

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6909

**AUTHORIZING THE THIRD AMENDMENT TO THE DISPOSITION
AND DEVELOPMENT AGREEMENT FOR STATION PLACE
REDEVELOPMENT WITH HOYT STREET PROPERTIES, LLC**

WHEREAS, the Urban Renewal Plan for the River District Urban Renewal Area (as amended from time to time, the "Plan") was adopted by the Portland City Council on October 21, 1998, by Ordinance No. 172808;

WHEREAS, Hoyt Street Properties, L.L.C. ("HSP") and the Portland Development Commission ("PDC") are parties to that certain Disposition and Development Agreement for Station Place Redevelopment dated September 2, 2002 (as amended from time to time, the "DDA");

WHEREAS, PDC conveyed the real property known as Station Place Lot 4 or Parcel 3 (the "Property") on April 26, 2004, to HSP;

WHEREAS, HSP desires to sell the Property and assign its rights and obligations under the Station Place DDA as they relate to the Property to Pearl Hotel Investors, LLC ("PHI");

WHEREAS, the DDA currently requires housing on the Property with thirty units affordable to households at 120 percent Median Family Income ("MFI") or lower;

WHEREAS, PHI desires to construct a hotel on the Property;

WHEREAS, PDC and HSP have negotiated the Third Amendment to the Disposition and Development Agreement for Station Place in the form attached hereto as Exhibit A (the "Third Amendment") to accommodate the hotel use on the Property; and

WHEREAS, in consideration of the Third Amendment, HSP has agreed to extend the repurchase right for affordable housing as set forth in the Amended and Restated Agreement between the City of Portland and Hoyt Street Properties, LLC ("HSP DA") for two additional years until 2014, and HSP has agreed that that under the HSP DA its affordable housing obligation shall be increased by 30 for-rent or for-sale housing units affordable to households at or below 120 percent of MFI.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to execute the Third Amendment and may approve changes to the Third Amendment prior to and subsequent 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 December 14, 2011.


Recording Secretary

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6909

Title:

AUTHORIZING THE THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT FOR STATION PLACE REDEVELOPMENT WITH HOYT STREET PROPERTIES, LLC

Adopted by the Portland Development Commission on December 14, 2011.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Aneshka Dickson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Steven Straus	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input 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.



Recording Secretary

Date: December 14, 2011

**AMENDMENT NUMBER 3 TO DISPOSITION AND DEVELOPMENT
AGREEMENT FOR STATION PLACE REDEVELOPMENT**

THIS AMENDMENT NUMBER 3 TO DISPOSITION AND DEVELOPMENT AGREEMENT FOR STATION PLACE REDEVELOPMENT (this "Amendment") is effective as of December __, 2011 (the "Effective Date") and is made by the City of Portland, a municipal corporation of the State of Oregon, acting by and through the Portland Development Commission, the duly designated urban renewal agency of the City of Portland ("PDC"), and Hoyt Street Properties, L.L.C., an Oregon limited liability company ("Hoyt Street"). Each of PDC and Hoyt Street may be referred to in this Amendment as a "party" and both PDC and Hoyt Street may be collectively referred to in this Amendment as the "parties".

RECITALS

A. PDC, Hoyt Street, Station Place, LLC ("REACH") and H. Williams Advisors, Inc. ("HWA") entered into that certain Disposition and Development Agreement for Station Place Redevelopment on September 27, 2002, which agreement was amended by Amendment No. 1 to Disposition and Development Agreement dated June 1, 2003, which affected only Parcel 1A, and Amendment Number 2 to Disposition and Development Agreement for Station Place Redevelopment dated May 3, 2004 (collectively, the "Original DDA").

B. REACH has completed construction of the Rental Component of the Project, and a Certificate of Completion has been recorded for that Component. HWA has completed construction of the Parking Component of the Project, and a Certificate of Completion has been recorded for that Component. Under the Original DDA, REACH was to have developed the Commercial Component on Parcel 1B, now Lot 2 (hereafter "Lot 2"). REACH decided that it was not interested in developing the Commercial Component, PDC declared REACH in default of the Original DDA, REACH waived its rights and obligations relating to Lot 2, and the development of Lot 2 has been released from and is no longer bound or covered by the Original DDA. As a result of the foregoing, the Original DDA has terminated as to Station Place, LLC and H. Williams Advisors, Inc., and they are no longer necessary parties to the Original DDA or this Amendment.

