

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6817

RECOMMENDING PRELIMINARY APPROVAL TO THE CITY COUNCIL OF RECOVERY ZONE FACILITY BONDS FOR AN AMOUNT NOT TO EXCEED \$31,000,000 FOR THE MEIER & FRANK WAREHOUSE PROJECT FOR THE DEVELOPMENT AND CONSTRUCTION OF NEW OFFICE SPACE AND PARKING; AND AUTHORIZING EXECUTIVE DIRECTOR TO EXECUTE A LETTER OF INTENT AND INDEMNIFICATION AND COMPENSATION AGREEMENT.

WHEREAS, pursuant to the American Recovery and Reinvestment Act of 2009 (“ARRA”) and IRS Notice 2009-50 the State of Oregon (“State”) has been allocated \$155,175,000 of Recovery Zone Facility Bond (“RZFB”) volume cap;

WHEREAS, RZFBs are private activity bonds that are able to be issued as tax-exempt bonds;

WHEREAS, ARRA requires that RZFBs be issued no later than December 31, 2010;

WHEREAS, ARRA permits the State to suballocate RZFB volume cap to local governments for use on eligible projects in recovery zones;

WHEREAS, the Portland City Council has enacted Ordinance No. 183563, designating the entire geographical area of the city of Portland as a recovery zone;

WHEREAS, the City of Portland (the “City”) has expressed its intent to issue RZFBs pursuant to the administrative procedures and requirements of Portland City Code (“PCC”) Chapter 5.72, for issuance of private activity economic development revenue bonds;

WHEREAS, pursuant to PCC Chapter 5.72, the Portland Development Commission (“PDC”) is charged with the responsibility to review and process applications for private activity economic development revenue bonds;

WHEREAS, the City has adopted in Chapter 5.72 of the PCC procedures and standards for the application for an issuance of revenue bonds to finance economic development projects;

WHEREAS, PDC has received an application from 14th & Everett Investors, LLC, an Oregon limited liability corporation (“Applicant”), for RZFBs in the amount of \$31,000,000 for the redevelopment of the historic Meier & Frank Warehouse (“Project”) as a five-story office building containing four floors of office space (approximately 133,000 net leasable square feet) and one floor of parking using hydraulic parking stackers totaling 183 parking spaces;

WHEREAS, Chapter 5.72 of the PCC requires (a) an agreement from the Applicant to indemnify and hold harmless the PDC and the City, (b) an agreement from the Applicant to pay all applicable PDC and City fees and expenses associated with its application whether or not the bonds are issued, and (c) contemplates the execution of a letter of intent between PDC and

the Applicant; all of which staff proposes be covered under a Letter of Intent and Indemnification and Compensation Agreement executed by PDC, the City, and the Applicant;

WHEREAS, the Oregon Business Development Department has agreed to suballocate \$31 million in RZFB volume cap to the City for the Project;

WHEREAS, PDC recommends that City Council approve the application and the bonds be issued in the approximate amount of \$31,000,000, which bonds shall be payable solely from the revenues of the Project, the funds and accounts described in the bond documentation, and from amounts, if any, received pursuant to any credit enhancement;

WHEREAS, PDC has reviewed the application pursuant to Chapter 5.72.040(A) of the PCC and considered the factors set forth in Chapter 5.72.040(B) of the PCC; and

WHEREAS, PDC finds that the proposed Project (a) does not conflict with any adopted plans or policies of the City of Portland, (b) is a qualified historic project and conforms as commercial use pursuant to Chapter 5.72.040(C)(8) of the PCC, and (c) is an “economic development project” within the meaning of Chapter 5.72.020(A) of the PCC.

