

PDC

PORTLAND DEVELOPMENT COMMISSION

DATE: May 14, 2009

TO: Board of Commissioners

FROM: Bruce A. Warner, Executive Director

SUBJECT: Report Number 09-57
Authorize First Amendment to Block 45 Disposition and Development Agreement to extend the Schedule of Performance

EXECUTIVE SUMMARY

BOARD ACTION REQUESTED

Adopt Resolution No. 6703

ACTION SUMMARY

Authorize the Executive Director to amend the previously executed disposition and development agreement (DDA) with Weston Investment Co., LLC (WIC/Weston) for the purchase and redevelopment of the Commission-owned Block 45 located at 1010-1034 NE Grand Ave. in the Oregon Convention Center Urban Renewal Area (OCCURA). The original DDA was authorized by the Commission on April 25, 2007 through Resolution No. 6476. The First Amendment would extend the approved Schedule of Performance for twenty four (24) months. The amendment also provides for an additional twelve (12) month extension that would be automatically granted under the following conditions:

1. PDC receives a written request for the extension from Weston between 90 and 60 days prior to April 4, 2011;
2. The written request in 1. above is accompanied by a written report from Weston summarizing the need for the additional 12 month extension. The report must include the following factors: (i) the condition of Portland's central city condominium market, particularly condominium absorption, (ii) the condition of the financial markets, especially lending for projects of the type and scale contemplated, (iii) the status of the Grand Avenue streetcar line, (iv) the status of the Convention Center hotel project, and (v) the status of the project proposed for PDC Blocks 47 and 49 in the Oregon Convention Center Urban Renewal Area
3. Weston executes and delivers to PDC, no later than April 4, 2011, an appropriate amendment to the DDA, prepared by PDC and implementing the 12 month extension to the Schedule of Performance.

PUBLIC BENEFIT

Public benefits from extending the existing disposition and development agreement versus restarting the disposition process derive in part from the following:

- PDC has already invested significant time and staff resources on the development solicitation. This investment would be preserved and no new investment would be required.

- PDC has already invested significant time and staff resources on negotiating the development deal including a fully executed disposition and development agreement. This investment would be preserved and no new investment would be required.
- The public has already invested significant time in creating the disposition document, evaluating the development team and providing feedback on the project to the development team. This investment would be preserved and no new time or energy from the public would be required.
- Weston has already spent significant time and staff resources on the development solicitation and negotiating the deal. This investment would be preserved and no new investment would be required.
- To date, Weston has spent over \$1M on design. This investment would be preserved and no new investment would be required.
- Weston has already received approval from Portland's Design Commission for the Cosmopolitan Tower. The approval would be preserved and would not need to be repeated.

In addition, when the deal closes, PDC will receive approximately \$2.4M from the sale of the property. Retaining the current deal insures PDC will receive this payment.

Restarting the solicitation would mean additional expenditure of time, staff resources, and public effort as well as development team resources and would provide no assurance that any deal, much less a better deal, could be struck.

This action will support the following PDC goals:

- Sustainability and Social Equity
- Healthy Neighborhoods
- A Vibrant Central City
- Strong Economic Growth and Competitive Region
- Effective Stewardship over our Resources and Operations, and Employee Investment

PUBLIC PARTICIPATION AND FEEDBACK

No additional public participation activities have been undertaken for this relatively minor amendment.

COMPLIANCE WITH ADOPTED PLANS AND POLICIES

Oregon Convention Center Urban Renewal Plan: The Oregon Convention Center Urban Renewal Plan seeks to foster the creation of mixed-use housing and new housing for middle-income households.

Lloyd District Housing Strategy: The Lloyd District Housing Strategy calls for the development of 3,000 new housing units by 2015.

Development Vision for the Oregon Convention Center Blocks: The OCC Blocks Development Vision calls for the creation of a vibrant, sustainable 24/7 urban neighborhood with a distinctive and unique identity.

FINANCIAL IMPACT

The financial impacts to PDC of extending the disposition and development are for the most part minor, excepting the question of property value. PDC's costs to maintain and manage the property are less than \$2,000/year. Other than property management, PDC has no additional holding costs; the land is vacant with no improvements.

On the question of property value: the proposed DDA extension does not affect the sales price which has been set at \$2,381,500 or approximately \$130/square foot. This price was negotiated based on an appraisal completed in November 2006. While a new appraisal for the property has not been undertaken, the greater likelihood is that since the appraisal, prices have decreased, not increased. If PDC were to renegotiate a price at this time, it is highly likely Weston would move toward a lower price, costing PDC revenue.

The current condition of the financial markets means that both construction financing and condominium mortgages are difficult if not impossible to obtain. The proposed extension is motivated in large part by these financial market conditions. If PDC were to attempt to force Weston to proceed under the existing Schedule of Performance, Weston would more than likely back out of the deal, putting PDC in the position of beginning the development again and incurring all the costs of securing a new developer as well as the uncertainty surrounding a new development deal. For example, Weston is requesting no subsidy from PDC for the Cosmopolitan Tower while providing approximately 20 affordable housing units. A new deal with a new development team might require PDC subsidy.

RISK ASSESSMENT

The most important risks with this project and the proposed amendment are: 1) market risk; 2) development team risk.

Market Risk

The proposed extension would allow up to three years to elapse before Weston would be forced to take additional action on the project. During that time, the property might increase in value above the price specified in the DDA. As the current market price is probably lower than that in the DDA, this risk is limited, i.e. the market would have to improve significantly in the next three years first to come back in line with late 2006/early 2007 prices, and second to begin to exceed those prices. In addition, should the development go ahead, PDC and the city would benefit from a building likely to have a market value of over \$100,000,000. Real estate tax generation from this building would quickly surpass any marginal difference between the price specified in the DDA and the market price. It should be noted that if market prices stay depressed over the course of the three year extension, PDC would still receive the late 2006 appraised value for the property. Weston is not seeking to renegotiate this aspect of the DDA at this time.

Another market risk is attributable to the condominium market, i.e it is difficult for all but a few individual borrowers to obtain mortgages for condominium units, complicating unit absorption. These conditions could persist into the three year period covered by the requested extension. This could mean that Weston would need to seek another extension, or potentially end participation in the DDA. This aspect of market risk can't be accurately measured at this time.

Finally, Portland currently has a significant inventory of unsold condominium units. Depending on the source, estimates of inventory range anywhere from a two to five year supply. For this reason, it makes sense for Weston not to add to the supply. That also means that supply and demand must come into better alignment before the Cosmopolitan makes sense to build. Again, this aspect of market risk can't be accurately measured at this time.

Development Team Risk

Weston Investment Company has a number of condominium projects around the city of Portland. Weston is currently experiencing difficulty with absorption of some units in some of those projects. Should absorption problems persist, they might eventually impact WIC's financial capacity. WIC does, however, have a large and diverse portfolio of real property holdings and investments, which have the potential to provide a significant financial cushion during stressful economic times.

WORK LOAD IMPACT

Impact is minimal. As this is an amendment to a previously negotiated DDA, a majority of project tasks have already been completed. The most important remaining tasks include:

- Review of design;
- Property closing and title transfer;
- Assistance with condominium unit marketing;

These tasks can reasonably be completed within the regular duties of assigned PDC staff.

ALTERNATIVE ACTIONS

The Board could direct staff to negotiate different terms or conditions relative to the extension request. The Board could choose not to authorize the amendment. This would mean that Weston would, currently be in violation of the terms of the DDA relative to the project schedule. PDC would then have access to the remedies specified in the DDA which include termination.

CONCURRENCE

PDC's Investment Committee (IC) approved the terms of the Schedule of Performance extension on March 2, 2009.

BACKGROUND

PDC's History with Block 45

In 1998 and 1999 Enterprise Grand, LLC applied to the city of Portland to build two structures on Block 45 (3/4 block), the "Cascadian Affordable Housing" project and the "Cascadian Tower." The Cascadian Affordable Housing project is located at the corner of NE Holladay St. and NE. 6th Ave. It contains over 50 condominium units on nine floors.

The Cascadian Tower, never built, was designed for 20 stories of residential uses, (over 200 condominiums units), five floors of structured parking, a community club house and exercise facility and ground floor commercial space. Enterprise Grand, LLC was not able to secure financing for the Tower and in fact found itself in financial trouble on the Affordable Housing portion of the site. In part to provide assistance to Enterprise Grand, in 2000, PDC purchased the Cascadian Tower site from Enterprise Grand for \$1.4M. PDC has owned the west half of Block 45 ever since.

Request for Qualifications

On April 20, 2006, PDC staff issued a request for qualifications (RFQ) to solicit development proposals for Block 45. An RFQ was chosen in recognition of PDC's lack of funding for the project. Generally, an RFQ requires lesser detail relative to an RFP, which staff and management felt was appropriate. PDC received one response, that from Weston Investment Co., LLC.

The Cosmopolitan Tower

According to Weston's original proposal, the development on Block 45, named the Cosmopolitan Tower, would include a total of 28 stories of residential condominiums in a "point-tower" format. A three-story podium was proposed to support the tower and provide ground floor commercial space and automobile parking. Initially approximately 220 units were proposed, forty percent of which were to be smaller than 530 square feet. Weston dubbed these approximately ninety units "affordable" in recognition of their small size. DDA negotiations confirmed that Weston will provide at least 10% of total units at prices affordable to households making 120% median family income. The current design calls for a total of 204 condominium units, with parking at an approximately 1:1 ratio, space to condo units.

