractors with contracts of \$100,000 or more must:

A. Before starting work on this project: Submit proof of registration as a Training Agent with the Bureau of Labor & Industry (BOLI), Apprenticeship & Training Division. Not a BOLI registered training agent? Contact BOLI at (971) 673-0760 or the City of Portland at (503) 823-6888 for information on how to become a BOLI registered training agent.

B. Throughout the duration of the project:

1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the prime and subcontractors of \$100,000 or more are worked by State-registered apprentices.
2. Strive in good faith to meet the applicable workforce diversity goals of employing people of color and women (including both journey level and apprentice workers).
3. Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of diverse workforce through the unions, apprenticeship programs and other community resources, as described herein.
4. Maintain written documentation of all requests for workers from the unions, apprenticeship programs, and community organizations.
5. When an apprentice is hired, notify the City's Contract Compliance Specialist at (503) 823-6888.
6. Submit the Monthly Employment Record (Exhibit 4) by the 5th of each month to the City's Contract Compliance Specialist. This report can be submitted by either hard-copy by mail or via email, mer@portlandoregon.gov.

Refer questions or requests for additional information to the City's Contract Compliance Specialist Paula Wendorf at (503) 823-1090.

WORKFORCE TRAINING AND HIRING PROGRAM SPECIFICATION

I. PURPOSE

A. General Program Description

The PDC Board has directed that all Contractors, Developers and Borrowers conducting construction work on behalf of PDC maximize apprenticeship and employment opportunities for minorities and women workers in the construction trades. The goal is for the Contractor's workforce to reflect the diversity of the workforce found in the City of Portland, and that their contracting dollars provide fair and equal opportunities to the jurisdictions' diverse populations.

II. PROGRAM APPLICABILITY

The Workforce Training & Hiring Program (WTHP) is administered by the City of Portland, Bureau of Internal Business Services, Procurement Services Division (Compliance Agency). The WTHP applies to **PDC-Owned Construction Contacts greater than \$200,000, PDC-Sponsored Projects with hard construction costs of \$1,000,000 or more with \$300,000 or more in PDC resources and to each subcontractor having a subcontract of \$100,000 or more** on the project. Contractors and/or Developers shall make reasonable efforts to ensure that their workforce reflects the diversity of the City of Portland.

The Contractor shall thoroughly read this WTHP specification and commit to perform all requirements described herein. The Contractor shall submit Exhibit 2, Projected Hiring Needs at least fourteen (14) calendar days prior to starting work on the project. The Exhibit shall provide complete information. The Projected Hiring Needs must demonstrate how the workforce on this project will fulfill all program requirements, including utilization of apprentices and workforce diversity goals.

III. DEFINITIONS

For purposes of the WTHP, the following definitions shall apply:

Compliance Agency – City of Portland, Bureau of Internal Business Services, Procurement Division

Contract – The Contract awarded as a result of these bid specifications

Contractor – The Prime Contractor to whom a Contract is awarded and any subcontractors with subcontracts of \$100,000 or more

Hard Construction Costs – 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, shall not be considered a part of the Hard Construction Costs.

Owner – The government agency that awarded the Contract or leveraged public involvement in the project through a loan or development agreement

Project – Includes all work performed pursuant to the Contract

IV. ACTIONS NECESSARY TO SATISFY PROGRAM REQUIREMENTS

The Contractor and its subcontractors with subcontracts of \$100,000 or more, at any tier level, shall strive to achieve the applicable workforce diversity goal of employing women and people of color (including both journey level and apprentice workers) on the project.

To the extent allowed by law, Contractors and Subcontractors are encouraged to hire apprentices and journey level workers with consideration of gender and ethnicity.

A. Ensure Compliance by Subcontractors

1. The Contractor shall ensure that each subcontractor having a subcontract of \$100,000 or more, at all tiers, shall comply with all of the provisions of the WTHP specifications. Contractors shall include in their bid all costs associated with this requirement. No change order will be executed in order for the contractor to comply with this section.
2. The Contractor shall provide a copy of this WTHP specification to all subcontractors with contracts of \$100,000 or more executed for the project.

B. Register as a Training Agent

The Contractor shall register with the Oregon Bureau of Labor and Industries (BOLI) as a Training Agent and ensure that all subcontractors who have contracts in the amount of \$100,000 or more are registered as Training Agents. However, registration as a Training Agent in a specific trade is not required if there are no training opportunities in that trade on the project, based on the maximum ratio allowed by BOLI.

1. Only training programs approved by and registered with BOLI may be used to fulfill training requirements under the Workforce Specifications.
2. Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary. Hours performed in crafts which are not apprenticeable occupations are exempt from the training requirements.
3. Exemptions to the training requirements must be approved by the Compliance Agency in writing prior to starting work on the project. Written requests for exemptions related to the training requirements will be considered by the Compliance Agency during the course of the project, only for extreme circumstances, and must also be approved in writing. All requests to exempt all or any portion of the work on a project shall be submitted to the Compliance Agency (14) days before any work on the project begins. Requests for exemptions should be directed to the City Contract Compliance Specialist.

C. Submit Documentation

The contractor shall submit documentation regarding the following subjects to the Compliance Agency. The Compliance Agency's failure to object to documentation submitted by the Contractor or subcontractor shall not relieve them of the requirements of this section.

1. Training Agent Status

The Contractor and all required subcontractors must submit proof to the Compliance Agency that they are registered Training Agents with BOLI prior to beginning any work on the project. Failure to sign up as a Training Agent prior to beginning work may subject the contractor to liquidated damages.