NOW, THEREFORE, BE IT RESOLVED that PDC recommends to the City Council the preliminary approval of the application for the issuance of economic development revenue bonds as RZFBs in an aggregate principal amount not to exceed \$31,000,000 to finance the Project pursuant to PCC Chapter 5.72 and ARRA;

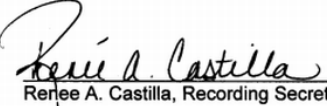
BE IT FURTHER RESOLVED that PDC requests the City’s Office of Management and Finance to (a) declare the City’s official intent to issue the RZFBs pursuant to the Income Tax Regulations promulgated under the Tax Code, and permit the reimbursement by the City or the Applicant for costs of the Project paid prior to the date of issuance of the RZFBs, and (b) determine which commercial bank or investment bank shall act as the underwriter(s) or private placement agent(s) for the RZFBs or which accredited investor will purchase the RFFBs;

BE IT FURTHER RESOLVED that upon City Council approval of the application, the Executive Director of PDC is hereby directed to execute and deliver a Letter of Intent and Indemnification and Compensation Agreement with the Applicant;

BE IT FURTHER RESOLVED that the City’s conduit bond counsel, K&L Gates LLP, is designated as bond counsel for such RZFBs; and

BE IT FURTHER RESOLVED that this resolution shall become effective thirty days from the date of its adoption.

Adopted by the Portland Development Commission on August 25, 2010.


Renee A. Castilla, Recording Secretary

**LETTER OF INTENT AND INDEMNIFICATION AND
COMPENSATION AGREEMENT**

between

CITY OF PORTLAND, OREGON
Acting By and Through Its City Council
and the Portland Development Commission

and

14TH & EVERETT INVESTORS, LLC

THIS LETTER OF INTENT AND INDEMNIFICATION AND COMPENSATION AGREEMENT (the "Letter and Agreement") is between the CITY OF PORTLAND, OREGON (the "City"), acting by and through its City Council and the Portland Development Commission (the "Commission"), the agency charged with the administration of the economic development and housing revenue bond programs of the City, and 14th & EVERETT INVESTORS, LLC. (the "Borrower").

1. Preliminary Statement. Among the matters of mutual inducement, which have resulted in the execution of this Letter and Agreement are the following:

a. The City is a municipal corporation, authorized and empowered by ORS Chapter 280.410 to 280.485 (the "Act"), Chapter 5.72 of the City Code (the "Code") and ORS 287A to issue revenue bonds for the purposes specified therein, which constitutes an "economic development project" and "eligible project," under the Act and the Code, upon such terms and conditions as the City and the Commission may deem advisable.

b. Pursuant to I.R.S. Notice 2009-50, the City was allocated \$20,323,000 of Recovery Zone Facility Bond volume cap ("City RZFB Volume Cap"), and the City Council previously adopted Ordinance No. 183563 declaring the entire geographic area of the City a recovery zone for purposes of, among other things, issuing recovery zone facility bonds to finance projects within the City; and

c. The Borrower has filed an application with the Commission for the issuance of revenue bonds as recovery zone facility bonds pursuant to the Act to provide funds for the redevelopment of the historic four-story Meier & Frank Warehouse building (the "Project") in an

amount not to exceed \$31,000,000. Revenue Bonds for the Project are referred to herein as the “revenue bonds.”

d. The State of Oregon Business Development Department has verbally committed to allocate to the City sufficient Recovery Zone Facility Bond volume cap available to the State (“State RZFB Volume Cap”) for the purpose of financing the Project through the issuance of the revenue bonds as recovery zone facility bonds.

e. The City proposes to issue the revenue bonds as recovery zone facility bonds for the financing of the Project, which constitutes an “economic development project” and “eligible project” within the meaning of the Act and the Code, and to loan the proceeds of such revenue bonds to the Borrower. The Bonds will be issued in an amount not exceeding \$31,000,000 and shall be payable solely from the revenues of the Project, the funds and accounts described in the loan documents for the Project and from amounts, if any, received pursuant to a credit facility or credit enhancement.

c. The City deems it necessary and advisable that it take such action as may be required under the Act to authorize and issue revenue bonds, in one or more series, to finance the cost of the Project in a total amount not exceeding \$30,000,000.

d. The City finds that the issuance of revenue bonds to finance the cost of the Project, and the loaning of the proceeds thereof to the Borrower constitutes a valid public purpose.

e. The Borrower wishes to proceed with the preparation of necessary plans and specifications, and to incur expenses in connection with the financing. The Borrower does not wish to incur the costs and expenses and proceed with its plans for the refinancing without assurances from the City, satisfactory to the Borrower, that proceeds of the sale of revenue bonds of the City will be made available to finance the Project. The parties consider it appropriate that the action contemplated hereunder be the subject of this Letter and Agreement.

f. All references in this Letter and Agreement to the City or the Commission shall be deemed to include when appropriate their elected and appointed officials, employees and agents.