Since signing of the DDA, Weston and LRS Architects have accomplished all relevant design milestones in a timely fashion. The Cosmopolitan Tower has received approval from Portland's Design Commission. As of April 2009, Weston has spent approximately \$1 Million on design. Building design has been completed through 90% design development documents.

ATTACHMENTS:

- A. Project Summary
- B. Signed and executed Disposition and Development Agreement
- C. Proposed DDA Amendment

PROJECT SUMMARY

- Project Name:** Block 45/Cosmopolitan Tower
- Description:** 31 story point tower with approximately 204 condominium units and 15,000 square feet of ground floor commercial space
- Location:** NE Grand Ave. between NE Holladay St. and NE Hassalo St.
- URA:** Oregon Convention Center
- Current Phase:** Design Development documents complete
- Next Milestone:** 50% Construction Documents
- Completion Target:** TBD as per DDA amendment
- Outcome:** Completion of Construction Documents
- Site/Project Map:**



**AGREEMENT FOR DISPOSITION AND DEVELOPMENT
OF PROPERTY
COSMOPOLITAN TOWER**

THIS AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY (this "Agreement") is made as of June 6, 2007, 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 **WESTON INVESTMENT CO. 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. Section 6.2 of the Plan calls 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 found it necessary and in the public interest to implement the Plan by acquiring certain parcels of land located at NE Grand Avenue and Holladay Street on Block 45 (as further described in the Definitions section below, the "Property") in the Oregon Convention Center Urban Renewal Area and offering those parcels for redevelopment as a transit-oriented, mixed-use, residential condominium project to serve as a catalyst for area redevelopment and to provide additional housing in the Lloyd District, consistent with Section 6.2 of the Plan.
4. In furtherance of this redevelopment objective, PDC issued its Request for Qualifications #05-41 (the "RFQ") on April 10, 2006, seeking statements of qualifications from developers for the purchase and redevelopment of the Property as a transit-oriented, mixed use, residential condominium building.
5. Developer submitted a proposal in response to the RFQ and was selected by PDC as the proposed developer of the Property. The project proposed by developer includes approximately 204 residential condominium units, approximately 41% of which will be 532 square feet or smaller and intended to be "affordable," approximately 20,000 square feet (less space required sidewalk dedications and space needed for ramps, loading docks, building mechanical, building lobby, supporting services and other similar uses) of ground floor active-use space, a four and one half level parking structure estimated to contain 220 or more parking spaces, and a "point tower" design (as further described in the Definitions section below, the "Project"). The Project does not require any PDC financing.
6. The Parties are now prepared to enter into a definitive agreement for Developer to undertake acquisition, development and operation of the Project.
7. 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 the Project.
8. This Agreement includes a requirement that at least 10% of the residential condominium units in the Project be affordable to households earning 120% of Median Family Income.

9. PDC finds that Developer's redevelopment of the Property, pursuant to this Agreement, will help achieve local and regional growth management and mixed income housing development goals, and will help provide needed services in support of a vibrant, mixed-use neighborhood surrounding the Property. PDC also finds that the fulfillment generally 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 Property has been acquired.

AGREEMENT

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. **"Certificate of Completion"** means a certificate to be issued by PDC to Developer pursuant to Section 3.5 of this Agreement.
3. **"City"** means the City of Portland, Oregon and its constituent bureaus and agencies, except PDC.
4. **"Close"** or **"Closing"** means the conveyance to Developer by PDC of the Property by Deed.
5. **"Closing Date"** means the date on which the Property is conveyed to Developer by Deed.
6. **"Commencement of Construction"** means the date excavation of the Property is begun for construction of the Project after issuance of permits necessary for such excavation.
7. **"Component"** means the Ground Floor Component or the Housing Component.
8. **"Construction Documents"** means documents based upon Design Development Documents that set forth in detail the requirements for construction of the Project pursuant to the terms of this Agreement, reviewed by PDC and approved by the appropriate City agencies. Construction Documents shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project.
9. **"Conveyance"** means the transfer by PDC to Developer of fee simple title to the Property, by means of the Deed and subject to reversion as provided herein.
10. **"Deed"** means the form of Bargain and Sale Deed conveying fee simple title to the Property attached to this Agreement as Exhibit A.
11. **"Design Development Documents"** means:
 - Documents based upon Schematic Design Documents and a preliminary budget illustrating and describing the refinement of the design of the Project, and establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The documents must be sufficient to determine the primary design elements of the building(s) exterior, including but not limited to proposed building materials and colors;

- Specifications that identify major materials and systems and establish in general their quality levels;
- Detailed engineering and architectural site plans for the Project showing all structures on the Property, the relationship of the buildings to projected final topography of the land, with all proposed connections to existing or proposed utilities and services, together with a landscape plan;
- Calculations of gross building areas, floor areas, height ratios and open spaces;
- Proposed layouts for exterior signage and graphics;
- Outline of the exterior lighting plan;
- Descriptions of servicing requirements, trash collection locations, loading docks and related functional areas;
- Detailed plans to be submitted to the City of Portland Bureau of Development Services for Design Review in accordance with Title 33.825 of the Code of the City of Portland, including:
 - Architectural site plans showing all structures upon the site together with all connections to roads, sidewalks and alleys;
 - A general landscaping concept;
 - Plans and elevations for the Project and its components sufficient to determine the primary design elements of the building(s) exterior, including but not limited to proposed building materials and colors; and
 - A three-dimensional illustration of the Project showing its relationship to adjacent buildings and open space.

12. **“Development Program and Concept Documents”** means:

- A program setting forth the objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements.
- A preliminary building and site evaluation for the Project based on site conditions, program, schedule, and proposed method of contracting for construction services.
- Documentation shall include a schedule, program and diagrammatic sketches of the building and context,

13. **“Effective Date”** means the date that both Parties have executed this Agreement.

14. **“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 Property, including without limitation, ORS chapter 466, OAR Chapter 341, 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.

15. **“Environmental Report”** means: a “Phase I Environmental Site Assessment dated October 5, 2005” prepared by URS Corporation.

16. **“Escrow Agent”** means Ticor Title Insurance Company.

17. **“Final Construction Plans and Specifications”** means all plans and specifications required to complete the Project pursuant to the terms of this Agreement, reviewed by PDC and approved, as required, by the appropriate City agencies.

18. **“Ground Floor Component”** means approximately 20,000 square feet (less space required sidewalk dedications and space needed for ramps, loading docks, building mechanical, building lobby, supporting

services and other similar uses) square feet of ground floor active-use space fronting on NE Grand, NE Holladay and NE Hassalo.

19. **“Housing Component”** means approximately 204 condominium housing units.
20. **“Infrastructure”** means public streets, sidewalks, alleys, and driveway approaches, connections to garages, planting street trees and grass in planting strips, stormwater mitigation, street and parking lot lighting, construction and connection of the Property to abutting potable water and sewer and storm sewer mains, connecting the Property to gas and electric utility services, and all permitting for any of the above as further described in the Scope of Development.
21. **“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.
22. **“Mortgage”** means a mortgage or deed of trust against the Property, or any portion thereof, approved by PDC and recorded in the real property records of Multnomah County, Oregon.
23. **“Mortgagee”** means the holder of any Mortgage affecting or encumbering the 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 Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee.
24. **“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, or other federal, state or local authority or any other government having jurisdiction with respect to the Property.
25. **“Parking Area”** means a parking structure to be constructed on the Property with approximately 240 parking spaces, more fully described in the Scope of Development.
26. **“Performance Guaranty Fee”** means a sum of \$100,000 paid by Developer and held by PDC pursuant to section 1.9 herein, to guarantee performance according to the terms of this Agreement.
27. **“Project”** means the Property, fixtures and the buildings, and other improvements to be newly constructed by Developer on the Property, and including the Housing Component, the Parking Area, the Ground Floor Component and the Infrastructure. A more detailed description of the Project is included in the Scope of Development.
28. **“Project Budget”** means the chart of sources and uses of funds for the Project and detailed listing of estimated Project costs that will be furnished by Developer to PDC when Design Development Documents are submitted to PDC for review.
29. **“Property”** means:

LOTS 1, 2, 3 AND 4, BLOCK 45, HOLLADAY’S ADDITION TO EAST PORTLAND, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON.
30. **“Purchase Price”** means the price Developer shall pay to PDC for the Property to be conveyed by PDC to Developer pursuant to Section 1.3.
31. **“Release”** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting,

escaping, disposing or dumping.

32. “**Schedule of Performance**” means the document describing the schedule by which construction and development of the Project will be finished, prepared by Developer, agreed to by the Parties, and attached hereto as Exhibit B.
33. “**Schematic Design Documents**” means:
- Documents based on a mutually agreed-upon program and schedule.
 - Documents establishing the conceptual design of the Project illustrating the scale and relationship of the Project components.
 - Documents that include a conceptual site plan, conceptual site elevations, preliminary building plans, sections and elevations.
 - Three-dimensional representations of the project 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 material shall be noted on the drawings or described in writing.
34. “**Scope of Development**” means the detailed description of the improvements to be built comprising the Project, attached hereto and incorporated herein as Exhibit C.

