

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**RESOLUTION NO. 6594**

**AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO  
A DISPOSITION AND DEVELOPMENT AGREEMENT WITH  
STARTERRA LLC FOR REAL PROPERTY LOCATED ON  
BLOCKS 47 AND 49 OF HOLLADAYS ADDITON IN THE  
OREGON CONVENTION CENTER URBAN RENEWAL AREA;**

**WHEREAS**, Portland Development Commission (“PDC”) has purchased property located at Blocks 47 and 49 of Holladays Addition for redevelopment that is adjacent to and supportive of the Oregon Convention Center facility and fulfills the goals of the Oregon Convention Center Urban Renewal Area adopted in 1989 (Resolution 4178 and Resolution 5232), the Lloyd District Housing Strategy, adopted in 2002 (Resolution 5859), and the Development Vision for the Oregon Convention Center Blocks, adopted in 2006 (Resolution 6355);

**WHEREAS**, PDC has entered into exclusive negotiations with StarTerra LLC (“Developer”) which has acquired rights to an assemblage of underutilized property adjacent to that owned by PDC, for the redevelopment of Blocks 47 and 49;

**WHEREAS**, the coordinated redevelopment of property owned by PDC and the Developer will maximize existing public investment such as the Oregon Convention Center, MAX light rail line, and the planned streetcar line, as well as provide a mix of uses, including retail, housing and office;

**WHEREAS**, PDC will finance Developer’s purchase of Blocks 47 and 49 under loan terms that provide for forgiveness of all or a portion of the loans based on a showing of need and satisfaction of certain performance measures that support housing, economic development, and environmental plans and goals, resulting in no future unbudgeted obligations to PDC;

**WHEREAS**, it is anticipated that this public-private partnership will leverage approximately \$500,000,000 in private investment in two phases of development; and

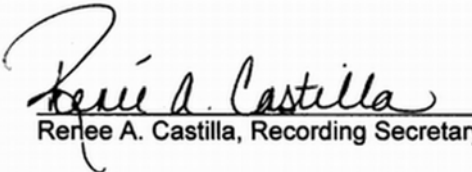
**WHEREAS**, this action supports revitalization of a key location in the Oregon Convention Center Urban Renewal Area and will result in increased jobs, increased tax revenue, increased transit ridership, additional pedestrian and commercial activity, and at least 200 housing units in at least two LEED Silver Certified buildings.

**NOW, THEREFORE, BE IT RESOLVED** that the Executive Director is hereby authorized to enter into an Agreement for Disposition and Development of PDC property located at Blocks 47 and 49 of Holladays Addition in the Oregon Convention Center Urban Renewal Area with StarTerra LLC, substantially in the form attached hereto as Exhibit A (the “Disposition and Development Agreement”);

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

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

**Adopted by the Portland Development Commission on May 28, 2008.**



Rerlee A. Castilla, Recording Secretary

## AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

THIS AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY (this “**Agreement**”) is made as of \_\_\_\_\_, 2008 (the “**Effective Date**”), by the CITY OF PORTLAND (the “**City**”), a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly-designated urban renewal agency of the City of Portland (“**PDC**”) and STARTERRA, LLC, an Oregon limited liability company (“**Developer**”). PDC and Developer are referred to jointly in this Agreement as “**Parties**” and individually as a “**Party**.”

### RECITALS

1. PDC is the duly authorized urban renewal agency of the City of Portland, Oregon, and administers the City’s urban renewal plans.
2. The Urban Renewal Plan for the Oregon Convention Center Urban Renewal Area (the “**Plan**”) was adopted by the Portland City Council on May 18, 1989, by Ordinance No. 161925, and has been amended from time to time. Goals 3.1, 3.2, 3.3, 4.5 and 6.2 of the Plan call for residential and mixed-use development that serves a range of age and income groups within residential or mixed use zones in the Oregon Convention Center Urban Renewal Area in order to support retail activities and maintain neighborhood values.
3. PDC previously found it necessary and in the public interest to implement the Plan by acquiring certain parcels of land located across from the Oregon Convention Center (as further described in the Definitions section below, the “**PDC Property**”) in the Oregon Convention Center Urban Renewal Area and offering those parcels for redevelopment as a transit-oriented, mixed-use project to serve as a catalyst for area redevelopment and to provide additional housing in the Lloyd District, consistent with Goal 6.2 of the Plan.
4. Developer has the right to acquire property located between and adjacent to the PDC Property (as further described in the Definitions section below, the “**Peters Property**” and the “**Byrne Property**”).
5. Together, the PDC Property, the Peters Property and the Byrne Property comprise approximately 3.8 acres and represent one of the largest remaining developable urban parcels in the central city. Coordinating the development of the PDC Property, the Peters Property and the Byrne Property provides the potential for (a) a larger well-planned project that provides a stronger catalyst for developing an area that is currently underdeveloped and not an attractive gateway to the Oregon Convention Center, (b) a more comprehensive, integrated design that will support the Oregon Convention Center, the potential Headquarters Hotel and PDC’s development vision for the Oregon Convention Center blocks, and (c) increased employment opportunities in Northeast Portland.
6. Developer desires to develop the PDC Property, the Peters Property and the Byrne Property as a mixed use residential and commercial project on the terms and conditions of this Agreement (as defined below, the “**Project**”).
7. Development of the Project would help achieve PDC goals and objectives by (a) providing a catalytic development in the Lloyd District with uses that support the Oregon Convention Center and the proposed Headquarters Hotel, (b) developing a regional entertainment identity that showcases and reflects the values and characteristics of Oregon, (c) capitalizing on the existing event-driven nature of the area by creating more diverse and continuous business and neighborhood activities, (d) providing a range of new housing units that support the goals in the Lloyd District Housing Strategy and (e) furthering the development of the Oregon Convention

Center Blocks, as set forth in the Oregon Convention Center Blocks Vision Plan prepared by PDC and released in March 2006.

8. The completion of the Project according to the terms of this Agreement, including the Scope of Development and Schedule of Performance, is a material inducement to PDC's participation in and support for the Project.
9. PDC finds that Developer's development of the PDC Property, pursuant to this Agreement, will help achieve the community and City goals for neighborhood revitalization and creation of jobs. PDC also finds that the fulfillment of this Agreement, and the intentions set forth herein, are in the vital and best interests 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 PDC Property has been acquired.

### **AGREEMENT**

This Agreement shall incorporate by this reference, the Recitals, the Definitions and all Exhibits hereto. The Parties, in consideration of the premises and the agreements set forth herein and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, covenant and agree as follows:

### **DEFINITIONS**

The following terms have the designated meanings in this Agreement:

1. **"Agreement"** means this Agreement for Disposition and Development of Property and all attached Exhibits.
2. **"Block 47 Improvements"** means the improvements to be constructed on the Block 47 Parcel as part of the Phase II Component, as described in the Scope of Development.
3. **"Block 47 Parcel"** means the property legally described as:

LOTS 5 AND 6, BLOCK 47, HOLLADAY'S ADDITION TO EAST PORTLAND, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON, EXCEPTING THEREFROM THAT PORTION IN NE UNION STREET.

4. **"Block 47 Seller Financing"** means PDC's financing of Developer's purchase of the Block 47 Parcel from PDC on the terms and conditions set forth in Exhibit K, attached hereto and incorporated herein by this reference.
5. **"Block 49 Parcel"** means the property legally described as:

LOTS 1 THROUGH 8, BLOCK 49, HOLLADAY'S ADDITION TO EAST PORTLAND, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON, EXCEPTING THEREFROM THAT PORTION OF LOTS 4 AND 5 THEREOF, DESCRIBED IN DEED TO THE CITY OF PORTLAND, RECORDED DECEMBER 6, 1983 IN BOOK 1710 PAGE 1823, RECORDS OF MULTNOMAH COUNTY, OREGON; AND EXCEPTING THEREFROM THAT PORTION OF LOTS 1 AND 8 THEREOF, DESCRIBED IN DEED TO THE CITY OF PORTLAND, RECORDED MARCH 9, 1993 IN BOOK 2658 PAGE 1202, RECORDS OF MULTNOMAH COUNTY, OREGON.

6. **"Block 49 Seller Financing"** means PDC's financing of Developer's purchase of the Block 49 Parcel from PDC on the terms and conditions set forth in Exhibit K, attached hereto and incorporated herein by this reference.

7. **“Board of Commissioners”** means the board of the Portland Development Commission acting in its capacity as the duly-designated urban renewal agency of the City of Portland.
8. **“Byrne Property”** means the property legally described as: Lot 4 and the South one-half of Lot 3, Block 48, HOLLADAY’S ADDITION TO EAST PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.
9. **“Certificate of Completion”** means one or more certificate(s) to be issued by PDC to Developer pursuant to Section 3.8 of this Agreement.
10. **“City”** means the City of Portland, Oregon and its constituent bureaus and agencies, except PDC.
11. **“Close”** or **“Closing”** means the conveyance of the Block 47 Parcel, the conveyance of the Block 49 Parcel, or the simultaneous conveyance of the Block 47 Parcel and the Block 49 Parcel, as the case may be, to Developer by PDC by Deed.
12. **“Closing Date”** means the date on which PDC conveys the Block 47 Parcel, the Block 49 Parcel, or both the Block 47 Parcel and the Block 49 Parcel, as the case may be, to Developer.
13. **“Commencement of Construction”** means the date excavation of the Property is begun for construction of an Element or Component, as the case may be, after issuance of at least the demolition, excavation, and foundation permits necessary for construction of the Element or Component.
14. **“Component”** means either the Phase I Component or the Phase II Component.
15. **“Components”** means both the Phase I Component and the Phase II Component.
16. **“Conceptual Plans”** means the preliminary plans, general property uses, site drawings, and cost estimates as described in the Scope of Development.
17. **“Construction Plans and Specifications”** means, with respect to a Component or Physical Element, all plans and specifications required to complete the Component or Physical Element, as the case may be, pursuant to the terms of this Agreement as approved by PDC, to the extent required by this Agreement, and the appropriate governmental agencies.
18. **“Deed”** means the form of Bargain and Sale Deed, substantially in the form attached to this Agreement as Exhibit A, which will be used to convey fee simple title to each of the Parcels to Developer subject to PDC’s right of re-entry as specified in the Deed.
19. **“Design Development Drawings”** includes, but is not limited to, such items as:
  - Detailed engineering and architectural site plans for the Project (or a Component) showing the relationship of the buildings to projected final topography of the land, proposed connections to existing or proposed utilities and services, and a landscape plan;
  - Plans, elevations, and typical cross-sections of all building areas;
  - Elevations of the building exteriors;
  - A calculation of gross building areas, floor area ratios, building heights, open spaces, and rentable square feet;
  - A preliminary exterior finish schedule;
  - Outline of the exterior lighting plan; and
  - A description of servicing requirements, trash collection locations, loading docks and related functional areas;

20. **“Developer”** means StarTerra, LLC, an Oregon limited liability company, or its permitted assignee.
21. **“Developer Property”** means the Byrne Property and Peters Property.
22. **“Developer Property Trust Deed”** has the meaning set forth in Section 6.7 hereof.
23. **“Element”** means a Physical Element or a Programmatic Element.
24. **“Environmental Laws”** means all federal, state and local laws, ordinances, rules and regulations pertaining to the protection or regulation of the environment that apply to the PDC Property, including without limitation, RCRA (defined herein), CERCLA (defined herein), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
25. **“Environmental Reports”** means the completed Environmental Reports listed in Exhibit B.
26. **“Escrow Agent”** means Chicago Title Insurance Company of Oregon, 888 SW Fifth Avenue, Suite 930, Portland, OR 97204, Attn: Cheryle Stahel-Eastman.
  
27. **“Green Building Policy”** means PDC’s Green Building Policy in effect as of June 22, 2005, a copy of which is attached hereto as Exhibit L and incorporated herein by this reference.
28. **“Green Building Progress Reports”** means the reports Developer is required to submit to PDC under the Green Building Policy consisting of an updated LEED Checklist and any additional supporting documentation indicating:
  - the progress towards meeting the requirements of the Green Building Policy;
  - the likelihood that the requirements will be met or exceeded; and
  - any issues or circumstances that may prevent Developer from meeting the requirements.
29. **“Hazardous Substances”** means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substances as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, *et seq.* (**“RCRA”**), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, *et seq.* (**“CERCLA”**), or any other Environmental Law.
30. **“Infrastructure”** means, with respect to a Component, public streets, sidewalks, alleys, and driveway approaches, connections to garages, street trees and grass in planting strips, stormwater mitigation, street and parking lot lighting, construction and connection of the Component to abutting potable water and sewer and storm sewer mains, connecting the Component to gas and electric utility services, and all permitting for any of the above as further described in the Scope of Development.
31. **“LEED”** means the Leadership in Energy and Environmental Design standards of the U.S. Green Building Council.
32. **“Median Family Income”** means median family income as annually defined by the United States Department of Housing and Urban Development for the Portland, Oregon metropolitan area, adjusted for family size.
33. **“Mortgage”** means a mortgage or deed of trust against the PDC Property, or any portion thereof, consented to by PDC pursuant to Section 5.3, and recorded in the real property records of Multnomah County, Oregon.

34. **“Mortgagee”** means the holder of any Mortgage affecting or encumbering the PDC Property or any portion thereof, together with any successor or assignee of such holder. The term **“Mortgagee”** shall include any Mortgagee as owner of the property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a mortgage but shall not include (a) any other party who thereafter obtains title to the PDC Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee.
35. **“Notice”** means any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by the Oregon Department of Environmental Quality (**“DEQ”**), the United States Environmental Protection Agency, PDC, and any other federal, state or local authority or any other government having jurisdiction over the PDC Property.
36. **“Parcel”** or **“Parcels”** means one or both of the Block 47 Parcel and the Block 49 Parcel.
37. **“Parking Element”** means the Physical and Programmatic Element of the Phase II Component for construction of parking, as described in the Scope of Development.
38. **“Peters Property”** means the property legally described as:

PARCEL I:

Lots 1,2,3 and 4, Block 47, HOLLADAY'S ADDITION TO EAST PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH those portions of the vacated streets which inured thereto by Vacation Ordinance No. 166257, recorded August 30, 1993 in Book 2745, Page 1201.

PARCEL II:

Lot 8, Block 47, HOLLADAY'S ADDITION TO EAST PORTLAND, EXCEPT the East 10 feet in Union Avenue, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH those portions of the vacated street which inured thereto by Vacation Ordinance No. 166257, recorded August 30, 1993, in Book 2745, Page 1201.

PARCEL III:

Block 48, HOLLADAY'S ADDITION TO EAST PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM the South one-half of Lot 3 and all of Lot 4, Block 48, HOLLADAY'S ADDITION TO EAST PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH those portions of the vacated streets which inured thereto by Vacation Ordinance No. 166257, recorded August 30, 1993 in Book 2745, Page 1201.

PARCEL IV:

Lots 1,2,3 and 4, Block 65, HOLLADAY'S ADDITION TO EAST PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM that portion conveyed to the City of Portland for Street Purposes by Deed recorded March 12, 1993 in Book 2659, Page 1698.

TOGETHER WITH those portions of the vacated streets which inured thereto by Vacation Ordinance No. 166257, recorded August 30, 1993 in Book 2745, Page 1201.

ALSO EXCEPTING THEREFROM that portion conveyed to Pacific Development (Property), Inc. by Deed recorded February 24, 1994 as Fee No. 94030130.

PARCEL V:

A parcel of land in the Northeast quarter of Section 34, Township 1 North, Range 1 East, Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Southeast corner of Block 64, according to the duly filed plat of HOLLADAY'S ADDITION, a recorded plat in the County of Multnomah and State of Oregon; thence North 88°12'36" West, along the South line of said Block 64, 56.37 feet; thence North 55°18'59" East, 70.10 feet to the East line of Block 64, HOLLADAY'S ADDITION; thence South 01°47'24" West along said East line, 41.67 feet to the point of beginning.

TOGETHER WITH those portion of vacated NE 3rd Avenue and NE Hassalo Street which inured thereto by Ordinance No. 166257, recorded August 30, 1993, in Book 2745, Page 1201.

39. **"Phase I Component"** means the development of office and retail space on the Block 49 Parcel, as more particularly described in the Scope of Development.
40. **"Phase II Component"** means the mixed use development of the Peters Property, the Byrne Property and the Block 47 Parcel, as more particularly described in the Scope of Development.
41. **"Physical Element"** means a discrete structure identified in the Scope of Development to be constructed as part of the Phase II Component and containing all or portions of one or more of the Programmatic Elements.
42. **"Programmatic Element"** means a specific use identified in the Scope of Development to be included as part of the Phase II Component and located in all or portions of one or more of the Physical Elements.
43. **"Project"** generally means the improvements to be constructed by Developer on the PDC Property, the Peters Property, and the Byrne Property and all actions and activities necessary thereto. A more detailed description of the Project is included in the Scope of Development.
44. **"Project Budget"** means the summary financial analysis for each Component of the Project attached hereto as Exhibit I, representing the estimated sources and uses of funds, cash flow and Project costs as of the Effective Date, as may be modified from time to time.
45. **"PDC Property"** means both the Block 47 Parcel and the Block 49 Parcel.
46. **"Purchase Price"** means the price Developer shall pay to PDC for the PDC Property to be conveyed by PDC to Developer pursuant to Section 1.3.
47. **"Release"** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
48. **"Schedule of Performance"** means the document describing the schedule by which construction and development of the Project will be completed by Developer, attached hereto as Exhibit C.
49. **"Schematic Design Documents"** means, with respect to a Component:



- Documents based on a mutually agreed-upon project program and establishing the design of the Component illustrating the scale and relationship of the parts of the Component;
- Documents that include a conceptual site plan, conceptual site elevations, preliminary building plans, sections and elevations;
- Three-dimensional representations of the Component in the site that may include study models, perspective sketches, electronic modeling or combinations of this media;
- Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

50. **“Scope of Development”** means the detailed description of the improvements to be built comprising the Project, attached hereto and incorporated herein as Exhibit D.

## 1. GENERAL TERMS OF CONVEYANCE

### 1.1. Conveyance of PDC Property by Deed.

**1.1.1. Deed.** Subject to the terms, covenants and conditions of this Agreement, at the Closing(s), PDC will convey the PDC Property by Deed to Developer.

**1.1.2. Closing.** The conveyance of the PDC Property to Developer shall occur in two escrow Closings at the office of the Escrow Agent not later than the deadline for the Closing of each of the Block 47 Parcel and the Block 49 Parcel as set forth in the Schedule of Performance. The Parties agree that the conveyance of the Parcels may occur in simultaneous Closing(s). At each Closing, Developer shall accept such conveyance of the respective Parcel and pay to PDC, in the manner set forth in Section 1.3, the Purchase Price for the Parcel conveyed. The payment terms are specific to Developer’s unique characteristics and are not assignable except as allowed under Section 5 below.

**1.2. Conveyance of Property.** Upon satisfaction of the Conditions Precedent to conveyance of each Parcel to be conveyed as provided in Section 1.6 and Section 1.7 hereof and upon payment by Developer to PDC of the Purchase Price for the Parcel to be conveyed, PDC will convey such Parcel to Developer by Deed.

**1.3. Purchase Price.** The Purchase Price for the Block 47 Parcel is \$1,475,000. The Purchase Price for the Block 49 Parcel is \$3,600,000. Developer shall pay the Purchase Price for the Block 47 Parcel in accordance with the terms and conditions of the Block 47 Seller Financing. Developer shall pay the Purchase Price for the Block 49 Parcel in accordance with the terms and conditions of the Block 49 Seller Financing.

### 1.4. Title Review.

**1.4.1.** PDC has made available to Developer a preliminary title report on the PDC Property and copies of all exception documents (the **“Title Report”**).

**1.4.2.** Developer will have twenty (20) days after the Effective Date to notify PDC in writing if Developer objects to any exception on the Title Report. Those items to which Developer does not object will be deemed the **“Permitted Exceptions”**, and shall be referenced on Exhibit 1 to the Deed for each Parcel. If Developer objects to any item, then PDC shall have twenty (20) days after receiving Developer’s written objection to notify Developer in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If PDC refuses to remove any such objected to exceptions, Developer shall have twenty (20) days thereafter to terminate this Agreement. If Developer does not terminate the Agreement, the exceptions that Developer originally objected to and that PDC refused

to remove will be deemed "Permitted Exceptions." If PDC does not give its response to Developer's objections within the twenty (20) day time period, Developer shall have twenty (20) days thereafter to terminate this Agreement by written notice to PDC.

(a) Notwithstanding the foregoing, Developer may not object to the existing Lease Agreement between PDC (as the landlord) and AK Media/NW, a division of AK Media Group, Inc., a Washington corporation (as the tenant), commencing on June 1, 2008 (the "Billboard Lease"), a true and correct copy of which PDC shall deliver to Developer. The Billboard Lease shall be considered a Permitted Exception for purposes of this Agreement, and if the Billboard Lease is in effect at the Closing of the Block 49 Parcel, Developer shall assume the rights and obligations of PDC under the Billboard Lease. The Billboard Lease is a the result of renegotiation of a prior lease with AK Media Group, Inc., and PDC shall satisfy, at PDC's expense, any relocation obligation with respect to the Billboard Lease, arising under law or PDC policy as result of PDC's actions to renegotiate the terms of the prior lease.