2. Undertakings on the Part of the City. Subject to the conditions stated herein and subject to approval by the City Council, the preparation and approval of the various financing documents and review and approval by bond counsel, the City agrees and represents as follows:

a. The City will, upon satisfaction by the Borrower of all conditions stated herein and all other conditions imposed on the Borrower by the City prior to issuance of the revenue bonds, authorize and cause the issuance of revenue bonds to be payable solely out of the loan payments paid by the Borrower to the City pursuant to a loan agreement or other financing agreement between the Borrower and the City, which revenue bonds will be in an aggregate principal amount not to exceed \$31,000,000.

b. The City will adopt such proceedings and authorize the execution of such documents as may be necessary and advisable for the authorization, issuance, sale and delivery of the revenue bonds, and the loan of the proceeds of the revenue bonds to the Borrower to finance the Project, all as authorized by law and as mutually satisfactory to the Borrower and the City.

c. The amounts payable to the City under the loan agreement or other financing agreement will be sufficient to pay the principal of and the interest on, and redemption premium, if any, of the revenue bonds as and when the same become due and payable.

d. The City has appointed K&L Gates LLP, as the City's bond counsel ("Bond Counsel") to supervise the proceedings and to approve the legality of the actions of the City, the Commission, the revenue bonds, and to assist in the preparation and review of any preliminary and final disclosure document or placement memorandum for the revenue bonds.

e. Neither the revenue bonds nor the interest thereon shall be an obligation of the City of Portland, the Commission, or the State of Oregon, or the personal obligations of the elected or appointed officials, employees or agents of the City or the Commission within the meaning of any constitutional or statutory provisions whatsoever, but shall be payable solely from amounts received by the City or the Commission from the loan agreement and other monies pledged therefor. The revenue bonds shall not be a general obligation of the City or the Commission or their elected or appointed officials, employees or agents nor a pledge of the faith and credit of the City or the Commission or their elected or appointed officials, employees or agents nor a debt or pledge of the faith and credit of the City of Portland, the Commission, or the State of Oregon.

f. No presently existing assets of the City or the Commission shall be given to secure the revenue bonds and shall be repayable out of and, only out of, the Borrower's assets and income or other credit enhancement to be provided by the Borrower at its expense.

3. Undertakings on the Part of the Borrower. Subject to the conditions above stated, the Borrower agrees as follows:

a. If the revenue bond financing herein contemplated is available, it is the intent of the Borrower to cause the Project to be constructed at the site indicated in the Borrower's revenue bond application.

b. The Borrower will cooperate with the City for the approval of all of the terms and conditions of the issuance of the revenue bonds, and in the sale of the revenue bonds in an aggregate principal amount not to exceed \$30,000,000, to be used to finance the Project.

c. If the revenue bond proceeds are not sufficient to finance the Project and pay all costs of issuance, the Borrower agrees to pay, or cause to be paid, the deficiency.

d. At the time of closing of the revenue bond sale, the Borrower will cause to be delivered an executed loan agreement or other financing agreement with the City, under which terms the Borrower will agree to pay the City loan payments sufficient in the aggregate to pay the principal of and interest on, and redemption premium, if any, of the revenue bonds as and when the same shall become due and payable and shall contain such other provisions as the City, the Commission or Bond Counsel shall require. The loan agreement or financing agreement may be secured by an appropriate trust deed or mortgage or other security as the City or Commission deems appropriate.

e. The loan agreement or other financing agreement shall contain a provision that the Borrower shall indemnify and hold the City and its elected or appointed officials, employees and agent harmless from all liabilities incurred in connection with the Project or the revenue bonds.