2. Subcontractor Workforce Information

Exhibit 2, Projected Hiring Needs, must also be submitted for each subcontractor required to register as a Training Agent prior to beginning work on the project or within 5 calendar days after the execution of the applicable subcontract, whichever occurs first. Work by a

subcontractor shall not begin prior to submission of such documentation. Failure to sign up as a Training Agent prior to beginning work may subject the contractor to liquidated damages.

3. Contractor and Subcontractor Reports After Work Begins.

The Monthly Employment Report (Exhibit 4) must be submitted by the prime Contractor and any subcontractor having a subcontract of \$100,000 or more to the Workforce Equity Program by the 5th day of each month. The Contractor shall follow the submittal instructions on the report form. All hours subject to prevailing wage rates on public projects, in addition to supervisors, foremen, and superintendents, shall be reported on Exhibit 4.

4. A copy of certified payroll reports may be requested by the Compliance Agency to verify information in the Report. The payroll reports shall be provided within 7 days of the date when the contractor receives the request for the payroll.

D. Use of Apprentices

The Contractor shall:

1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed on the project by the prime contractor, and subcontractors with subcontracts of \$100,000 or more, are worked by state registered apprentices throughout the duration of the project. Contractors and subcontractors shall fulfill the 20% apprenticeship hours requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program.
2. Pay all apprentices the wages required by any applicable collective bargaining contract or pursuant to state or federal law and regulations.
3. Not use workers previously employed at journey-level or those who have successfully completed a training course leading to journey-level status to satisfy the requirements of these provisions.
4. Notify the Compliance Agency when an apprentice is hired for this project.
5. Count apprentice hours as follows:
 - (a) Hours worked on the project by apprentices enrolled in state-approved apprenticeship programs. If the Contractor is unable to fulfill its 20% requirement, then the Contractor may also use methods (b) and (c) below;
 - (b) Hours worked on the project by apprentices who are required to be away from the job site for related training during the course of the project, but only if the apprentice is rehired by the same employer after completion of training; and
 - (c) Hours worked on the project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the 12-month period following the apprentice's completion date.

E. Use Apprenticeship Programs for Referrals

Contractors must follow all of these steps in seeking apprentice referrals:

1. Contact the appropriate apprenticeship program or dispatch center to request apprentices who are enrolled in the apprenticeship program; and
2. Request female or minority apprentices from the union or open shop apprenticeship program if such an action will help remedy historical underutilization in the Contractor's workforce; and

3. Keep a written record of the request for apprentices, including name of contact person at apprenticeship program, phone, fax, date, time, job location, start date, etc.; and
4. Make reasonable and necessary efforts to recruit apprentice applicants from community organizations/recruitment resources, and seek to enroll them into an apprenticeship program, if the apprenticeship program is unable to supply an apprentice and if the program is open for applications or allows direct entry from community resources.

NOTE: Contractors may contact the Contract Compliance Specialist for assistance regarding the apprentice referral process, or may utilize Exhibit 3, Request for Apprentice form, to document their efforts. A list of community organizations/recruitment resources is also available. Instructions are on the last page of this section of the specifications.

F. Utilize Unions and Community Organizations When Recruiting For Any Positions on this Project

When hiring, requesting, recruiting, or replacing workers for this project, the Contractor shall:

1. Make reasonable and necessary efforts to employ a diverse workforce. Such actions should include requests for minority and female applicants. Contractors are notified that direct hiring of employees (such as "walk-ons") without providing notification of that job opportunity, in accordance with paragraph G.2 below, may not constitute a reasonable effort.
2. Document its employment efforts. Documentation should be sufficient to establish the Contractor's efforts, and should include:
 - a) Requests to union halls for signatory contractors;
 - b) Requests to union or open shop apprenticeship programs;
 - c) Requests to community resources who assist contractors with recruitment and referral of workers.

Documentation will be requested by the Compliance Agency from Contractors that are not meeting the workforce diversity goals if it appears that the Contractor has not made reasonable and necessary efforts to acquire a diverse workforce. When requested, the Contractor shall provide that documentation to the Workforce Equity Program within 7 calendar days.

IV. CONSEQUENCES OF NONCOMPLIANCE WITH WORKFORCE REQUIREMENTS

The Owner's commitment to this program is reflected, in part, by the cost of administering the program. Failure to meet the requirements of this section of the specifications negates such funding and impairs the Owner's efforts to promote workforce diversity and to provide fair and equal opportunities to the public as a whole as a result of the expenditure of public funds. Therefore, the parties mutually agree that failure to meet the requirements of this section of the specifications, including but not limited to the submission of required documentation, constitutes a material breach of contract.

In the event of a breach of this section of the contract, the Compliance Agency may take any or all of the following actions:

A. Withholding Progress Payments

The Owner may withhold all or part of any progress payment or payments until the Contractor has remedied the breach of contract. In the event that progress payments are withheld, the contractor shall not be entitled to interest on said payments.

If a subcontractor(s) is responsible for noncompliance with the WTHP requirements, the Compliance Agency may choose to withhold only their portion of the progress payment.

B. Retain sums as damages for failure to comply with Workforce Equity Program Specifications

The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Compliance Agency for the Contractor's failure to comply with the

Workforce Specifications. The parties further agree that it is difficult, if not impossible, to determine the cost to the Compliance Agency when workforce opportunities are not provided.

