

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6698

**AUTHORIZING THE EXECUTIVE DIRECTOR TO
EXECUTE A TRANSFER AGREEMENT WITH PORTLAND
PARKS AND RECREATION FOR THE FINAL
IMPROVEMENTS OF THE SOUTH WATERFRONT
NEIGHBORHOOD PARK AT 3508 SW MOODY AVENUE
IN THE NORTH MACADAM URBAN RENEWAL AREA**

WHEREAS, in furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, the Portland Development Commission (“PDC”) has undertaken a program for the development and redevelopment of blighted areas in the City and in connection therewith prepared and approved an Urban Renewal Plan for the North Macadam Urban Renewal Area, pursuant to an urban renewal plan adopted August 11, 1999, by the Portland City Council, by Ordinance No. 173651, and as amended from time to time (the “Plan”);

WHEREAS, the Plan’s primary goal is to enable redevelopment of the North Macadam Urban Renewal Area (“URA”) to fully utilize its potential as an employment center with characteristics of a viable neighborhood, including parks and open space;

WHEREAS, in 2003 PDC entered into the Central District Development Agreement (“CDDA”) with its development partners, North Macadam Investors, LLC , River Campus Investors, LLC , Oregon Health and Sciences University and Block 39, LLC, which assigned development roles, responsibilities and financial obligations to individual parties related to the redevelopment of the project area within the URA identified in the CDDA (the “Central District”), including acquisition and redevelopment of certain real property by PDC to be redeveloped as a public park;

WHEREAS, in 2005 pursuant to the obligations of the CDDA, PDC acquired the two-acre former Public Storage Property located at 3508 SW Moody Avenue (“Property”) for the purpose of providing a public park in the heart of the Central District; PDC demolished the existing structures, performed environmental remediation of the Property and made interim improvements in anticipation of a future planning and design process for the final improvements to the Property (the “South Waterfront Neighborhood Park Project”);

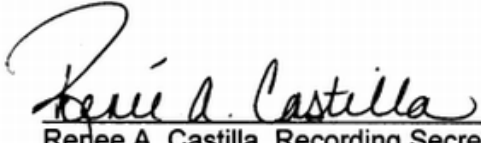
WHEREAS, in accordance with the CDDA, PDC and Portland Parks and Recreation (“Parks”) executed an Intergovernmental Agreement (“IGA”) in August 2003 which assigned the design and development of the South Waterfront Neighborhood Park Project to Parks; and

WHEREAS, in order to facilitate the construction of the South Waterfront Neighborhood Park Project on the Property and allow for its operation as a public park, PDC desires to convey and Parks agrees to receive the Property on the terms and conditions set forth in the Transfer Agreement negotiated by PDC and Parks substantially in the form attached hereto as Exhibit A (the “Transfer Agreement”).

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to execute the Transfer Agreement with Parks; and

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

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



Renee A. Castilla
Renee A. Castilla, Recording Secretary

AGREEMENT OF TRANSFER

THIS AGREEMENT OF TRANSFER (this "Agreement") is entered into as of May_____, 2009 (the "Effective Date") between the CITY OF PORTLAND, a municipal corporation of the State of Oregon (the "City"), acting by and through the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland ("PDC" or "Seller"), and the City acting by and through **PORTLAND PARKS AND RECREATION** ("Parks" or "Buyer"). PDC and Parks may be referred to jointly in this Agreement as "Parties" and individually as a "Party".

RECITALS

A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, PDC has undertaken a program for the development and redevelopment of blighted areas in the City and in connection therewith prepared and approved an Urban Renewal Plan for the North Macadam Urban Renewal Area, which was approved by the Portland City Council ("Council") on _____ by Ordinance No. _____ (as amended from time to time, the "Urban Renewal Plan");

B. A copy of the Urban Renewal Plan, as amended, as constituted on the date hereof has been recorded in the real property records of Multnomah County, Oregon, as Document No. _____ and is by this reference made a part hereof;

C. In 2003, to further the goals in the Urban Renewal Plan, PDC entered into the Central District Development Agreement ("CDDA") with North Macadam Investors LLC, River Campus Investors LLC, Block 39 LLC and Oregon Health Sciences University to facilitate the large scale redevelopment of a 33-block area of the North Macadam URA known as the South Waterfront Central District which included significant public and private investment;

D. An obligation of the CDDA was the acquisition and construction of an approximately two-acre public park in the heart of the Central District. To meet this obligation, PDC acquired 3508 SW Moody Avenue (as further described in the Definitions section below, the "Property") in the North Macadam Urban Renewal Area and offering the Property for redevelopment as a public park to serve as a catalyst for further redevelopment, consistent with the Urban Renewal Plan;

E. To facilitate the development of the Property as a public park by Parks, PDC wishes to convey the property to Parks;

F. Accordingly, the Parties desire to enter into this Agreement setting forth the terms and conditions under which PDC will convey the Property to Parks for redevelopment as a public park (as further described in the definitions section below, the "Project") on the Property;