**1.4.3.** From and after the time that the Permitted Exceptions are identified and established pursuant to Section 1.4.2 above, PDC will not consent to any liens, encumbrances or other exceptions to title to the PDC Property without Developer's prior written consent, which consent shall not be unreasonably withheld provided that such exceptions to title do not impair the construction or financing of the Project. Developer may obtain an update to the Title Report on a Parcel at any time prior to the Closing on a Parcel. Developer shall promptly give to PDC a copy of any 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) Business 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 on the affected Parcel. If PDC refuses to remove any such objected to exceptions, Developer may terminate its obligations under this Agreement with respect to the affected Parcel or proceed to Close the conveyance of the affected Parcel subject to same. Any exceptions that Developer accepts at Closing are the "**Final Permitted Exceptions.**"

**1.4.4.** Within twenty (20) Business Days following the Effective Date, PDC will provide to Developer a boundary survey suitable for Owner's Extended ALTA title insurance that delineates the PDC Property and shows all easements of record and any encroachments impacting the PDC Property.

**1.5. Title Insurance, Survey, Property Taxes and Closing Costs.** PDC, at its expense, shall provide Developer with a standard coverage ALTA Owner's Policy of Title Insurance, issued by Escrow Agent, covering each Parcel when conveyed, and insuring Developer in the amount of the Purchase Price for the Parcel, free and clear of encumbrances, except Final Permitted Exceptions. Developer, at its option and its expense, may elect to obtain excess basic or other extended coverage under such policies of title insurance and PDC agrees, as reasonably requested by Developer, to execute any affidavits or other documents required by the Escrow Agent to enable Developer to obtain all such coverage. The costs for recording a Memorandum of Agreement, a form of which is attached as Exhibit F, the Deed(s) and 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 Escrow Agent. Property taxes shall be allocated as of the Closing Date. With respect to each Parcel, PDC will provide Developer with a certification from Multnomah County Real Property Tax Assessor that there are no unpaid real property taxes or other assessments as of the Closing Date for the Parcel being conveyed. Developer shall be obligated to pay all property taxes on a Parcel from and after the Closing Date for the Parcel, including any property taxes due on a Parcel as a result of its transfer to a taxable entity and the subsequent loss of the public ownership tax exemption. PDC shall pay any real property taxes attributable to a Parcel that relate to the period of time prior to the Closing Date for the

Parcel. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Multnomah County.

**1.6. Conditions Precedent to Conveyance of Block 49 Parcel.**

**1.6.1. Conditions.** Developer and PDC are not obligated to Close the Conveyance of the Block 49 Parcel unless the following conditions are satisfied to the reasonable satisfaction of the benefited Party or waived in writing by the benefited Party. A waiver of a condition is at the sole discretion of the benefited Party. Except as 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. Each Party shall act diligently and in good faith to satisfy conditions over which it has control or influence.

**(a) To the satisfaction of both PDC and Developer:**

- (1) Permits, including but not limited to all building permits from the City of Portland Bureau of Development Services, required for Commencement of Construction of the Phase I Component, shall have been issued, or shall be ready for issuance subject only to site control, to allow site work and construction activities on the Phase I Component. The Construction Plans and Specifications for the Phase I Component shall be at 50% complete (or at such greater level of completeness as required by Developer's construction lender) and, at such completeness level, shall have been approved by all required governmental entities or agencies, including PDC pursuant to Section 3.2 hereof, and all other Drawings (as defined in Section 3.2) for the Phase I Component, for which PDC's approval is required prior to approval of the 50% Construction Plans and Specifications, shall have been approved by PDC in accordance with Section 3.2.
- (2) All land use approvals for the Phase I Component required by Title 33 of the Code of the City of Portland shall have been secured and no appeal of any required land use approval shall have been filed, and the time for any such appeal shall have expired. If an appeal shall have been filed, it has been finally resolved.
- (3) Developer shall have demonstrated financial feasibility for the Phase I Component consistent with the Project Budget, including acquisition and construction, by providing to PDC not later than ten (10) Business Days prior to the Closing Date for conveyance of the Block 49 Parcel as set forth in the Schedule of Performance: (a) a copy of a commitment letter from Developer's private lender for the construction financing of the Phase I Component, (b) if required by Developer's construction lender, a copy of a commitment letter from Developer's private lender for the permanent financing of the Phase I Component after completion of construction and required lease-up as may be required by the private lender, or such other evidence of permanent financing for the Phase I Component as Developer's construction lender may require (c) written evidence of necessary equity commitment(s) to the Phase I Component, (d) written information on the proposed sale prices of the commercial condominiums (if any) and the proposed lease terms for leased space, including any pre-leasing commitments, and (e) a final construction budget for the Phase I Component.
- (4) The Parties shall have agreed to the final form of the Deed for the Block 49 Parcel, and any documents necessary to close the financing for the Block 49 Parcel.
- (5) There shall be no litigation pending that prevents PDC or Developer from performing their respective obligations under this Agreement relating to the Phase I Component; provided that, in the event of filing any such litigation, either Party may extend this condition, and the Closing, for a period not to exceed one hundred eighty (180) days and either Party may request of the other Party an additional extension of up to one hundred eighty (180) days, and the other Party shall not unreasonably

- (6) Neither Party shall be in default under this Agreement and all tasks shown on the Schedule of Performance to be completed as of Closing on the Block 49 Parcel shall have been completed.
- (7) The PDC Board of Commissioners shall have authorized the disposition of the PDC Property in accordance with this Agreement and the terms and amount of the Block 49 Seller Financing.
- (8) The portion of that certain Right-of-Way Easement, granted by Pacific Development (Property), Inc. to Pacificorp, a corporation doing business as Pacific Power & Light Company, on May 26, 1988, encumbering the Block 49 Parcel and recorded on January 27, 1989 in Book 2174, Page 575 of the Real Property Records of Multnomah County, shall have been terminated. PDC shall use commercially reasonable efforts to have the foregoing easement terminated prior to the date scheduled for Closing of the Block 49 Parcel.

**(b) To Developer's Satisfaction:**

- (1) Developer shall be satisfied with the condition of title to the Block 49 Parcel subject only to the Final Permitted Exceptions.
- (2) Developer shall be satisfied that public and private utilities are available to the PDC Property with sufficient capacity to serve the Project and shall be satisfied that any utilities located within the PDC Property are acceptable.
- (3) Escrow Agent shall have issued to Developer a binding commitment, satisfactory to Developer, (a) to issue to Developer an ALTA Owner's Extended Title Insurance Policy covering the Block 49 Parcel in an amount not less than the Purchase Price for the Block 49 Parcel, subject only to the Final Permitted Exceptions and (b) to issue a Lender's Extended Title Insurance Policy covering fee interest in the Property in the amount of the funding to be provided to Developer in form and substance satisfactory to any lender identified by Developer.
- (4) PDC shall not be in default under this Agreement. As of the Closing Date of the conveyance of the Block 49 Parcel, PDC shall represent to Developer that there are no defaults by PDC under this Agreement or events which with the passage of time would constitute a default by PDC under this Agreement.
- (5) PDC's representations and warranties stated in Section 1.8 herein are true and correct as of the Closing Date for the Block 49 Parcel.
- (6) The Block 49 Seller Financing and construction financing for the Phase I Component shall be available, upon Closing, on terms and conditions satisfactory to Developer.

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

- (1) Developer shall have provided to PDC an operating proforma for the Phase I Component reasonably satisfactory to PDC.
- (2) Developer shall have provided to PDC a copy of its articles of organization, operating agreement, and a certificate of existence from the Secretary of State of the State of Oregon dated no earlier than twenty (20) days prior to the Closing Date.

- (3) Developer shall have provided to PDC a certified copy of resolutions, adopted by the members or managers of Developer who have authority to legally bind Developer to this Agreement, authorizing the execution of this Agreement and the performance of the transactions contemplated by this Agreement.
- (4) Developer shall have provided to PDC, or made available for review by PDC, copies of any leases or proposed leases between Developer and the Phase I Component tenants.
- (5) Developer has registered the Phase I Component for LEED certification and has provided PDC with documentation of the Phase I Component's LEED credits, evidencing anticipated credits sufficient to reach at least the LEED New Construction Silver certification level.
- (6) Developer shall have executed and delivered to the Escrow Agent all documentation reasonably necessary to evidence that Developer has obtained construction financing for the Phase I Component, which construction financing documentation shall have been reasonably approved by PDC, and Developer's construction financing shall close no later than the Closing on the Block 49 Parcel.
- (7) Developer shall not be in default under this Agreement. As of Closing Date of the conveyance of the Block 49 Parcel, Developer shall represent to PDC that there are no defaults by Developer under this Agreement or events which with the passage of time would constitute a default by Developer under this Agreement.
- (8) Developer's representations and warranties stated in Section 1.9 herein shall be true and correct as of the Closing Date.

**1.6.2. Election of Rights upon Non-Occurrence of Conditions.** Except as provided below, if any condition in Section 1.6.1 is not fulfilled to the satisfaction of the benefited Party or Parties on the earlier of (i) the date designated for satisfaction of the condition, or (ii) on the date scheduled for Closing of the conveyance of the Block 49 Parcel as set forth in the Schedule of Performance, subject to any extension that may be granted pursuant to this Section 1.6.2 or Section 1.6.3, then such benefited Party or Parties may elect to:

- (a) If the Closing of the conveyance of the Block 47 Parcel has not occurred, terminate this Agreement, which termination shall become effective sixty (60) days after the notice of termination is sent unless, before the sixty (60) day period ends, the other Party fulfills such condition or conditions to the sole satisfaction of the benefited Party or Parties; or
- (b) If the Closing of the conveyance of the Block 47 Parcel has occurred, terminate the rights and obligations of the Parties relating to acquisition and development of the Phase I Component, which termination shall become effective sixty (60) days after the notice of termination is sent unless, before the sixty (60) day period ends, the other Party fulfills such condition or conditions to the sole satisfaction of the benefited Party or Parties; or
- (c) Waive in writing the benefit of that condition precedent to its obligation to perform under this Agreement, and proceed in accordance with the terms hereof; or
- (d) Extend the date by which the applicable condition may be satisfied, if the condition can be satisfied by the other Party and if the other Party agrees in writing to the extension.

**1.6.3. Block 49 Final Termination Date.**

- (a) If all of the conditions precedent under Section 1.6.1 have not been satisfied, waived or otherwise resolved pursuant to this Agreement on or before the date scheduled for Closing of the conveyance of the Block 49 Parcel as set forth in the Schedule of Performance, then (i) if the Closing of the conveyance of the Block 47 parcel has not occurred, this Agreement shall automatically terminate 90 days following the date scheduled for the Closing of the conveyance of the Block 49 Parcel as set forth in the Schedule of

Performance or (ii) if the Closing of the conveyance of the Block 47 Parcel has occurred, the rights and obligations of the Parties under this Agreement with respect to the Block 49 Parcel and the Phase I Component shall automatically terminate 90 days following the date scheduled for Closing of the Conveyance of the Block 49 Parcel as set forth on the Schedule of Performance, unless, in the case of both subparagraphs (i) and (ii) above, the date for satisfying the unsatisfied condition(s) is extended by agreement of the Parties prior to the otherwise applicable termination date set forth in subparagraph (i) or (ii) above, or unless the failure of satisfaction of the unsatisfied condition(s) is the result of an Unavoidable Delay, as described in Section 8.9 below.

- (b) If the otherwise applicable termination date set forth in subparagraph (i) or (ii) of paragraph (a) above is extended for a period of Unavoidable Delay, the maximum allowable period of Unavoidable Delay shall be 180 days.
- (c) If this Agreement is terminated, or the rights and obligations of the Parties under this Agreement with respect to the Block 49 Parcel and the Phase I Component are terminated, for failure of satisfaction of the conditions precedent, and such failure is not the result of a breach of a material provision of this Agreement by Developer or PDC (including Developer's or PDC's failure to act in accordance with Section 1.6.1 above), then the rights and obligations of the Parties to each other under this Agreement, or with respect to the Block 49 Parcel and the Phase I Component, as the case may be, shall terminate with no remedies accruing to either Party as a result thereof.
- (d) If this Agreement is terminated, or the rights and obligations of the Parties under this Agreement with respect to the Block 49 Parcel and the Phase I Component are terminated, for failure of satisfaction of the conditions precedent caused by Developer's breach of a material provision of this Agreement (including Developer's failure to act in accordance with Section 1.6.1 above), then the failure of satisfaction of the conditions precedent will be deemed a Developer default, and PDC shall have the remedies stated in Section 8.2 below.
- (e) If this Agreement is terminated, or the rights and obligations of the Parties under this Agreement with respect to the Block 49 Parcel and the Phase I Component, are terminated for failure of satisfaction of the conditions precedent caused by PDC's breach of a material provision of this Agreement (including PDC's failure to act in accordance with Section 1.6.1 above), then the failure of satisfaction of the conditions precedent will be deemed a PDC default, and Developer shall have the remedies stated in Section 8.6 below.

## **1.7. Conditions Precedent to Conveyance of Block 47 Parcel.**

**1.7.1. Conditions.** Developer and PDC are not obligated to Close the Conveyance of the Block 47 Parcel unless the following conditions are satisfied to the reasonable satisfaction of the benefited Party or waived in writing by the benefited Party. A waiver of a condition is at the sole discretion of the benefited Party. Except as 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. Each Party shall act diligently and in good faith to satisfy conditions over which it has control or influence.

- (a) To the Satisfaction of both PDC and Developer:
  - (1) Permits, including but not limited to all building permits from the City of Portland Bureau of Development Services, required for Commencement of Construction of the Parking Element and at least one additional Physical Element of the Phase II Component, shall have been issued, or shall be ready for issuance subject only to site control, to allow site work and construction activities on the Parking Element and at least one additional Physical Element of the Phase II Component. The Construction Plans and Specifications for the Parking Element and at least one additional Physical Element of the Phase II Component shall be at least 50%

complete (or at such greater level of completeness as required by Developer's construction lender) and, at such completeness level, shall have been approved by all required governmental entities or agencies, including PDC pursuant to and to the extent required by Section 3.2 hereof, and all other Drawings (as defined in Section 3.2) for the Parking Element and at least one additional Physical Element of the Phase II Component, for which PDC's approval or review is required prior to approval or review, as the case may be, of the 50% Construction Plans and Specifications, shall have been approved or reviewed by PDC in accordance with and to the extent required by Section 3.2.

- (2) Developer shall have acquired fee title to the Peters Property and the Byrne Property and has all rights to the Peters Property and the Byrne Property necessary to complete the Phase II Component.
  - (3) All land use approvals for the Parking Element and at least one additional Physical Element of the Phase II Component required by Title 33 of the Code of the City of Portland shall have been secured and no appeal of any required land use approval shall have been filed, and the time for any such appeal shall have expired. If an appeal shall have been filed, it has been finally resolved.
  - (4) Developer shall have demonstrated financial feasibility for the Parking Element and at least one additional Physical Element of the Phase II Component consistent with the Project Budget, including acquisition and construction, by providing to PDC not later than ten (10) Business Days prior to the Closing Date for conveyance of the Block 47 Parcel as set forth in the Schedule of Performance: (a) a copy of a commitment letter from Developer's private lender for the construction financing of the Parking Element and at least one additional Physical Element of the Phase II Component, (b) if required by Developer's construction lender, a copy of a commitment letter from Developer's private lender for the permanent financing of the Parking Element and at least one additional Physical Element of the Phase II Component after completion of construction and required lease-up as may be required by the private lender, or such other evidence of permanent financing for the Parking Element and at least one additional Physical Element of the Phase II Component as Developer's construction lender may require (c) written evidence of necessary equity commitment(s) to the Parking Element and at least one additional Physical Element of the Phase II Component, (d) written information on the proposed sale prices of the commercial condominiums (if any) and the proposed lease terms for leased space, including any pre-leasing commitments, and (e) a final construction budget for the Parking Element and at least one additional Physical Element of the Phase II Component.
  - (5) The Parties shall have agreed to the final form of the Deed for the Block 47 Parcel, and any documents necessary to close the financing for the Block 47 Parcel.
  - (6) There shall be no litigation pending that prevents PDC or Developer from performing their respective obligations under this Agreement relating to the Phase II Component; provided that, in the event of filing any such litigation, the either Party may extend this condition, and the Closing, for a period not to exceed one hundred eighty (180) days, or both Parties may mutually agree to any period of extension.
  - (7) Neither party shall be in default under this Agreement, and all tasks shown on the Schedule of Performance to be completed as of Closing on the Block 47 Parcel shall have been completed.
  - (8) The PDC Board of Commissioners shall have authorized the disposition of the PDC Property in accordance with this Agreement and the terms and amount of Block 47 Seller Financing.
- (b) To Developer's Satisfaction:

- (1) Developer shall be satisfied with the condition of title to the Block 47 Parcel subject only to the Final Permitted Exceptions.
  - (2) Developer shall be satisfied that public and private utilities are available to the PDC Property with sufficient capacity to serve the Project and shall be satisfied that any utilities remaining within the PDC Property are acceptable.
  - (3) Escrow Agent shall have issued to Developer a binding commitment, satisfactory to Developer, (a) to issue to Developer an ALTA Owner's Extended Title Insurance Policy covering the Block 47 Parcel in an amount not less than the Purchase Price for the Block 47 Parcel, subject only to the Final Permitted Exceptions and (b) to issue a Lender's Extended Title Insurance Policy covering fee interest in the Property in the amount of the funding to be provided to Developer, for the Parking Element and at least one additional Physical Element of the Phase II Component, in form and substance satisfactory to any lender identified by Developer.
  - (4) PDC shall not be in default under this Agreement. As of the Closing Date of the conveyance of the Block 47 Parcel, PDC shall represent to Developer that there are no defaults by PDC under this Agreement or events which with the passage of time would constitute a default by PDC under this Agreement.
  - (5) PDC's representations and warranties stated in Section 1.8 herein are true and correct as of the Closing Date for the Block 47 Parcel.
  - (6) The Block 47 Seller Financing and construction financing for the Parking Element and at least one additional Physical Element of the Phase II Component shall be available, upon Closing, on terms and conditions satisfactory to Developer.
- (c) To PDC's Satisfaction:
- (1) Developer shall have provided to PDC an operating proforma for the Parking Element and at least one additional Physical Element of the Phase II Component reasonably satisfactory to PDC.
  - (2) Developer shall have provided to PDC a copy of its articles of organization, operating agreement, and also a certificate of existence from the Secretary of State of the State of Oregon dated no earlier than twenty (20) days prior to the Closing Date.
  - (3) Developer shall have provided to PDC a certified copy of resolutions, adopted by the members or managers of Developer who have authority to legally bind Developer to this Agreement, authorizing the execution of this Agreement and the performance of the transactions contemplated by this Agreement.
  - (4) Developer shall have provided to PDC, or made available for review by PDC, copies of any leases or proposed leases between Developer and the Phase II Component tenants.
  - (5) Developer has registered the Phase II Component (other than the Parking Element) for LEED certification and has provided PDC with documentation of the Phase II Component's LEED credits, evidencing anticipated credits sufficient to reach at least the LEED New Construction Silver certification level for the Phase II Component (other than the Parking Element) .
  - (6) Developer shall have executed and delivered to the Escrow Agent all documentation reasonably necessary to evidence that Developer has obtained construction financing for the Parking Element and at least one additional Physical Element of the Phase II Component, which construction financing documentation shall have been reasonably approved by PDC, and Developer's construction financing shall close no later than the Closing on the Block 47 Parcel.



- (7) Developer shall not be in default under this Agreement. As of the Closing Date of the conveyance of the Block 47 Parcel, Developer shall represent to PDC that there are no defaults by Developer under this Agreement or events which with the passage of time would constitute a default by Developer under this Agreement.
- (8) Developer's representations and warranties stated in Section 1.9 herein shall be true and correct as of the Closing Date.
- (9) PDC's Board of Commissioners shall have approved, and this Agreement shall have been amended to reflect, an updated Scope of Development and Schedule of Performance for the Phase II Component that (a) identifies the scope and nature of the development to occur on the Block 47 Parcel and (b) consistent with the Scope of Development and Schedule of Performance attached to this Agreement on the Effective Date, specifies the size, location and timing of each Physical Element of the Phase II Component and the portion of each Programmatic Element to be included in each of the Physical Elements; provided, however, that the updated Schedule of Performance may not accelerate any of the deadlines set forth in the Schedule of Performance attached to this Agreement on the Effective Date without the consent of the Party burdened by such deadline.
- (10) Developer has closed on the Block 49 Parcel.

**1.7.2. Election of Rights upon Non-Occurrence of Conditions.** Except as provided below, if any condition in Section 1.7.1 is not fulfilled to the satisfaction of the benefited Party or Parties on the earlier of (i) the date designated for satisfaction of the condition, or (ii) on the date scheduled for Closing of the conveyance of the Block 47 Parcel as set forth in the Schedule of Performance, subject to any extension that may be granted pursuant to this Section 1.7.2 or Section 1.7.3, then such benefited Party or Parties may elect to:

- (a) If the Closing of the conveyance of the Block 49 Parcel has not occurred, terminate this Agreement, which termination shall become effective sixty (60) days after the notice of termination is sent unless, before the sixty (60) day period ends, the other Party fulfills such condition or conditions to the sole satisfaction of the benefited Party or Parties; or
- (b) If the Closing of the conveyance of the Block 49 Parcel has occurred, terminate the rights and obligations of the Parties relating to acquisition of the Block 47 Parcel and development of the Phase II Component, which termination shall become effective sixty (60) days after the notice of termination is sent unless, before the sixty (60) day period ends, the other Party fulfills such condition or conditions to the sole satisfaction of the benefited Party or Parties; or
- (c) Waive in writing the benefit of that condition precedent to its obligation to perform under this Agreement, and proceed in accordance with the terms hereof; or
- (d) Extend the date by which the applicable condition may be satisfied, if the condition can be satisfied by the other Party and if the other Party agrees in writing to the extension.