Therefore, if the Contractor fails to comply with the workforce provisions of this contract, the Contractor agrees to pay the sum of \$250 per day for each day of missed apprenticeship hours or until the breach of contract is remedied. Damages may be assessed for failure to meet the 20% apprenticeship training requirements by the prime and each required subcontractor in each trade employed. Damages will be calculated based on the training hours not provided to the Compliance Agency at a rate of \$250 per day. For example, if the Contractor was required to provide 200 hours of carpenter training (20% of 1,000 total carpenter hours), and the Contractor only provided 150 training hours, then the difference (50 hours) is divided by 8 (one day of work) to determine number of days of undelivered training. ($50/8 = 6.25 \times \$250 = \$1,562.5$).

Damages may also be assessed for failure to fulfill the inclusive hiring process described in Section III, subsections F.

These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by the Contractor's failure to comply with the Workforce Training & Hiring Program provisions of the contract.

C. Notification of Possible Debarment

By executing this contract, the contractor agrees that it has been notified that failure to comply with the requirements of this portion of the contract may lead to the Contractor's disqualification from bidding on and receiving other Compliance Agency contracts for a minimum of two years and a maximum of three years based on the violation.

E. Other Remedies

The remedies that are noted above do not limit any other remedies available to the Compliance Agency in the event that the Contractor fails to meet the requirements of the Workforce Specifications.

V. **REVIEW OF RECORDS**

In the event that the Compliance Agency reasonably believes that a violation of the requirements of this section has occurred, the Compliance Agency is entitled to review the books and records of the Contractor and any subcontractors employed on the project to whom the requirements of this section are applicable to determine whether such a violation has or has not occurred.

In the event that the Contractor or any subcontractor fails to provide the books and records for inspection and copying when requested, such failure shall constitute a material breach of this contract and permit the imposition of any of the remedies noted in Section IV above, including the withholding of all or part of any progress payment.

VI. **APPRENTICESHIP RATIO DATA**

The BOLI ratios of apprentices to journey level workers on the jobsite shall apply. For information regarding the ratios for the various trades, view the BOLI website link below. The information can be found under the Active Approved Standards tab on for each trade and is usually under section VI, "Ratio of Apprentice to Journey Level Workers." The ratios that apply are those listed in the standards of the apprenticeship committee to which the Training Agent (Contractor) is a member. If the applicable trade is not listed, contact the Bureau of Labor and Industries at (971) 673-0760 or your apprenticeship committee

http://www.oregon.gov/BOLI/ATD/A_AG_Standards_8000-8999.shtml

ATTACHMENTS:

Exhibit 1: Recommended Recruitment & Retention Practices

Workforce Equity Program Spec. Page **25** of **83**

Revised October 2012

Exhibit 2: Projected Hiring Needs
Exhibit 3: Request For Apprentice form
Exhibit 4: Sample Monthly Employment/will be sent electronically
Exhibit 5: Ratios

Questions Regarding Apprenticeship:

Bureau of Labor & Industries
Apprenticeship & Training Division
800 N.E. Oregon St. # 32
Portland, OR 97232
(971) 673-0760

**Questions Regarding Portland Development Commission
Workforce Equity Program or Workforce Training & Hiring Program:**

Paula Wendorf
City of Portland/Bureau of Internal Business Service, Procurement Services
1120 S.W. Fifth Ave., Room 750
Portland, OR 97204
(503) 823-1090
paula.wendorf@portlandoregon.gov

Patricia Weekley
Portland Development Commission
222 NW Fifth Avenue
Portland, OR 97209-3859
(503) 823-3309
Weeklyp@portlandoregon.gov

**RECOMMENDED GOOD FAITH RECRUITMENT &
RETENTION PRACTICES**

A. Recruitment Efforts

Good faith recruitment efforts are those intense, aggressive, sincere, and result-oriented actions taken by the Contractor designed to accomplish the objectives of the PDC Workforce Equity Program including the Workforce Training & Hiring Program, and Equal Employment Opportunity Programs. These efforts may assist the Contractor in achieving an "A" level EEO certification and may assist the Contractor in reaching the workforce diversity goals. Good faith recruitment efforts include, but are not limited to:

1. Work aggressively with Contractor's Joint Apprenticeship Training Committee (JATC) to recruit minorities, women and disadvantaged individuals. Provide evidence of these efforts.
2. Assist the JATC by conducting a workshop with minority and women employees to enlist their assistance as recruiters and request their ideas on how to increase employment of underutilized groups.
3. Support the efforts of the Contractor's JATC by giving all apprentices referred to the Contractor a fair chance to perform successfully, allowing for possible lack of previous experience. Recognize that the Contractor is responsible for providing on-the-job training, and that all apprentices should not be expected to have previous experience.
4. Participate in job fairs, school-to-work, and community events to recruit minorities, women, and disadvantaged individuals into the construction trades.
5. Allow scheduled job site visits by participants in community programs, as safety allows, to increase awareness of job and training opportunities in the construction trades.
6. Keep applications of those not selected for an opening. Contact when opening occurs.

B. Retention Efforts

The Contractor shall endeavor to retain minorities, women, and disadvantaged individuals by implementing steps such as the following:

1. Maintain a harassment-free work place.
2. Ensure that employees are knowledgeable about the company's policies if they need to report a harassment problem.
3. Make reasonable attempts to keep apprentices working and train them in all work processes described in the apprenticeship standards.
4. Review and disseminate, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions.
5. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
6. Take steps to reduce feelings of isolation among minorities and women to curb hostile attitudes and behavior (e.g., have several minorities and women at the job site, provide access to support group system).
7. Provide adequate toilet facilities for women on the job site.
8. Match minority, female, or disadvantaged apprentices who may need support to complete their apprenticeship programs with a journey-level mentor.

EXHIBIT 2

PROJECTED HIRING NEEDS

This form must be completed by the prime and each subcontractor with a subcontract of \$100,000 or more.