G. To expedite construction of the Project, PDC granted Parks a Permit of Entry dated March 19, 2009 to enter on the Property and commence construction;

H. The completion of the Project in accordance with the IGA (as hereinafter defined) and is a material inducement to PDC to enter into this Agreement; and

I. PDC finds that the fulfillment, generally, of this Agreement, and the intentions set forth herein, are in the vital and best interest 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 Urban Renewal Plan was adopted.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises set forth above and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

1. Definitions.

- A. “**Close**” means the transfer of the Property to Parks by PDC through recordation of the Deed.
- B. “**Environmental Laws**” means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Property or the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (as defined in the definition of Hazardous Substances, below), CERCLA (defined in the definition of Hazardous Substances, below), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
- C. “**Hazardous Substances**” means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. (“CERCLA”), or any other Environmental Law.
- D. “**IGA**” means that certain Intergovernmental Agreement, as amended, by and between PDC and Parks dated August 29, 2003, including the Annual Scopes of Work thereunder, concerning the design and financing of the Project. In the event of a conflict between this Agreement and the IGA, the terms of the IGA shall govern.
- E. “**Plans**” means collectively, the “Park and Streetscape Construction Documents - Conformed Set - dated January 15, 2009 and Proposal Request #1 Revisions, dated March 11, 2009”, all as previously agreed to and approved by the Parties in connection with the IGA.
- F. “**Project**” means the design and construction of the Neighborhood Park on the Property in accordance with the Plans.
- G. “**Property**” means that certain real property known as Blocks 32 and 36 and located at 3508 SW Moody Avenue, in the City of Portland, County of Multnomah, State of Oregon.
- H. “**Recognized Environmental Conditions**” means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Property or into the ground, ground water, or surface water of the Property, whether or not the Release is in compliance with applicable law. Recognized Environmental

Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

- I. **“Release”** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
 - J. **“Transfer”** means the transfer of fee simple title to the Property by PDC to Parks.
 - K. **“Unforeseen Environmental Conditions”** means the presence of a Hazardous Substance on the Property that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by the Oregon Department of Environmental Quality (DEQ).
2. **Consideration.** The Property is being transferred at no cost to Parks, in consideration of mutual benefits resulting from the Transfer.
 3. **Taxes, Assessments and Encumbrances.** PDC agrees that all taxes, assessments and encumbrances that will be a lien against the Property on the Closing Date shall be satisfied of record by PDC, unless otherwise agreed in writing.
 4. **Closing.** The Transfer of the Property (the “Closing”) shall occur on or before June 1, 2009 (the “Closing Date”). Subject to satisfaction of the Conditions Precedent set forth in Section 6 hereof, PDC will Transfer the Property to Parks by quitclaim deed substantially in the form attached hereto as Exhibit A (the “Deed”). Subject to satisfaction of the Conditions Precedent set forth in Section 5 hereof, Parks shall accept the Transfer of the Property on the Closing Date.
 5. **Conditions Precedent.** Parks and PDC are not obligated to Close the Transfer 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 Parks:
 - 1) The Parties have agreed to the final form of the Deed and any documents necessary to Close the Transfer;
 - 2) PDC’s Board of Commissioners (the “Board”) and City Council have authorized the consummation of the transactions contemplated by this Agreement; and
 - 3) PDC shall provide, at its expense, a standard owner's title insurance policy in the amount of \$_____, insuring fee simple title vested in Parks.
 6. **Continuing Covenants.** The Parties acknowledge and agree that the following terms shall be continuing covenant that survive the termination of this Agreement:
 - A. The Property will be used only for Park purposes. This restriction shall be included in the Deed and may be terminated by the written agreement of the Parties. In addition, after the Transfer, Parks, at its cost and expense, shall operate and maintain all components of the Project to a standard of maintenance applied by Parks at least equal to the standard applied to other downtown and Central City urban parks; and
 - B. The Deed shall stipulate that PDC reserves for itself all available floor area ratio (FAR) rights attached to the Property.