1. GENERAL TERMS OF CONVEYANCE

1.1 Conveyance by Deed.

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

1.1.2 **Closing.** The conveyance of the Property to Developer shall occur in an escrow closing at the office of the Escrow Agent not later than the deadline for Closing set forth in the Schedule of Performance, subject to extension to not later than the Final Termination Date as provided in Section 1.6.3. At Closing, Developer shall accept such conveyance and pay the Purchase Price to PDC.

1.2 **Conveyance of Property.** Upon satisfaction of the Conditions Precedent to Conveyance provided in Section 1.6 hereof and upon payment by Developer to PDC of the Purchase Price, PDC will convey the Property to Developer by Deed.

1.3 **Purchase Price.** At Closing, Developer shall pay the Purchase Price for the Property in cash. The total Purchase Price for the Property is Two Million Three Hundred Eighty One Thousand Five Hundred Dollars (\$2,381,500).

1.4 Title Review.

1.4.1 PDC has previously submitted to Developer a preliminary title report on the Property (the “Title Report”). Developer has reviewed the Title Report and has accepted the exceptions to title identified on Exhibit 1 to the form of deed attached hereto as Exhibit A (the “Permitted Exceptions”).

1.4.2 From and after the Effective Date, PDC will not suffer or permit any liens, encumbrances or other exceptions to title to the Property without Developer's prior written consent, which consent shall not be unreasonably withheld. Developer may obtain an update to the Title Report at any time prior to the Closing.

Developer shall promptly give to PDC a copy of any updated Title Report. Developer may object to PDC in writing to any exceptions (which are not Permitted Exceptions or which have not been approved by Developer as provided in this Section 1.4.2) to title that appear on the updated Title Report as a result of PDC's actions or inactions. Within ten (10) days of Developer's written notice to PDC described in the preceding sentence, PDC shall remove the objected to exceptions to title prior to Closing. If PDC refuses to remove any such objected to exceptions, Developer may terminate this Agreement with ten (10) days written notice to PDC or seek other remedies, including extension of the Closing Date pending removal of those exceptions that are capable of removal. The Permitted Exceptions identified and established pursuant to Section 1.4.1 above together with any exceptions that Developer approves pursuant to this Section 1.4.2 are the "Final Permitted Exceptions".

1.5 Title Insurance, Survey, Property Taxes and Closing Costs.

1.5.1 PDC, at its expense, shall provide Developer with a standard coverage Owner's Policy of Title Insurance, issued by Escrow Agent, covering the Property insuring Developer in the amount of \$2,381,500, all free and clear of encumbrances except Final Permitted Exceptions. Developer, at its option and its expense, may elect to obtain extended coverage under such policies of title insurance and PDC agrees to execute any affidavits or other documents required by the Escrow Agent to enable Developer to obtain such coverage.

1.5.2 The costs for recording a Memorandum of this Agreement, the Deed 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. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Multnomah County. Developer's obligation to pay property taxes on the Property will be limited to the taxes after the date of Conveyance. Developer shall be responsible for the Property's pro-rated share of special assessments, or any payments on special assessments, due after the Closing Date.

1.6 Conditions Precedent to Conveyance.

1.6.1 **Conditions.** Developer and PDC are not obligated to Close the Conveyance unless the following conditions are satisfied to their reasonable satisfaction. The Party benefited by a particular condition shall not unreasonably withhold, condition or delay acknowledgment that the condition has been satisfied.

- (a) To the Satisfaction of Both PDC and Developer:
 - (i) The Parties shall have agreed to the final form of the Deed, including the final legal description of the Property, and any other documents necessary to Close the Conveyance.
 - (ii) The 90% Construction Documents shall have been reviewed by PDC and approved by all required governmental entities and/or agencies.
 - (iii) All land use approvals for the Project required by Title 33 of the Code of the City of Portland have been secured and no appeal of any required approval or permit shall have been filed, and the time for any such appeal shall have expired. If an appeal has been filed, it has been finally resolved. In the event of filing any such appeal, Developer may extend this contingency, and the Closing, for a period not to exceed one hundred and eighty (180) days, or both parties may mutually agree to any period of extension. PDC will not withhold approval of such further extension as may be requested by Developer as long as Developer has pursued such appeals with reasonable diligence.
 - (iv) Written evidence that the City of Portland Bureau of Development Services is prepared to issue a shoring and excavation permit for the Project upon payment of the required fee and that there is a phased permit plan in place and approved by the

City of Portland Bureau of Development Services providing for the timely provision of the remaining building permits required to construct the Project.

- (v) There shall be no litigation pending that prevents PDC or Developer from performing their respective obligations under this Agreement; provided that, in the event of filing any such litigation, Developer may extend this contingency, and the Closing, for a period not to exceed one hundred and eighty (180) days, or both parties may mutually agree to any period of extension. PDC will not withhold approval of such further extension as may be requested by Developer as long as Developer has pursued such litigation with reasonable diligence.
- (b) To Developer's Satisfaction:
- (i) Developer shall have determined that PDC has title to the Property subject only to the Final Permitted Exceptions.
 - (ii) Escrow Agent shall have issued to Developer a binding commitment (a) to issue to Developer an Owner's Extended Title Insurance Policy covering the Property in an amount not less than \$2,381,500, in form and substance satisfactory to the Developer, 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.
 - (iii) PDC's representations and warranties stated in Section 1.7 herein are true and correct as of the Closing Date.
 - (iv) Developer shall have obtained financing for the construction of the Project reasonably satisfactory to Developer.
 - (v) PDC shall not be in default under any material term or condition of this Agreement. As of Closing, PDC shall represent to Developer that there are no material defaults by PDC under this Agreement or events which with the passage of time would constitute a material default by PDC under this Agreement.
- (c) To PDC's Satisfaction:
- (i) Reasonable proof that Developer is a limited liability company existing in the state of Oregon and that Developer has full authority to enter into and perform its obligations under this Agreement.
 - (ii) Developer shall not be in default under any material term or condition of this Agreement. As of Closing, Developer shall represent to PDC that there are no material defaults by Developer under this Agreement or events which with the passage of time would constitute a material default by Developer under this Agreement.
 - (iii) Developer's representations and warranties stated in Section 1.8 herein are true and correct as of the Closing Date.
 - (iv) Developer shall have demonstrated financial feasibility for the Project by providing to PDC copies of binding commitment letters for construction financing from private lenders, subject to standard conditions to closing, and consistent with the

Project Budget.

1.6.2 Elections 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 date scheduled for Closing as set forth in the Schedule of Performance, subject to any extension that may be granted pursuant to this Section 1.6.2 and Section 1.6.3 below, then such benefited Party or Parties may elect to:

(a) Terminate this Agreement by written notice to the other Party, which termination shall become effective sixty (60) days after the notice of termination is given ("Termination Date") unless, before the sixty (60) day period ends, the other Party fulfills such condition or conditions to the reasonable satisfaction of the benefited Party or Parties; or

(b) 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

(c) Extend the Termination Date by which the other Party must satisfy the applicable condition, if the other Party can satisfy the condition and if the other Party agrees in writing to the extension.

1.6.3 Final Termination Date. If all of the conditions precedent under Section 1.6.1 have not been satisfied, waived or otherwise resolved pursuant to this Agreement by the date sixty (60) days after the date scheduled for Closing as set forth in the Schedule of Performance, then this Agreement shall automatically terminate 60 days after the date scheduled for Closing as set forth in the Schedule of Performance ("Final Termination Date") unless the Final Termination Date is extended by agreement of the Parties prior to Final Termination Date, or unless the failure of satisfaction of the conditions precedent is the result of an Unavoidable Delay, as described in Section 8.9 below (Force Majeure) (the maximum extension of the Final Termination Date as a result of Unavoidable Delay is 180 days, in aggregate). If the Agreement is terminated for failure of satisfaction of the conditions precedent, and such failure is not the result of a breach of this Agreement by either Party, then the obligations of the Parties to each other under this Agreement shall terminate.

1.6.4 Refund of Performance Guaranty Fee. If the Agreement is terminated for failure of satisfaction of the conditions precedent, and such failure is not the result of a breach of this Agreement by Developer, then PDC shall within ten (10) days of the Final Termination Date, refund to Developer the Performance Guaranty Fee together with interest earned thereon.

1.7 PDC Representations and Warranties. PDC represents that:

1.7.1 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.

1.7.2 PDC is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

1.7.3 To PDC's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, PDC's ability to perform its obligations under this Agreement, or Developer's ability to develop the Project.

1.7.4 To PDC's knowledge, and except as disclosed in writing to Developer, the Property is in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements ("Laws").

1.7.5 PDC has not received or given any notice stating that the Property is in violation of any Laws; provided, however that PDC makes no representation as to the availability or suitability of utility

connections to the Property.

1.7.6 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.

1.7.7 As of the date hereof, 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.

1.7.8 "**PDC's knowledge**" shall mean the actual knowledge of the managerial and supervisory personnel of PDC having responsibility for the supervision of the Property, without any duty of inquiry or investigation.