Please state how you plan to perform the work on this project, indicating the number of journey workers and apprentices by trade. This workforce plan must demonstrate how your company will fulfill all Workforce Training & Hiring & Workforce Equity Program requirements, including utilization of apprentices. Refer to Exhibit 5 for apprenticeship ratio data.

Complete all columns, with project-specific information.

BID# _____ CONTRACT AMOUNT \$ _____ PROJECT NAME: _____

COMPANY NAME _____

Federal ID # _____ Prime Contractor Subcontractor

List all Trades to be used on this Project	Total # of Journey Workers	Total # of Apprentices	Total # of Female Workers	Total # of Minority Workers	# and Level of New Positions (i.e. 1A or 1J)	Anticipated Start Date	Estimated Total Hours (all workers in each trade)

Please list the apprentices who will work on this project. If you need more space, attach an additional sheet of paper. The Compliance Agency must approve all apprentices on the project.

Name of Apprentice	Trade	Race	Gender	Date of Hire	STAFF USE ONLY

If no current apprentices, indicate when and how they will be hired:

Person in your company who does hiring: _____

COMPANY: _____ CCB# _____ PHONE: _____ FAX: _____

E-mail address for submitting Monthly Employment Reports via e-mail: _____

Are you a registered Training Agent? Yes No Are you a Union Open Shop contractor?

With which JATCs are you registered to train apprentices? _____

Apprentice committee or union contact person who dispatches apprentices to your company:

Name: _____ Phone: _____ Fax: _____

Name: _____ Phone: _____ Fax: _____

PREPARED BY: _____ DATE: _____

(sign and print)

Prime contractor must complete and submit to as designated to Compliance Agency:

Workforce Training & Hiring Program
1120 S.W. Fifth Avenue #750, Portland, OR 97204
Phone (503) 823-6850 or FAX (503) 823-5539

EXHIBIT 3

Request for Apprentice

The contractor may use this form to document efforts when recruiting apprentices.

FAX To: _____ / _____
(Apprenticeship Committee) (Contact/ Dispatcher)

Fax Number : _____ Number of Pages _____

Request From:

Company Name _____ / _____
(Registered Training Agent) (Contact Person)

Phone _____ Fax _____

Date: _____ Time: _____

Apprentice Request:

As a registered Training Agent, I am using this form to request referral of an apprentice for employment with my company in cooperation with the City Workforce Training & Hiring Program. I would like to continue to diversify my workforce. Therefore, please refer ethnic minorities and women for my consideration. If I am unable to receive a referral from my apprenticeship program within a reasonable time, and my apprenticeship program is open for applications or allows direct entry, I may use this form to request a referral to the apprenticeship program from community recruitment resources.

Apprentice referral is needed by this date: _____ Work Starts: _____

Job Site Location: _____ Expected Length of Employment: _____

Project _____ Compliance Agency (City of Portland)

Number of Apprentices: _____ Trade/Occupation: _____

Number of Apprentices: _____ Trade/Occupation: _____

Minimum qualifications (if different from apprenticeship standards): _____

Safety needs: ___ Hard hat ___ Gloves ___ Hard-toed boots Other? _____

Please fax this Request for Apprentice form to your apprenticeship committee.

To document your good faith efforts, copies may also be sent to:

City Workforce Training & Hiring
1120 SW 5th Ave. Rm 750
Portland, OR 97204
Phone: (503) 823-6850
FAX: (503) 823-5539

For Apprenticeship Program Only

Please check the appropriate box and fax to City Workforce Equity Program:

I was able to dispatch an apprentice to the project listed above.

Name of Apprentice _____ Race _____ Gender _____ Term _____

I was unable to dispatch an apprentice to the project listed above because _____

Fax this form with dispatch information to 823-5539. Thank you.

EXHIBIT 4

MONTHLY EMPLOYMENT REPORT

MONTHLY EMPLOYMENT REPORT

COMPANY NAME	FEDERAL TAX ID	MONTH ENDING	BIDNO	PRIME?	FINAL REPORT?
<p>The Monthly Employment/Training Report must be completed by the prime contractor and all subcontractors with contracts of \$100,000 or more. The prime contractor shall submit a report for its workforce on the project. Each subcontractor shall separately submit a report for its workforce on the project. It is the responsibility of the prime contractor to assure that all subcontractors submit Monthly Employment/Training Reports in a timely manner.</p> <p>Complete the form on the worksheet titled MER (third tab), filling in all categories for each employee working on the project during the reporting period.</p> <p>Email the completed worksheet as an Excel attachment to mur-mer@portlandoregon.gov no later than the 5th of each month for work performed during the previous month. The emailed worksheet must be titled mer.xls. Please do not change the worksheet's layout or contents.</p> <p>Please direct questions about electronic data submission to the same email address.</p>					

REVISED 3.11.11

FEDID	MONTHENDING	BIDNO	LASTNAME	FIRSTNAME	ZIP	SSN	JOBCLASS	LEVEL	RACE	GENDER	HOURS	PRIME?
123456789	8/31/2002	100758	DOE	JANE	97214	9874	1010	A	C	F	32	NO
123456789	8/31/2002	100758	DOE	JOHN	97204	7489	1018	J	C	M	154	NO

EXHIBIT 5

Ratios

The following data may be used to determine the ratio of apprentices on a jobsite in proportion to journey-level workers on the jobsite. The ratios that apply are those listed in the standards of the apprenticeship committee to which the Training Agent (Contractor) is a member. If the applicable trade is not listed, contact the Bureau of Labor & Industries, or your apprenticeship committee.

*Ratios may change pursuant to actions taken by the Oregon State Apprenticeship & Training Council. For the purposes of this contract, the ratios approved by BOLI on the date the bid is advertised shall prevail.