C. Hoyt Street owns property subject to the Original DDA and referred to in the Original DDA as "Parcel 3". Parcel 3 has been platted since the parties entered into the Original DDA and is now commonly referred to by the parties as "Lot 4". Parcel 3 is legally described on Exhibit A-1 and depicted on Exhibit A-2, both of which are attached to this Amendment.

D. The Original DDA contemplates the development of a for-sale residential project on Parcel 3, described therein as the Condominium Component. The parties

acknowledge and agree that current economic conditions have rendered a condominium development on Parcel 3 unfeasible for the foreseeable future.

E. Hoyt Street desires to sell Parcel 3 to Williams/Dame & Associates, Inc., an Oregon corporation, or its intended assignee, Pearl Hotel Investors, LLC, an Oregon limited liability company (each and collectively, “WDA”), and WDA has proposed the development of a hotel project on Parcel 3.

F. To spur construction and permanent jobs and the development of a taxable project on Parcel 3, which will result in increased revenue to the City of Portland (the “City”) and to Multnomah County, PDC and Hoyt Street desire to amend the Original DDA on and subject to the terms and conditions set forth in this Amendment.

G. The Original DDA as modified by this Amendment shall be referred to herein as the “DDA.” Capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Original DDA.

AGREEMENT

In consideration of the mutual covenants and agreements contained in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PDC and Hoyt Street agree as follows:

1. Status of DDA. Because Certificates of Completion have been recorded for the Rental Component and the Parking Component and because a commercial building has been constructed to PDC’s satisfaction on Lot 2 that would entitle the owner thereof to a Certificate of Completion for Commercial Component, the references to and requirements of such Components under the DDA are no longer applicable and will have no ongoing force or effect.

2. Use. Parcel 3 may be developed for hotel use and, if not developed as a hotel, for any other use consistent with the River District Urban Renewal Plan. Sections 7.3.2(d), 7.7, 10.1.2 and 10.3 of the Original DDA and Section 5 of Exhibit B to the Original DDA are hereby deleted in their entirety.

3. Environmental Conditions and Responsibilities. The terms and provisions of Section 4 of the Original DDA remain in full force and effect with respect to the development of Parcel 3.

4. Contracting Requirements. The Developer of Parcel 3 will comply with PDC’s Business and Workforce Equity Policy (adopted April 28, 2010). Section 7.2 of the Original DDA is inapplicable to Parcel 3.

5. Green Building. Although not required by the Original DDA, the developer of Parcel 3 will strive to achieve LEED Silver certification for the project, which will satisfy in full the City’s and PDC’s green building requirements for Parcel 3. In addition, the hotel operator’s green operations initiatives will be implemented in

operating hotel. Failure to achieve LEED Silver certification for any reason shall not be deemed a default by Developer under the DDA.

6. Affordable Housing. The affordable housing obligation set forth in the Original DDA for Parcel 3 is hereby deleted in its entirety. In consideration of the elimination of the affordable housing requirement on Parcel 3, Hoyt Street hereby: (a) agrees that under the Hoyt Street Yards DA, its affordable housing obligation shall be increased by 30 for-rent or for-sale housing units affordable to households at or below 120% of MFI (excluding parking costs); and (b) grants to PDC, for and on behalf of the City, an extension of the City's right under, and in accordance with, Recital M and Section V.D.2 of the Hoyt Street Yards DA to request the sale by Hoyt Street of a City Affordable Housing Parcel for two additional years, until September 8, 2014; provided that the extension set forth in this subsection 6(b) will terminate if PDC exercises its right to require an affordable housing component in connection with any future residential development on Parcel 3 as provided in Section 11.4 of the DDA, as modified by this Amendment. The parties acknowledge and agree that the City is a third-party beneficiary of this Agreement.

7. Schedule of Performance. The dates for performance set forth in Section V of the Schedule of Performance attached to the Original DDA as Exhibit C are hereby deleted in their entirety and replaced with the schedule attached to this Amendment as Exhibit B.

