

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6701

**AUTHORIZING AMENDMENT OF AGREEMENT FOR
DISPOSITION AND DEVELOPMENT OF PROPERTY
WITH E&F PROPERTIES, LLC, FOR PDC-OWNED
PROPERTY LOCATED AT 1101-1139 SW JEFFERSON
STREET**

WHEREAS, on February 28, 2007, the Portland Development Commission ("PDC") Board of Commissioners ("Board") adopted Resolution No. 6440 authorizing the Executive Director to execute an Agreement for Disposition and Development ("Agreement") with E&F Properties, LLC ("E&F"), for PDC-owned property located at 1101-1139 SW Jefferson Street (Block 263, Lots 3-6; Jefferson West Apartments);

WHEREAS, PDC and E&F are parties to the Agreement dated April 30, 2007, pursuant to which PDC agrees to convey and E&F agrees to acquire the property for redevelopment as a market-rate, residential mixed-use project upon the terms and conditions set forth in the Agreement;

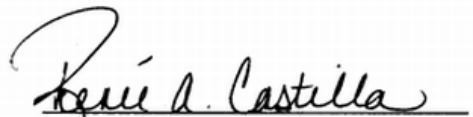
WHEREAS, E&F has requested minor modifications to the Agreement that will clarify certain terms of the Agreement and modify the Schedule of Performance and will not materially increase any risk to PDC or change the intent of the Agreement; and

WHEREAS, PDC and E&F have negotiated an Amendment of Agreement for Disposition and Development.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to execute an Amendment to the Agreement for Disposition and Development with E & F Properties, LLC, substantially in the form attached hereto as Exhibit A; and

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

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



Renee A. Castilla, Recording Secretary

**AMENDMENT OF AGREEMENT FOR DISPOSITION AND DEVELOPMENT
OF PROPERTY
JEFFERSON WEST**

THIS AMENDMENT OF AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY JEFFERSON WEST (this "Amendment") is made as of this ____ day of _____, 2009 (the "Effective Date"), by and between 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 E&F PROPERTIES, LLC, an Oregon limited liability company ("E&F").

RECITALS

A. PDC and E&F are parties to an Agreement for Disposition and Development of Property – Jefferson West (the "DDA"), dated April 30, 2007, pursuant to which PDC agrees to convey and E&F agrees to acquire the Property, upon the terms and conditions set forth in the DDA.

B. Subject to the terms and conditions of this Amendment, the parties desire to amend the DDA. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the DDA.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree that as of the Effective Date, the DDA is amended as set forth below.

1. Definition No. 22 of the DDA (Mortgage) is amended to provide that any Mortgage that meets the requirements of Paragraph 3 of this Amendment shall be approved by PDC.
2. Section 3.5.1 of the DDA is amended by deleting phrase (iii) at the end of the Section and replacing it with the following phrase: "(iii) the Project's architect has issued its certificate that the Project is substantially complete and is substantially in compliance with the plans reviewed by PDC."
3. The following is added to the end of Section 5.2(i) "provided that any Mortgage, the terms of which (interest rate, maturity date, and cure periods) are similar to typical mortgages for similar projects in Portland, Oregon (in terms of type, scope, and cost) issued around the same time the Mortgage is entered into by Developer, shall be approved by PDC."
4. Exhibit C to the DDA is amended to add the following sentence after the last sentence thereof: "The housing constructed as part of the Project may be market-rate housing."

5. Section 3.3 of the DDA is amended to add the following language after the first sentence thereof: “Notwithstanding the preceding sentence, Developer may perform the tasks set forth in the Schedule of Performance in any order. The due dates provided in the Schedule of Performance are deadlines only, and Developer’s early completion of any of the tasks shall not affect the deadline for any other task. In particular, if all of the conditions to Closing are otherwise satisfied, the Conveyance of the Property may Close and any tasks on the Schedule of Performance with a due date after the Closing Date may be completed after Closing provided that they are completed on or before their respective due dates.”
6. Section 1.4 of the DDA is amended to provide that the following shall not be a Permitted Exception: the City of Portland Notice of Possible Lien dated November 12, 1998, and recorded in the real property records of Multnomah County, Oregon, on November 18, 1998, under recorder’s number 98210531. The final sentence of Section 1.4 of the DDA is amended to read as follows: “If this Agreement is not terminated in accordance with the preceding sentence, the exceptions to which Developer objected but which PDC refused to remove shall also be considered Permitted Exceptions.”
7. Section 1.4 of the DDA is amended to add the following language after the last sentence thereof: “Developer may obtain an update to the Title Report on the Property at any time prior to the Closing. Developer shall promptly give to PDC a copy of any updated Title Report. 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 as a result of PDC’s actions or inactions. Within twenty (20) days of Developer’s written notice to PDC described in the preceding sentence, PDC shall notify Developer in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If PDC refuses to remove any such objected to exceptions, Developer shall have twenty (20) days to terminate this Agreement by written notice to PDC. Any exceptions that Developer accepts at Closing are the “**Final Permitted Exceptions.**”
8. Section 3.4.2 of the DDA is amended to add the following language after the last sentence thereof: “PDC’s access to the Property under this Section 3.4.2 is conditioned on PDC’s representatives complying with Developer’s reasonable safety and construction rules prior to entry.”
9. The legal description of the Property set forth in the definition of “Property” and in Exhibits A and E to the DDA is amended to read as set forth below.