**1.7.3. Final Termination Date.**

- (a) If all of the conditions precedent under Section 1.7.1 have not been satisfied, waived or otherwise resolved pursuant to this Agreement on or before the date scheduled for Closing of the conveyance of the Block 47 Parcel as set forth in the Schedule of Performance, then (i) if the Closing of the conveyance of the Block 49 Parcel has not occurred, this Agreement shall automatically terminate 90 days following the date scheduled for the Closing of the conveyance of the Block 47 Parcel as set forth in the Schedule of Performance or (ii) if the Closing of the conveyance of the Block 49 Parcel has occurred, the rights and obligations of the Parties under this Agreement with respect to the Block 47

Parcel and the Phase II Component shall automatically terminate 90 days following the date scheduled for Closing of the conveyance of the Block 47 Parcel as set forth on the Schedule of Performance, unless, in the case of both subparagraphs (i) and (ii) above, the date for satisfying the unsatisfied condition(s) is extended by agreement of the Parties prior to the otherwise applicable termination date set forth in subparagraph (i) or (ii) above, or unless the failure of satisfaction of the unsatisfied condition(s) is the result of an Unavoidable Delay, as described in Section 8.9 below.

- (b) If the otherwise applicable termination date set forth in subparagraph (i) or (ii) of paragraph (a) above is extended for a period of Unavoidable Delay, the maximum allowable period of Unavoidable Delay shall be 180 days.
- (c) If this Agreement is terminated, or the rights and obligations of the Parties under this Agreement with respect to the Block 47 Parcel and the Phase II Component are terminated, for failure of satisfaction of the conditions precedent, and such failure is not the result of a breach of a material provision of this Agreement by Developer or PDC (including Developer's or PDC's failure to act in accordance with Section 1.7.1 above), then the obligations of the Parties to each other under this Agreement, or with respect to the Block 47 Parcel and the Phase II Component, as the case may be, shall terminate with no remedies accruing to either Party.
- (d) If this Agreement is terminated, or the rights and obligations of the Parties under this Agreement with respect to the Block 47 Parcel and the Phase II Component are terminated, for failure of satisfaction of the conditions precedent caused by Developer's breach of a material provision of this Agreement (including Developer's failure to act in accordance with Section 1.7.1 above), then the failure of satisfaction of the conditions precedent will be deemed a Developer default, and PDC shall have the remedies stated in Section 8.2 below.
- (e) If this Agreement is terminated, or the rights and obligations of the Parties under this Agreement with respect to the Block 47 Parcel and the Phase II Component are terminated, for failure of satisfaction of the conditions precedent caused by PDC's breach of a material provision of this Agreement (including PDC's failure to act in accordance with Section 1.7.1 above), then the failure of satisfaction of the conditions precedent will be deemed a PDC default, and Developer shall have the remedies stated in Section 8.6 below, as applicable.

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

- 1.8.1.** With respect to each Parcel prior to its conveyance to Developer, except as has been disclosed to Developer in the Environmental Reports, to PDC's knowledge, there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, Release or production of Hazardous Substances, or other dangerous or toxic substances or solid wastes on the Parcel, or underground storage tanks existing on the Parcel, except in compliance with Environmental Laws currently in effect, and PDC has not received notice of the Release of any Hazardous Substances on the Parcel.
- 1.8.2.** PDC has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by PDC in connection with the execution of this Agreement and the transactions contemplated hereby.
- 1.8.3.** PDC is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.
- 1.8.4.** 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 PDC's ability to perform its obligations under this Agreement.

- 1.8.5. With respect to a Parcel prior to its conveyance to Developer, to PDC's knowledge, and except as disclosed in writing to Developer, the Parcel is in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements ("**Laws**").
- 1.8.6. With respect to a Parcel prior to its conveyance to Developer, PDC has not received or given any notice stating that the Parcel is in violation of any Laws.
- 1.8.7. No representation, warranty or statement of PDC in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.
- 1.8.8. As of the Effective Date, there are no defaults by PDC under this Agreement or events that with the passage of time would constitute a default of PDC under this Agreement.
- 1.8.9. "**PDC's knowledge**" shall mean the actual knowledge of the managerial and supervisory personnel of PDC having responsibility for the supervision of the PDC Property, without any duty of inquiry or investigation.

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

- 1.9.1. Developer has full power and authority to enter into and perform this Agreement in accordance with its terms, and Developer has taken all requisite action in connection with the execution of this Agreement and the transactions contemplated hereby.
- 1.9.2. No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.
- 1.9.3. As of the Effective Date there are no defaults by Developer under this Agreement or events that with the passage of time would constitute a default of Developer under this Agreement.
- 1.9.4. Developer enters into this Agreement without reliance upon any verbal representation of any kind by PDC, its employees, agents or consultants regarding any aspect of the PDC Property, the Project, its feasibility, financing or compliance with any governmental regulation.

**2. INFRASTRUCTURE AND PROPERTY CONDITION**

- 2.1. **Infrastructure.** As part of the Project, Developer will design, construct, fund and obtain permits for all Infrastructure.
- 2.2. **Utility Service.** PDC makes no representation as to the availability or suitability of utility connections to the PDC Property. Developer shall pay any and all costs of installation, connection, or upgrade of new or existing utilities to serve the Project, and costs of removal or demolition necessary for such installation or upgrade.
- 2.3. **Subsurface and Surface Conditions.** The PDC Property shall be conveyed from PDC to Developer in an "AS IS" condition. Except as expressly provided in this Agreement, PDC makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the PDC Property for any improvements to be constructed by the Developer, and, except for representations and warranties expressly provided by PDC in this Agreement, Developer warrants that it has not relied on any representations or warranties made by PDC as to the environmental condition, the suitability of the soil conditions or any of the conditions of the PDC Property for any improvements to be constructed by the Developer. Except for breach of PDC representations and warranties expressly set forth in this Agreement, Developer agrees that

PDC will not be liable for any loss, cost or damage that may be caused or incurred by Developer by reason of any such soil or physical conditions on the PDC Property. PDC shall allow Developer free access to PDC's records with respect to such conditions.

### 3. DEVELOPMENT

**3.1. Project Financing.** Developer shall obtain all construction and permanent financing necessary to acquire, construct and operate the Project in accordance with the Schedule of Performance and Scope of Development, attached hereto as Exhibits C and D respectively, and pursuant to the requirements set forth in Section 6 below. Except as provided in Sections 3.1.1, 3.1.2 and 3.1.3 below, PDC will not provide any financing for the Project.

**3.1.1. PDC Predevelopment Loan.** PDC has budgeted \$200,000 in Fiscal Year 2008-2009 for a predevelopment loan to Developer for the Phase II Component and PDC will, subject to the recommendation of the PDC Loan Committee and the approval of the PDC Executive Director (which may be granted or withheld in the Executive Director's reasonable discretion), make up to \$200,000 in predevelopment financing available to Developer for the Phase II Component, on customary PDC terms and conditions. Developer will repay all predevelopment financing from the first construction loan draw for the Phase II Component.

**3.1.2. PDC Seller Financing.** PDC shall provide seller financing for Developer's acquisition of the Block 47 Parcel and the Block 49 Parcel in accordance with the terms and conditions of the Block 47 Seller Financing and the Block 49 Seller Financing, respectively, set forth in Exhibit K. PDC has received preliminary approval of the Block 47 Seller Financing and Block 49 Seller Financing from the PDC Loan Committee. The ultimate availability of the Block 47 Seller Financing and the Block 49 Seller Financing is subject to satisfaction of PDC's customary underwriting criteria, as reasonably determined by the PDC Executive Director based on the recommendation of the PDC Loan Committee, and agreement on definitive loan documentation which may contain additional terms and conditions not specified herein but consistent with the terms and conditions set forth in Exhibit K-1. The definitive loan documentation shall be in PDC's customary form and shall be consistent, in all material respects, with the terms and conditions set forth herein, unless otherwise approved by Developer and PDC's Board of Commissioners.

**3.1.3. PDC Additional Financing.** Developer may apply to PDC for additional financing in connection with the Phase II Component, but nothing in this Agreement obligates PDC to provide any financing for the Phase II Component other than the Block 47 Seller Financing on the terms and subject to the conditions set forth herein. In particular, PDC shall consider, if requested by Developer, the possibility of providing additional subordinate financing for the Phase II Component from the proceeds of a potential tax increment financing unlock scenario for the Oregon Convention Center Urban Renewal Area.

### 3.2. Plans, Drawings and PDC Review.

**3.2.1. Design Work by Developer.** Developer will diligently pursue the design work necessary to construct the Project. Developer and PDC will cooperate to complete the following described design review process in the spirit of an open, collaborative and timely effort. Developer and PDC have agreed to the Design Development Drawings for the Phase I Component of the Project and to the Scope of Development and the Conceptual Plans for the Phase II Component of the Project that is the basis for entering into this Agreement. Design Development Drawings submitted to PDC for review shall be at a level of detail and sufficiency commensurate with the industry standard in the City of Portland for such documents that a reasonable developer would submit for City permitting purposes. PDC and the Developer anticipate modifying the Conceptual Plans and revising the current

Scope of Development for the Phase II Component. In that case and after such modifications and revisions have been reflected in an appropriate amendment to this Agreement, the Drawings prepared for the Phase II Component will conform to the modified Scope of Development for the Phase II Component. All documents, drawings, plans and specifications referred to in this Section 3.2.1 are collectively referred to throughout this Section 3 as the “**Drawings.**”

- (1) For the Phase I Component, Developer shall prepare 50% and final Construction Plans and Specifications and submit them to PDC for review and approval in accordance with the Schedule of Performance.
- (2) Except as described in Section 3.2.1(3), for each Physical Element of the Phase II Component, Developer shall prepare 50% and 90% Schematic Design Documents, 50% and 90% Design Development Drawings and 50% and final Construction Plans and Specifications and submit them to PDC for review and comment. Except as described in Section 3.2.1(3), the Drawings for each Physical Element of the Phase II Component must be submitted to PDC for review and comment only and the final approval of those Drawings shall remain at all times with the Developer and any governmental entity whose approval is required as a matter of law. After obtaining PDC’s input and comments, Developer shall then submit the Drawings to the City, as required for any land use permit review, including, but not limited to any City design review process.
- (3) All Drawings for any Physical Element of the Phase II Component to be constructed in whole or in part on the PDC Property must be submitted to PDC for review and approval. In addition, the Design Development Drawings for any Physical Element of the Phase II Component to be constructed in whole or in part on the PDC Property must be approved in writing by PDC prior to Developer submitting its application to the City for any land use permit review for that Physical Element, including, but not limited to any City design review process, and the final Construction Plans and Specifications for that Physical Element must be approved in writing by PDC prior to their submittal to the City of Portland Bureau of Development Services for building permit approval.

**3.2.2. Standards of Design Review.** PDC will respond in writing to requests for review and comment or approval within ten (10) Business Days of a request. PDC’s response shall take the form of written comments including approval, rejection, or recommendations, made with specificity. PDC’s failure to respond within the ten (10) Business Day period will be deemed approval or acceptance. PDC will not unreasonably withhold or delay its approval (to the extent such approval is required) of any Drawings for the Project that, in PDC’s reasonable opinion with well-articulated reasons, adequately address the following design objectives, taking into account the financial and market constraints on the overall Project together with existing City and PDC policies:

- (1) **Pedestrian Environment.** The design and materials of the Project meet the City’s design standards which are intended to foster a safe, friendly and active pedestrian environment in the Project area, with window glass that is transparent and non-reflective, landscape improvements, and storefront entries located on the street.
- (2) **Neighborhood Compatibility.** The design for site and building details, materials and colors are reasonably compatible with and complementary to the Project’s neighborhood, and incorporate high-quality, durable materials. The design evidences methods to mitigate immediate neighbor impacts, including, but not limited to, the following topics: outdoor storage, garbage, noise, nighttime operations, deliveries, graffiti, outdoor maintenance, outdoor lighting, and odors.
- (3) **Transit Oriented Development.** The design is transit-oriented and supports the regional light rail, street car, and other mass transit systems.

- (4) **Regional Entertainment Identity.** The design furthers the development of a regional entertainment identity for the area that reflects the values and characteristics of Oregon to the extent possible in the marketplace. The design capitalizes on the existing event-driven nature of the area by creating more diverse business and neighborhood activities.
- (5) **Serves as a Catalyst.** The Project is a well-designed, high quality, sustainable “green” development, and is designed to support the Oregon Convention Center and proposed Headquarters Hotel, to enhance the neighborhood, and to encourage additional private investment in the area.

**3.2.3. Scope of PDC Design Review.** PDC’s review and comment on (or review and approval of, as the case may) the Drawings for each Component will occur in stages and comment or approvals, as the case may be, will be progressive in nature, but expressly limited to the following:

- (1) **50% Schematic Design Documents (Phase II Component Only).** Elements, including green building elements, depicted in the 50% Schematic Design Documents, which were not approved, which were not at a level of detail to be approved, or which are not in conformance with the approved Conceptual Plans.
- (2) **90% Schematic Design Documents (Phase II Component Only).** Elements, including green building elements, depicted in the 90% Schematic Design Documents, which were not approved, which were not at a level of detail to be approved, or which are not in conformance with the approved 50% Schematic Design Documents.
- (3) **50% Design Development Drawings (Phase II Component Only).** Elements, including green building elements, draft Design Review application and narrative, and material and color samples, depicted in the 50% Design Development Drawings which were not approved, which were not at a level of detail to be approved, or which are not in conformance with the approved 90% Schematic Design Documents.
- (4) **90% Design Development Drawings (Phase II Component Only).** Elements, including green building elements, final Design Review application and narrative, material and color samples, and Design Development Drawings cost estimate, depicted in the 90% Design Development Drawings which were not approved, which were not at a level of detail to be approved, or which are not in conformance with the approved 50% Design Development Drawings.
- (5) **50% Construction Plans and Specifications.** Elements, including green building elements, 50% Construction Plans and Specifications cost estimate, and material and color samples, depicted in the 50% Construction Plans and Specifications which were not approved, which were not at a level of detail to be approved, or which are not in conformance with the approved 90% Design Development Drawings or, with respect to the Phase I Component, the Design Development Drawings approved by PDC.
- (6) **Final Construction Plans and Specifications.** Elements, including green building elements, final Construction Plans and Specifications cost estimate, and material and color samples, depicted in the final Construction Plans and Specifications which were not approved, which were not at a level of detail to be approved, or which are not in conformance with the approved 50% Construction Plans and Specifications.

**3.2.4. Changes in Approved Drawings.** If Developer wants to substantially change any Drawings or plans after approval or comment, as the case may be, by PDC, Developer shall submit the proposed changes to PDC for approval or comment, as the case may be. 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 or commented on the changes, as the case may be. PDC shall assist Developer throughout PDC design review and any land use process of the appropriate bureaus or agencies within the City; provided, however, PDC does not represent or warrant that its assistance will guarantee approval.

- 3.2.5. Project Rendering.** Developer will provide PDC with a color rendering of the Component at the time the final Construction Plans and Specifications for that Component are submitted to PDC for PDC approval.
- 3.2.6. Community Outreach.** Developer shall endeavor to ensure that the Lloyd District Community Association, the Lloyd District Transportation Management Association and local neighbors and residents are kept informed of Project progress and provided specific opportunities to comment upon the proposed Project including design, operations and community benefits. The Developer may achieve this objective through meetings with adjacent residents, broader neighborhood meetings, a project newsletter, etc. PDC shall help coordinate outreach with the community and provide outreach assistance as mutually determined and consistent with a public participation plan developed by PDC.
- 3.2.7. PDC Design Review Process.** The PDC Project Manager will involve PDC internal design staff to assist in PDC's review of the Project design. PDC may, at its discretion and at its cost, also retain an outside design advisor to assist PDC in its review of the Project design. PDC staff and its outside design advisor, if any, may attend regularly scheduled design meetings for the Project on a schedule mutually agreeable to PDC staff and Developer. In an effort to streamline the design review approval process by PDC, the Developer will invite PDC's design representative(s) to attend the regularly scheduled design team meetings scheduled by the Developer or its architect. In addition, the PDC Project Manager will meet with Developer and its design team regularly as scheduled by the Parties, or upon the request of either Party to the other, to review progress on the resolution of design and related issues.
- 3.3. Prevailing Wage Laws.** The Parties hereby acknowledge that the Project is a "public work" subject to ORS 279C.800 to 279C.870 and the administrative rules adopted thereunder (the "**Oregon Prevailing Wage Law**"). Accordingly, the Parties have entered into, and shall perform and discharge their obligations under, that certain Compliance Agreement of the same date herewith in the form attached hereto as part of Exhibit N, 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.
- 3.4. Diligent Completion.** Subject to the terms and conditions of this Agreement, Developer covenants to complete development of the Project, and each Component and Physical Element of a Component, in substantial conformance with the final Construction Plans and Specifications for the Component or Physical Element of a Component, to comply with the programs described in Section 6, and to comply with the Schedule of Performance subject only to Force Majeure as provided in Section 8.9. **Subject to Force Majeure as provided in Section 8.9, Developer shall complete development of the Phase I Component no later than the date for completion of construction of the Phase I Component, as set forth in the Schedule of Performance, and shall complete development of the Phase II Component no later than the date for completion of construction of the Phase II Component, as set forth in the Schedule of Performance.** Developer agrees to provide PDC with monthly reports on construction progress from Commencement of Construction through PDC issuance of the Certificates of Completion for the construction of all Components and Physical Elements of the Project.

- 3.4.1.** Project development shall include:

- (a) Entering into all necessary architectural and construction contracts;
- (b) Securing all necessary approvals, permits and insurance coverage required by the City or reasonably required by PDC;
- (c) Securing all necessary public entitlements and building permits;
- (d) Negotiating and executing all leases with the tenants in the Project; and
- (e) Securing all financing necessary to complete the Project.

**3.5. Safety Matters; Indemnification.** Developer shall:

**3.5.1. Safety.** Comply with all safety laws and take such measures necessary to protect its employees, and PDC's employees, agents, contractors, subcontractors, licensees and invitees, and the personal property and improvements of each, from injury or damage caused by or resulting from the performance of its construction. This obligation will terminate, with respect to a particular Component or Physical Element, upon PDC's issuance of its Certificate of Completion of construction for that Component or Physical Element.

**3.5.2. Liability Claims.** Indemnify and hold PDC harmless from all claims, costs, expenses and liabilities arising from the death of, or accident, injury, loss or damage whatsoever caused to, any person or to the property of any person as occurs in the process of the construction work. This obligation will be limited, with respect to a particular Component or Physical Element, to claims, costs, expenses and liabilities that arise from activities occurring prior to PDC's issuance of its Certificate of Completion of construction for that Component or Physical Element.

**3.5.3. Indemnity from Liens.** Indemnify, defend and hold PDC harmless from and against all mechanics', materialmen's and laborers' liens (including attorneys' fees and other costs of defending against the foregoing) and all costs, expenses and liabilities arising from Developer's construction.

**3.6. Liens.** Developer agrees that in the event any statutory lien shall be filed during the term of this Agreement against any portion of the PDC Property by reason of labor, services, or materials supplied to or at the request of Developer or pursuant to any construction in the Project, Developer shall pay and discharge such statutory lien of record within sixty (60) days after the filing thereof, provided, however that Developer shall have the right to contest the validity, amount or applicability of any such respective liens by appropriate legal proceedings so long as Developer shall bond over or cash deposit over such lien so that it is removed from title to the PDC Property pursuant to applicable law. Developer may, in its sole discretion, establish a reserve sufficient to resolve any such lien in lieu of payment during the period of dispute provided that, in such event, Developer shall (a) continue to indemnify PDC pursuant to section 3.5.3 above, and (b) in the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Developer, Developer shall within ten (10) days thereafter cause the lien to be discharged of record.

**3.7. Inspection and Property Access.**

**3.7.1. Before Conveyance of Property.** Before conveying a Parcel to Developer, and pursuant to a written Permit of Entry, PDC may allow Developer and Developer's employees, agents and consultants to enter upon the Parcel, at all reasonable times and to the extent necessary to carry out the purposes of this Agreement.

**3.7.2. After Conveyance of Property.** After conveying a Parcel to Developer, during construction of the Project, and until a Certificate of Completion is issued for the Component to be constructed on that Parcel, Developer's work shall, upon reasonable



notice of not less than forty-eight hours, be accessible at all reasonable times for inspection by representatives of PDC; provided, however, PDC agrees not to interfere with the work occurring on the Parcel. PDC hereby waives all claims of loss, injury, or other physical harm arising from such site visits.