1.8 Developer Representations and Warranties. Developer represents that:

1.8.1 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.

1.8.2 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.

1.8.3 As of the date hereof 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.

1.8.4 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 Property, the Project, its feasibility, financing or compliance with any governmental regulation.

1.9 **Performance Guaranty Fee.** Within ten (10) days after the Effective Date, Developer shall pay \$100,000 to PDC as a Performance Guaranty Fee. The Performance Guaranty fee will be held by PDC to guarantee performance by Developer according to the terms of this Agreement. The Performance Guaranty Fee, with interest earned thereon, shall be returned to Developer upon PDC's issuance of the Certificate of Completion.

2. INFRASTRUCTURE AND SITE PREPARATION

2.1 **Infrastructure Improvements.** Developer, at its own cost, will design, construct, fund and obtain permits for all Infrastructure.

2.2 **Site Preparation.** Developer, at its own cost, will complete site preparation in accordance with the Schedule of Performance.

2.3 **Subsurface and Surface Conditions.** The Property shall be conveyed from PDC to Developer in "AS IS" condition. Except as otherwise specifically provided in this Agreement, PDC makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Property for any improvements to be constructed by the Developer, and, except for representations and warranties otherwise provided by PDC in this Agreement, Developer warrants that it has not relied on any representations or warranties, made by the PDC as to the environmental condition, the suitability of the soil conditions or any of the conditions of the 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 Property. PDC shall allow Developer free access to PDC's records with respect to such conditions.

3. DEVELOPMENT

3.1 Project Financing. Developer will be responsible for obtaining all financing and equity funds necessary to acquire the Property and develop the Project. PDC will not provide any financing for the Project and the Project will not be subsidized by PDC. The financing shall be obtained from private persons and institutions and the Parties agree that no public financial assistance will be provided to the Project. The Parties anticipate that the Project financing shall be structured generally as shown on the Project Budget. The Parties acknowledge and agree that this is only a projection and that a number of factors may change this projection including interest rates, lender requirements, market shifts, number of parking spaces, and soft and hard development costs.

3.2 PDC Design Review and Comment.

3.2.1 By participating in early design phases, PDC intends to assist Developer in the design of the Project consistent with PDC's knowledge of long term development plans and interests in the area, as well as goals for public spaces and amenities. PDC's primary focus of design review will include but not be limited to urban design and the pedestrian environment including public street frontages. It is PDC's intent that its design review and comment process will not delay the Project schedule.

3.2.2 Developer shall prepare the Development Program and Concept Documents, 50% and 90% Schematic Design Documents, 50% and 90% Design Development Documents, the 50% and 90% Construction Documents and the Final Construction Plans and Specifications and submit them to PDC for review and comment in accordance with the Schedule of Performance. PDC staff will review and provide comments to Developer on the Development Program and Concept Documents, the 50% and 90% Schematic Design Documents, the 50% and 90% Design Development Documents, the 50% and 90% Construction Documents, and the Final Construction Plans and Specifications at each phase of the work in accordance with the Schedule of Performance.

3.2.3 All plans and specifications referred to in this Section 3.2 are referred to herein as the "Documents". PDC's staff review is limited to a period not to exceed fifteen (15) business days from the date of its receipt of Documents. Developer shall have ten (10) business days to respond in writing to PDC's written comments. Thereafter, PDC will have ten (10) business days to respond to any written comments received from Developer.

3.2.4 PDC shall be informed of significant changes to Project scope, time and dollar amount during the construction phase of the Project.

3.2.5 Changes in Reviewed Documents. If Developer wants to substantially change any Documents after review by PDC or approval by the City, Developer shall submit the proposed changes to PDC for review. A substantial change shall mean any change that would have a material impact on the Scope of Development, including a material change to the function, appearance, timing or cost of the Project. Developer acknowledges that it may be necessary to secure separate City approval of such changes. Any separate City approvals shall be sought after PDC has reviewed the changes. PDC shall assist Developer throughout any City or PDC design review, and the applicable land use and development review processes of the appropriate bureaus or agencies within the City, but PDC does not represent or warrant that its assistance will guarantee or accelerate any required approvals.

3.2.6 PDC may retain a design advisor, at its expense and its discretion, to assist in review of the Project design. The role of the design advisor is to review the design of the Project and to advise the PDC Project Manager as to design considerations consistent with this Agreement. The advisor's review will take into

consideration building codes and other governmental regulations but will not include any analysis of compliance with same.

3.3 Diligent Completion. Subject to the terms and conditions of this Agreement, Developer covenants to complete the development of the Project, through the construction of the Housing Component, Parking Area, and Ground Floor Component in substantial conformance with the Final Construction Plans and Specifications, no later than the date for completion of construction set forth in the Schedule of Performance and to comply with the Schedule of Performance, subject to Force Majeure as provided in Section 8.9. Developer agrees to keep PDC informed of its progress with respect to development of the Project during construction, with periodic written reports to be issued no less frequently than once per quarter until PDC issues its final Certificate of Completion for the Project.

Project development shall include:

3.3.1 Entering into all necessary architectural and construction contracts;

3.3.2 Securing all necessary public entitlements and building permits, including but not limited to, completing all required sidewalk dedications and extensions;

3.3.3 Securing all financing necessary to complete the Project, consistent with the Project

Budget.

3.4 Inspection and Property Access.

3.4.1 Before Conveyance of Property. Before conveying the Property 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 Property, at all reasonable times whenever and to the extent necessary to carry out the purposes of this Agreement.

3.4.2 After Conveyance of Property. After conveying the Property to Developer, during construction of the Project, and until a Certificate of Completion is issued, Developer's work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of PDC. PDC agrees not to interfere with the work occurring on the Property.

3.5 Certificate of Completion.

3.5.1 When Developer is Entitled to Certificate of Completion. Upon substantial completion of the Project as provided in this Section 3.5, PDC will furnish Developer with a Certificate of Completion for the Project, substantially in the form attached hereto as Exhibit D. The Project will be deemed to be substantially complete when (i) the Project is completed according to the Final Construction Plans and Specifications, except for punchlist items which do not materially affect the use of the Project for the purposes intended under this Agreement, (ii) the City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project, and (iii) any other improvements required by the terms of this Agreement to have been completed at the time the Project is complete are complete in all material respects.

3.5.2 Meaning and Effect of the Certificate of Completion. The Certificate of Completion shall provide for termination of obligations under this Agreement and limitation of remedies of PDC as expressly provided for therein. Upon issuance of a Certificate of Completion for the Project, PDC will return the Performance Guaranty Fee, together with interest earned thereon, to Developer.

3.5.3 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 for the Project shall, except as otherwise provided

herein, state that the 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 fifteen (15) days after written request by Developer for such Certificate of Completion, shall provide Developer with a written statement indicating in detail in what respects Developer has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts Developer must take or perform to obtain such Certificate of Completion. PDC's failure to furnish Developer with such detailed written statement within such fifteen (15) day period shall be deemed PDC's approval of Developer's request for the Certificate of Completion.

3.6 Marketing of Affordable Condominium Units. Developer, in cooperation with PDC as described below, shall market at least 10% of the residential condominium units in the Housing Component to households earning 120% of Median Family Income and at prices affordable to such households ("Affordable Units"). Developer shall develop a plan for marketing the Affordable Units to households earning 120% of Median Family Income. The marketing plan must include an agreement with PDC for PDC to act as a preferred lender for the Affordable Units. PDC shall assist Developer in the marketing of the Affordable Units by (a) providing Developer with Median Family Income figures, (b) providing Developer with affordability calculations based on unit size and family income, (c) assisting Developer in developing a plan to market the Affordable Units to households earning 120% of Median Family Income, (d) making available to potential condominium purchasers, as appropriate, PDC mortgage products, and (e) providing assistance, as needed, to assist in income verification and securing of financing for individual borrowers. Developer and PDC shall work cooperatively to determine unit affordability including unit prices, unit sizes and buyer income targets. Based on currently available data on Median Family Income and estimates of construction costs, Developer will provide to PDC, no later than the date set forth in Schedule of Performance, an estimate of how many residential condominium units, broken out by size, may qualify as Affordable Units.

3.7 Safety Matters; Indemnification. Developer shall:

3.7.1 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 upon PDC's issuance of its Certificate of Completion of construction.

3.7.2 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 to claims, costs, expenses and liabilities that arise prior to PDC's issuance of its Certificate of Completion of construction.

3.7.3 Indemnity from Liens. Indemnify, defend and hold PDC harmless from and against all mechanics', materialmen's and laborers' liens and all costs, expenses and liabilities arising from Developer's construction.

3.8 Liens. Developer agrees that in the event any statutory lien shall be filed during the term of this Agreement against any portion of the Project or the 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, within thirty (30) days after the filing thereof, pay and discharge the same of record or post a bond or a cash deposit and take all other action required by the Oregon Construction Lien Law so that the Project and the Property shall thereafter be entirely free of the lien, subject also to the provisions of the following sentence. Developer shall have the right to contest the validity, amount or applicability of any such respective liens by appropriate legal proceedings so long as it shall remove such lien from title to the Property pursuant to applicable law.