8. Design. Section 6.1.4 of the original DDA is amended as follows: "The Developer of Parcel 3 will prepare preliminary design drawings for the Parcel 3 Component in such form as will be included in the Type III Design Review Application package ("Preliminary Design Plans"), for submission to and approval by PDC staff as soon as they are available and prior to applying to the City for design review approval. PDC staff will review and approve or comment on the Preliminary Design Plans within five (5) business days after submission. Failure to approve or comment within such 5-day period will be deemed approval. After City design review approval, the Developer will submit 90% Construction Plans and Specifications for PDC staff approval. PDC staff will review and approve or comment on the 90% Construction Plans and Specifications within five (5) business days after submission. Failure to approve or comment within such 5-day period will be deemed approval."

9. Assignment to WDA. PDC agrees that WDA satisfies the permitted assignee criteria set forth in Section 8.2.4 of the Original DDA. Accordingly, upon closing of the sale of Parcel 3 to WDA (the "Closing"), Hoyt Street may partially assign the DDA to WDA or another, affiliated special purpose entity formed by WDA to develop and own the hotel on Parcel 3. Such assignment shall obligate WDA to assume only those provisions of the DDA that specifically apply to Parcel 3. Upon such assignment by Hoyt Street and assumption by WDA (or its special purpose entity), Hoyt Street will be released from any and all obligations under the DDA that are related to Parcel 3. From and after the date of such assignment, all references in the DDA to HSP or to the Developer of Parcel 3 shall mean WDA (or is special purpose entity).

10. Construction Staging. Subject to availability, PDC will permit the Developer of Parcel 3 to enter and use the lot to the North of Parcel 3, being Lot 5, STATION PLACE, for construction staging activities for the Parcel 3 Component, commencing 30 days prior to the commencement of construction on Parcel 3. If requested by the Developer of Parcel 3, PDC will enter into a permit of entry on terms and in form as are customary for permits of entry granted by PDC, to memorialize such use. PDC's Executive Director shall have the authority to include in such permit of entry such terms and conditions as the Executive Director deems appropriate.

11. Parking Agreement. PDC is the owner of the Parking Component. PDC agrees to allow the owner of the Parcel 3 Component to use up to 100 parking spaces in the Parking Garage on terms and conditions acceptable to both parties. At Closing, the owner of Parcel 3 and PDC will enter into a parking agreement, in form and substance reasonably acceptable to both parties. PDC's Executive Director shall have the authority to include in such parking agreement such terms and conditions as the Executive Director deems appropriate.

12. Conveyance to Hoyt Street. The conveyance of Parcel 3 has occurred. Thus, Section 2 of the Original DDA is hereby no longer operative.

13. Exhibits. PDC and Hoyt Street hereby acknowledge and agree that Exhibit G attached to the Original DDA is not applicable to Parcel 3.

14. Definitions.

14.1 The following definitions are hereby deleted in their entirety from the Original DDA: "Parcel 3 Deed," "Parcel 3 Option," and "Parcel 3 Purchase Price."

14.2 The definition of "Condominium Component" is hereby deleted in its entirety and replaced with the following: "Parcel 3 Component" means (a) the development on Parcel 3 of a hotel with approximately 200 rooms (the "Hotel"), or (b) if the Hotel is not constructed, (i) any office, rental housing or for-sale housing use or (ii) any other use that is consistent with the River District Urban Renewal Plan and approved by PDC, which approval will not be unreasonably withheld, conditioned or delayed. All references in the Original DDA to the "Condominium Component" are hereby deleted and replaced with "Parcel 3 Component."

15. PDC Remedies. Sections 11.4 and 11.5 of the Original DDA are deleted in their entirety effective as of the date that a building permit is issued for construction of the Hotel on Parcel 3. Prior to that date, Section 11.5.2(a) of the Original DDA is amended to provide that PDC will not recover any costs to complete any improvements (because no improvements will have been commenced at that time and the parties agree that any resale of Parcel 3 will occur in its undeveloped state), and clause (a) of Section 11.5.2(b) of the Original DDA is amended to provide that the amount of the purchase price that will be paid to WDA upon a resale of Parcel 3 will equal the purchase price that WDA has paid to Hoyt Street, together with all closing and other acquisition costs (in addition to all development costs, as specified); provided that the

foregoing shall not create any obligation of PDC to pay to WDA more than the amount of the sale proceeds received upon sale and remaining after repayment of PDC's costs pursuant to Section 11.5.2(a) as amended hereby.