Trade	1 st Apprentice	2 nd Apprentice	Max
Asbestos/Insulation Workers	1:1	1:4	
Brick/Marble/Terrazzo/Tile Finisher	1:1	1:3	
Bricklayer/Masonry	1:1	1:5	
Carpenter	1:1	1:1 (1:5 union)	1:1 for 1 st 3; Additional apprentices authorized at 1:5
Carpet Installers/Floorlayers	1:1	1:3	
Cement Masons	1:2	1:3	
Drywall Applicator (Ext/Int. Specialist)	1:3	1:5	
Drywall Finisher (Taper)	1:1	1:3	
Electricians			
Inside	1:1	1:2 (1:3 union)	
Outside	1:6	1:6	
Ltd. Energy/Ltd. Residential	1:1	1:2 (1:1 union)	
Construction Lineman	1:1	1:1	
Ltd. Maintenance	1:1	1:2	
Stationary Engineer	1:1	1:3	
Elevator Contractor	1:1	1:1	1:2 thereafter
Environmental Control (HVAC)	1:1	1:1	
Glazier	1:1	1:3	
Hod Carrier/Mason Tender	1:1	1:3 (1:5 union)	
Ironworker	1:1	1:6	
Laborer (Construction)	1:1	1:3 (1:5 union)	
Maintenance Mechanic	1:1	1:3	
Millwright	1:3 (1:5 union)	1:3 (1:5 union)	
Operating Engineer	1:1 (1:1-4 union)	1:1	
Painter	1:1	1:3	
Pile Driver	1:3	1:5	
Pipe Fitter/Steam Fitter	1:1	1:3	
Plasterer	1:1	1:3	
Plumber	1:1	1:1	1:3 thereafter
Roofer	1:1	1:1	
Sheet Metal Worker	1:1	1:1	1:3 thereafter
Sprinkler Fitter	1:1	1:1	
Structural Fabricator	1:1	1:3	
Terrazzo Worker	1:1	1:3	

Marble Setter	1:1	1:3	
Truck Driver (Heavy)	1:1	1:1	

EXHIBIT J

GREEN BUILDING POLICY

To support the intent and application of the Green Building Policy of the City through advocating and incorporating sustainable and green building practices in all projects to the maximum extent practicable, and as a condition of receiving financial assistance from the Commission as applicable.

.....Adopted by the PDC Board of Commissioners on June 22, 2005 - Resolution #6262

Green Building Program Guidelines

A. Description

The PDC Green Building Program ("Program") requires developers receiving financial assistance from the Commission and direct Commission funded construction projects to integrate green building practices into construction projects and meet the established U.S. Green Building Council Leadership in Energy and Environmental Design ("LEED") or Earth Advantage Small Commercial rating system standards.

B. Authority

1. Resolution Number 36310 adopted by the Portland City Council on April 27, 2005, amending the Green Building Policy adopted by the Portland City Council on January 10, 2001, requires the Portland Development Commission to enforce certain development standards when providing financial assistance to various projects.
 - a. These Program Guidelines ("Guidelines") are intended to implement the responsibilities assigned to the Commission by the City Council in these actions.
 - b. Definitions contained in the City Green Building Policy (BCP-ENB-9.01) are hereby included by reference in these Guidelines.
2. The PDC Board of Commissioners adopted Resolution 6262 on June 22, 2005 authorizing the Green Building Program Guidelines.

C. 3. The Executive Director approved these Guidelines based on the authority granted him in Section J.2 in these Guidelines on June 17, 2010, for implementation on July 1, 2010. Development Projects Subject to These Guidelines

1. A project receiving PDC financial assistance in an amount:
 - a. > 10% of the total project cost; **AND**
 - b. > \$300,000

NOTE: "PDC financial assistance" shall include any:

 - Loan or grant of funds directly provided by PDC.
 - Indirect financial benefit provided by PDC as the result of writing down the value of land.
2. These Guidelines further apply only to the construction or rehabilitation of a building or structure that is > 10,000 square feet in total area **and** is part of a project meeting the criteria in Section C-1.

D. Types of Construction Within a Qualifying Project Subject to These Guidelines

1. **New Construction** - new buildings or structures for the following uses:

- a. Commercial / Mixed-Use
 - b. Residential
2. **Rehabilitation Construction** - an existing building or structure that is modified, renovated or remodeled; including tenant improvements, and intended for the following uses:
- a. Commercial / Mixed-Use
 - b. Residential

c. City-Owned Buildings

E. Individual Project Requirements

NEW CONSTRUCTION	
Development Type	Green Building Standard Required
<ul style="list-style-type: none"> • Commercial / Mixed Use for buildings > 70,000 square feet 	LEED™ NC (New Construction) Silver Certification
<ul style="list-style-type: none"> • Commercial / Mixed Use for buildings 10,000 to 70,000 square feet 	LEED™ NC (New Construction) Silver Certification OR Earth Advantage Small Commercial
<ul style="list-style-type: none"> • Residential 	Greening Portland's Affordable Housing (ALL)
< 5 stories of the structure	Earth Advantage Green Certification
= 5 stories	Earth Advantage Green or LEED NC Silver based on the particular configuration of entire building
> 5 stories	LEED NC Silver Certification
<ul style="list-style-type: none"> • City-owned Buildings 	<ul style="list-style-type: none"> - LEED™ NC Gold Certification - Eco-roof or Energy Star approved roofing materials - Operations & maintenance according to guidelines established by the Bureau of General Services