4. ENVIRONMENTAL MATTERS

4.1 **Indemnification.** Developer shall be responsible for compliance with all Environmental Laws with respect to its business and the operation of the Project from and after the date of Conveyance. 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. The indemnity set forth in this Section 4.1 shall survive the issuance of 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 to this Agreement.

5. ASSIGNMENT PROVISIONS

5.1 **No Assignment.** Because it is a municipal entity, PDC is uniquely benefited by completion of the Project. Developer is uniquely qualified to construct and manage the Project. The anti-assignment restrictions in this Section 5.1 shall not apply to any transfers that become effective at or after the issuance by PDC of a Certificate of Completion for the Project. Except as provided in Section 5.2, Developer shall not partially or wholly dispose of or agree to dispose of Developer's interest in this Agreement without the prior written approval of the PDC, which approval may be withheld in PDC's sole discretion. For purposes of this Section 5.1, the disposal of Developer's interest in this Agreement includes, but is not limited to, a sale or transfer of ownership interests in Developer. Among other things, PDC may require as conditions to any such approval that:

5.1.1 The transfer is not in violation of other provisions of this Agreement; and

5.1.2 Any proposed transferee shall have qualifications and financial responsibility equal to or superior to Developer; and

5.1.3 The transfer will not cause a material delay in the completion of the Project.

5.1.4 **Approved Pre-Construction Transfers.** Notwithstanding Section 5.1 above, and provided that Developer provides PDC with copies of all agreements related to the transfer at least fifteen (15) 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 (i) an assignment of Developer's rights under this Agreement and interest in the Property (which interest is subject to the terms and conditions of this Agreement) to a partnership, limited liability company or limited partnership provided that the owners of the assignee are the same as the owners of Developer and that Developer's principals remain the managing member or general partner of such assignee and retain principal operational control over the assignee and (ii) Mortgage(s) which Developer may cause to attach to the Property to finance the Project provided that PDC has approved the terms of the Mortgage, which approval shall not be unreasonably withheld. In the event of an assignment under Section 5.1.4(i), Developer shall remain fully responsible to the PDC (but not to any third party) for the performance of this Agreement through PDC's issuance of the final Certificate of Completion for the Project.

5.2 **Transfers After Completion.** After PDC's issuance of a Certificate of Completion for the Project, Developer may transfer its interest, or portions of its interest in the Project or this Agreement, without restriction, consent or approval by the PDC.

6. SPECIAL COVENANTS AND CONDITIONS

6.1 **Staffing and Operation of Project.** Developer covenants and agrees that it will provide an experienced qualified project representative with authority to act on behalf of the Developer. The Principal-in-Charge for Developer is Joseph Weston. Developer's Project Manager will be Keith Vernon. Developer will own, operate and maintain the Project at its sole cost and expense.

6.2 **Middle Income Affordability:**

6.2.1 Developer shall sell at least 10% of the total number of housing units in the Project at prices affordable to middle income households whose income is at or below 120% of Median Family Income (excluding parking costs), with no PDC subsidy.

6.2.2 Developer will pay for and privately finance the construction of the Project.

6.2.3 The middle-income units will be fully finished and have standard features, but are not expected to have premium finishes, fixtures, or features. They will not be substantially smaller (that is, no more than 25% smaller on a square footage basis) than the other dwelling units of the same kind (that is, studios compared to studios, one-bedroom units to one-bedroom units, and so on). The middle-income units will be disbursed throughout the condominium building, other than the top ten floors.

7. PERMITTED MORTGAGES OR TRUST DEED INDEBTEDNESS

7.1 **Mortgagee Protection Provisions.**

7.1.1 **Effect of Revesting on Mortgages.** Any reversion and revesting of the 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 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 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 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 Final Construction Plans and Specifications. Any Mortgagee who properly completes the Project shall be entitled to issuance of a Certificate of Completion, upon written request made to PDC following the procedures set forth in Section 3.5 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 proposing to make a loan to Developer secured by a security interest in all or any part of the 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 Property.

8. DEFAULT; REMEDIES

8.1 Default and Cure.

8.1.1 Default by Developer. A default shall occur if Developer breaches any material provision of this Agreement, 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. 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 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 who is not removed within one hundred eighty (180) days after appointment. Default shall occur, and PDC shall be irreparably harmed by such default, if Developer or its assignee constructs any portion of the Project in a manner materially inconsistent with the terms and conditions of this Agreement or the PDC-reviewed Documents (as described in Section 3.2). 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. A default shall occur if PDC breaches any material provision of this Agreement including, without limitation, PDC's failure to adhere to the Schedule of Performance for any element of the Schedule of Performance which 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 or, in the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, if PDC shall not within such sixty (60) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure within one hundred twenty (120) days after the written notice from Developer.

8.2 PDC's Pre-Conveyance Remedies. If a Developer default (as described in Section 8.1.1) occurs before any of the 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 (ii) retain the Performance Guaranty Fee, together with any interest accrued thereon, as liquidated damages; or (iii) specifically enforce the obligations of Developer under this Agreement. Because of the difficulty of accurate estimation of the amount of damages which would be sustained by PDC in the event of violation of this Agreement with respect to the loss of the jobs to be created, taxes to be collected, loss of overall economic benefit of the Project to the community and anticipated greater difficulty in obtaining equivalent development on the land but taking into consideration the reduced level of PDC expenditure which will have been incurred if the Project is terminated prior to conveyance of the Property, PDC and Developer have bargained for the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00), plus accrued interest, as liquidated damages and as a reasonable forecast of the actual damage to PDC for harm incurred by it and the public for the losses listed in this sentence. If PDC terminates this Agreement as provided in this Section 8.2, then Developer shall deliver to PDC within thirty (30) days after such termination, copies of all Property market research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties,

and which Developer is authorized to release, provided that, if required by Developer, PDC pays to Developer the fair value thereof as determined by good faith negotiations between PDC and Developer. Any of the foregoing documents provided to PDC may be used by PDC in any manner that PDC deems appropriate with the consent of any party having approval rights thereunder. Notwithstanding the foregoing, PDC shall have no obligation to pay Developer or acquire the documents if PDC and Developer are not able to reach agreement on the fair value thereof.

8.3 Restoration. If, prior to Commencement of Construction (including the period prior to Closing), Developer performs any construction activities on the Property and Developer fails to acquire the Property, Developer agrees to restore the Property to substantially the condition that existed prior to the time that Developer performed any activities thereon, or to such condition as PDC shall reasonably approve.

8.4 PDC's Post-Conveyance Remedies.

8.4.1 Failure to Complete Construction. If a Developer default (as described in Section 8.1.1) occurs after Closing, including but not limited to, Developer's failure to obtain the required Certificate of Completion because of Developer's failure to take the actions required under, or otherwise comply with, Section 3.3 hereof, then PDC shall have the following remedies:

(a) Subject to the rights of a Mortgagee to cure a default and to the other Mortgagee protections specified in Section 7.1, PDC shall have the right to re-enter and take possession of the Property and to terminate (and revest in PDC) the estate conveyed by the Deed, terminate Developer's right to develop the Project, and resell the Property pursuant to Section 8.5 hereof. It is the intent of this provision together with other provisions of this Agreement, that the conveyance of the Property to Developer shall be made upon, and that the Deed to the Property shall provide for, a condition subsequent to the effect that in the event of a Developer default (as described in Section 8.1.1), PDC, at its option, may upon 60 days written notice (hereinafter "Notice of Termination") to Developer and the Escrow Agent declare a termination in favor of PDC of the title, and of all the rights and interest in the Property. After delivery of such Notice of Termination, and in the event Developer fails to remedy, end or abrogate such default within the 60-day period in the manner stated in the Notice of Termination, all the title and rights and interest in the Property conveyed to Developer by Deed, or to any successors or permitted assigns of Developer, shall be reconveyed to PDC by quitclaim deed and pursuant to the escrow instructions, each as set forth in Exhibit E. 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.

(b) Developer shall provide PDC with any work product produced by any third parties for Developer, if allowed pursuant to Developer's contracts with such third parties, for PDC's use, provided that PDC pays to Developer the fair value thereof as described in Section 8.2.

(c) PDC shall retain the Performance Guaranty Fee, plus any interest accrued thereon, as liquidated damages for the damages described in Section 8.2 above.

8.5 PDC Resale.

8.5.1 PDC Completion, Resale. In the event that the title to the Property shall revest in PDC in

accordance with the provisions of Section 8.4, PDC may, at its option and subject to rights of Mortgagees, bring the improvements to a state of completion deemed necessary by PDC, and shall, pursuant to its responsibilities under Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City, use its best efforts consistent with prudent business practices to resell at a reasonable price, the Property and such improvements (subject to Mortgage(s) permitted by this Agreement) as soon and in such manner as PDC shall find feasible and consistent with the objectives of such law and of the Urban Renewal Plan to a qualified and responsible party or parties (as determined by PDC in its sole discretion) who will assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to PDC and in accordance with the uses specified in the Urban Renewal Plan.