**3.8. Certificate of Completion(s) for Phase I and Phase II Components.**

**3.8.1. When Developer is Entitled to Certificate of Completion – Phase I Component.** Upon substantial completion (as defined below) of the Phase I Component, PDC will furnish Developer with a Certificate of Completion for the Phase I Component, substantially in the form attached hereto as Exhibit G-1. The Phase I Component will be deemed to be substantially complete when (i) PDC reasonably determines that the Phase I Component is completed according to the final Construction Plans and Specifications for the Phase I Component, except for punchlist items which do not materially affect the use of the Phase I Component for the purposes intended under this Agreement, (ii) the City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Phase I Component, and (iii) Developer has submitted all materials to the United States Green Building Council necessary to obtain LEED New Construction Silver Certification for the Phase I Component and (iv) PDC reasonably determines that any other improvements required by the terms of this Agreement to have been completed at the time the Phase I Component are complete in all material respects.

**3.8.2. When Developer is Entitled to Certificate of Completion – Phase II Component.** Upon substantial completion (as defined below) of a Physical Element of the Phase II Component, PDC will furnish Developer with a Certificate of Completion for such Physical Element of the Phase II Component, substantially in the form attached hereto as Exhibit G-2; provided, however, that PDC will not furnish Developer with a Certificate of Completion for the final Physical Element of the Phase II Component until all Programmatic Elements are complete. A Physical Element of the Phase II Component will be deemed to be substantially complete when (i) PDC reasonably determines that the Physical Element of the Phase II Component is completed according to the final Construction Plans and Specifications for such Physical Element of the Phase II Component, except for punchlist items which do not materially affect the use of that Physical Element of the Phase II Component for the purposes intended under this Agreement, (ii) the City has issued a temporary or permanent Certificate(s) of Occupancy with respect to that Physical Element of the Phase II Component, (iii) Developer has submitted all materials to the United States Green Building Council necessary to obtain LEED New Construction Silver Certification for that Physical Element of the Phase II Component, and (iv) PDC reasonably determines that any other improvements required by the terms of this Agreement to have been completed at the time that Physical Element is complete are complete in all material respects. In addition, upon substantial completion (as defined below) of the Block 47 Improvements, PDC will furnish Developer with a Certificate of Completion for the Block 47 Improvements, substantially in the form attached hereto as Exhibit G-3.

**3.8.3. Meaning and Effect of the Certificate of Completion.** The Certificates of Completion shall provide for termination of construction obligations under this Agreement and limitation of remedies of PDC as expressly provided for in each Certificate of Completion. Issuance of a Certificate of Completion for one Component or one Physical Element does not affect the obligations of Developer to complete the other Physical Elements or Components of the Project.

**3.8.4. Form of Certificate of Completion; Procedure Where PDC Refuses to Issue.** A Certificate of Completion shall be in a form that can be recorded in the real property records of Multnomah County. At Developer's request, the Certificate of Completion shall state which terms and conditions of this Agreement are of no further force and effect. If

PDC refuses or fails to provide a Certificate of Completion in accordance with this section, then PDC, within ten (10) Business 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 subject Component or Physical Element 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. Upon receipt of such detailed statement from PDC, Developer shall complete the improvements and/or cure the alleged default in a manner responsive to the stated reasons for disapproval. PDC's failure to furnish Developer with such detailed written statement within such ten (10) Business Day period shall be deemed PDC's approval of Developer's request for the Certificate of Completion.

**3.8.5. Obligations Surviving Completion of Construction.** The obligations described in Section 3.5.2 (to the extent of claims, costs, expenses and liabilities that arise from activities occurring prior to issuance of the Certificate of Completion) Section 3.5.3, Section 3.6, Section 4.1, Section 9.2, Section 9.23, and Section 9.24 of this Agreement, and any other sections identified in this Agreement as surviving completion of construction of the Project, shall survive completion of construction of the Project and the issuance of the Certificates of Completion.

#### **4. ENVIRONMENTAL MATTERS**

**4.1. Indemnification.** Developer shall be responsible for compliance with all Environmental Laws with respect to a Parcel and its business and the operation of the Component related to that Parcel from and after the date of conveyance of the Parcel related to that Component to Developer. Developer shall defend, indemnify and hold harmless PDC, its successors and assigns, against any and all damages, claims, losses, liabilities and expenses, 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 party or parties, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer; provided, however, that the foregoing indemnity shall not include damages, claims, losses, liabilities or expenses, including, without limitation, reasonable legal, accounting, consulting, engineering or other expenses that may be imposed on, incurred by or asserted against PDC under the Environmental Laws as a result of a Release of Hazardous Substances on a Parcel by PDC, or its agents, contractors or tenants, during PDC's ownership of the Parcel and that is not disclosed in the Environmental Reports.. The indemnity set forth in this Section 4.1 shall survive the issuance any Certificate of Completion.

**4.2. Contribution.** The foregoing indemnity does not limit any rights of contribution that the Parties may have against others under applicable law or agreement. The indemnity is intended only as an allocation of responsibility between the Parties.

#### **5. ASSIGNMENT PROVISIONS**

**5.1. Restrictions on Transfer of the Property or Assignment of the Agreement during Construction.** Because it is a municipal entity, PDC is uniquely benefited by completion of the Project. Developer and Developer's management team are uniquely qualified to construct and manage the Project. Developer's participation in the Project is a material inducement for PDC's participation in and support of the Project. Accordingly, Developer's assignment of its interests in this Agreement or the PDC Property is subject to the restrictions set forth below. The assignment restrictions in this Section 5.1 shall not apply to any transfers of a Parcel or any Element or Component that become effective at or after the issuance by PDC of the Certificate of Completion for that Element or Component or the Certificate(s) of Completion for all Elements or Components involving that Parcel, as the case may be.

- 5.1.1.** Except as provided in Sections 5.2 and 5.3, Developer shall not partially or wholly dispose of or agree to dispose of the PDC Property or Developer's interest in this Agreement without the prior written approval of the PDC.
- 5.1.2.** Except as provided in Sections 5.2 and 5.3, Barry Schlesinger and Wayne Rembold, or entities in which they hold a controlling ownership interest, (a) shall have a material ownership interest in the Developer and (b) shall either (i) have management control of the operations of the Developer as the manager or general partner of Developer (or as an executive officer with equivalent management control of Developer's operations) or (ii) have management control of the operations of Developer pursuant to a management contract with Developer.
- 5.2. Exceptions to Restrictions on Pre-Completion Transfer.** The restrictions set forth in Section 5.1 shall not apply to the following assignments :
- 5.2.1.** An assignment to an entity in which Barry Schlesinger and Wayne Rembold, or entities in which they hold a controlling ownership interest, (a) have a material ownership interest and (b) have either (i) management control of the operations thereof, as the manager or general partner thereof (or as an executive officer with equivalent management control of the operations thereof) or (ii) have management control of the operations thereof pursuant to a management contract with the entity. Developer shall provide to PDC such documentation as PDC may reasonably request to evidence such an assignment and the restrictions set forth in Sections 5.1.1 and 5.2.1 shall apply to the assignee.
- 5.2.2.** Subject to the prior written consent of PDC, an assignment to an entity that has (a) financial resources that equal or exceed that of Developer and its principals and (b) sufficient technical development capability and experience to complete the Project in accordance with the terms of this Agreement. PDC shall not unreasonably withhold, condition or delay its consent to an assignment that satisfies foregoing standard and such consent may be provided by PDC's Executive Director. Developer shall provide to PDC such information and documents as PDC may reasonably request to determine whether the proposed assignment satisfies the foregoing standard, including copies of the proposed assignment documents. The restrictions set forth in Section 5.1.1 shall apply to any assignee under this Section 5.2.2 and PDC may impose on the assignee, assignment restrictions equivalent to that set forth in Section 5.1.2 with respect to the principals of the assignee.
- 5.2.3.** No assignment shall constitute a release of Developer from its obligations under this Agreement and, as part of any assignment, the assignee shall assume the obligations of Developer under this Agreement..
- 5.3. Approved Pre-Completion Transfers.** Notwithstanding Section 5.1 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 any Mortgage(s) which Developer may cause to attach to a Parcel to secure financing provided for development of the Component to be constructed on that Parcel.
- 5.4. Transfers After Completion.** After PDC's issuance of a Certificate of Completion for a Component or Physical Element of the Project, Developer may transfer its interest, or portions of its interest in such Component or Element of the Project, or portions of this Agreement related thereto, without restriction, consent or approval by the PDC.

## 6. DEVELOPMENT REQUIREMENTS

**6.1. Construction Wage Policy.** PDC has adopted a Construction Wage Policy to increase the opportunity for Portlanders to access family and living wage jobs as an important means of wealth creation and to expand opportunities for People of Color and women in the construction trades to ensure that benefits of PDC's investments are equitably disbursed. PDC has determined that the Project is subject to the Construction Wage Policy. Accordingly, in connection with the Project, the Developer shall comply with the Construction Wage Policy, which requires Developer to enter into a Project Apprenticeship and Equity Agreement ("PAE Agreement") with PDC and to require its General Contractor to enter into the PAE Agreement and comply with the Construction Wage Policy. The PAE Agreement shall set forth, among other things, specific goals for increased participation by People of Color and women on the Project. The Construction Wage Policy is set forth in Attachment A of the Fair Contracting and Hiring Guideline Index, and made a part hereof. The Fair Contracting and Hiring Guideline Index is attached to this Agreement as Exhibit E, and made a part hereof.

**6.2. 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 Guidelines are set forth in Attachment B of the Fair Contracting and Hiring Guideline Index, and made a part hereof.

The Business and Workforce Equity Policy is comprised of two (2) separate and distinct programs:

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

PDC has determined that the Project is subject to both the Business Equity Program and the Workforce Equity Program as follows:

**6.2.1. Business Equity Program.** The purpose of the Business Equity Program is to ensure that PDC provides professional, supplier and construction contracting opportunities to State certified minority-owned, women-owned and emerging small businesses (collectively, "Certified Firms") and to encourage the participation of businesses owned by veterans in connection with PDC projects. The utilization goal for Certified Firms in connection with the Project is twenty percent (20%) of the Project's hard construction costs. The Developer shall comply with the Business Equity Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the Business Equity Program and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the Business Equity Program 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 Business Equity Program shall constitute a breach of a material provision of this Agreement.

**6.2.2. 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. Projects subject to the Workforce Equity Program must comply with PDC's Workforce Training and Hiring Program which requires contractors to: (i) ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the contractor and subcontractors are worked by state-registered apprentices; and (ii) make all reasonable and necessary efforts to employ a

workforce that reflects the diversity of the City of Portland. In connection with the Project, the Developer shall comply with the Workforce Equity Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the Workforce Equity Program and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the Workforce Equity Program in connection with the Project. Developer shall also comply with all portions of the Workforce Equity Program applicable directly to Developer. The failure of Developer or Developer's General Contractor, or the subcontractors thereof, to comply with the Workforce Equity Program shall constitute a breach of a material provision of this Agreement.

- 6.3. Green Building Policy.** In connection with the Project, Developer shall comply with PDC's Green Building Policy. Among other things, this policy requires Developer to construct the Project in the manner necessary to meet the applicable Green Building standard set forth in the Green Building Policy. Within ten (10) days after the Effective Date, Developer shall provide PDC with the initial Green Building Progress Report, and Developer shall submit subsequent Green Building Progress Reports to PDC every thirty (30) days thereafter until PDC has issued a Certificate of Completion for the Project. If the applicable Green Building standard is some level of LEED certification, then Developer shall submit all materials necessary to obtain the applicable level of LEED 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.
- 6.4. EEO Certification.** Developer shall comply with the City's EEO Certification Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the EEO Certification Program and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the EEO Certification Program. Developer shall also comply with all portions of the EEO Certification Program applicable directly to Developer and with all applicable provisions of Federal or state statutes and regulations and City ordinances concerning equal employment opportunities for persons engaged in the Project. The failure of Developer or Developer's General Contractor, or the subcontractors thereof, to comply with the EEO Certification Program or other applicable equal employment opportunity law shall constitute a breach of a material provision of this Agreement. The EEO Certification Program is set forth in Attachment C of the Fair Contracting and Hiring Guideline Index, and made a part hereof.
- 6.5. Special Conditions and Covenants.**
- 6.5.1. Neighborhood Impacts.** Developer shall address neighbor impacts in the manner required in Section 3.2.2(2) herein.
- 6.5.2. Community Benefits.** Developer shall make a good faith effort to hire and procure from the local community for services and contracting opportunities. This might include landscaping, maintenance, janitorial, temporary staffing, and other such services as well as materials and goods procurement. PDC will facilitate access to a database of pertinent North and Northeast Portland businesses. Developer will provide to PDC such information about community hiring as PDC may reasonably request from time to time.
- 6.6. Right of First Opportunity on Peters Property and Byrne Property.** At such time as Developer acquires title to either or both of the Peters Property and the Byrne Property, and if such acquisition occurs prior to Commencement of Construction on the Parking Element of the Phase II Component and at least one additional Physical Element of the Phase II Component, Developer agrees to grant PDC a right of first opportunity (the "**Right of First Opportunity**") on either or both the Peters Property or the Byrne Property, as the case may be, by execution and delivery to PDC of an Agreement of Right of First Opportunity, substantially in the form attached hereto as Exhibit M and made a part hereof, within ten (10) Business Days of the

acquisition. PDC agrees to accept such Right of First Opportunity, if at all, by executing the Agreement of Right of First Opportunity within fourteen (14) Business Days after receipt of same from Developer and recording the same in the real property records of Multnomah County.

- 6.7. Lien on Peters Property and Byrne Property.** To secure Developer's performance of its obligations under this Agreement to complete the Phase II Component, Developer shall, no later than the Closing on the Block 47 Parcel, grant PDC a lien on and security interest in the Peters Property and Byrne Property by execution and delivery to PDC of a Commercial Trust Deed encumbering Developer's interest in the Peters Property and Byrne Property, in customary form and naming PDC as the beneficiary (the "Developer Property Trust Deed"). If Developer's lenders for the Phase II Component request PDC to subordinate its lien on and security interest in the Peters Property and the Byrne property to such lenders' loan documents, PDC shall execute such subordination agreement or other documents as are necessary to evidence such subordination, after PDC's approval of the terms and conditions thereof. PDC will not unreasonably withhold, condition or delay approval of the subordination terms and conditions. Concurrently with PDC's execution of delivery of a Certificate of Completion for a Physical Element of the Phase II Component, PDC shall execute and deliver to Developer a partial reconveyance of the Developer Property Trust Deed reconveying to Developer that portion of the Peters Property or the Byrne Property included as part of the Physical Element for which the Certificate of Completion is issued.

## **7. PERMITTED MORTGAGES**

### **7.1. Mortgagee Protection Provisions.**

- 7.1.1. Effect of Revesting on Mortgages.** Any reversion and revesting of the PDC Property or any portion thereof in PDC and all other post-conveyance rights and remedies of PDC pursuant to this Agreement shall always be subordinate and subject to and limited by, and shall not defeat, render invalid, or limit in any way (except as expressly set forth in Sections 7.1.2 and 7.1.3 below) any lien, Mortgage, or security interest approved by PDC and authorized by this Agreement.
- 7.1.2. 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 improvements in the PDC Property or to guarantee such construction or completion, provided, however that nothing in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the PDC Property or any part thereof to any uses, or to construct any improvements thereon other than those uses or improvements provided or permitted in this Agreement.
- 7.1.3. Copy of Notice of Default to Mortgagee.** If PDC delivers any notice or demand to Developer with respect to any breach of or default by Developer in its obligations or covenants under 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.
- 7.1.4. Mortgagee's Options to Cure Defaults.** After any default in or breach of this Agreement by Developer where Developer fails to cure or remedy said default or breach, then each Mortgagee may, at its option, cure or remedy such breach or default within thirty (30) days after passage of the latest date for Developer's cure of the default, and if permitted by its loan documents, to add the cost thereof to the Mortgage debt and the lien of its Mortgage. If the breach or default is with respect to construction of the improvements, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction

or completion of the improvements, provided that the Mortgagee notifies PDC in writing of its intention to complete the Project according to the approved final Construction Plans and Specifications. Any Mortgagee who properly completes the Project, or a Component thereof, shall be entitled to issuance of a Certificate of Completion, upon written request made to PDC following the procedures set forth in Section 3.8 above.

**7.1.5. Amendments Requested by Mortgagee.** PDC shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee (including subordination of any Right of First Opportunity) proposing to make a loan to Developer secured by a security interest in all or any part of the PDC Property and/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 PDC Property.

## **8. DEFAULT; REMEDIES**

### **8.1. Default and Cure.**

**8.1.1. Default by Developer.** Subject to Section 8.9 below, a Developer default shall occur if Developer breaches any material provision of this Agreement, including but not limited to, Developer's failure to adhere to the Schedule of Performance for any element of the Schedule of Performance that is the responsibility of Developer, whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after Developer receives written notice from PDC specifying the breach. Developer's failure to act diligently and in good faith to satisfy conditions over which it has control or influence is a breach of a material provision of this Agreement. In the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, a default shall occur if Developer does not commence the cure of the breach within sixty (60) days after Developer receives written notice from PDC and thereafter diligently prosecute to completion such cure within one hundred twenty (120) days after the written notice from PDC. A Developer default also shall occur if Developer makes any 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. A Developer default shall occur, and PDC shall be irreparably harmed by such default, if Developer or its assignee constructs any Component of the Project in a manner materially inconsistent with PDC-approved plans as provided in Paragraph 3.2 hereof or this Agreement. Developer shall not be in default hereunder for failure to pay any tax, assessment, lien or other charge if Developer in good faith is contesting the same and, if necessary to avoid foreclosure, has furnished an appropriate bond or other undertaking to assure payment in the event Developer's contest is unsuccessful.

**8.1.2. Default by PDC.** Subject to Section 8.9 below, a PDC default shall occur if PDC breaches any material provision of this Agreement, including but not limited to, PDC's failure to adhere to the Schedule of Performance for any element of the Schedule of Performance that is the responsibility of PDC, whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after PDC receives written notice from Developer specifying the breach. PDC's failure to act diligently and in good faith to satisfy conditions over which it has control or influence is a breach of a material provision of this Agreement. In the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, a default shall occur if PDC does not commence the cure of the breach within sixty (60) days after PDC receives written notice from Developer and thereafter diligently prosecute to completion such cure within one hundred twenty (120) days after written notice from Developer.

### **8.2. PDC's Pre-Conveyance Remedies.**

- 8.2.1.** If a Developer default (as described in Section 8.1.1) occurs before any of the PDC Property is conveyed to Developer, PDC may, at its option: (i) terminate this Agreement by written notice to Developer, without waiving any cause of action PDC may have against Developer, and seek monetary damages against Developer; or (ii) specifically enforce the obligations of Developer under this Agreement. Notwithstanding the preceding sentence or anything to the contrary in Section 8.4 below, PDC shall not seek consequential damages from Developer in connection with an event of Developer default.
- 8.2.2.** If a Developer default (as described in Section 8.1.1) occurs after conveyance of the Block 49 Parcel (including but not limited to Developer's failure to obtain the required Certificate of Completion for the Phase I Component according to the Schedule of Performance) but before conveyance of the Block 47 Parcel, PDC may, at its option: (i) terminate the rights of Developer to acquire the Block 47 Parcel and develop the Phase II Component by giving written notice to Developer, without waiving any cause of action for monetary damages PDC may have against Developer and seek monetary damages against Developer; (ii) specifically enforce the obligations of Developer under this Agreement; or (iii) exercise the remedies set forth in Section 8.4.1, as applicable. Notwithstanding the preceding sentence or anything to the contrary in Section 8.4 below, PDC shall not seek consequential damages from Developer in connection with an event of Developer default. The remedies set forth in Sections 8.2.2(i) and (iii) are cumulative and may be exercised individually or collectively.
- 8.2.3.** If a Developer default (as described in Section 8.1.1) occurs after conveyance of the Block 47 Parcel (including but not limited to Developer's failure to obtain the required Certificate of Completion for an Element of the Phase II Component according to the Schedule of Performance) but before conveyance of the Block 49 Parcel, PDC may, at its option: (i) terminate the rights of Developer to acquire the Block 49 Parcel and develop the Phase I Component by giving written notice to Developer, without waiving any cause of action for monetary damages PDC may have against Developer, and seek monetary damages against Developer; (ii) specifically enforce the obligations of Developer under this Agreement; (iii) foreclose the lien of the Developer Property Trust Deed, or exercise any of the other remedies thereunder, subject to any senior lender liens on the Developer Property; or (iv) exercise the remedies set forth in Section 8.4.2, as applicable. Notwithstanding the preceding sentence or anything to the contrary in Section 8.4 below, PDC shall not seek consequential damages from Developer in connection with an event of Developer default. The remedies set forth in Sections 8.2.3(i), (iii) and (iv) are cumulative and may be exercised individually or collectively.
- 8.2.4.** If a Developer default (as described in Section 8.1.1) occurs after conveyance of both the Block 49 Parcel and the Block 47 Parcel (including but not limited to Developer's failure to obtain the required Certificate of Completion for an Element or Component according to the Schedule of Performance), PDC may, at its option: (i) seek monetary damages against Developer; (ii) specifically enforce the obligations of Developer under this Agreement; (iii) if the default occurs with respect to the Phase II Component, foreclose the lien of the Developer Property Trust Deed, or exercise any of the other remedies thereunder, subject to any senior lender liens on the Developer Property; or (iv) exercise the remedies set forth in Sections 8.4.1 or 8.4.2, as applicable. Notwithstanding the preceding sentence or anything to the contrary in Section 8.4 below, PDC shall not seek consequential damages from Developer in connection with an event of Developer default. The remedies set forth in Sections 8.2.4(i), (iii) and (iv) are cumulative and may be exercised individually or collectively.
- 8.3. Restoration.** If, prior to acquiring a Parcel, Developer performs any construction activities on that Parcel and Developer does not acquire that Parcel for any reason, Developer agrees, upon PDC request, to restore that Parcel to substantially the condition that existed prior to the time



that Developer performed any activities thereon. PDC may elect to require that any improvements Developer has installed on the Parcel remain on the Parcel.