REHABILITATION	
Development Type	Green Building Standard Required
<ul style="list-style-type: none"> • Commercial / Mixed Use 	
<ul style="list-style-type: none"> ○ Full Building Commercial / Mixed Use for buildings > 70,000 square feet 	LEED™ NC (New Construction) Silver Certification
<ul style="list-style-type: none"> ○ Full Building Commercial / Mixed Use for buildings 10,000 to 70,000 square feet 	LEED™ NC (New Construction) Silver Certification OR Earth Advantage Small Commercial
<ul style="list-style-type: none"> ○ Partial-building 	LEED™ CI (Commercial Interiors) Silver and/or G-Rated

○ Tenant Improvements	Tenant Improvement Guide Certification
• Residential	Greening Portland's Affordable Housing (ALL)
< 5 stories of the structure	Earth Advantage Green Certification
= 5 stories	Earth Advantage Green or LEED NC Silver based on the particular configuration of entire building
> 5 stories	LEED NC Silver Certification
• City-owned Buildings	LEED™ CI (Commercial Interiors) Silver and/or G-Rated Tenant Improvement Guide Certification

F. Good Faith Deposit

In all financial assistance agreements where compliance with these Guidelines is required and not otherwise exempted, the developer will be required to provide PDC with a deposit in the amount of \$10,000 and in the form of either a cashier's check or promissory note, as determined by the project manager, as security that the developer will make a good faith effort to comply with these Guidelines ("Good Faith Deposit").

1. The Good Faith Deposit will be returned if and when PDC has determined the developer has "complied" with these Guidelines.
2. The Good Faith Deposit will be forfeited to PDC if the developer is determined to be "non-compliant" with these Guidelines

G. Compliance

1. **Progress Reports.** According to a schedule agreed to by both parties in the financial assistance agreement, the developer shall submit an up-dated *LEED or Earth Advantage Checklist* and any additional supporting documentation to PDC indicating:
 - a. The progress towards meeting requirements of these Guidelines.
 - b. The likelihood that requirements will be met or exceeded.
 - c. Any issues or circumstances that may prevent the developer from meeting Requirements.
2. **Final Report.** Within five (5) business days of receiving notification of LEED or Earth Advantage certification approval or denial, the developer shall notify and submit to PDC evidence of,
 - a. LEED or Earth Advantage Certification approval; **OR**
 - b. LEED or Earth Advantage Certification denial.
3. **Determination**
 - a. If the developer's required certification is approved, the developer will be deemed to have "complied" with these Guidelines and the Good Faith Deposit will be returned.
 - b. If the developer's required certification is denied, the developer will be deemed to be "non-compliant" with these Guidelines.

H. Non-Compliance Request for Waiver

If a developer's request for certification is denied by LEED or Earth Advantage, the developer may, within 10 (ten) business days of receiving such notice, submit to PDC a "Request for Waiver" from required compliance with these Guidelines based on the "good faith effort" made by the developer to comply.

1. A *Request for Waiver* must contain:
 - a. The following documentation appropriate to the type of construction.

- i. **Commercial:** Final LEED or Earth Advantage certification application, documentation and response from U.S. Green Building Council.
 - ii. **Residential:** Final LEED or Earth Advantage certification application, documentation and response from certification agency(s).
- b. An explanation of the efforts and accomplishments made by the developer to achieve compliance with these Guidelines.
 - c. An explanation of the practical or economic infeasibility of implementing certain green building design or construction techniques that if implemented would otherwise have likely resulted in certification.
 - d. Any other supporting documentation or information the developer wishes to submit.
2. Within 30 (thirty) days of receiving the *Request for Waiver*, the PDC Executive Director shall make a determination as to whether a Waiver should be approved or denied based on the good faith effort the developer made to comply with these Guidelines.

In order to establish the developer's good faith efforts, the documentation and information submitted by the developer with the *Request for Waiver*, and any other information obtained by PDC from the developer during design and construction, must establish that the developer:

- a. Complied with the LEED or Earth Advantage certification application process;
 - b. Submitted timely progress reports to PDC;
 - c. Undertook reasonable, appropriate and on-going efforts to obtain certification; **AND**
 - d. That compliance would otherwise have been obtained but for the practical or economic infeasibility of implementing certain green building design or construction techniques.
3. If a *Request for Waiver* is approved by the PDC Executive Director, the developer will be relieved from meeting the requirements of these Guidelines, and the Good Faith Deposit returned to the developer.
4. If a *Request for Waiver* is denied by the PDC Executive Director, the developer will be deemed to have not made a "good faith effort" to meet requirements of these Guidelines and shall forfeit the Good Faith Deposit to PDC

I. Exemptions

1. **Programs.** The following programs are categorically exempt from these guidelines due to the generally small amount of financial assistance provided by the Commission.
- a. Storefront Improvement Program
 - b. Neighborhood Housing Program will be exempt from meeting Green Building Standards otherwise required in Section E of these Guidelines, except Greening Portland's Affordable Housing
2. **Affordable Housing Project.** A project otherwise required to follow these Guidelines, but where at least 51% of housing units are either:
- a. rental housing affordable to households at 60% area Median Family Income and have a regulatory agreement with PDC; and/or
 - b. ownership housing in which sales prices are no greater than 95% of the Multnomah County average sales price **and** homebuyer incomes are no greater than 100% of the area median income.
- c. **Definitions.**
- i. **Median Family Income:** Area median income is established annually by the U.S. Department of Housing and Urban Development, or its successor agency, and applies to the year of sale for ownership units, and applies annually during the period of the PDC affordability agreement for rental units.
 - ii. **Sales Price:** a price which does not exceed 95 percent of the Federal Housing Administration mortgage maximum for a single unit in the Portland Metropolitan area as

established annually will be exempt from meeting all Green Building Standards otherwise required in Section E of these Guidelines, except Greening Portland's Affordable Housing