8.5.2 Application of Proceeds from Resale. Upon such resale, and subject to the rights of any Mortgagee, the proceeds thereof shall be applied as follows:

(a) **PDC and City.** First, to PDC on its own behalf, to reimburse it for all costs and expenses reasonably incurred by it in retaking, completing and selling the Property and its improvements, including, but not limited to, salaries of personnel in connection with the recapture, management and resale of the Property; finishing construction of Project improvements which were Developer's responsibility to construct but were done by or on behalf of PDC; all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or, in the event the Property 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 Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of reversion 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 the Developer, its successors or transferees excluding any mortgage if the Property 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 Property 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 and its successor or transferee;

(b) **Developer.** Second, to reimburse the Developer up to the amount equal to any portion of the Purchase Price of the Property which Developer has paid to PDC, and any costs or expenses incurred by the Developer, or for which Developer remains liable, in making any of the improvements on the Project or part thereof, less any gains or income withdrawn or made as to the Project; and

(c) **Balance to PDC.** Third, any balance remaining after any reimbursements described above 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 the Property to Developer, Developer may, at its option: (i) terminate this Agreement by written notice to PDC, and receive a refund of the Performance Guaranty Fee (including interest earned thereon), without waiving any cause of action Developer may have against PDC and (ii) seek monetary damages against PDC; or (iii) specifically enforce the obligations of PDC under this Agreement. Notwithstanding the preceding sentence, Developer shall 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 the Property to Developer, Developer may specifically enforce the obligations of PDC under this Agreement, or seek monetary damages against PDC. Notwithstanding the preceding sentence, Developer shall 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 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 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 beyond its control, and without its fault or negligence, including but not limited to (a) acts of God, acts of the public enemy, acts of the government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, and riot or (b) inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, 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. The period(s) of Unavoidable Delay for matters listed Section 8.9.1 shall not exceed 180 days in the aggregate.

9. MISCELLANEOUS PROVISIONS

9.1 **PDC Project Manager.** For the purposes of managing the implementation of this Agreement on behalf of PDC, 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 Karl Dinkelspiel.

9.2 **Discrimination.** Developer, for itself and its successor and assigns, agrees that during the construction of the Property, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.

9.3 **Notice.** Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail, postage prepaid, return receipt requested, or (b) when received if personally delivered, and:

In the case of a notice to Developer, addressed as follows:

Keith Vernon
Senior Vice President
Weston Investment Co. LLC
2154 NE Broadway, Suite 200
Portland, Oregon 97232

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

Karl Dinkelspiel, Project Manager
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 97209-3859

or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing dispatched as provided in this Section. Notice given in any other manner shall be effective upon receipt by the Party for whom the same is intended.

9.4 **Participation in Certain Programs.**

9.4.1 **Equal Employment Opportunity.** Developer must comply 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 Parties do not intend by this provision to impose any obligations on Developer different from those imposed by applicable law.

9.5 **Merger.** None of the provisions of this Agreement are intended to or shall be merged by reason of any Deed transferring title to the Property from PDC to Developer or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

9.6 **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.

9.7 **Waivers.** No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by PDC or Developer of any provision of this Agreement or any breach thereof, shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

9.8 **Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under the 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.

9.9 **Choice of Law.** Oregon law shall govern this Agreement.

9.10 **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.

9.11 **Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

9.12 **Legal Purpose.** Developer agrees that it shall use the Property solely for lawful purposes.

9.13 **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,

9.14 **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 are no oral or written representations made by either Party, implied or express, other than those contained in this Agreement.

9.15 **Amendments and Modifications.** Any modifications to this Agreement shall be made in writing and executed by all Parties, and approved by the PDC Commission. Notwithstanding this general requirement, the PDC Executive Director may approve minor modifications to this Agreement without Commission approval. "Minor Modifications" include:

9.15.1 Modifications to the Scope of Development that do not increase or decrease the proposed amount of square footage for a Component or number of units in a Component by more than twenty percent (20%);

9.15.2 Changes in the Schedule of Performance when deemed warranted by the Executive Director which do not exceed one hundred twenty (120) days; and

9.15.3 Corrections of errors, clarifications, or minor modifications that do not change the substantive content of the Agreement.

9.16 **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.

9.17 **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.

9.18 **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. The Parties agree and acknowledge that PDC is not providing any financing or subsidy to Developer for the Project.

9.19 **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 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.

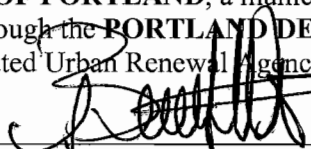
9.20 Approval by PDC Executive Director. Unless specified to the contrary elsewhere in this Agreement as to a particular consent or approval, whenever consent or approval by PDC is required under the terms of this Agreement, all such consents or approvals shall be given in writing from the Executive Director of PDC, or from such other PDC staff as the Executive Director has designated to give approval.

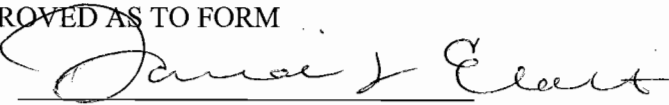
9.21 Recording of Memorandum of Agreement. PDC shall provide for recording a Memorandum of this Agreement within ten (10) days of the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit F to this Agreement. When PDC issues to Developer a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record an Amended Memorandum of Agreement to reflect the release of this Agreement subject only to the surviving covenants expressly provided for in this Agreement.

9.22 Time is of the Essence of this Agreement.

Executed in multiple counterparts as of the day and year first above written.

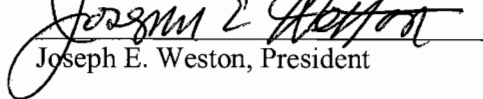
CITY OF PORTLAND, a municipal corporation in the State of Oregon, acting by and through the **PORTLAND DEVELOPMENT COMMISSION** as the duly designated Urban Renewal Agency of the City of Portland.

By: 
Bruce A. Warner, Executive Director

APPROVED AS TO FORM

Portland Development Commission
Assistant General Counsel

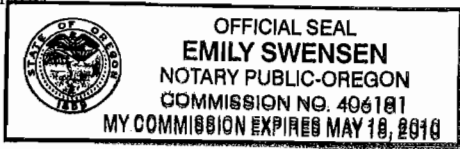
WESTON INVESTMENT CO. LLC, an Oregon limited liability company

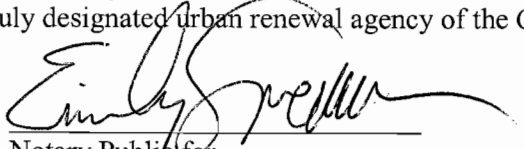
By: WESTON TRUST CORP., an Oregon corporation, its Managing Member

By: 
Joseph E. Weston, President

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on June 6, 2007, by Bruce A. Warner, Executive Director of the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland

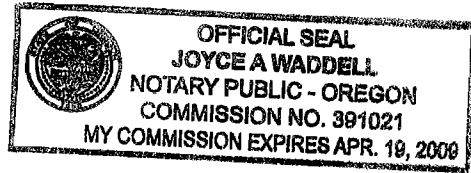



Notary Public for
My commission expires: May 18, 2010

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on June 4th, 2007, by Joseph E. Weston, President of Weston Trust Corp, an Oregon corporation and the Managing Member of **WESTON INVESTMENT CO. LLC**, an Oregon limited liability company.

Joyce A. Waddell
Notary Public for
My commission expires: 4/19/2009



EXHIBITS

- Exhibit A** **Form of Deed**
- Exhibit B** **Schedule of Performance**
- Exhibit C** **Scope of Development**
- Exhibit D** **Form of Certificate of Completion**
- Exhibit E** **Form of Quitclaim Deed and Escrow Instructions**
- Exhibit F** **Memorandum of Agreement for Recording**

EXHIBIT A
FORM OF
BARGAIN AND SALE DEED

After Recording Return to and
Tax Statements to be Sent to:
WESTON INVESTMENT CO. LLC
2154 NE Broadway, Suite 200
Portland, OR 97232

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 **WESTON INVESTMENT CO. 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:

LOTS 1, 2, 3 AND 4, BLOCK 45, HOLLADAY'S ADDITION TO EAST PORTLAND, IN THE CITY OF
PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON.

The conveyance is made pursuant to that certain Agreement for Disposition and Development of Property Cosmopolitan Tower, between Developer and PDC, dated _____ 2007, a Memorandum of which was recorded on _____, 2007 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 Project, and upon 60 days written notice (hereinafter "Notice of Termination") to said Developer and the Escrow Agent, to declare a termination in favor of PDC of the title, and of all the rights and interest of Developer in the Property. After delivery of such Notice of Termination, and in the event Developer fails to remedy, end or abrogate such default within the 60-day period in the manner stated in the Notice of Termination, Developer shall reconvey the Property to PDC by quitclaim deed, pursuant to the Escrow Instructions in Exhibit E 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 Project, 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 197.352. 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 APPROVED USES, 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 197.352.

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 _____, by
_____ and _____ as Chairman and Secretary of the City of Portland Development
Commission, on its behalf.

Notary Public for Oregon
My commission expires: _____

EXHIBIT 1
Permitted Exceptions

[Additional exceptions identified pursuant to Section 1.4.2, if any, added prior to Closing.]