#### **8.4. PDC's Post-Conveyance Remedies.**

**8.4.1. Failure to Complete Construction of Phase I Component.** If a Developer default (as described in Section 8.1.1 and other than a default solely with respect to the Phase II Component) occurs after Closing of the conveyance of the Block 49 Parcel, including but not limited to Developer's failure to comply with the portions of the Schedule of Performance applicable to the Phase I Component or obtain the required Certificate of Completion for the Phase I Component according to the Schedule of Performance, then PDC shall have the following remedies:

- (a) Subject to the Mortgagee protection provisions set forth in Section 7.1, the right to re-enter and take possession of the Block 49 Parcel, and to terminate (and revest in PDC) the estate in the Block 49 Parcel conveyed by the Deed, terminate Developer's right to develop the Phase I Component, and to resell the Block 49 Parcel pursuant to Section 8.5 hereof, it being the intent of this provision together with other provisions of this Agreement, that the conveyance of the Block 49 Parcel to Developer shall be made upon, and that the Deed to the Block 49 Parcel shall provide for, a condition subsequent to the effect that in the event of default by Developer (other than a default solely with respect to the Phase II Component), PDC, at its option, may upon 60 days written notice (hereinafter "**Notice of Block 49 Termination**") to Developer and the Escrow Agent declare a termination in favor of PDC of the title, and all the rights and interest in the Block 49 Parcel. After delivery of such Notice of Block 49 Termination, and in the event Developer fails to remedy, end or abrogate such default within the 60-day period in the manner stated in the Notice of Block 49 Termination, all the title and rights and interest in the Block 49 Parcel conveyed to Developer by Deed, or to any successor or permitted assigns of Developer, shall be reconveyed to PDC by quitclaim deed pursuant to the escrow instructions, each as set forth in Exhibit H. Any delay by PDC in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 8.4 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.

**8.4.2. Failure to Complete Construction of Phase II Component.** If a Developer default (as described in Section 8.1.1 and other than a default solely with respect to the Phase I Component) occurs after Closing of the conveyance of the Block 47 Parcel, including but not limited to Developer's failure to comply with the portions of the Schedule of Performance applicable to the Phase II Component, or obtain the required Certificate of Completion for each Physical Element of the Phase II Component and the Block 47 Improvements according to the Schedule of Performance, then PDC shall have the following remedies:

- (a) Subject to the Mortgagee protection provisions set forth in Section 7.1, the right to re-enter and take possession of the Block 47 Parcel, and to terminate (and revest in PDC) the estate in the Block 47 Parcel conveyed by the Deed, terminate Developer's right to develop the Phase II Component, and to resell the Block 47 Parcel pursuant to Section 8.5 hereof, it being the intent of this provision together with other provisions of this Agreement, that the conveyance of the Block 47 Parcel to Developer shall be made upon, and that the Deed to

the Block 47 Parcel shall provide for, a condition subsequent to the effect that in the event of default by Developer (other than a default solely with respect to the Phase I Component), PDC, at its option, may upon 60 days written notice (hereinafter “**Notice of Block 47 Termination**”) to Developer and the Escrow Agent declare a termination in favor of PDC of the title, and all the rights and interest in the Block 47 Parcel. After delivery of such Notice of Block 47 Termination, and in the event Developer fails to remedy, end or abrogate such default within the 60-day period in the manner stated in the Notice of Block 47 Termination, all the title and rights and interest in the Block 47 Parcel conveyed to Developer by Deed, or to any successor or permitted assigns of Developer, shall be reconveyed to PDC by quitclaim deed pursuant to the escrow instructions, each as set forth in Exhibit H. Any delay by PDC in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 8.4 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.

**8.5. PDC Resale.** If title to a Parcel shall revert in PDC in accordance with the provisions of Section 8.4 above, PDC may, at its option, bring the improvements on the Parcel to a state of completion deemed by PDC as reasonably necessary to protect it 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 Parcel and such improvements (subject to Mortgage(s) and leasehold interests permitted by this Agreement) as soon and in such a manner as PDC shall find feasible and consistent with the objectives of such laws, 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 and in accordance with the uses specified in the Urban Renewal Plan. Upon such resale, the proceeds thereof shall be applied as follows:

**8.5.1. PDC Reimbursement.** First, to PDC on its own behalf to reimburse PDC for all costs and expenses reasonably incurred in connection with the recapture, management and resale of the Parcel and its improvements, including but not limited to, salaries of personnel in connection with the recapture, management and resale of the Parcel; finishing construction of the Project improvements that were Developer’s responsibility to construct on the Parcel but were done by or on behalf of PDC; all taxes, assessments and water and sewer charges with respect to the Parcel or part thereof (or, in the event the Parcel is exempt from taxation or assessment of such charges during the period of ownership thereof by PDC or Developer, an amount equal to such taxes, assessments, or charges (as determined by the County assessing official) as would have been payable if the Parcel were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Parcel or part thereof at the time of re-vesting of title thereto in PDC or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successor or transferees excluding any mortgage if the Parcel and/or the improvements are sold subject to such mortgage; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Parcel or part thereof; any amounts paid to the State or City as lease or license fees, legal fees and costs and any amounts otherwise owing PDC by the Developer or its successor or transferee;

- 8.5.2. Developer Reimbursement.** Second, to reimburse Developer, its successor or transferee, up to the amount equal to, the sum of (a) any portion of the Purchase Price of the Parcel that Developer has actually paid to PDC, and (b) the PDC-approved pre-development and development costs incurred by Developer in acquiring the Parcel and designing, arranging the financing for, and making any of the improvements on the Parcel for the Component to be constructed thereon; and
- 8.5.3. Balance to PDC.** Third, any balance remaining after any reimbursements shall be retained by PDC as its property.
- 8.6. Developer's Pre-Conveyance Remedies.** If a PDC default (as described in Section 8.1.2) occurs before PDC conveys a Parcel 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, and seek monetary damages against PDC; or (iii) specifically enforce the obligations of PDC under this Agreement. Notwithstanding the preceding sentence, Developer may not seek consequential damages from PDC in connection with PDC's default.
- 8.7. Developer's Post-Conveyance Remedies.** If a PDC default (as described in Section 8.1.2) occurs after PDC conveys a Parcel to Developer, Developer may specifically enforce the obligations of PDC under this Agreement, or seek monetary damages against PDC. Notwithstanding the preceding sentence, Developer may not seek consequential damages from PDC in connection with PDC's default.
- 8.8. 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 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 should not limit or affect the obligations of a Party under any contractual indemnities set forth herein.
- 8.9. Force Majeure**
- 8.9.1.** Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation created hereunder or progress in respect thereto if the delay in performance of such obligations (the "**Unavoidable Delay**") is due to causes that are reasonably unforeseeable, reasonably beyond its control, and without its fault or negligence, including but not limited to acts of God, acts of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, extraordinary delay in the issuance of necessary permits for the Project, malicious mischief, condemnation action, delays of litigation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar events and/or occurrences beyond the control of such Party.
- 8.9.2.** It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of PDC or Developer, as the case may be, shall be extended for the period of the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section shall, 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 the estimated time of correction. Notwithstanding any other provision of this Agreement, the time for Parties'

performance shall not be extended by one or more events of Unavoidable Delay for a cumulative period greater than 180 days unless the Parties agree to a longer period.

## 9. MISCELLANEOUS PROVISIONS

- 9.1. PDC Project Manager.** For the purposes of making determinations relating to provisions of this Agreement on behalf of PDC (but not for the purpose of approvals or modifications unless the Executive Director has delegated such authority to the Project Manager), the Executive Director of the Portland Development Commission shall designate a Project Manager. Upon the initial execution of this Agreement, the PDC Project Manager shall be Sara King. The Project Manager shall have the authority to approve changes in rentable square footage that do not deviate more than five percent (5%) from that dimension originally set forth in the Scope of Development.
- 9.2. Discrimination.** Developer, for itself and its successor and assigns, agrees that during the term of this Agreement, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation, handicap or national origin as required by law.
- 9.3. Notice.** Any notice, demand, request, or other communication (collectively referred to in this Section 9.3 as a "notice") required or permitted to be given or made by either Party to the other pursuant to this Agreement shall be in writing and shall be delivered to the other Party by delivery service (including by messenger or by overnight delivery service such as Federal Express) or sent postage prepaid by registered or certified U.S. mail (but if an address is a post office box, then by regular U.S. mail), addressed to the Party at its address set forth in Section 9.3.1 with respect to Developer and Section 9.3.2 with respect to PDC or such other address as may be designated by such Party by written notice hereunder. Notices shall be deemed given and shall be effective on the date of delivery or, if mailed, two (2) days following the date of mailing.
- 9.3.1.** In the case of a notice or communication to Developer, all notices shall be addressed as follows:

Barry Schlesinger  
BPM Development  
610 SW Alder Street, Suite 1221  
Portland, Oregon 97205

With copies to:

Wayne C. Rembold  
Rembold Properties  
1022 SW Salmon Street  
Portland, Oregon 97205

Karen M. Williams, Esq.  
Lane Powell PC  
601 Southwest Second, Suite 2100  
Portland, Oregon 97204

- 9.3.2.** In the case of a notice or communication to PDC, all notices shall be addressed as follows:

Sara King  
Portland Development Commission  
222 NW Fifth Avenue  
Portland, OR 97209-3859

With a copy to:

Portland Development Commission  
Attn: General Counsel  
222 NW Fifth Avenue  
Portland, OR 97209

- 9.4. Merger.** None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the PDC 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.
- 9.5. 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.
- 9.6. 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.
- 9.7. 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 or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, 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.
- 9.8. Choice of Law.** This Agreement shall be governed by Oregon law. Venue shall be that set forth in Section 9.15 below.
- 9.9. 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.
- 9.10. Legal Purpose.** Developer agrees that it shall use the PDC Property solely for lawful purposes.
- 9.11. 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.
- 9.12. Entire Agreement.** This Agreement and the attachments hereto are the entire agreement between the Parties. There is no other oral or written agreement between the Parties with regard to this subject matter. There is no oral or written representation made by either Party, implied or express, other than those contained in this Agreement.

- 9.13. Modifications.** Any modifications to this Agreement shall be made in writing and executed by both Parties. The Parties recognize that circumstances may change and that it may be in the interest of both Parties that this Agreement be amended from time to time. For this reason, each of the Parties will consider changes that may be proposed by the other during the term of this Agreement.
- 9.13.1.** PDC Executive Director may approve minor modifications to this Agreement without approval of the Board of Commissioners and may delegate his authority to do so to the Project Manager. “**Minor Modifications**” include:
- (a) Modifications to the Scope of Development that do not increase or decrease the proposed amount of square footage for the Phase I Component by more than 15%;
  - (b) Modifications to the Scope of Development that do not increase or decrease the proposed amount of square footage for the Phase II Component by more than 15%;
  - (c) Changes in the Schedule of Performance, when deemed warranted by the Executive Director which do not exceed one hundred eighty (180) days;
  - (d) Corrections of errors, clarifications, or minor modifications that do not change the substantive content of the Agreement; and
  - (e) Any change in the provisions governing a particular Component or Element following the issuance of a Certificate of Completion for that Component or Element.
- 9.13.2.** All other modifications to the Agreement must be approved by the Board of Commissioners.
- 9.14. Successors and Assigns.** Subject to the provisions of Section 5, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.
- 9.15. Place of Enforcement.** Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Multnomah County, or the United States District Court for the District of Oregon in Portland, Oregon.
- 9.16. 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.
- 9.17. Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the deeds, 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 PDC 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.
- 9.18. Approvals.** Where approvals of PDC are required, PDC will approve or disapprove within ten (10) Business 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 approval. Any disapproval shall state in writing 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.

- 9.19. Approval by PDC Executive Director.** Unless specified to the contrary elsewhere in this Agreement as to a particular waiver, consent or approval, whenever waiver, consent or approval by PDC is required or permitted under the terms of this Agreement, all such waivers, consents or approvals shall be given in writing from the Executive Director of PDC, or from such other PDC staff as the Executive Director has designated to give waivers, consents or approvals.
- 9.20. Recording of Memorandum of Agreement.** PDC shall provide for recording a Memorandum of Agreement within thirty (30) days of the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit F 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.
- 9.21. Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday. All periods of time shall be deemed calendar days unless specifically designated as Business Days. Business Days shall mean Monday through Friday excluding state or federal legal holidays.
- 9.22. Counterparts.** The Agreement shall be executed in multiple counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 9.23. Conflict of Interest.** No member, official, or employee of PDC shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership or other entity in which he or she is directly or indirectly interested. No member, official, or employee of PDC shall be personally liable to Developer or any successor in interest in the event of any default or breach on the part of PDC or for any amount which may become due to Developer or its successor or on any obligations under the terms of this Agreement.
- 9.24. Good Faith and Reasonableness.** The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation of a Party to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted in this Agreement by use of the phrase “sole discretion” or “sole satisfaction” applicable to such Party’s decision-making.
- 9.25. Dispute Resolution.** Except as otherwise expressly provided herein, all disputes arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal proceedings. The parties shall endeavor to resolve any disputes initially by mediation. The mediator shall be an individual mutually acceptable to the parties. A request for mediation shall be filed in writing with the other party. The parties shall share the mediator’s fee and any filing fees, equally. The mediation shall be held in Portland, Oregon at a location mutually acceptable to the parties. The mediation hearing shall occur within thirty (30) days of the request for mediation. Notwithstanding the foregoing, the parties shall not be required to submit to mediation any claims in equity, such as claims for injunctive relief.
- 9.26. No Third-Party Beneficiary(ies).** This Agreement is intended solely for the benefit of the Parties hereto and shall not give rise to any claim or cause of action in any other person.
- 9.27. Time is of the Essence** of this Agreement.
- 9.28. 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. 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.

*[Signature Pages to Follow]*



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: \_\_\_\_\_  
Bruce A. Warner, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel

**DEVELOPER:**

**STARTERRA LLC, an Oregon limited liability company**

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

Its: Member

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

Its: Member

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

This instrument was acknowledged before me on \_\_\_\_\_, 2007, by Bruce A. Warner, Executive Director of the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal PDC of the City of Portland.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

This instrument was acknowledged before me on \_\_\_\_\_, 2007 by \_\_\_\_\_, Member of STARTERRA LLC, an Oregon limited liability company, and acknowledged it to be the duly authorized act of the company.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

This instrument was acknowledged before me on \_\_\_\_\_, 2007 by \_\_\_\_\_, Member of STARTERRA LLC, an Oregon limited liability company and acknowledged it to be the duly authorized act of the company.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

**EXHIBITS**

- Exhibit A Form of Bargain and Sale Deed
- Exhibit B List of Environmental Reports
- Exhibit C Schedule of Performance
- Exhibit D Scope of Development
- Exhibit E Fair Contracting Guidelines Index
- Exhibit F Memorandum of DDA
- Exhibit G Form of Certificate of Completion
  - Exhibit G-1 Form of Certificate of Completion: Phase I Component
  - Exhibit G-2 Form of Certificate of Completion: Elements of Phase II Component
  - Exhibit G-3 Form of Certificate of Completion: Block 47 Improvements
- Exhibit H Quit Claim Deed and Escrow Instructions for Quit Claim Deed
- Exhibit I Project Budget
- Exhibit J [Reserved]
- Exhibit K Terms of Seller Financing
  - Exhibit K-1 Loan Forgiveness Performance Measures
- Exhibit L Green Building Policy
- Exhibit M Form of Right of First Opportunity
- Exhibit N Form of Oregon Prevailing Wage Law Compliance Agreement

**EXHIBIT A**  
**FORM OF**  
**BARGAIN AND SALE DEED**

After Recording Return to and  
Tax Statements to be Sent to:

STARTERRA, LLC

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**BARGAIN AND SALE DEED**

KNOW ALL MEN BY THESE PRESENTS, that 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 (which, together with any successor public agency designated by or pursuant to law, is herein called "PDC"), does hereby grant, bargain, sell and convey to **STARTERRA, LLC**, an Oregon limited liability company (the "Developer"), and unto its successors and assigns, all the following described real property, with the tenements, hereditaments and appurtenances (herein called the "Property"), situated in the County of Multnomah and State of Oregon:

*[Insert legal description of applicable Parcel here]*

The conveyance is made pursuant to that certain Agreement for Disposition and Development of Property at \_\_\_\_\_ between Developer and PDC, dated \_\_\_\_\_ 2008, a Memorandum of which was recorded on \_\_\_\_\_, 2008 as Document No. \_\_\_\_\_, Records of Multnomah County, Oregon (the "DDA"). Any capitalized terms in this Deed shall have the meanings set out in the DDA, unless otherwise defined herein. The Developer has given other value as a portion of the consideration for this conveyance.

The conveyance is subject to the following:

1. All easements, covenants, restrictions, conditions and encumbrances of record, as set out in Exhibit " 1" attached hereto and incorporated herein; and
2. A condition subsequent to this conveyance, that PDC shall have the option, in the event of a default by Developer before PDC issues a Certificate of Completion for the *[Insert reference to Component corresponding to Parcel included in this Deed]*, and upon 60 days written notice (hereinafter "Notice of Termination") to said Developer and the Escrow Agent, and in the event of the failure by Developer to remedy, end or abrogate such default within the 60-day period in the manner stated in the Notice of Termination, to then declare a termination in favor of PDC of the title, and of all the rights and interest of Developer in the Property. Developer shall reconvey the Property to PDC by quitclaim deed, pursuant to the Escrow Instructions in Exhibit H to the DDA.
3. 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 *[Insert reference to Component corresponding to Parcel included in this Deed]*, including but not limited to the right of re-entry to the Property and reversion in PDC described in subparagraph 2 immediately above.

This Deed is made by PDC pursuant to powers exercised by it under Oregon Revised Statutes Chapter 457, and Chapter XV of the Charter of the City of Portland, and for the purpose of carrying out an

urban renewal plan for the Oregon Convention Center Urban Renewal Area approved by the City Council of the City on May 18, 1989, as amended.

It is intended that the delivery of this Deed shall not effect a merger of those provisions of the DDA that are intended by the terms of said Agreement to continue after the delivery of this Deed.

TO HAVE AND TO HOLD the same unto the said Developer and unto its successors and assigns forever.

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. 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.

IN WITNESS WHEREOF, the City of Portland Development Commission, as the duly designated urban renewal agency of the City of Portland, a municipal corporation of the State of Oregon, has caused this Deed to be executed this \_\_\_\_day of \_\_\_\_\_, 200\_.

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 this \_\_\_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_ and \_\_\_\_\_ as Chairman and Secretary of the City of Portland Development Commission, on its behalf.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

**EXHIBIT B**  
**LIST OF ENVIRONMENTAL REPORTS**

1. "Preliminary Site Assessment, Block 49 and Lots 5,6, and 7 of Block 47, Portland, Oregon," Prepared by Dames & Moore, dated November 27, 1991.
2. "Phase II Environmental Site Assessment Report, PDC (Block 49) Property, Tri-Met Interstate Light Rail Project," prepared for Stacy and Witbeck, Inc., prepared by Environmental Health Management, Inc., dated February 18, 2001.
3. "Phase I Environmental Site Assessment, PDC Property, Martin Luther King, Jr. Blvd. and Holladay Street, Lots 5, 6, and 7, Block 47, Holladay's Addition, Portland, Oregon," prepared by Century West Engineering Corporation, for PDC, dated January 8, 2003.
4. "Phase I Environmental Site Assessment, Tax Lots 2700, 2800, and 2900, Block 47, Holladay's Addition, Portland, Oregon," Prepared by GeoEngineers, dated December 21, 2006.
5. "Phase I Environmental Site Assessment, Block 49, Holladay's Addition, Portland, Oregon," Prepared by GeoEngineers, dated December 21, 2006.