3. **Individual Projects.** A project otherwise required to follow these Guidelines may be exempted from program requirements subject to the following.
 - a. **Exemption Criteria.** The project developer must demonstrate that complying with these Guidelines,
 - i. would burden the project with extraordinary costs affecting the economic feasibility of the project; **OR**
 - ii. is not reasonably feasible due to unique construction or reconstruction circumstances of the project.
 - b. **Exemption Process.**
 - i. The developer must request an exemption in writing, and provide an explanation and provide any supporting documents necessary to demonstrate the need for an exemption.
 - ii. The request is reviewed by PDC staff in consultation with the Portland Office of Sustainable Development to assess the request for exemption and make a recommendation to the PDC Board of Commissioners.
 - iii. The exemption must be approved or denied by the PDC Board of Commissioners.
 - iv. If an exemption is granted, the developer must agree to:
 - Integrate green building practices into the design and construction of the project to the maximum extent possible and feasible.
 - Provide PDC with reports during construction on the effort to incorporate green building practices into the project.

J. Administration of Guidelines

1. **Administrator.** The PDC Executive Director, or designee, shall be responsible for the administration of these Guidelines.
2. **Changes.** The PDC Executive Director is authorized to change or revise these Guidelines as necessary to remain current with City of Portland Green Building Policy, or implement changes to improve the administration, effectiveness or practical application of the PDC Green Building Policy.
3. **Disputes.** The Executive Director is authorized to resolve any dispute arising from the application, administration or enforcement of these Guidelines, with the exception of the PDC Board of Commissioner's decisions regarding the issuance of an exemption.

EXHIBIT K

COMPLIANCE AGREEMENT

(State Prevailing Wage)

This COMPLIANCE AGREEMENT (this "Agreement") is made this ___ day of _____, 201_, by the City of Portland, a municipal corporation of the State of Oregon, acting by and through the Portland Development Commission ("PDC"), and _____ ("Developer")/("Borrower"). PDC and [Developer]/[Borrower] may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

Recitals

Developer has or will receive \$750,000 or more in funds of a public agency for redevelopment of certain real property located at _____ (the "Project"). Accordingly, the Project is a "public work" for purposes of Oregon's prevailing wage rate law, ORS 279C.800 to 279C.870 (the "PWRL"), administered by the Bureau of Labor and Industries ("BOLI"). This Agreement satisfies the legal requirement that certain terms of the PWRL be included in a contract between PDC and Developer.

Agreement

1. Prevailing Wage Rate. This Project is a public work as defined by ORS 279C.800(6), and the Parties agree that Developer will comply with and require the general contractor for the Project (the "General Contractor") and all subcontractors to comply with all provisions in ORS 279C.800 through 279C.870 with respect to the Project. Developer may not select as the General Contractor, a person or entity on the BOLI list of ineligible. Each worker in each trade or occupation employed in the performance of the work on the Project, whether by the General Contractor, subcontractor or other person, must be paid not less than the applicable rate of wage, and Developer shall include this requirement in its contract with the General Contractor for the Project and ensure that this requirement is included in all subcontracts. Developer shall include in the contract specifications for the Project, the prevailing wage rates identified in Section 1(l) below, a provision stating that a fee is required to be paid to the BOLI Commissioner as provided in ORS 279C.825(1), and a provision stating that the General Contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt. Developer shall ensure that all required weekly certified payroll for the Project is submitted to the attention of PDC's designated representative by the 5th working day of the following month, and all other required documentation prior to the General Contractor or a subcontractor commencing work on the site. PDC, Developer, and General Contractor shall withhold payment as prescribed by ORS 279C.845(7) through 279C.845(8) if certified payroll statements are not filed in the time and manner prescribed under ORS 279C.800 through 279C.870. Developer also agrees to ensure compliance and to include the following provisions in the contract with the General Contractor for the Project:

A. Certified Payroll. General Contractor shall submit all required weekly certified payroll for work on the Project to both the Developer's designated representative and PDC's designated representative by the 5th business day of the following month. General Contractor shall include in each subcontract a provision requiring the subcontractor (a) to submit all required weekly certified payroll for work on the Project to the attention of the General Contractor's representative by the 5th business day of the following month and (b) to include this provision in all of its subcontracts.

B. BOLI Fee. PDC is required to pay a fee to BOLI as provided in ORS 279C.825(1) and pursuant to the administrative rule of the Commissioner. The total hard construction costs of the Project shall be used for the purpose of calculating the fee.

C. Public Works Bond. General Contractor and all subcontractors, prior to starting any work on this Project, are required to file with the Construction Contractors Board a "public works bond" in the amount of \$30,000 with a corporate surety authorized to do business in the state of Oregon, unless exempt under the provisions of ORS 279C.836. General Contractor shall file with the Construction Contractors Board a public works bond satisfying the foregoing requirements before commencement of work on the Project, unless otherwise exempt. General Contractor shall include in each subcontract a provision

requiring the subcontractor (a) to have a public works bond satisfying the foregoing requirements filed with the Construction Contractors Board before commencement of work on the Project, unless otherwise exempt and (b) to include this provision in all of its subcontracts. General Contractor shall verify that all subcontractors have filed the public works bond prior to commencement of work on the Project.

D. Contractor Eligibility. General Contractor may not award a subcontract to any person or entity on the BOLI list of ineligibles. General Contractor shall include in each subcontract a provision (a) prohibiting the subcontractor from awarding a subcontract to a person or entity on the BOLI list of ineligibles and (b) requiring the subcontractor to include this provision in all of its subcontracts. General Contractor shall verify that none of the subcontractors are on the BOLI list of ineligibles.