1. **Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.**
2. **Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.**
3. **Easements, or claims of easement, not shown by the public records: reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.**
4. **Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.**
5. **Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.**
6. **Portland city lien(s), if any. None shown as of April 5, 2007.**
7. **The herein described property lies within the boundaries of an Urban Renewal Plan.
For: Oregon Convention Center**
8. **City of Portland Design Commission Action No. DZ 24-89, including the terms and provisions thereof,
Recorded Date: July 10, 1989
Recording Number: 54743 Book 2218 page 1082**
9. **City of Portland Administrative Decision, File No. LUR 92-00359 DZ AD, including the terms and provisions thereof,
Recorded Date: August 7, 1992
Recording Number: 87580 Book 2574 page 143**

EXHIBIT B
SCHEDULE OF PERFORMANCE

| TASK | DUE DATE |
|---|----------------------|
| 1. PDC to provide Preliminary Title Report to Weston | Complete |
| 2. Execute Memorandum of Understanding | Complete |
| 3. Substantial Draft DDA | Complete |
| 4. Commission Approval of DDA | April 25, 2007 |
| 5. Weston to submit to the City of Portland Bureau of Development Services, a Design Advice Request (DAR) | October 10, 2007 |
| 6. Weston to re-submit to the City of Portland Bureau of Development Services, a second Design Advice Request (DAR) | December 10, 2007 |
| 7. Weston to provide Development Program and Concept Documents | March 3, 2008 |
| 8. PDC to complete review of Development Program and Concept Documents | March 24, 2008 |
| 9. Weston to submit to the City of Portland Bureau of Development Services application for Design Review Approval | April 7, 2008 |
| 10. Weston to provide 50% Schematic Drawings | June 9, 2008 |
| 11. PDC to complete review of 50% Schematic Drawings | June 30, 2008 |
| 12. Weston to provide 90% Schematic Drawings | August 25, 2008 |
| 13. PDC to complete review of 90% Schematic Drawings | September 15, 2008 |
| 14. West to provide estimate of number of Affordable Units | October 1, 2008 |
| 15. Weston to provide 50% Design Development Documents & Project Budget | November 10, 2008 |
| 16. PDC to complete review of 50% Design Development Documents & Project Budget | December 1, 2008 |
| 17. Weston to provide 90% Design Development Documents & Project Budget | January 2, 2009 |
| 18. PDC to complete review of 90% Design Development Documents & Project Budget | January 23, 2009 |
| 19. Weston to provide 50% Construction Documents & Project Budget | April, 2, 2009 |
| 20. PDC to complete review of 50% Construction Documents & Project Budget | April 23, 2009 |
| 21. Weston to provide 90% Construction Documents & Project Budget | September 3, 2009 |
| 22. PDC to complete review of 90% Construction Documents & Project Budget | September 24, 2009 |
| 23. Weston to provide Final Construction Plans and Specifications & Project Budget | |
| 24. PDC to complete review of Final Construction Plans and Specifications & Project Budget | |
| 25. Weston to provide Articles of Organization, Operating Agreement, Certificate of Good Standing, and Authorizing Resolution | May 5, 2010 |
| 26. PDC to provide final form of deed | May 5, 2010 |
| 27. Weston secures Building Permits (Shoring & Excavation at minimum) from BDS | May 5, 2010 |
| 28. Weston to provide evidence/commitment of construction financing for Project | May 5, 2010 |
| 29. Closing/Conveyance of Property to Weston Properties | May 18, 2010 |
| 30. Weston begins construction | May 19, 2010 |
| 31. Final Termination Date (if Closing does not occur by May 18, 2010) | July 17, 2010 |
| 32. Completion of construction/Weston to secure Certificate of Occupancy for the Project | June 18, 2012 |
| 33. Weston Properties requests Certificate of Completion from PDC | June 18, 2012 |
| 34. PDC issues Certificate of Completion | July 2, 2012 |

EXHIBIT C

SCOPE OF DEVELOPMENT

General

The project is to be sited on the Property, as defined in the Agreement, a 20,000 square foot site located in the Lloyd District of the city of Portland, Multnomah County, Oregon. The project contains condominiums, ground floor active-use space and other uses, an entry plaza and structured parking as described below.

The Condominium

The condominium will contain a minimum of approximately 204 residential condominium units. The condominium structure is envisioned to consist of one building approximately 325 feet high. The residential portion of the building shall be approximately 31 stories high.

The majority of the units will be studio and one bedroom units ranging in size from approximately 425 square feet to approximately 1,594 square feet. A limited number of larger units will also be provided. They will range in size from approximately 2,000 square feet to approximately 3,000 square feet.

The condominium building will also include approximately 20,000 square feet (less space required sidewalk dedications and space needed for ramps, loading docks, building mechanical, building lobby, supporting services and other similar uses) of ground floor active-use space.

Parking

All parking for the project is to be provided on site. The parking area is planned to have four and one half levels, with two below grade and two and one half above.

Not less than 220 spaces are planned for the residential units. Approximately 1 parking space per unit will be constructed for the market rate residential units.

Sustainable Architecture

The project will include modern, highly efficient systems that use less energy and water resources. Building components will be constructed from materials that contain high percentages of recycled metal, plastics, and other raw materials to reduce waste stream volumes. The project architects will include within their standard specifications the use of low-emitting materials, (eliminating harmful off-gassing of volatile organic compounds). The project will include operable windows and patio doors for access to natural ventilation, daylight and views.

EXHIBIT D

FORM OF CERTIFICATE OF COMPLETION

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, WESTON INVESTMENT CO. LLC, an Oregon limited liability company ("Developer") has satisfactorily completed construction of the Project as described in the Agreement for Disposition and Development of Property Cosmopolitan Tower, dated _____, 2007 (herein called the "DDA"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. _____ on _____, 2007. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 3.5.1 of the DDA, PDC hereby certifies that:

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

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 Project, 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 Project shall not (because of such purchase or lease) have any obligation under the DDA with respect to the construction of the Project, and
- (2) The following Sections of the DDA shall survive and remain in effect for the periods identified in the DDA notwithstanding issuance of this Certificate ("Surviving Sections"): Section 3.7.2 (LIABILITY CLAIMS), Section 3.7.3 (INDEMNITY FROM LIENS) and Section 4.1 (INDEMNIFICATION).

Other than its right to enforce the Surviving Sections, PDC shall hereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the DDA with respect to the construction of the Project, or as a result of a default in or breach of any provisions of the DDA relating to construction by the Developer, or by any successors in interest or assigns of Developer. Without limitation, PDC confirms that PDC no longer has any right of re-entry to the Project or termination of the DDA.

IN WITNESS WHEREOF, PDC has caused this instrument to be executed this ____ day of _____, 200__.

PORTLAND DEVELOPMENT COMMISSION

By: _____
Name: _____
Executive Director

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: _____

EXHIBIT E

FORM OF QUITCLAIM DEED AND ESCROW INSTRUCTIONS

After recording return to
and send tax statements to:

Portland Development Commission
222 NW 5th Avenue
Portland, OR 97209
Attn: General Counsel

For a valuable consideration, receipt of which is hereby acknowledged WESTON INVESTMENT CO. 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:

LOTS 1, 2, 3 AND 4, BLOCK 45, HOLLADAY'S ADDITION TO EAST PORTLAND, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON.

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 197.352. 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 APPROVED USES, 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 197.352.

IN WITNESS WHEREOF, Grantor has executed and sealed this instrument this ___ day of _____, 20__.

WESTON INVESTMENT CO. LLC, an Oregon limited liability company

By: WESTON TRUST CORP., an Oregon corporation, its Managing Member

By: _____
Joseph E. Weston, President

Accepted this ___ day of _____, 200__.

CITY OF PORTLAND
acting by and through the PORTLAND DEVELOPMENT COMMISSION

By: _____

Executive Director

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20__, by
Joseph E. Weston, President of Weston Trust Corp, the Managing Member of WESTON INVESTMENT CO.
LLC, an Oregon limited liability company

Notary Public for
My commission expires: _____

EXHIBIT E (Continued)

ESCROW INSTRUCTIONS FOR QUITCLAIM DEED

Ticor Title Insurance Company

Attention: [INSERT TITLE OFFICER]

Re: Escrow No. _____

WESTON INVESTMENT CO., an Oregon limited liability company (“Developer”) has entered into that certain Agreement for Disposition and Development of Property Cosmopolitan Tower (“DDA”) with the City of Portland, Oregon acting by and through the Portland Development Commission (“Agency”) dated as of _____, 200__, a Memorandum of which was recorded _____, 200__ 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 deed (“Quitclaim Deed”).

Section 8.4.1 of the DDA provides that, under certain circumstances, the Agency is entitled to reconveyance of the Property pursuant to the Quitclaim Deed and Escrow Instructions. This document constitutes those escrow instructions and is for the purpose of irrevocably instructing you as to the disposition of the accompanying Quitclaim Deed.