7. **Unforeseen Environmental Conditions.** If Parks encounters, during construction and prior to issuance of the Certificate of Occupancy, an Unforeseen Environmental Condition on the Property that was not caused solely by Parks, Parks shall suspend all related construction activities pending PDC's investigations. Parks shall also, promptly thereafter, notify DEQ (to the extent required by applicable law) and PDC of the Unforeseen Environmental Condition and provide PDC with any documentation regarding the circumstances of the discovery of the Unforeseen Environmental Condition, including but not limited to, any documentation on the release of a Hazardous Substance on the Property. After discovery of an Unforeseen Environmental Condition on the Property, Parks shall allow PDC access to the Property to make such surveys and conduct such tests and investigations as PDC deems reasonably necessary or desirable to determine the nature and extent of the Unforeseen Environmental Condition. PDC will provide Parks with copies of any reports arising from such surveys, tests and investigations. Promptly after PDC's completion of the surveys, tests and investigations, the Parties shall meet to agree upon a source and method for funding the remediation or abatement, as applicable, of the Unforeseen Environmental Condition, which the Parties will then determine who will perform and complete as part of the Project, in a manner necessary to obtain an Update to the No Further Action Letter from DEQ. Parks shall comply with all restrictions, limitations, conditions and obligations set forth in the Updated No Further Action Letter once issued by DEQ. If the Parties are unable to agree on a source and method for funding the remediation or abatement, then PDC shall have the right, but not the obligation, in its sole discretion, to pursue other responsible parties of the Unforeseen Environmental Condition, terminate the Project, or perform remediation or abatement of the Unforeseen Environmental Condition itself, as it determines necessary or appropriate; provided, however, that any such costs related to Unforeseen Environmental Conditions shall be considered costs of the Project under the IGA. In the event that PDC elects to pursue a course of action related to the Unforeseen Environmental Condition that results in Park's inability to complete the Project or in the legal requirement that Parks remediate the Unforeseen Environmental Condition, Parks, at its sole discretion, may assign, to the extent assignable, its responsibilities under the IGA and may quitclaim the Property back to PDC, and PDC shall accept such assignment or transfer. In the event that an Unforeseen Environmental Condition is discovered on the Property that was solely caused by Parks or by any action Parks takes that is inconsistent with the Plans, then Parks, at its sole cost and expense, shall fully remediate or abate the Unforeseen Environmental Condition in the manner necessary to obtain an Update to the NFA Letter from DEQ. Once it is agreed that PDC is in no way responsible for the Unforeseen Environmental Condition, PDC will have no rights or obligations to test, investigate, or remediate such Unforeseen Environmental Condition caused by Parks.
8. **Further Actions of the Parties.** The Parties agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the transaction contemplated hereunder and shall use their best efforts to accomplish the Transfer by the Transfer Date.
9. **Time of Essence.** The Parties hereby acknowledge and agree that time is strictly of the essence with respect to every term, condition, obligation, and provision of this Agreement.

10. **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.
11. **Entire Agreement.** This Agreement and the IGA and the exhibits and attachments hereto constitute the entire agreement between the Parties on the on the subject matter hereof.
12. **STATUTORY WARNING.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22.

Executed in multiple counterparts as of the Effective Date.

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:

Lisa Gramp, Assistant General Counsel
Portland Development Commission

PORTLAND PARKS AND RECREATION

By: _____
Nick Fish, Commissioner in Charge

APPROVED AS TO FORM

Harry Auerbach
Chief Deputy City Attorney

EXHIBIT A
FORM OF
BARGAIN AND SALE DEED

After Recording Return To:

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

BARGAIN AND SALE DEED

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 "Grantor" or "PDC"), conveys to the **CITY OF PORTLAND**, by and through **PORTLAND PARKS AND RECREATION**(herein called the "Grantee" or "Parks"), the following described real property (herein called the "Property"):

Grantor reserves unto itself the total floor to area ratio ("FAR") rights, if any, attached to the Property at the time of conveyance, subject to a requirement that Grantor will consult with Grantee prior to assigning or disposing of the FAR rights to a third party.

The conveyance is made pursuant to that certain Transfer Agreement between Parks and PDC, dated _____20__, a Memorandum of which was recorded on _____, 20__ as Document No. _____, Records of Multnomah County, Oregon (the "Agreement"). Any capitalized terms in this Deed shall have the meanings set out in the Agreement, unless otherwise defined herein. Other property or value was either part or the whole consideration.

The conveyance is subject to the following:

1. A covenant running with the land restricting the use of the Property to development, operation, and maintenance of a public park. The park shall be maintained to a standard of maintenance applied by Parks at least equal to the standard applied to other downtown and Central City urban parks. Nonuse of the Property by Parks for any period shall not be deemed abandonment of such covenant.

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 North Macadam Urban Renewal Area approved by the City Council of the City on _____, as amended.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER OREGON LAWS 2007, CHAPTER 424, SECTIONS 2, 3 AND 5 TO 22.

IN WITNESS WHEREOF, the 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 _____, 2009.

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 on _____, 20____, by _____ as Chairman of the Portland Development Commission, on its behalf.

Exhibit A

Property Description

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6698

Title:

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A TRANSFER AGREEMENT WITH PORTLAND PARKS AND RECREATION FOR THE FINAL IMPROVEMENTS OF THE SOUTH WATERFRONT NEIGHBORHOOD PARK AT 3508 SW MOODY AVENUE IN THE NORTH MACADAM URBAN RENEWAL AREA

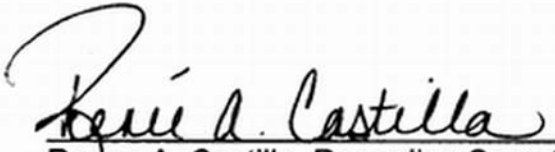
Adopted by the Portland Development Commission on May 14, 2009.

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

Certification

The undersigned hereby certifies that:

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


Renee A. Castilla, Recording Secretary

Date: June 4, 2009