**EXHIBIT C**  
**SCHEDULE OF PERFORMANCE**

**EXHIBIT C-1: SCHEDULE OF PERFORMANCE (Phase I Component)**

**EXHIBIT C-2: SCHEDULE OF PERFORMANCE (Phase II Component)**

**EXHIBIT C-1**

**SCHEDULE OF PERFORMANCE  
 Phase I Component**

<b>TASK</b>	<b>DUE DATE</b>
1. Developer to submit to the City of Portland Bureau of Development Services, a Design Advice Request (DAR)	Completed
2. Developer to re-submit to the City of Portland Bureau of Development Services, a second Design Advice Request (DAR)	Completed
3. Developer to submit to the City of Portland Bureau of Development Services application for Design Review Approval	Completed
4. Developer to obtain Design Review Approval from City of Portland Bureau of Development Services	Completed
5. Developer to provide 50% Construction Plans and Specifications	12-17-09
6. PDC to complete review of 50% Construction Plans and Specifications	[10 Business Days after Developer submission]
7. Developer to provide to provide final Construction Plans and Specifications	12-20-09
8. PDC to complete review of final Construction Plans and Specifications	[10 Business Days after Developer submission]
9. Developer to secure land use approvals	As Required
10. Developer to secure building permits from BDS necessary for Commencement of Construction of the Phase I Component	12-31-09
11. Developer to provide documentation of required financing	12-17-09
12. PDC to provide final form of Deed	12-15-09
13. Developer to provide Articles of Organization, Operating Agreement, Certificate of Good Standing, and Authorizing Resolution	12-15-09
14. Developer to submit Final Construction Budget	12-11-09
15. PDC to complete review of Final Construction Budget	[10 Business Days after Developer submission]
16. Developer to provide LEED documentation pursuant to Section 1.6.1(c)(5)	12-01-09
<b>17. Closing/Conveyance of Block 49 Parcel to Developer</b>	<b>12-31-09</b>
18. Developer to begin construction	01-01-10
<b>19. Final Termination Date (if Closing does not occur by December 31, 2009)</b>	<b>03-31-10</b>
20. Developer to complete construction and secure Certificate of Occupancy for the Phase I Component (Section 3.4)	01-01-13
21. Developer to provide proof of submittals for LEED Silver certification pursuant to Section 3.8.1	01-01-13
22. Developer to request Certificate of Completion from PDC	01-01-13
23. PDC to issue Certificate of Completion (assuming compliance with DDA)	01-10-13



**EXHIBIT C-2**

**SCHEDULE OF PERFORMANCE**

**Phase II Component**

<b>TASK</b>	<b>DUE DATE</b>
1. Developer to submit to the City of Portland Bureau of Development Services, a Design Advice Request (DAR) for the Parking Element and at least one additional Physical Element of the Phase II Component	01/01/13
2.	
3. Developer to submit to the City of Portland Bureau of Development Services application for Design Review Approval for the Parking Element and at least one additional Physical Element of the Phase II Component	01/01/13
4. Developer to provide 50% Schematic Design Documents for the Parking Element and at least one additional Physical Element of the Phase II Component	01/01/13
5. PDC to complete review of 50% Schematic Design Documents for the Parking Element and at least one additional Physical Element of the Phase II Component	[10 Business Days after Developer submission]
6. Developer to provide 90% Schematic Design Documents for the Parking Element and at least one additional Physical Element of the Phase II Component	03/01/13
7. PDC to complete review of 90% Schematic Design Documents for the Parking Element and at least one additional Physical Element of the Phase II Component	[10 Business Days after Developer submission]
8. Developer to provide 50% Design Development Drawings for the Parking Element and at least one additional Physical Element of the Phase II Component	06/01/13
9. PDC to complete review of 50% Design Development Drawing for the Parking Element and at least one additional Physical Element of the Phase II Component	[10 Business Days after Developer submission]
10. Developer to provide 90% Design Development Drawings for the Parking Element and at least one additional Physical Element of the Phase II Component	09/01/13
11. PDC to complete review of 90% Design Development Drawings for the Parking Element and at least one additional Physical Element of the Phase II Component	[10 Business Days after Developer submission]
12. Developer to provide 50% Construction Plans and Specifications for the Parking Element and at least one additional Physical Element of the Phase II Component	6/16/14
13. PDC to complete review of 50% Construction Plans and Specifications for the Parking Element and at least one additional Physical Element of the Phase II Component	[10 Business Days after Developer submission]
14. Developer to provide to provide final Construction Plans and Specifications for the Parking Element and at least one additional Physical Element of the Phase II Component	09/30/14
15. PDC to complete review of final Construction Plans and Specifications for the Parking Element and at least one additional Physical Element of the Phase II Component	[10 Business Days after Developer submission]
16. Developer to secure land use approvals	As Required
17. Developer to secure building all permits from BDS and all other permits necessary for Commencement of Construction of the Parking Element and at least one additional Physical Element of the Phase II Component	06/30/14
18. Developer to provide documentation of required financing for the Parking Element and at least one additional Physical Element of the Phase II Component	06/16/14
19. PDC to provide final form of Deed	06/15/14
20. Developer to provide Articles of Organization, Operating Agreement, Certificate of Good Standing, and Authorizing Resolution	06/10/14
21. Developer to submit Final Construction Budget for the Parking Element and at	06/15/14

<b>TASK</b>		<b>DUE DATE</b>
least one additional Physical Element of the Phase II Component		
22.	PDC to complete review of Final Construction Budget	[10 Days after Developer submission]
23.	Developer to provide LEED documentation for the Phase II Component pursuant to Section 1.7.1(c)(5)	06/01/14
24.	Developer to acquire fee title to the Peters Property and the Byrne Property	06/30/14
25.	<b>Closing/Conveyance of Block 47 Parcel to Developer</b>	<b>June 30, 2014</b>
26.	Developer to begin construction	07/01/14
27.	<b>Final Termination Date (if Closing does not occur by June 30, 2014)</b>	<b>September 30, 2014</b>
28.	Developer to complete construction and secure Certificate of Occupancy for the final Physical Element of the Phase II Component (Section 3.4)	12/30/19
29.	Developer to provide proof of submittals for LEED Silver certification for the final Physical Element of the Phase II Component pursuant to Section 3.8.2	12/30/19
30.	Developer to request Certificate of Completion from PDC for the final Physical Element of the Phase II Component	12/30/19
31.	PDC to issue Certificate of Completion for the final Physical Element of the Phase II Component (assuming compliance with DDA)	1/15/20

## **EXHIBIT D SCOPE OF DEVELOPMENT**

### **General**

The Project is to be sited on the PDC Property, the Peters Property, and the Byrne Property, each as defined in the Agreement, a combined 3.8-acre site located in the Lloyd District of the City of Portland, Multnomah County, Oregon. Development of the Project should (a) provide a catalytic development in the Lloyd District with uses that support the Oregon Convention Center and the proposed Headquarters Hotel, (b) further the development of a regional entertainment identity of the area that showcases and reflects the values and characteristics of Oregon, (c) capitalize on the existing event-driven nature of the area by creating more diverse and continuous business and neighborhood activities, (d) provide a range of new housing units that support the goals in the Lloyd District Housing Strategy and (e) further the Development Vision for the Oregon Convention Center Blocks.

The Project shall consist of the Phase I Component, and also the Phase II Component, which will be a phased development consisting of several Elements (as noted in the Phase II Component summary below).

### **PHASE I COMPONENT**

The Phase I Component of the Project will consist of one office tower containing the following uses.

**Retail Space:** Minimum of approximately 3,000 s.f. of ground floor retail space, including a space that will be constructed to accommodate future retail at the southwest corner, and approximately 2,000 s.f. of bike hub space with secured long-term bicycle storage for not less than 50 bicycles.

**Parking:** Approximately 450 spaces on seven levels of parking (3 above grade and 4 below grade)

**Office Space:** Approximately 323,000 s.f., of Class A office space on 16 floors. Office space begins on the 4<sup>th</sup> floor above the parking deck. The 4<sup>th</sup> floor will have access to an amenity deck at the south side of the building above the parking deck.

**Sustainable Architecture:** Entire Phase I Component will achieve a LEED New Construction Silver standard, and will include modern highly efficient systems that use less water and energy resources.

### **PHASE II COMPONENT**

The Phase II Component of the Project will consist of several Physical Elements, including several vertical towers to be built in succession. Construction of the Phase II Component must commence with the Parking Element and at least one additional Physical Element.

The Phase II Component must include, at a minimum, the following Programmatic Elements as further described below: the Parking Element, the Retail Space Element, plus at least one of the other Programmatic Elements listed below. In all cases, at least 200 units of residential (either apartments, condominiums, seniors housing or the like) must be located in the Phase II Component. Sustainable Architecture will be LEED New Construction Silver standard for each Physical Element other than the Parking Element.

**A. Parking Element:** Adequate parking to support the Phase II Component shall be constructed in conjunction with the first other Physical Element of the Phase II Component.

**B. Retail Space Element:** minimum of 100,000 s.f. of commercial retail space, in the aggregate, in the Phase II Component. The Retail Space Element will be located on the ground floor, second floor and possibly the third floor of one or more of the Physical Elements in the Phase II Component.

**C. Other Programmatic Elements in the Phase II Component (include one or more of the following):**

**Office Element:** Minimum of 100,000 s.f. of commercial office space

**Hotel Element:** Minimum of 100 rooms

**Seniors Living Element:** Minimum of 100 units

**Apartments Element:** Minimum of 100 units

**Condominiums Element:** Minimum of 100 units

**EXHIBIT E**  
**FAIR CONTRACTING GUIDELINES INDEX**

**Attachment A** – Construction Wage Policy

**Attachment B** – Business and Workforce Equity Policy

**Attachment C** -- Equal Employment Opportunity Program

**EXHIBIT E – ATTACHMENT A**

**CONSTRUCTION WAGE POLICY**

**1. Introduction**

The purpose of the Portland Development Commission (“PDC”) Construction Wage Policy (“Policy”) is (1) to ensure that PDC projects for environmental and remediation work pay living wages to workers, and (2) to support a diverse workforce, and provide training opportunities for workers that have historically been excluded from the construction trades. The Policy was adopted by the PDC Board of Commissioners (“Board”) on January 10, 2007, and amended on April 11, 2007.

On June 28, 2007, the Oregon Legislature passed House Bill 2140 amending the Oregon Revised Statutes (“ORS”) as they relate to prevailing wage rates. The new law took effect on July 1, 2007. Its requirements are substantially similar to the wage rate requirements in the Policy, thereby making portions of the Policy unnecessary and duplicative of state law. PDC is therefore amending the Policy to eliminate the requirements that have been superseded by State law.

The remaining Policy consists of two requirements: (1) a construction wage rate applied to PDC’s environmental and demolition work, and (2) a workforce diversity component, as described below:

- A. **The Construction Wage Rate Program.** Workers involved on all Environmental Remediation and Demolition (as defined below) that equals or exceeds \$50,000 in PDC resources shall be paid wage rates no less than the Bureau of Labor and Industries (“BOLI”) standards.
- B. **The Workforce Diversity Component:** The workforce diversity component is made up of two agreements, a Workforce Diversity Strategy Agreement and a Project Apprenticeship and Equity Agreement.
  - (i) **Workforce Diversity Strategy Agreement.** This agreement is a general umbrella agreement between PDC and various organizations that sets forth commitments to develop programs to recruit, train, and employ a more diverse workforce in the Portland metropolitan area. This agreement is not project specific, but rather a general agreement with a goal of promoting programs to ensure that there is a diverse workforce within all of the construction trades.
  - (ii) **Project Apprenticeship and Equity Agreement.** This agreement is a project-specific agreement entered into by PDC, the developer and the general contractor prior to the commencement of construction of a project subject to this Policy. The agreement shall set forth project specific diversity goals for the workforce employed on that specific project.

**2. Definitions**

- A. **“Demolition”** means the removal of permanent structures from land, including destruction, deconstruction, and/or salvaging of building components.
- B. **“Direct Contracting”** includes all professional, supplier and construction services purchased directly by PDC.
- C. **“Environmental Remediation”** means the removal and disposal of environmental pollutants, including but not limited to asbestos abatement, lead based paint abatement, contaminated

soil removal, underground storage tank decommissioning and the removal and disposal of other such environmental pollutants.

- D. **“PDC Resources”** include PDC funds in the form of grants and/or loans. For purposes of calculating PDC Resources, any PDC funds used for a project in the form of grants or loans shall be combined to determine the total amount of PDC Resources. Sources of PDC Resources may include Tax Increment Financing (TIF) but do not include New Market Tax Credits and other Federal and State Tax Credits or abatements.
- E. **“PDC Wage Rate”** means wage rates under this Policy shall be, at a minimum, equal to the BOLI standards and shall include wage, fringe, and overtime rates and apprentice pay.

### 3. Policy

- A. **Application of the Construction Wage Rate Program.** The Construction Wage Rate Program shall apply to:
  - (a) All Environmental Remediation and Demolition work that equals or exceeds \$50,000 in PDC Resources or is Direct Contracting. In the event that a project under this Policy is subject to BOLI and/or Davis-Bacon, the Construction Wage Rate Program requirements shall be superseded by the State and/or Federal requirements.
  - (b) The Portland Regional Lead Hazard Control Program is exempt.
  - (c) The Executive Director in consultation with the PDC Board may grant exemptions if it is consistent with BOLI or Davis-Bacon project exemptions.
- B. **Application of the Workforce Diversity Component.** The Workforce Diversity Component shall apply to:
  - (a) All projects that are privately owned and constructed that receive \$750,000 or more in PDC Resources.
  - (b) The Workforce Diversity requirements do not apply to Direct Contracting.
- C. **Subsequent PDC Resources.** In the event that a project that was originally determined not to be subject to the Policy based on the amount of PDC Resources, but through the addition of subsequent PDC Resources meets or exceeds the dollar threshold for either the Construction Wage Rate Program or the Workforce Diversity Components, the project shall be subject to the Policy as follows:
  - (i) **Construction Wage Rate Program:** if Environmental Remediation and/or Demolition work meets or exceeds the \$50,000 threshold for total PDC Resources after subsequent PDC Resources have been contributed, the remaining Environmental Remediation and/or Demolition work shall be subject to the Construction Wage Rate Program and the Contractor shall be required to pay PDC Construction Wage Rates.
  - (ii) **Workforce Diversity Component:** if the addition of the subsequent PDC Resources occurs prior to the signing of the prime construction contract with the private developer, the entire project shall be subject to the Policy; if the addition of the subsequent PDC Resources occurs after the signing of the prime construction

contract with the private developer, then the Policy shall apply only to construction to be completed with the subsequent PDC Resources.

#### **4. General**

The following provisions shall apply to all projects that are subject to the Policy:

- A. Because PDC needs to put administrative processes in place to carry out this Policy, the Policy shall not take effect until December 1, 2007. Any project that has a memorandum of understanding, transactional document or other contract between PDC and an external party in place as of December 1, 2007, shall be exempt from this policy.
- B. PDC Wage Rates shall be posted at the construction worksite.
- C. Contractors that are on the BOLI list of ineligible cannot participate in construction projects subject to the Policy.
- D. One year after the adoption of this modified Policy, the Board will review the Policy.

#### **5. PDC Construction Wage Rate Program**

- A. PDC's Construction Wage Rate Program requires contractors performing Environmental Remediation and/or Demolition on a project receiving \$50,000 or more of PDC Resources to pay their workers no less than BOLI prevailing wage rates for that portion of the work.
- B. Elements of the Construction Wage Rate Program include:
  - (a) PDC Wage Rates shall be posted at the construction worksite.
  - (b) Contractors that are on the BOLI list of ineligible cannot participate in Environmental Remediation and Demolition projects subject to the Policy.
  - (c) Contractor must submit certified payroll to PDC for workers covered under the Construction Wage Rate Program.
  - (d) Developers, contractors and subcontractors that fail to comply with the PDC Construction Wage Rate component of this policy, as determined by PDC, shall be placed on a PDC list of ineligible and barred from participation on PDC projects for a period of two (2) years.

#### **6. Workforce Diversity Strategy Agreement**

- A. PDC, union and non-union representatives, union and non-union Joint Apprenticeship Training Committee ("JATC"), representatives from Evening Trades Apprenticeship Preparation ("ETAP") Program, Oregon Tradeswomen, Construction Apprenticeship Workforce Solutions, Inc. ("CAWS") Inc., Portland Youth Builders, Portland Community College Skill Center "PCC Skill Center", Hispanic Metro Chamber of Commerce, Job Corps, Irvington Covenant Community Development Corporation, and other relevant and qualified parties as appropriate (collectively, the "Parties") shall enter into an agreement that sets forth the Parties' commitment to develop a program for the recruitment, training, employment and retention of People of Color and Women members of the Portland metropolitan area in union and non-union apprenticeship programs through graduation with the objective of achieving a permanent



increase at the journey level in the participation of trained and licensed People of Color and Women in the construction trades in the Portland metropolitan area. In developing this agreement, PDC will work with existing collaborative efforts to strengthen and enhance efforts to increase the representation of People of Color and Women in the construction trades.

B. Elements of the Workforce Diversity Strategy Agreement shall include:

- (a) A process for creating a mentorship program to improve retention from the apprentice to the journey level.
- (b) A process for entry, and for direct entry into JATCs that have state approved direct entry processes from approved programs.
- (c) Trade specific goals for all union and non-union JATCs to increase diversity at the apprentice and journey level.
- (d) Union and non-union specific goals to increase diversity amongst its membership/workforce.
- (e) The requirement that union and non-union JATCs submit an annual affirmative action report from each of its member unions. Non-union contractors and subcontractors shall submit an annual affirmative action report, either individually or through its representative organization.
- (f) A commitment to comply with PDC's programs authorized by the Disparity Study Implementation Plan adopted by the Board by Resolution 5066 that implements policies concerning fair contracting and workforce training (collectively, and as may be amended from time to time, the "Business and Workforce Equity Programs").

7. **Project Apprenticeship and Equity Agreement**

A. Prior to the commencement of construction of a project subject to the Policy, PDC, the developer (or other recipient of PDC Resources) and the general contractor (collectively, the "Contracting Parties") shall enter into an agreement that sets forth, among other things, a process to achieve specific goals for increased participation by People of Color and Women on the project (the "Project Specific Diversity Goals") and a plan for compliance with the Business and Workforce Equity Programs.

B. Elements of the Project Apprenticeship and Equity Agreement shall include:

- (i) A commitment by the Contracting Parties to incorporate the terms of the Workforce Diversity Strategy Agreement (if that agreement is in effect) into all construction contracts for the project.
- (ii) A commitment to comply with the process set forth in the Project Apprenticeship and Equity Agreement (the "PAE Process") to achieve the Project Specific Diversity Goals.
- (iii) An acknowledgement that failure to comply with the PAE Process shall result in an assessment of damages against the general contractor for each day of non-compliance.

(iv) A commitment to comply with the Business and Workforce Equity Programs.

(v) An acknowledgement that failure to comply with the Business and Workforce Equity Programs shall result in an assessment of damages against the general contractor for each day of non-compliance.

C. Damages assessed as a result of non-compliance with the PAE Process and the Business and Workforce Equity Programs shall be maintained in separate account and used exclusively for programs, such as mentoring, determined by PDC to effectively increase workforce diversity or increase the capacity of minority-owned, women-owned or emerging small businesses. A report of the account shall be made by PDC staff to the Board on a quarterly basis.

D. Developers, contractors and subcontractors that fail to comply with any requirement of the PAE Process, the Business and Workforce Equity Programs or the procedural requirements of the Workforce Diversity Strategy Agreement as determined by PDC shall be placed on a PDC list of ineligible and barred from participation on PDC projects for a period of two (2) years.

**EXHIBIT E -- ATTACHMENT B**  
**BUSINESS AND WORKFORCE EQUITY POLICY**

**Portland Development Commission**  
**Business and Workforce Equity Policy**

**A. OBJECTIVES OF THE POLICY**

The objectives of the **Business and Workforce Equity Policy** (the "Policy") are to:

- Ensure that the Portland Development Commission ("PDC") provides professional, supplier and construction contracting opportunities to Certified Firms and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.
- Maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and women and encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

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

The Policy replaces the existing policy adopted by the Board on December 18, 1997 (Resolution No. 5066) that authorized implementation of the Disparity Study Implementation Plan and policies concerning fair contracting and workforce training, including the Good Faith Effort Program and Workforce Training and Hiring Program. This Policy also supports other City of Portland and PDC policies with respect to workforce diversity and utilization of Certified Firms.

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

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

**B. DEFINITIONS**

1. **"Certified Firms"** include M/W/ESB firms that have been certified by the State of Oregon as a minority-owned business, a women-owned business or an emerging small business.
2. **"Hard Construction Cost"** is the cost to build improvements on a property, including all related construction labor and materials, including fixed and built-in equipment costs. Costs not directly related to the construction of an improvement, such as entity overhead, administration or taxes, or other professional services including architectural or engineering, shall not be considered a part of the Hard Construction Cost.
3. **"Direct Contracting"** includes all professional, supplier and construction services purchased directly by PDC.
4. **"Flexible Service Contract"** is a contract for services that has repetitive requirements on an as-needed basis and may include Personal Services Contracts that have such repetitive requirements.

5. **“Land Transaction”** is the sale of real property by PDC at any price for the purpose of a private or public project.
6. **“PDC-Owned Construction Contracts”** include contracts where PDC has a direct contractual relationship with the contractor and where PDC is the owner of the project.
7. **“PDC Resources”** include:
  - (iii) PDC funds in the form of grants or loans. For purposes of calculating PDC Resources, any PDC funds used by a single entity for a single project in the form of grants or loans shall be combined to determine the total amount of PDC Resources; and
  - (iv) The value of a Land Transaction. For purposes of calculating the value of a Land Transaction, the value shall be that which is specified in the sales or development agreement.
8. **“PDC Sponsored Projects”** include all projects that are privately owned and constructed involving a disposition and development agreement, development agreement, loan agreement, or other type of financial assistance agreement with PDC.
9. **“People of Color”** as used in this Policy includes persons who self identify as being other than Caucasian.
10. **“Personal Services Contract”** is a contract for specialized skills, knowledge or unique resources in the application of highly-technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Such services include, but are not limited to the services of architects, engineers, surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers.
11. **“Utilization Goal”** shall mean the percentage goals set for Certified Firms and workforce utilization on contracts and projects subject to the Policy.