f. The Borrower will cause its counsel to provide the City with legal opinions satisfactory to the City and Bond Counsel.

g. The loan agreement shall also contain such other provisions as may be required or permitted by law and as are mutually acceptable to the parties.

h. The Borrower agrees that the City's Office of Management and Finance shall appoint a placement agent and bond trustee for the revenue bonds or approve the purchaser for the revenue bonds, as applicable. The pricing of the revenue bonds shall be subject to the approval of the City's Office of Management and Finance.

i. The Borrower agrees to comply with the requirements of the Act and the Code.

j. The Borrower understands and agrees that preliminary and final approval, if any, of revenue bond financing does not imply or otherwise constitute approval of other City funds or subsidies.

k. The Borrower will take such further action and adopt such further proceedings as may be required to implement these understandings.

4. General Provisions.

a. Issuance of the revenue bonds as recovery zone facility bonds is conditioned upon waiver by the State of State RZFB Volume Cap to the City to the satisfaction of Bond Counsel in an amount necessary for the issuance of such revenue bonds.

b. Except as provided in Section 4(c) and Section 5 hereof or as otherwise provided herein, all obligations arising under this Letter and Agreement are conditioned upon the parties agreeing to mutually acceptable terms for the sale of the revenue bonds and mutually acceptable terms and conditions for the contracts and agreements contemplated herein; provided, however, and subject to Section 3(h) hereof, that the City shall not participate in or be responsible for the marketing of the revenue bonds.

c. The Borrower will pay, or cause to be paid, to the City and the Commission as applicable, whether the revenue bonds are actually issued or not, any and all direct or indirect costs incurred by the City or the Commission in connection with the Project including without limitation, any and all fees and expenses incurred in connection with the issuance, sale and on-going administration (including any IRS investigation or audit) of the revenue bonds, including without limitation, the fees and expenses of Bond Counsel, the City's external financial advisor, if

any, the trustee, registrar, placement agent, paying agent, ratings and securities depository. The Borrower will also pay the cost of staff time of the City and Commission incurred in connection with the issuance, sale or on-going administration (including any IRS investigation or audit) of the revenue bonds. In addition, the Borrower shall pay the out-of-pocket costs of Bond Counsel, the City's external financial advisor, if any, legal counsel and staff in connection with the Project. The Borrower will also pay the costs and fees of its counsel, letter of credit or credit enhancement fees, the placement agent and any other costs incurred in connection with the revenue bonds.

c. The Borrower shall obtain, at its expense, all necessary governmental approvals and opinions of Bond Counsel necessary to ensure the legality of the revenue bonds.

5. Miscellaneous Provisions. The Borrower shall and hereby agrees to indemnify and save the City and the Commission, their appointed or elected officials, employees or agents harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the execution of this Letter and Agreement and the adoption of the Commission's Resolution on July 26, 2010 and any actions to be taken by the City or the Commission relating to the Project or the issuance of the revenue bonds for so long as the revenue bonds remain outstanding, including, without limitation, (i) any condition related to the Project; (ii) any breach or default on the part of the Borrower in the performance of any of its obligations under this Letter and Agreement, (iii) any act or negligence of the Borrower or of any of its agents, contractors, servants, employees or licensees (iv) any violation of the federal or state securities laws in connection with the revenue bonds, or (v) any act or negligence of any assignee or lessee of the Borrower, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Borrower. The Borrower shall indemnify and save the City and the Commission and their elected or appointed officials, employees or agents harmless from any such claim arising as aforesaid, or in connection with any action or proceeding and for any costs or fees incurred in any action or proceedings brought thereon whether at trial, on appeal, in bankruptcy proceedings or otherwise, and upon notice from the City or the Commission or their elected or appointed officials, employees or agents, the Borrower shall defend them or either of them in any such action or proceeding at the Borrower's expense.