16. PDC Cooperation. PDC agrees to execute such applications, and to cooperate with Hoyt Street and WDA as reasonably necessary, to obtain: (a) an amendment to the Central City Master Plan to permit Parcel 3 to be used for hotel purposes; (b) verification from the City that the FAR for Parcel 3 will be not less than 4.9:1 exclusive of the 3:1 FAR bonus available for residential development; and (c) verification from the City that all open space requirements for the Station Place subdivision have been or will be satisfied on lots other than Parcel 3, and there is no open space requirement for Parcel 3; and (d) an amendment to the Central City Parking Review to clarify or update the allowable uses in the Parking Component as necessary to accommodate the parking contemplated under the lease referenced in Section 11 above.

17. Miscellaneous.

17.1 This Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

17.2 Except as expressly modified herein, the Original DDA is hereby ratified and confirmed and shall remain in full force and effect. In the event of a conflict between the terms of this Amendment and the terms of the Original DDA, the terms of this Amendment shall prevail.

17.3 The parties may execute this Amendment in one or more identical counterparts, each of which shall be deemed an original and all of which when taken together will constitute one and the same instrument.

17.4 All of the exhibits attached to this Amendment are incorporated into and made a part of the DDA.

17.5 The parties acknowledge that PDC and Hoyt Street are both sophisticated parties and that each party and its counsel have reviewed and revised this Amendment. Therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Amendment or any amendments or exhibits hereto.

**[Remainder of Page Intentionally Left Blank;
Signatures on Following Page.]**

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, which shall be effective as of the Effective Date.

PDC:

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: _____
Patrick Quinton,
Executive Director

APPROVED AS TO FORM:

PDC Legal Counsel

HOYT STREET:

HOYT STREET PROPERTIES, L.L.C., an Oregon limited liability company

By: _____
Tiffany Sweitzer,
President

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing document was personally acknowledged before me this ___ day of _____, 2011 by Patrick Quinton, who being duly sworn, did say that he is the Executive Director of the Portland Development Commission, the duly designated Urban Renewal Agency of the City of Portland, a municipal corporation in the State of Oregon, acting for and on behalf of the City of Portland, and that the foregoing instrument was signed on behalf of said Commission by authority of its Commissioners, and acknowledged said instrument to be its voluntary act and deed.

BEFORE ME:

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing document was personally acknowledged before me this __ day of _____, 2011 by Tiffany Sweitzer, who being duly sworn, did say that she is the President of Hoyt Street Properties, L.L.C., an Oregon limited liability company, and that the foregoing instrument was signed on behalf of said limited liability company, and acknowledged said instrument to be its voluntary act and deed.

BEFORE ME:

Notary Public for Oregon
My Commission Expires: _____

Exhibit A-1

Parcel 3 Legal Description

Lot 4, STATION PLACE, in the City of Portland, County of Multnomah, State of Oregon.

Exhibit A-2

Depiction of Parcel 3

Exhibit B

Parcel 3 Schedule of Performance

TASK	DUE DATE
Close Sale and Transfer Title to WDA or assigns	September 1, 2012
Initiate Design Contracts – Begin Schematic Design	June 30, 2012
Developer to Submit Preliminary Design Development Drawings to PDC	January 30, 2012
PDC to Complete Review of Design Documents	5 Business Days after Submittal
Submit 90% Construction Documents	June 30, 2013
PDC to Complete Review of Design Documents	5 Business Days after Submittal
Developer to provide LEED Scorecard	October 1, 2013
Developer to Commence Construction	October 1, 2013
Developer to Complete Construction and secure Certificate of Occupancy	June 30, 2015
Developer to request PDC Certificate of Completion	September 30, 2015
PDC to issue Certificate of Completion	30 Days after Submittal