A tract of land comprised of Lots 4 and 5, and the Southerly fractional portion of Lots 3 and 6, Block 263, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon, said tract being more particularly described as follows:

Beginning at a point of intersection of the Westerly line of SW 11th Avenue (formerly 9th Street) with the Northerly line of SW Jefferson Street, which point is also the Southeasterly corner of Block 263, CITY OF PORTLAND; thence Northerly along the said Westerly line of SW 11th Avenue, 80.95 feet, more or less, to the point of intersection with a line formerly known as the North boundary line of the R.R. Thompson tract and the South boundary line of the Harker tract and being also known as the North line of the tract of land formerly owned by the Amanda Reed Estate; thence Westerly along said boundary line to a point in the Easterly line of SW 12th Avenue (formerly 10th Street) which is 87.65 feet Northerly of the Northerly line of said SW Jefferson Street; thence Southerly along the said Easterly line of SW 12th Avenue, 87.65 feet to the said Northerly line of SW Jefferson Street; thence Easterly along the said Northerly line of SW Jefferson Street, 200 feet to the point of beginning.

10. Exhibit B (the Schedule of Performance) attached to the DDA is replaced in its entirety with the Exhibit A (“Revised Schedule of Performance”) attached to this Amendment.

Except as amended and/or modified by this Amendment, the DDA is hereby ratified and confirmed and all other terms of the DDA shall remain in full force and effect, unaltered and unchanged by this Amendment. In the event of any conflict between the provisions of this Amendment and the provisions of the DDA, the provisions of this Amendment shall prevail. Whether or not specifically amended by the provisions of this Amendment, all of the terms and provisions of the DDA are hereby amended, in accordance with the terms and subject to the conditions hereof, to the extent necessary to give effect to the purpose and intent of this Amendment.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

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

E&F PROPERTIES, LLC, an Oregon limited liability company

By: _____
Name: Mark D. Fraser
Title: Authorized Member

By: _____
Name: Bruce A. Warner
Title: Executive Director

APPROVED AS TO FORM

By: _____
Name: Eric F. Iverson
Title: Portland Development Commission, General Counsel

REVISED SCHEDULE OF PERFORMANCE

TASK	TASK TYPE	DUE DATE
Execute Memorandum of Understanding	1	Complete
Substantial Draft DDA	1	Complete
Commission Approval of DDA	1	Complete
PDC to provide Preliminary Title Report to E & F Properties	1	Complete
E & F Properties to notify PDC of any objections to title condition	1	Complete
E & F Properties to secure Certificate of Occupancy for Jeffrey	1	Complete
PDC to complete relocation of all Jefferson West tenants	1	Complete
E & F Properties to provide Development Program and Concept Documents	1	May 1, 2011
E & F Properties to provide 50% Schematic Drawings & Project Budget	1	April 1, 2011
PDC to complete review of 50% Schematic Drawings & Project Budget	2	April 15, 2011
E & F Properties to provide 90% Schematic Drawings & Project Budget	1	July 15, 2011
PDC to complete review of 90% Schematic Drawings & Project Budget	2	August 1, 2011
E & F Properties to provide 50% Design Development Documents & Project Budget	1	October 1, 2011
PDC to complete review of 50% Design Development Documents & Project Budget	2	October 15, 2011
E & F Properties to provide 90% Design Development Documents & Project Budget	1	December 15, 2011
PDC to complete review of 90% Design Development Documents & Project Budget	2	January 1, 2012
E & F Properties to provide 50% Construction Documents & Project Budget	1	February 1, 2012
PDC to complete review of 50% Construction Documents & Project Budget	2	February 15, 2012
E & F Properties to submit for Design Review	1	March 15, 2012
E & F Properties to provide 90% Construction Documents & Project Budget	1	July 1, 2012
PDC to complete review of 90% Construction Documents & Project Budget	2	July 15, 2012
E & F Properties to provide Final Construction Plans and Specifications & Project Budget	1	August 15, 2012
PDC to complete review of Final Construction Plans and Specifications & Project Budget	2	September 1, 2012
E & F Properties to provide evidence/commitment of construction financing for project	1	October 1, 2012
E & F Properties secures Building Permits (Shoring & Excavation at minimum) from BDS	1	October 1, 2012
E & F Properties to provide Articles of Organization, Operating Agreement, Certificate of Good Standing, and Authorizing Resolution	1	October 15, 2012
PDC to issue Owner's Standard Title Insurance Policy	1	At Closing/Conveyance of Property
E&F Properties to pay Performance Guaranty Fee to PDC	1	At Closing/Conveyance of Property
PDC Closing/Conveyance of Property to E & F Properties	1	November 1, 2012

TASK	TASK TYPE	DUE DATE
Final Termination Date (if applicable)	1	December 31, 2012
E & F to complete construction of Project	1	October 31, 2014
E & F Properties requests Certificate of Completion from PDC	1	Upon issuance of Certificate of Occupancy for Project
PDC issues Certificate of Completion	2	15 days

TASK TYPE Definitions:
Type 1: Task to be completed by responsible party no later than the designated Due Date
Type 2: If preceding Task has been completed prior to the designated due date, the Due Date for a Type 2 task will be accelerated by the same number of days the preceding task was completed prior to its designated due date.

Amended 5/14/09

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6701

Title:

AUTHORIZING AMENDMENT OF AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY WITH E&F PROPERTIES, LLC, FOR PDC-OWNED PROPERTY LOCATED AT 1101-1139 SW JEFFERSON STREET

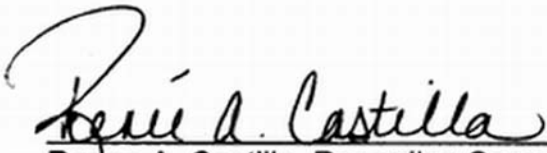
Adopted by the Portland Development Commission on May 14, 2009.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Charles Wilhoite, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Steven Straus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

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


Renee A. Castilla, Recording Secretary

Date: June 4, 2009