Notwithstanding the fact that it is the intention of the parties hereto that neither the City nor the Commission or their elected or appointed officials, employees or agents shall incur any pecuniary liability by reason of the terms of this Letter and Agreement or the undertakings

required of the City or the Commission or their elected or appointed officials, employees or agents hereunder, by reason of the issuance of the revenue bonds or by reason of the execution of any financing documents relating thereto, or by reason of the performance of any act requested by the City or the Commission, their elected or appointed officials, employees or agents or by the Borrower, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulation pertaining to the foregoing; nevertheless, if the City or the Commission or their elected or appointed officials, employees or agents should incur any such pecuniary liability, then in such event the Borrower shall indemnify and hold the City or the Commission and their elected or appointed officials, employees or agents harmless against all claims, demands or causes of action whatsoever, by or on behalf of any person, firm or corporation or other legal entity arising out of the same or out of any offering statement or lack of offering statement in connection with the sale or resale of the revenue bonds and all costs, fees and expenses, including without limitation, legal fees and expenses whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the City or the Commission or their elected or appointed officials, employees or agents, the Borrower shall defend the City and the Commission and their elected or appointed officials, employees or agents in any such action or proceeding.

Notwithstanding anything to the contrary contained herein, the Borrower shall have no liability to indemnify the City or the Commission, or their elected or appointed officials, employees or agents, against claims or damages resulting from the City's or the Commission's own gross negligence or willful misconduct, or that of their elected or appointed officials, employees or agents.

In the event any claim is made against the City or the Commission, their elected or appointed officials, employees or agents (collectively, the "Indemnified Parties") for which indemnification may be sought from the Borrower under the foregoing provisions, the Indemnified Parties shall promptly give written notice thereof to the Borrower; provided that any failure to give or delay in giving such written notice shall not relieve the Borrower's indemnification obligations as set forth above except to the extent such failure or delay prejudices the Borrower's ability to defend or settle such claim. Upon receipt of such notice, the Borrower shall assume the defense thereof in all respects and may settle such claim in such manner as it deems appropriate so long as there is no liability, cost or expense to the Indemnified Party. The

Borrower shall select legal counsel to represent each Indemnified Party and shall not be responsible for the legal fees and expenses of any legal counsel retained by any Indemnified Party without the written consent of the Borrower, unless the City or the Commission shall have reasonably concluded that there may be a conflict of interest between the City or the Commission and the Borrower in the conduct of the defense of such action (in which case the Borrower shall not have the right to direct the defense of such act on behalf of the City or the Commission and shall be responsible for the legal fees and expenses of the counsel retained by the Indemnified Party whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise). Borrower agrees to pay, or cause to be paid, the deficiency.

The City and the Borrower have caused this Letter and Agreement to be authorized by their respective governing bodies and executed by their duly authorized officers as of the ____ day of _____, 200_.

CITY OF PORTLAND, OREGON

14TH & EVERETT INVESTORS, LLC

By: _____
Debt Manager

By: _____

APPROVED AS TO FORM:

By: _____
City Attorney

PORTLAND DEVELOPMENT COMMISSION

By: _____
Executive Director

APPROVED AS TO FORM:

By: _____
Assistant General Counsel

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6817

Title:

RECOMMENDING PRELIMINARY APPROVAL TO THE CITY COUNCIL OF RECOVERY ZONE FACILITY BONDS FOR AN AMOUNT NOT TO EXCEED \$31,000,000 FOR THE MEIER & FRANK WAREHOUSE PROJECT FOR THE DEVELOPMENT AND CONSTRUCTION OF NEW OFFICE SPACE AND PARKING; AND AUTHORIZING EXECUTIVE DIRECTOR TO EXECUTE A LETTER OF INTENT AND INDEMNIFICATION AND COMPENSATION AGREEMENT.

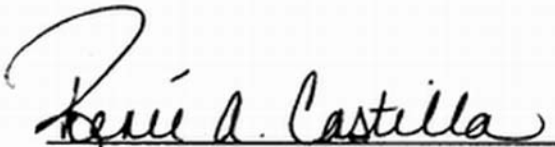
Adopted by the Portland Development Commission on August 27, 2010.

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

Certification

The undersigned hereby certifies that:

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


Renee A. Castilla, Recording Secretary

Date: October 26, 2010