### C. THE BUSINESS EQUITY PROGRAM

1. **Purpose of the Business Equity Program.** To ensure that PDC provides professional, supplier and construction contracting opportunities to Certified Firms and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.
2. **Applicability.** Direct Contracting entities, entities involved in a Land Transaction or entities receiving PDC Resources shall be obligated to comply with the Business Equity Program, upon meeting any one of the following criteria:
  - a) A PDC Personal Services Contract greater than \$100,000 that has subcontracts;
  - b) A PDC-Owned Construction Contract greater than \$200,000;
  - c) A PDC Sponsored Project receiving more than \$100,000 of PDC Resources to finance a project with a Hard Construction Cost greater than \$200,000; or
  - d) An interagency or intergovernmental agreement with Hard Construction Costs greater than \$200,000 and more than \$100,000 in PDC funding, whether performed by PDC or another agency.

3. **Utilization Goals for Certified Firms.** The following Utilization Goals are established upon the initial adoption of the Policy. The Executive Director is responsible thereafter for annually reviewing these Utilization Goals, and is authorized to modify them based on such annual analysis:
  - a) Personal Services Contracts: 25 percent of the contract value;
  - b) PDC-Owned Construction Contracts: 20 percent of Hard Construction Costs;
  - c) PDC Sponsored Projects: 20 percent of Hard Construction Costs;
  - d) Interagency and intergovernmental agreements: the greater of the appropriate Utilization Goal for PDC or the other agency's goal; and
  - e) Flexible Service Contracts and Personal Service Contracts not otherwise subject to Section C-2 above:
    - (i) 30 percent of the total number of contracts in any fiscal year; AND
    - (ii) 25 percent of contract dollars.
4. **Notice and Timing.** Should a party receive PDC Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the Business Equity Program, PDC (the project manager, with assistance from the M/W/ESB coordinator) will negotiate a Certified Firm participation level that is reasonable and provide technical assistance to achieve that negotiated Utilization Goal. For example, if a project is already under construction, there may be a negotiated Utilization Goal for any remaining work.

#### D. THE WORKFORCE EQUITY PROGRAM

1. **Purpose of the Workforce Equity Program.**
  - a) To maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and women on Direct Contracting, Land Transactions and on work utilizing PDC Resources; and
  - b) To encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.
2. **Applicability.** Direct Contracting entities, entities involved in a Land Transaction or entities receiving PDC Resources shall be obligated to comply with the Workforce Equity Program upon meeting any one of the following criteria:
  - a) On a **PDC-Owned Construction Contract** greater than \$200,000, the Workforce Equity Program shall apply to:
    - (i) the prime contract; and
    - (ii) any subcontract greater than \$100,000.
  - b) On a **PDC Sponsored Project** the Workforce Equity Program shall apply if:
    - (i) the project receives \$100,000 or more of PDC Resources to finance a project with a Hard Construction Cost greater than \$1,000,000; OR
    - (ii) for a Land Transaction, the resultant development will have a Hard Construction Cost greater than \$1,000,000.

- (iii) When applicable to a **PDC Sponsored Project**, the Workforce Equity Program shall apply to:
  - (a) the prime contract; and
  - (b) any sub-contract greater than \$100,000.

### **3. Requirements.**

- a) Projects subject to the Workforce Equity Program must comply with PDC's Workforce Training and Hiring Program which requires contractors to:
  - (i) Ensure that a minimum of 20 percent of labor hours in each apprenticeable trade performed by the contractor and subcontractors are worked by state-registered apprentices; and
  - (ii) Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the unions, the apprenticeship programs and other community resources.
- b) Projects subject to the Workforce Equity Program are encouraged to employ people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

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

**F. Damages.** The procedural requirements of the Policy are contractual obligations. Failure to comply with such procedural requirements may result in one or more of the following:

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

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

### **H. Exemptions.**

1. The Executive Director shall have the authority to waive requirements of the Policy in an Enterprise Zone if it can be demonstrated that the financial impact would exceed the legal limits outlined in OAR 123-065-2540 (4), or would otherwise jeopardize major economic development goals such as the relocation of a major employer to an Enterprise Zone.
2. Any other exemption or waiver of requirements of the Policy shall require approval of the PDC Board of Commissioners (the "Board").

- I. **Annual Report.** The Executive Director or designee is responsible for preparing an annual report to the Board summarizing the accomplishments and activities that have occurred related to the implementation of the Policy.

## **EXHIBIT E – ATTACHMENT C**

### **EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

The Portland Development Commission requires EEO certification of all vendors and contractors doing business in excess of \$2,500 with the Commission annually (July 1 through June 30). For projects supported by Portland Development Commission funding, all Prime Contractors are required to be EEO certified.

The Portland Development Commission's Equal Employment Opportunity (EEO) certification program is administered by the City of Portland Bureau of Purchases. In order to be EEO certified, your company must submit a form stating that it does not discriminate against any employee or applicant on the basis of race, religion, color, sex, marital status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income in violation of Portland City Code Chapter 23.01. Your company must also take steps to ensure equal opportunity in all aspects of employment. These aspects include, but are not limited to hiring, promotion, transfer, advertising, layoff, termination, rates of pay, training (including apprenticeship), and terms and conditions of employment.

We ask most of our vendors and contractors to renew their EEO certification every two years. Construction firms meeting the criteria for the Large Local certification—that is, firms located in the Portland metro and Vancouver area and employing more than 25 people—are asked to renew annually.

### **HOW TO BECOME CERTIFIED**

You can register on-line. Just go to:

<http://cityofportland.ebidsystems.com>, click on  
“Vendor EEO Registration,” and follow the instruction on the screen.

Questions may be directed to 503.823.6855 or email Anne Hawley,



**EXHIBIT F**  
**FORM OF MEMORANDUM OF DDA**

After recording return to:  
Portland Development Commission  
222 NW Fifth Avenue  
Portland, OR 97209  
Attn: General Counsel

**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 222 NW Fifth Avenue, Portland, Oregon 97209-3859 and STARTERRA, LLC, an Oregon limited liability company ("Developer"), with an address of \_\_\_\_\_, Portland, OR 97258, entered into an Agreement For Disposition And Development Of Property at \_\_\_\_\_ dated as of \_\_\_\_\_, 2008 ("Agreement") relating to the real property located in Multnomah County, Oregon, as more particularly described in Exhibit "A" attached hereto (the "Property").

All capitalized terms that are not defined herein shall have the meanings given to them in the Agreement.

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. Other property or value was part of the whole consideration given for the Property conveyance referenced herein.

As a condition subsequent to the conveyance of the Block 49 Parcel, in the event of a default by Developer (other than a default solely with respect to the Phase II Component) before PDC issues a Certificate of Completion for the Phase I Component, PDC shall have the option to declare a termination in favor of the PDC of all the title, rights and interests of Developer in the Block 49 Parcel. Upon such declaration of termination in accordance with Section 8.4 of the Agreement, Developer's title, right and interest in the Block 49 Parcel shall revert to PDC.. After a Certificate of Completion is recorded as to the Phase I Component, 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 Phase I Component, or as a result of a default in or breach of any provisions of the Agreement by Developer related to the Phase I Component, or by any successors in interest or assigns of Developer, except for those surviving sections described in the Certificate of Completion. PDC shall thereafter have no further right of re-entry to the Block 49 Parcel or reversion as described above.

As a condition subsequent to the conveyance of the Block 47 Parcel, in the event of a default by Developer (other than a default solely with respect to the Phase I Component) before PDC issues a Certificate of Completion for the Block 47 Improvements, PDC shall have the option to declare a termination in favor of the PDC of all the title, rights and interests of Developer in the Block 47 Parcel. Upon such declaration of termination in accordance with Section 8.4 of the Agreement, Developer's title, right and interest in the Block 47 Parcel shall revert to PDC. . After a Certificate of Completion is recorded as to the Block 47 Improvements, 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 Block 47 Improvements, or as a result of a default in or breach of any provisions of the Agreement by Developer related to the Block 47 Improvements, or by any successors in interest or assigns of Developer, except for those surviving sections described in the Certificate of Completion. PDC shall thereafter have no further right of re-entry to the Block 47 Parcel or reversion as described above.

PDC and Developer execute this Memorandum to acknowledge being bound by the Agreement and to give notice of the Agreement to third parties.

CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland

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

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

Date: \_\_\_\_\_, 200\_\_

STARTERRA, LLC, an Oregon limited liability company

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

Its: Member

Date: \_\_\_\_\_, 200\_\_

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

Its: Member

Date: \_\_\_\_\_, 200\_\_

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

This instrument was acknowledged before me on \_\_\_\_\_, 200\_, by \_\_\_\_\_, Executive Director of the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

This instrument was acknowledged before me on \_\_\_\_\_, 200\_, by \_\_\_\_\_ as member of STARTERRA LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

This instrument was acknowledged before me on \_\_\_\_\_, 200\_, by \_\_\_\_\_ as member of STARTERRA LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

**Legal Description**

LOTS 5 AND 6, BLOCK 47, HOLLADAY'S ADDITION TO EAST PORTLAND, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON. EXCEPTING THEREFROM THAT PORTION IN NE UNION STREET.

LOTS 1 THROUGH 8, BLOCK 49, HOLLADAY'S ADDITION TO EAST PORTLAND, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON, EXCEPTING THEREFROM THAT PORTION OF LOTS 4 AND 5 THEREOF, DESCRIBED IN DEED TO THE CITY OF PORTLAND, RECORDED DECEMBER 6, 1983 IN BOOK 1710 PAGE 1823, RECORDS OF MULTNOMAH COUNTY, OREGON; AND EXCEPTING THEREFROM THAT PORTION OF LOTS 1 AND 8 THEREOF DESCRIBED IN DEED TO THE CITY OF PORTLAND, RECORDED MARCH 9, 1993 IN BOOK 2658 PAGE 1202, RECORDS OF MULTNOMAH COUNTY, OREGON.

**EXHIBIT G  
FORM OF CERTIFICATE OF COMPLETION**

**EXHIBIT G-1: FORM OF CERTIFICATE OF COMPLETION (Phase I Component)**

**EXHIBIT G-2: FORM OF CERTIFICATE OF COMPLETION (Elements of Phase II Component)**

**EXHIBIT G-3: FORM OF CERTIFICATE OF COMPLETION (Block 47 Improvements)**

## EXHIBIT G-1

### FORM OF CERTIFICATE OF COMPLETION Phase I Component

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 certifies that Developer, STARTERRA, LLC, an Oregon limited liability company ("Developer"), has satisfactorily completed construction of the Phase I Component of the Project as described in the Agreement for Disposition and Development of Property at \_\_\_\_\_, dated \_\_\_\_\_, 2008 (herein called the "DDA"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. \_\_\_\_\_ on \_\_\_\_\_, 2008. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 3.8.1 of the DDA, PDC hereby certifies that:

- (i) the Phase I Component is completed according to the final Construction Plans and Specifications for the Phase I Component, except for punchlist items which do not materially affect the use of the Phase I Component for the purposes intended under the DDA,
- (ii) the City of Portland has issued a temporary or permanent Certificate of Occupancy with respect to the Phase I Component, and
- (iii) any other improvements required by the terms of the DDA to have been completed at the time the Phase I Component of the Project is complete have been completed in all material respects.

This Certificate of Completion is and shall be 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 Phase I Component, and such obligations are hereby terminated. This Certificate represents and certifies the completion of Developer's construction obligations described herein as to PDC only.

Further,

- (1) Any party acquiring or leasing any portion of the Phase I Component 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 ("**Surviving Sections**"): Sections 3.5.2 (to the extent of claims, costs, expenses and liabilities that arise from activities occurring prior to issuance of the Certificate of Completion), 3.5.3, 3.6, 4.1, 9.2, 9.23 and 9.24.

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 Phase I Component, or as a result of a default in or breach of any provisions of the DDA relating to construction by the Developer of the Phase I Component, or by any successors in interest or assigns of Developer. Without limitation, PDC confirms that PDC no longer has any right of re-entry to the Phase I Component or termination of the DDA with respect thereto.

IN WITNESS WHEREOF, PDC has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 200\_.

PORTLAND DEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Executive Director

(ACKNOWLEDGEMENT)

**EXHIBIT G-2**

**FORM OF CERTIFICATE OF COMPLETION  
Physical Element of Phase II Component**

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 certifies that Developer, STARTERRA, LLC, an Oregon limited liability company ("Developer"), has satisfactorily completed construction of the \_\_\_\_\_ Element of the Phase II Component of the Project as described in the Agreement for Disposition and Development of Property at \_\_\_\_\_, dated \_\_\_\_\_, 2008 (herein called the "DDA"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. \_\_\_\_\_ on \_\_\_\_\_, 2008. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 3.8.2 of the DDA, PDC hereby certifies that:

- (i) the \_\_\_\_\_ Element of the Phase II Component is completed according to the final Construction Plans and Specifications for such Element, except for punchlist items which do not materially affect the use of the Element for the purposes intended under the DDA,
- (ii) the City of Portland has issued a temporary or permanent Certificate of Occupancy with respect to the \_\_\_\_\_ Element of the Phase II Component, and
- (iii) any other improvements required by the terms of the DDA to have been completed at the time the \_\_\_\_\_ Element of the Phase II Component of the Project is complete have been completed in all material respects.

This Certificate of Completion is and shall be 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 \_\_\_\_\_ Element of the Phase II Component, and such obligations are hereby terminated. This Certificate represents and certifies the completion of Developer's construction obligations described herein as to PDC only.

Further,

- (1) Any party acquiring or leasing any portion of the \_\_\_\_\_ Element of the Phase II Component 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 ("**Surviving Sections**"): Sections 3.5.2 (to the extent of claims, costs, expenses and liabilities that arise from activities occurring prior to issuance of the Certificate of Completion), 3.5.3, 3.6, 4.1, 9.2, 9.23 and 9.24.



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 \_\_\_\_\_ Element of the Phase II Component, or as a result of a default in or breach of any provisions of the DDA relating to construction by the Developer of the \_\_\_\_\_ Element of the Phase II Component, or by any successors in interest or assigns of Developer.

IN WITNESS WHEREOF, PDC has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 200\_.

PORTLAND DEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Executive Director

(ACKNOWLEDGEMENT)

### EXHIBIT G-3

#### FORM OF CERTIFICATE OF COMPLETION Block 47 Improvements

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 certifies that Developer, STARTERRA, LLC, an Oregon limited liability company ("Developer"), has satisfactorily completed construction of the Block 47 Improvements as part of Phase II Component of the Project as described in the Agreement for Disposition and Development of Property at \_\_\_\_\_, dated \_\_\_\_\_, 2008 (herein called the "DDA"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. \_\_\_\_\_ on \_\_\_\_\_, 2008. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 3.8.2 of the DDA, PDC hereby certifies that:

- (i) the Block 47 Improvements are completed according to the final Construction Plans and Specifications for the Block 47 Improvements, except for punchlist items which do not materially affect the use of the Block 47 Improvements for the purposes intended under the DDA,
- (ii) the City of Portland has issued a temporary or permanent Certificate of Occupancy with respect to the Block 47 Improvements, and
- (iii) any other improvements required by the terms of the DDA to have been completed at the time the Block 47 Improvements of the Phase II Component of the Project is complete have been completed in all material respects.

This Certificate of Completion is and shall be 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 Block 47 Improvements as part of the Phase II Component, and such obligations are hereby terminated. This Certificate represents and certifies the completion of Developer's construction obligations described herein as to PDC only.

Further,

- (1) Any party acquiring or leasing any portion of the Block 47 Improvements 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 ("**Surviving Sections**"): Sections 3.5.2 (to the extent of claims, costs, expenses and liabilities that arise from activities occurring prior to issuance of the Certificate of Completion), 3.5.3, 3.6, 4.1, 9.2, 9.23 and 9.24.

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 Block 47 Improvements, or as a result of a default in or breach of any provisions of the DDA relating to construction of the Block 47 Improvements 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 re-entry to the Block 47 Parcel or termination of the DDA with respect thereto.

IN WITNESS WHEREOF, PDC has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 200\_.

PORTLAND DEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Executive Director

(ACKNOWLEDGEMENT)

**EXHIBIT H**  
**QUIT CLAIM DEED AND ESCROW INSTRUCTIONS FOR QUIT CLAIM DEED**

After recording return to  
and send tax statements to:

Portland Development Commission  
222 NW 5<sup>th</sup> Avenue  
Portland, OR 97209  
Attn: General Counsel

For a valuable consideration, receipt of which is hereby acknowledged STARTERRA, LLC, an Oregon limited liability company ("Grantor"), does hereby demise, release and quitclaim to CITY OF PORTLAND acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated Urban Renewal Agency of the City of Portland ("Grantee"), all right, title and interest in and to the following described real property, with the tenements, hereditaments and appurtenances, situated in the County of Multnomah and State of Oregon, to wit:

*[Insert here the correct legal description for one or the other of the Block 47 Parcel or the Block 49 Parcel]*

To have and to hold the same unto the said Grantee and Grantee's successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ -0-. However, the actual consideration consists of or includes other property or value given or promised which is the whole consideration.

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 195.2336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. 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.

In Witness Whereof, Grantor has executed and sealed this instrument this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

STARTERRA, LLC, an Oregon limited liability company

By: \_\_\_\_\_  
Its: Member

By: \_\_\_\_\_  
Its: Member

Accepted this \_\_\_\_ day of \_\_\_\_\_, 200\_.

CITY OF PORTLAND  
acting by and through the PORTLAND DEVELOPMENT COMMISSION

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

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_,  
Member of STARTERRA, LLC, an Oregon limited liability company

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_,  
Member of STARTERRA, LLC, an Oregon limited liability company

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

**Exhibit H (Continued)**

**ESCROW INSTRUCTIONS FOR QUITCLAIM DEED**

Chicago Title Insurance Company  
888 SW Fifth Avenue, Suite 930  
Portland, OR 97204  
Attention: [INSERT TITLE OFFICER]

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

STARTERRA, LLC, an Oregon limited liability company (“Developer”) has entered into that certain Agreement for Disposition and Development of Property at \_\_\_\_\_ (“DDA”) with the City of Portland, Oregon acting by and through the Portland Development Commission (“Agency”) dated as of \_\_\_\_\_, 2008, a Memorandum of which was recorded \_\_\_\_\_, 2008 as Document No. \_\_\_\_\_, Records of Multnomah County, Oregon, whereby the Agency will convey to the Developer or its assignees certain real property (the “Property”) in the Oregon Convention Center Urban Renewal Area. The Property is the subject of this escrow and is described in the accompanying quitclaim deeds (“Quitclaim Deeds”).

Sections 8.4.1 and 8.4.2 of the DDA provide that, under certain circumstances, the Agency is entitled to reconveyance of all or a portion of the Property pursuant to the Quitclaim Deeds 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 Deeds.

In the event that you receive from Agency a notice signed by the Agency’s Executive Director certifying that a copy of said notice has been delivered concurrently to Developer and certifying that a termination in favor of Agency of the title, and of all of the rights and interest of Developer in the portion of the Property described in one or both of the Quitclaim Deed(s) has occurred, and that the rights to that portion of the Property have reverted in the Agency pursuant to the DDA (“Notice of Termination”), you shall at the end of sixty (60) days after receipt of said instructions record the subject Quitclaim Deed(s) unless within said sixty (60) day period, you are notified by the Agency that the Agency has withdrawn the Notice of Termination, or unless you are prohibited from recording the Quitclaim Deed(s) by temporary restraining order, preliminary injunction, or other court order.

In the event that you receive a copy of a Certificate of Completion issued by Agency with respect to the Phase I Component or the Block 47 Improvements (either an original or one certified by Developer as being a duplicate of the original), you will forthwith return the Quitclaim Deed relating to that Component or the Block 47 Improvements, as the case may be, to Developer. In the event that there still remains in your possession an undisposed Quitclaim Deed by [insert date eighteen (18) months after DDA scheduled date for completion of improvements] you shall contact Agency 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,

STARTERRA, LLC, an Oregon limited liability company

By: \_\_\_\_\_  
Its: Member

By: \_\_\_\_\_  
Its: Member

Very truly yours,

CITY OF PORTLAND, acting by and through the  
PORTLAND DEVELOPMENT COMMISSION

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

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

Its: \_\_\_\_\_

Accepted and agreed to this  
\_\_\_ day of \_\_\_\_\_, 20\_\_

By \_\_\_\_\_  
Chicago Title Insurance Company





**EXHIBIT J**  
**[RESERVED]**

## EXHIBIT K

### TERMS OF SELLER FINANCING

#### Financing for Block 49 Parcel (Phase I Component)

1. **Loan Amount:** \$3,600,000.
2. **Term and Payment Structure:**
  - a. 15-year Loan term commencing at Closing on the Block 49 Parcel with monthly payments based on a 30 year amortization schedule. Any unpaid principal and interest shall be due and payable at the end of year 15.
  - b. Deferred loan payments during the Block 49 Construction Period and Block 49 Stabilization Period. Deferred loan payments will continue until the 10<sup>th</sup> anniversary of the Closing on the Block 49 Parcel (the "Forgiveness Determination Date") if, on or prior to the end of the Block 49 Stabilization Period, Developer (i) receives a Certificate of Completion for the Phase I Component from PDC and (ii) Closes on the Block 47 Parcel. Payment deferral is conditioned on no default under the Agreement or with respect to the Loan.
    - Block 49 Construction Period: Commencing at Closing on the Block 49 Parcel and continuing for 24 months (Block 49 Construction Period may be extended up to 12 additional months, in 6 month increments)
    - Block 49 Stabilization Period: Commencing at the end of the Block 49 Construction Period and continuing for 24 months
3. **Interest Rate:** Zero Percent (0%) during the period in which loan payments are deferred. Three percent (3%) at all other times.
4. **Forgiveness:** On the Forgiveness Determination Date, PDC shall forgive all or a portion of the Loan principal, as determined in accordance with Exhibit K-1, if (a) no default has occurred under the Agreement or with respect to the Loan and (b) Developer, on or prior to the end of the Block 49 Stabilization Period, (i) received a Certificate of Completion for the Phase I Component from PDC and (ii) Closed on the Block 47 Parcel. Any portion of the Loan not forgiven shall be repaid, with interest, as described above.
5. **Collateral:** Secured by a subordinate lien on the Block 49 Parcel.