E. Work Day/Work Week. No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it. In such cases, the employee shall be paid at least time and a half pay the regular rate of pay for: (1) all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (2) all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (3) all work performed on Saturday, and on any legal holiday specified in ORS 279C.540.

F. Employee Notice. General Contractor must give to employees who work on a public works contract, notice of the number of hours per day and days per week that the employees may be required to work as specified in ORS 279C.520, either: (a) in writing, either at the time of hire or before commencement of work on the contract, or (b) by posting a notice in a location frequented by employees.

G. Prompt Payment for Medical Services. General Contractor shall promptly make payment, as due, to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of General Contractor, of all sums which General Contractor agrees to pay for such services and all moneys and sums which General Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service per ORS 279C.530. General Contractor shall also comply with ORS 656.017.

H. General Contractor's Failure to Make Prompt Payment. If, upon reasonable concern by Developer that General Contractor has failed, neglected or refused to make prompt payment of any claim for labor, equipment, services or materials furnished to General Contractor or a subcontractor by any person, or the assignee of the person, in connection with the Project as such claim becomes due, Developer may pay such claim to the person furnishing the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due General Contractor under the contract. Developer reserves the right to make payments directly or by multiple-payee check and General Contractor hereby consents to such direct and multiple-payee check payments. Upon Developer's request, General Contractor shall furnish to Developer the information required to facilitate such payments with each application for payment, including: (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons per ORS 279C.315.

I. Wage Rates: The prevailing wage rates for public works contracts in Oregon effective [January 1, 200_] [January 1, 200_ with Amendments effective as of April 1, 2000_] [July 1, 200_] [July 1, 200_ with Amendments effective as of October 1, 200_] are incorporated into this Agreement by reference. All workers shall be paid the applicable prevailing wage rate as set forth in these documents, for work performed on the Project. General Contractor shall include in each subcontract a provision requiring the subcontractor (a) to pay the prevailing wage rates identified in this Section and (b) to include this provision in all of its subcontracts. A copy of the applicable prevailing wage rates are available from BOLI or its website:

http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml

2. Notice. Any notice required or permitted under this Agreement shall be given when actually delivered or two (2) days after being deposited in the United States Mail as certified mail return receipt requested and addressed as follows:

To Developer:

Copy to:

To Commission: Portland Development Commission
Kristy Branson, Construction Services Supervisor
222 NW 5th Avenue
Portland, Oregon 97209-3859

Copy to: Portland Development Commission
General Counsel
222 NW 5th Avenue
Portland, Oregon 97209-3859

or to such other address as may be specified from time to time by any of the Parties in writing.

3. Miscellaneous.

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

B. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

C. Governing Law. This Agreement shall be governed by and construed under Oregon law.

D. Assignment. No Party may assign this Agreement without the prior written consent of the other Parties.

E. Modification; Prior Agreements; Headings. This Agreement may not be modified or amended except by an instrument in writing signed by all Parties. This Agreement reflects and sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

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

G. Time of Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as the date first set forth above.

By: _____

CITY OF PORTLAND acting by and

**through the PORTLAND DEVELOPMENT
COMMISSION**

By: _____
Patrick Quinton, Executive Director
Approved as to Form:

By: _____
PDC Legal Counsel

EXHIBIT L

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 5th 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 13.4 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
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

EXHIBIT L (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 Interstate Corridor 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 13.3 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 PDC 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 twelve (12) months after DDA scheduled date for completion of improvements you shall contact PDC and Developer as to its disposition.

These instructions may not be withdrawn or in any way amended, modified or waived without the prior written consent of both of the parties hereto.

Please indicate your acceptance of and agreement to carry out these instructions as indicated below.

Very truly yours,

_____, a _____

By: _____

Name: _____

Title: _____

Very truly yours,

CITY OF PORTLAND, 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 M

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 Majestic Realty Company, a California corporation ("Developer"), with an address of 13191 Crossroads Parkway North, 6th Floor, City of Industry, California 91746, entered into an Agreement for Disposition and Development of Property in the Interstate Corridor 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 the Agreement, including the Scope of Development and final Drawings (as defined in the Agreement) and that prior to the issuance of the PDC Certificate of Completion, the Design Review provisions of Section 7.2 of the Agreement will survive any foreclosure or 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 the 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 right, title and interest 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 L 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 right, title and interest 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.

This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Agreement, the terms of which are incorporated herein by reference. This Memorandum is merely a memorandum of the Agreement and is subject to all of the terms, provisions and conditions of the Agreement. In the event of any inconsistency between the terms of the Agreement and this Memorandum, the terms of the Agreement shall prevail.

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

Lots 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, Block 25, WALNUT PARK, in the City of Portland, County of Multnomah and State of Oregon.

RESOLUTION NO. 7033

RESOLUTION TITLE:

AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT TO CONVEY 1.79 ACRES OF REAL PROPERTY IN THE INTERSTATE CORRIDOR URBAN RENEWAL AREA TO MAJESTIC REALTY COMPANY FOR \$502,160


Adopted by the Portland Development Commission on November 13, 2013

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 checked="" type="checkbox"/>	Commissioner Aneshka Dickson	<input checked="" 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 type="checkbox"/>	Commissioner Steven Straus	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Charles Wilhoite	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

CERTIFICATION

The undersigned hereby certifies that:

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

	<p>Date:</p> <p>November 18, 2013</p>
<p>Gina Wiedrick, Recording Secretary</p>	