In the event that you receive from 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 Property has occurred, and that rights to the Property described in the Quitclaim Deed 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 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 Project (either an original or one certified by Developer as being a duplicate of the original), you will forthwith return the Quitclaim Deed 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,

WESTON INVESTMENT CO. LLC, an Oregon limited liability company

By: WESTON TRUST CORP., an Oregon corporation, its Managing Member

By: _____
Joseph E. Weston, President

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 _____
Ticor Title Insurance Company

EXHIBIT F

FORM OF MEMORANDUM OF AGREEMENT

After recording return to:

Karl Dinkelspiel
PORTLAND DEVELOPMENT COMMISSION
222 NW 5TH Ave.
Portland, OR 97209

Memorandum of Contract

[And Agreement For Disposition And Development]

THIS MEMORANDUM OF CONTRACT AND AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY ("Memorandum") shall serve as notice to all persons that the CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland ("PDC"), with an address of Portland Development Commission, 222 NW Fifth Avenue, Portland, Oregon 97209-3859 and WESTON INVESTMENT CO. LLC, an Oregon limited liability company ("Developer"), with an address of 2154 NE Broadway, Suite 200, Portland, OR 97232, entered into an Agreement For Disposition And Development Of Property, Cosmopolitan Tower dated as of _____, 200__ ("Agreement") relating to the real property located in Multnomah County, Oregon, as more particularly described in Exhibit "A" attached hereto (the "Property").

Among other things, the Agreement requires PDC to convey the Property to Developer upon the satisfaction of certain conditions precedent, and requires Developer to construct and complete certain infrastructure and project improvements on the Property, all as more particularly set forth in the Agreement. Other property or value was part of the whole consideration given for the Property conveyance referenced herein.

As a condition subsequent to the Property conveyance, in the event of a material default by Developer before PDC issues a Certificate of Completion, PDC shall have the option, upon 60 days written notice ("Notice of Termination") to Developer and Escrow Agent, to declare a termination in favor of the PDC of all the title, rights and interests of Developer in the Property. After delivery of such Notice of Termination, and in the event Developer fails to remedy, end or abrogate such default within the 60-day period in the manner stated in the Notice of Termination, Developer shall reconvey the Property to PDC by quitclaim deed, pursuant to the Escrow Instructions in Exhibit E attached to the Agreement. After a Certificate of Completion is recorded as to the Project, PDC shall thereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the Agreement with respect to the construction of the Project, or as a result of a default in or breach of any provisions of the Agreement by Developer, or by any successors in interest or assigns of Developer, except for those surviving sections described in the Certificate of Completion. PDC shall thereafter have no further right of re-entry to the Property 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.

DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland

By: _____

Title: _____

Date: _____, 200__

WESTON INVESTMENT CO. LLC, an Oregon limited liability company

Date: _____, 200__

By: WESTON TRUST CORP., an Oregon corporation, its Managing Member

By: _____
Joseph E. Weston, President

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 Joseph E. Weston, President of Weston Trust Corp, an Oregon corporation and the Managing Member of Weston Investment Co., an Oregon limited liability company.

Notary Public for
My commission expires: _____

EXHIBIT A

Legal Description

LOTS 1, 2, 3 AND 4, BLOCK 45, HOLLADAY'S ADDITION TO EAST PORTLAND, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON.

**FIRST AMENDMENT TO AGREEMENT FOR DISPOSITION AND
DEVELOPMENT OF PROPERTY
COSMOPOLITAN TOWER**

This First Amendment to Disposition and Development of Property is made as of _____, 2009 (“First Amendment”) between the City of Portland, a municipal corporation of the State of Oregon, acting by and through the Portland Development Commission, the duly designated urban renewal agency of the City of Portland (“PDC”), and Weston Investment Co. LLC, an Oregon limited liability company (“Developer”). PDC and Developer are referred to jointly in this First Amendment as “Parties” and individually as a “Party.”

RECITALS

1. PDC and Developer entered into that certain Agreement for Disposition and Development of Property (Cosmopolitan Tower) dated June 6, 2007 (the “Original DDA”) pursuant to which PDC agreed, under certain terms and conditions, to sell certain real property to Developer and Developer agreed, under certain terms and conditions, to purchase the property from PDC and construct a residential tower thereon (the “Original DDA”). A memorandum of the Original DDA was recorded as Fee No. ____ in the real property records of Multnomah County.
2. PDC and Developer desire to amend the Original DDA to modify the Schedule of Performance and provide for subsequent additional modifications to the Schedule of Performance under certain circumstances.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Schedule of Performance. The Schedule of Performance set forth in Exhibit B of the Original DDA, is hereby deleted in its entirety and replaced with the Schedule of Performance set forth in Exhibit B, attached hereto and incorporated herein by this reference.

2. Further Changes in the Schedule of Performance. The following paragraph is hereby added to the end of Section 9.15:

Notwithstanding the foregoing, each of the dates contained in the Schedule of Performance shall be automatically extended by 12 months if (a) Developer submits a written request for the extension to PDC no more than 90 and no fewer than 60 days before April 4, 2011; (b) includes with the request a written report explaining why proceeding with the Project under the existing Schedule of Performance is not feasible and addressing each of the following factors: (i) the condition of Portland's central city condominium market, particularly condominium absorption, (ii) the condition of the financial markets, especially lending for projects of the type and scale contemplated by this Agreement, (iii) the status of the Grand Avenue streetcar line, (iv) the status of the Convention Center hotel project, and (v) the status of the project proposed for PDC Blocks 47 and 49 in the Oregon Convention Center Urban Renewal Area; and (c) Developer executes and delivers to PDC no later than April 4, 2011, an appropriate amendment to this Agreement, prepared by PDC and implementing the 12 month extension in the Schedule of Performance.

3. Except as expressly modified by this First Amendment, the Parties agree and acknowledge that the Original DDA is and remains in full force and effect and binding on the Parties.
4. This First Amendment may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this First Amendment so executed shall constitute an original. This First Amendment may not be modified except by a writing signed by the Parties.
5. Capitalized terms used but not defined in this First Amendment shall have the meanings ascribed thereto in the Original DDA.

IN WITNESS WHEREOF, the Parties hereto execute this First Amendment effective as of the date first set forth above.

[Recording?]

PDC:

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: _____
Bruce A. Warner,
Executive Director

APPROVED AS TO FORM

David J. Elott,
PDC Deputy General Counsel

DEVELOPER:

WESTON INVESTMENT CO. LLC, an Oregon limited liability company

By: WESTON TRUST CORP., an Oregon corporation, its
Managing Member

By: _____
Joseph E. Weston, President

EXHIBIT B

SCHEDULE OF PERFORMANCE

| TASK | DUE DATE |
|---|--------------------|
| 1. PDC to provide Preliminary Title Report to Weston | Complete |
| 2. Execute Memorandum of Understanding | Complete |
| 3. Substantial Draft DDA | Complete |
| 4. Commission Approval of DDA | Complete |
| 5. Weston to submit to the City of Portland Bureau of Development Services, a Design Advice Request (DAR) | Complete |
| 6. Weston to re-submit to the City of Portland Bureau of Development Services, a second Design Advice Request (DAR) | Complete |
| 7. Weston to provide Development Program and Concept Documents | Complete |
| 8. PDC to complete review of Development Program and Concept Documents | Complete |
| 9. Weston to submit to the City of Portland Bureau of Development Services application for Design Review Approval | Complete |
| 10. Weston to provide 50% Schematic Drawings | Complete |
| 11. PDC to complete review of 50% Schematic Drawings | Complete |
| 12. Weston to provide 90% Schematic Drawings | Complete |
| 13. PDC to complete review of 90% Schematic Drawings | Complete |
| 14. West to provide estimate of number of Affordable Units | Complete |
| 15. Weston to provide 50% Design Development Documents & Project Budget | Complete |
| 16. PDC to complete review of 50% Design Development Documents & Project Budget | Complete |
| 17. Weston to provide 90% Design Development Documents & Project Budget | Complete |
| 18. PDC to complete review of 90% Design Development Documents & Project Budget | Complete |
| 19. Weston to provide 50% Construction Documents & Project Budget | April 4, 2011 |
| 20. PDC to complete review of 50% Construction Documents & Project Budget | April 25, 2011 |
| 21. Weston to provide 90% Construction Documents & Project Budget | September 5, 2011 |
| 22. PDC to complete review of 90% Construction Documents & Project Budget | September 26, 2011 |
| 23. Weston to provide Final Construction Plans and Specifications & Project Budget | March 12, 2012 |
| 24. PDC to complete review of Final Construction Plans and Specifications & Project Budget | April 2, 2012 |

| TASK | DUE DATE |
|---|----------------------|
| 25. Weston to provide Articles of Organization, Operating Agreement, Certificate of Good Standing, and Authorizing Resolution | May 7, 2012 |
| 26. PDC to provide final form of deed | May 7, 2012 |
| 27. Weston secures Building Permits (Shoring & Excavation at minimum) from BDS | May 7, 2012 |
| 28. Weston to provide evidence/commitment of construction financing for Project | May 7, 2012 |
| 29. Closing/Conveyance of Property to Weston Properties | May 21, 2012 |
| 30. Weston begins construction | May 21, 2012 |
| 31. Final Termination Date (if Closing does not occur by May 21, 2012) | July 16, 2012 |
| 32. Completion of construction/Weston to secure Certificate of Occupancy for the Project | June 18, 2014 |
| 33. Weston Properties requests Certificate of Completion from PDC | June 18, 2014 |
| 34. PDC issues Certificate of Completion | July 2, 2014 |