#### Financing for Block 47 Parcel (Phase II Component)

1. **Loan Amount:** \$1,475,000.
2. **Term and Payment Structure:**

- a. 15-year Loan term commencing at Closing on the Block 47 Parcel with monthly payments based on a 30 year amortization schedule. Any unpaid principal and interest shall be due and payable at the end of year 15.
  - b. Deferred loan payments during the Block 47 Construction Period and Block 47 Stabilization Period. Deferred loan payments will continue until the Forgiveness Determination Date if, on or prior to the end of the Block 49 Stabilization Period, Developer (i) receives a Certificate of Completion for the Phase I Component from PDC and (ii) Closes on the Block 47 Parcel. Payment deferral is conditioned on no default under the Agreement or with respect to the Loan.
    - Block 47 Construction Period: Commencing at Closing on the Block 47 Parcel and continuing for 24 months (Block 47 Construction Period may be extended up to 12 additional months, in 6 month increments)
    - Block 47 Stabilization Period: Commencing at the end of the Block 47 Construction Period and continuing for 24 months
3. **Interest Rate:** Zero Percent (0%) during the period in which loan payments are deferred. Three percent (3%) at all other times.
4. **Forgiveness:** On the Forgiveness Determination Date, PDC shall forgive all or a portion of the Loan principal, as determined in accordance with Exhibit K-1, if (a) no default has occurred under the Agreement or with respect to the Loan and (b) Developer, on or prior to the end of the Block 49 Stabilization Period, (i) received a Certificate of Completion for the Phase I Component from PDC and (ii) Closed on the Block 47 Parcel. Any portion of the Loan not forgiven shall be repaid, with interest, as described above.
5. **Collateral:** Secured by a subordinate lien on the Block 47 Parcel.

**EXHIBIT K-1**

**LOAN FORGIVENESS PERFORMANCE MEASURES**

Repayment of the PDC loans for the purchase of Block 47 and Block 49 will be forgiven, in whole or in part, based on Developer’s satisfaction of one or more of the following Performance Measures on or before the Forgiveness Determination Date. No loan forgiveness will be provided for satisfaction of a Performance Measure for which a City zoning bonus is received. A particular use may qualify for only one performance measure. Some or all Performance Measures may be met. The appropriate PDC Departmental Director shall make the final determination on the satisfaction of a Performance Measure in the event of a dispute. Any forgiveness will be applied first to the Block 49 loan until that loan has been entirely forgiven and then to the Block 47 loan.

**Prerequisite:** No loan forgiveness will be provided unless Developer provides PDC with a pro forma demonstrating a lack of financial feasibility for the Phase II Component, as verified by PDC analysis and consistent with PDC’s customary return parameters..

	<b>Objective</b>	<b>Goal</b>	<b>Value</b>	<b>Calculation</b>	<b>Maximum Loan Forgiveness</b>	<b>Phase</b>	<b>Monitoring Notes</b>
1	Recruit and lease to regional or independent retailers	10% retail mix = locally owned, non-franchise	\$20 per square foot of tenant space	If 10% target is met, then 20 x SF = up to maximum	\$425,000	Phase I or Phase II	Seven year lease required
2	Reduce parking	<ul style="list-style-type: none"> <li>▪ Reduced employee and resident structured parking (at least 100 spaces below code) for both Phase I and Phase II</li> <li>▪ Encourage all tenants to join the Lloyd Transportation Management Association</li> </ul>	\$ 2,500 per eliminated space	If number of stalls for Phase I and Phase II = code allowance – 100, then \$2500 for each stall under code allowance will be credited.	\$500,000	Phase I and Phase II	Phase I & II, taken together.

3	Tenants represent target industry clusters	Tenant with employers representing the PDC's Economic Development target industries	\$28/SF	28 x SF of rentable space leased to tenants in target industries	\$3,500,000	Phase I or Phase II	Targets include: High Tech, Sustainable, Creative Design and Metals  Businesses themselves may qualify for PDC's assistance programs.
4	Demonstrate Northwest/Cascadian Experience theme	Recruit retail tenants that support outdoor recreation, healthy and active lifestyles, and fitness; Recruit tenants that showcase the products and industries of the Pacific Northwest	\$20 per square foot of tenant space	20 x SF = up to maximum	\$2,000,000	Phase I or Phase II	Seven year lease required
5	Provide housing units	10% of total housing units in Project at maximum 120% MFI		Based on pro forma demonstrating financial need	\$2,000,000	Phase II	Minimum 20 units; 10 year affordability period for rental.  This forgiveness credit would be issued in lieu of a direct loan.  For ownership or rental housing.
6	Provide affordable housing units	10% of total housing units in Project at 60%-100% MFI		Based on pro forma demonstrating financial need	\$3,000,000		Minimum 20 units; 60-year affordability period  This forgiveness credit would be issued in lieu of a direct loan.  For ownership or rental housing.

7	Visitor/tourist oriented	<ul style="list-style-type: none"> <li>▪ Hotel of ≤ 200 rooms</li> </ul> <hr/> <ul style="list-style-type: none"> <li>▪ Restaurant serving at least two meals daily (i.e. lunch/dinner)</li> <li>▪ Full-service spa</li> <li>▪ Museum</li> <li>▪ Entertainment venue</li> <li>▪ Food/wine market</li> <li>▪ Wine bar or brew pub</li> <li>▪ Retail</li> <li>▪ Visitor Center</li> </ul>	<p>Hotel \$1000/room</p> <hr/> <p>\$20/ per square foot of tenant space</p>	<p>1000 x number of rooms = up to maximum</p> <hr/> <p>20 x SF = up to maximum</p>	<p>\$200,000</p> <hr/> <p>\$2,000,000</p>	Phase I or Phase II	<p>Seven year lease required (except hotel).</p> <p>Uses must be open evenings and/or weekends.</p>
8	Open space	<p>Visible and accessible from Multnomah, MLK or Holladay – on ground plane</p> <p>Minimum of 2500 sf. Includes seating for general public. Open to public between 7 am and 8 pm.</p> <p>Public easement in perpetuity. Privately maintained.</p>	<p>\$109/SF (2007 appraised value of Block 47)</p>	<p>SF open space dedicated by public easement x appraised value</p>	<p>\$300,000</p>	Phase II	<p>Water features may count for open space bonus.</p> <p>Must be beyond code requirements.</p> <p>Must be dedicated by public easement.</p> <p>Should avoid shadows during much of the day.</p>
9	Public art Lloyd District Art Plan and OCC Vision Plan	<p>Use of public art in conformance with plans.</p>	<p>Dollar for dollar match</p>		<p>\$150,000</p>	Phase I or Phase II	<p>Cannot be used with zoning bonus; must meet requirements of Title 33.510.210.C.6 b-f.</p> <p>Must be in RACC ownership and must be exterior art.</p>

10	Bike parking	Extra bike storage = %50 beyond code	\$100,000		\$100,000	Phase II	Beyond code and bonus
	<b>TOTAL REDUCTIONS</b>				<b>\$14,175,000</b>		
	<b>MAXIMUM POSSIBLE</b>				<b>\$ 5,075,000</b>		

**If the Developer meets every performance measure, they have the opportunity to achieve incentive reductions of \$14,175,000; however, the reduction is capped at the total value of the PDC financing for the land (\$5.075M).**

# **PDC**

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## **PORTLAND DEVELOPMENT COMMISSION**

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### **Green Building Policy Program Guidelines**

**Adopted by the PDC Board of Commissioners**

**June 22, 2005**

**Resolution #6262**





## 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 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 established [Leadership in Energy and Environmental Design](#) (“LEED”) 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 by adoption of Resolution #6262 on June 22, 2005 adopted these Guidelines.

### C. Development Projects Subject to These Guidelines

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

c. City-Owned Buildings

**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**

<b>New Construction</b>	
<b>Development Type</b>	<b>Green Building Standard Required</b>
<ul style="list-style-type: none"> <li>• Commercial / Mixed-Use</li> </ul>	LEED NC (“New Construction”) Silver Certification
<ul style="list-style-type: none"> <li>• Residential</li> </ul>	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"> <li>• City-Owned Buildings</li> </ul>	<ul style="list-style-type: none"> <li>• LEED NC Gold Certification</li> <li>• “Ecoroof” or “Energy Star” approved roofing material</li> <li>• Operations &amp; maintenance according to guidelines established by the Bureau of General Services</li> </ul>

<b>Rehabilitation</b>	
<b>Development Type</b>	<b>Green Building Standard Required</b>
<ul style="list-style-type: none"> <li>• Commercial / Mixed-Use</li> </ul>	
○ Full-building	LEED NC Silver Certification
○ Partial-building ○ Tenant improvements	LEED CI (“Commercial Interiors”) Silver <b>and/or</b> G-Rated Tenant Improvement Guide Certification
<ul style="list-style-type: none"> <li>• Residential</li> </ul>	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"> <li>• City-Owned Buildings</li> </ul>	<ul style="list-style-type: none"> <li>• LEED Commercial Interiors (CI) Silver Certification; OR</li> <li>• G/Rated Tenant Improvement Guide Certification</li> </ul>

**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 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 certification approval or denial, the developer shall notify and submit to PDC evidence of
  - a. LEED Certification approval; **OR**
  - b. LEED 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, 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 certification application, documentation and response from U.S. Green Building Council.
    - ii. **Residential:** Final LEED 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 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 Programwill 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.

Approved: PDC Board of Commissioners; Resolution #6262

Date: June 22, 2005

**EXHIBIT M**

**FORM OF RIGHT OF FIRST OPPORTUNITY**

**AGREEMENT OF RIGHT OF FIRST OPPORTUNITY**

DATE: \_\_\_\_\_("Effective Date")

PARTIES: Starterra, LLC ("Owner")

City of Portland acting by and through the  
Portland Development Commission ("PDC")

**RECITALS**

- A. Owner and PDC have entered into that certain Agreement for Disposition and Development of Property dated \_\_\_\_\_ (the "DDA"), pursuant to which PDC has agreed to sell to Owner the PDC Property for development of a mixed use commercial, retail and housing project on terms and conditions stated in the DDA (the "Project"). All capitalized terms not defined herein shall have the meanings ascribed in the DDA.
- B. Development of the Project will involve both the PDC Property and that certain parcel of real property owned by Owner and located in Multnomah County, Oregon, as described in Exhibit A attached to and made a part of this Agreement (together with all leases thereof and improvements located thereon, the "Property").
- C. Under Section 6.6 of the DDA, Owner agreed to enter into this Agreement to give PDC the right to purchase the Property as set forth herein.

**AGREEMENT**

Therefore, in consideration of PDC's agreement to enter into the DDA with Owner and to sell the PDC Property to Owner under the terms and conditions of the DDA, and for other good and valuable consideration, the receipt and sufficiency of which is here acknowledged, Owner and PDC agree as follows:

- 1. **Right of First Opportunity.** Owner agrees not to sell, transfer, exchange, grant an option to purchase, or enter into a long-term lease (with primary and renewal terms of more than 15 years in the aggregate) of the Property or any part thereof, or interest therein without first offering the Property to PDC on the terms and conditions set forth in this Agreement (the "Right Of First Opportunity"). Owner may finance the Property without triggering this Right of First Opportunity.
  - A. At such time as Owner decides to sell the Property, or a part of or interest therein, Owner agrees to deliver a written notice of Owner's decision to sell with the price upon which Owner intends to sell the Property (the "Offer").
  - B. PDC shall have fifteen (15) days from the date that PDC receives the Offer (i) to notify Owner whether PDC elects to purchase the Property at the price contained in the Offer (or the part of or interest in the Property identified in the Offer), or (ii) to notify Owner that PDC desires to purchase the Property based on an appraisal of the Property. If PDC



notifies Owner that it desires to purchase the Property based on an appraisal, then PDC and Owner agree to select a licensed, experienced, and reputable MAI certified appraiser familiar with commercial developments in the Portland metropolitan area similar to the Property. The selected appraiser shall be instructed to complete an appraisal of the Property, based upon appraisal instructions mutually agreed to by PDC and Owner, within sixty days (60) days after receiving instructions from the parties or such longer period as the selected appraiser may reasonably require, and the appraised value shall then become the purchase price for the Property; provided, however, that if PDC determines, in its sole discretion, that the appraised value is not satisfactory, then PDC may, by and effective upon written notice to Owner, decline to purchase the Property, at which time any earnest money deposited by PDC shall be refunded. The cost of the appraisal shall be paid by PDC.

- C. If PDC elects to exercise its right to purchase the Property and subject to PDC's right to decline the purchase of the Property as described above, then, in addition to giving Owner written notice of its election to purchase within the 15-day period referenced in paragraph 2B above, PDC also shall tender an amount equal to the earnest money deposit, if any, specified in the Offer (such earnest money may be tendered in the form of a promissory note and may not to exceed \$200,000), and the closing of the transaction contemplated by the Offer shall, subject to the conditions set forth in the definitive purchase and sale documentation, take place no later than 120 days after the date that PDC receives the Offer if no appraisal was required, or no later than 60 days after the date that Owner and PDC receive the final appraisal with the purchase price if an appraisal was used to determine the purchase price.
  - D. If PDC fails to timely exercise its right to purchase the Property pursuant to the terms of the Offer and this Agreement with the 15-day period noted above, or if PDC sends written notice to Owner stating that PDC declines to purchase the Property, then Owner shall be entitled to sell the Property according to the price and terms stated in the Offer to any third party purchaser, provided that such sale transaction, when closed, shall include a purchase price that is within ten percent (10%) of the purchase price specified in the Offer or the appraisal, as the case may be.
  - E. If PDC fails to timely exercise its right to purchase the Property pursuant to the terms of this Agreement for any reason, this Agreement and the rights granted hereunder to PDC shall automatically terminate.
- 2. **Term.** The term of this Right of First Opportunity commences on the date of this Agreement and terminates on the earlier to occur of (1) the date of Commencement of Construction on the Parking Element and at last one additional Physical Element of the Phase II Component, or (2) the date 20 years after the Effective Date.
  - 3. **Excluded Transfers.** The Right of First Opportunity created by this Agreement shall not apply to any sale or conveyance of the Property by Owner to any partnership, limited liability company, limited partnership, joint venture, corporation, or other entity in connection with an assignment of the DDA pursuant to Section 5.2 thereof or a Mortgage pursuant to Section 5.3 thereof.; provided, however, that such transferee's interest in the Property shall remain subject to this Right Of First Opportunity as the Owner hereunder.
  - 4. **Notices.** All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed given and received two days after deposit in the United States Mail, certified or

registered form, postage prepaid, return receipt requested, addressed as follows:

To Owner: Barry Schlesinger  
BPM Development  
610 SW Alder Street, Suite 1221  
Portland, Oregon 97205

With copies to:

Wayne C. Rembold  
Rembold Properties  
1022 SW Salmon Street  
Portland, Oregon 97205

Karen M. Williams, Esq.  
Lane Powell PC  
601 Southwest Second, Suite 2100  
Portland, Oregon 97204

To PDC: Sara King  
Portland Development Commission  
222 NW Fifth Avenue  
Portland, OR 97209-3859

With a copy to:

Portland Development Commission  
Attn: General Counsel  
222 NW Fifth Avenue  
Portland, OR 97209

Notice given in any other manner shall be effective when it is received by the party for whom it is intended. Either party may change its address by giving 10 days' advance notice to the other party.

5. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Oregon.
6. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors, and assigns. PDC's rights under this Agreement are fully transferable and assignable.
7. **Headings.** The captions and headings used in this Agreement are for reference only and shall not be construed to define or limit the scope or content of this Agreement.
8. **Recording.** On request of PDC, Owner agrees to join in executing a memorandum of this Agreement, to be filed for record in the Official Records of Multnomah County, Oregon, to give notice to the public of the rights of PDC under this Agreement. PDC shall pay the cost of recording the memorandum. The memorandum shall note the date that this Agreement expires or terminates, and PDC shall join in executing a termination agreement in recordable form when this Agreement has expired or terminated, failing which, Owner may execute the termination agreement

on behalf of PDC.

9. **Entire Agreement.** This Agreement contains the final and entire understanding between Owner and PDC with respect to its subject matter and is intended to be an integration of all prior negotiations and understandings. Owner and PDC shall not be bound by any terms, conditions, statements, warranties, or representations not contained in this Agreement. No change or modification of this Agreement shall be valid unless it is in writing and is signed by both Owner and PDC.
10. **Waiver.** A failure by Owner or PDC to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.
11. **Attorney Fees.** If litigation is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court that hears the matter.
12. **Real Estate Commission.** Owner and PDC each agree to pay any commission or finder's fees that may be due on account of this transaction to any broker or finder employed by it and to indemnify (for PDC's indemnification of Owner, to the extent permitted by law and up to the limits of the Oregon Tort Claims Act) the other against any claims for commissions or fees asserted by any broker claiming by, through, or under the indemnifying party.
13. **Counterparts; Pronouns.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall be effective when one or more counterparts have been signed and delivered by Owner and PDC. With respect to any pronouns used herein, each gender used shall include the other gender and the singular and the plural, as the context may require.
14. **Time Is of the Essence.** Time is of the essence regarding this Agreement.
15. **Authority to Execute.** Each person executing this Agreement on behalf of Owner and PDC, respectively, warrants his or her authority to do so.
16. **Statutory Disclaimer.** **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. 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.**

- 17. Representations.** Owner represents to PDC that (1) Owner owns fee title to the Property; and (2) Owner has the authority to execute this Agreement, and executing it does not violate any agreement to which Owner is a party or any covenant by which the Property is bound. The Property shall be conveyed, if at all, from Owner to PDC in an “AS IS” condition and Owner makes no warranties or representations as to the suitability of Property for any improvements to be constructed thereon.

Executed as of the day and year first above written.

OWNER:

STARTERRA, LLC

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

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

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

PDC:

CITY OF PORTLAND ACTING BY AND  
THROUGH THE PORTLAND  
DEVELOPMENT COMMISSION

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

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

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

Attachments:

Exhibit A – Property [*Attach legal description of Byrne Property or Peters Property, as applicable*]

**EXHIBIT N**  
**FORM OF PREVAILING WAGE LAW COMPLIANCE AGREEMENT**

**COMPLIANCE AGREEMENT**  
**(State Prevailing Wage)**

This COMPLIANCE AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the City of Portland, a municipal corporation of the State of Oregon, acting by and through the Portland Development Commission (“PDC”), and Starterra, LLC, an Oregon limited liability company (“Developer”).

**Recitals**

Developer has or will receive \$750,000 or more in funds of a public agency for redevelopment of 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 ORS279C.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 ineligibles. 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(I) 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 5<sup>th</sup> 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 the Portland Development Commission's designated representative by the 5<sup>th</sup> 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 5<sup>th</sup> 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. For purposes of calculating the fee, the contract price shall be the portion of PDC funds that constitute funds of a public agency within the meaning of the PWRL.

**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 ineligible. 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 ineligible 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 ineligible.

**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 270C.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 \_\_\_\_\_, as amended \_\_\_\_\_, 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](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:

To Commission:

Portland Development Commission



Linda Naumcheff  
222 NW 5<sup>th</sup> Avenue  
Portland, Oregon 97209-3859

Copy to: Portland Development Commission  
General Counsel  
222 NW 5<sup>th</sup> 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.

**DEVELOPER**

By: \_\_\_\_\_  
[type name, title]

**CITY OF PORTLAND acting by and  
through the PORTLAND DEVELOPMENT  
COMMISSION**

By: \_\_\_\_\_  
Bruce A. Warner, Executive Director

Approved as to Form:

By: \_\_\_\_\_  
PDC Legal Counsel

# PDC

PORTLAND DEVELOPMENT COMMISSION

## Resolution Number 6594

TITLE: AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A DISPOSITION AND DEVELOPMENT AGREEMENT WITH STARTERRA LLC FOR REAL PROPERTY LOCATED ON BLOCKS 47 AND 49 OF HOLLADAYS ADDITON IN THE OREGON CONVENTION CENTER URBAN RENEWAL AREA;


Adopted by the Portland Development Commission on May 28, 2008.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Mark Rosenbaum, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Sal Kadri	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Charles Wilhoite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

### Certification

The undersigned hereby certifies that:

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

  
Renee A. Castilla, Recording Secretary

Date: June 12, 2008