

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6905

AUTHORIZING AN AGREEMENT FOR THE DISPOSITION AND DEVELOPMENT OF CERTAIN PDC-OWNED REAL PROPERTY LOCATED AT 123 NE THIRD AVENUE ON THE BURNSIDE BRIDGEHEAD SITE IN THE CENTRAL EASTSIDE URBAN RENEWAL AREA WITH BEAM DEVELOPMENT, LLC; AND AUTHORIZING A LOAN TO BEAM DEVELOPMENT, LLC, IN THE AMOUNT OF \$2,300,000.

WHEREAS, on August 27, 1986, City Council Ordinance No. 158940 adopted the Central Eastside Urban Renewal Plan (the "Plan") and the goals of the Plan emphasize revitalization, retention, and new business development and access to the river;

WHEREAS, the Portland Development Commission ("PDC") acquired Blocks 67, 68, and 76, and portions of Blocks 69 and 75 (collectively, the "Burnside Bridgehead Site") in the Central Eastside Urban Renewal Area to implement the Eastbank at Burnside Plan;

WHEREAS, the City of Portland's Economic Development Strategy, a Five-Year Plan for Promoting Job Creation and Economic Growth identifies the Burnside Bridgehead Site as a key catalytic site within the Central City and calls for the creation of a significant mixed-use gateway development at this location;

WHEREAS, on February 27, 2009, PDC entered into a Memorandum of Understanding with Beam Development, LCC ("Beam"), as PDC's strategic advisor, to partner on the creation of a framework plan (the "Framework Plan") that provides a strategic guide to redevelopment of the Burnside Bridgehead Site, and in exchange it was anticipated that Beam would have the right to exclusive negotiations with PDC to develop a portion of the Burnside Bridgehead Site that, at a minimum, is equal to twenty percent of the Burnside Bridgehead Site;

WHEREAS, the PDC Board of Commissioners adopted the Framework Plan as the guiding document for the evaluation of future development of the Burnside Bridgehead Site (Resolution No. 6800);

WHEREAS, Beam declared its interest to exclusively negotiate with PDC for the acquisition of the Convention Plaza building, the remainder of Block 68 and a portion of Block 69 (collectively, the "Property"), and the PDC Executive Director authorized staff to negotiate with Beam a Disposition and Development Agreement (the "DDA") for the redevelopment of the Property;

WHEREAS, Beam proposes to acquire and renovate the Property for use as commercial flex-office space with a focus on employment (the "Project"), and in particular those tenants that are within PDC's target industry clusters, research, and commercialization and high growth firms to advance the Economic Development Strategy and the Central Eastside Entrepreneurial Jobs Strategy;

WHEREAS, the adaptive reuse of the Property also includes multi-purpose public open space adjacent to the building and active-use ground-floor tenants on 3rd Avenue that provide vibrancy and the activity intended for the Burnside Bridgehead Site;

WHEREAS, PDC and Beam have negotiated the terms and conditions of the DDA;

WHEREAS, PDC will finance the land acquisition costs through a Commercial Property Redevelopment Loan to Beam Development that also includes performance measures where the value of the Property could be earned-down based on improvements completed and tenant space provided; and

WHEREAS, PDC finds that the Project supports the Plan goals to eliminate blight, encourage private conservation, rehabilitation, and redevelopment within the urban renewal area and encourages land uses that will help create a well-balanced physical and economic environment.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to enter into an agreement (the "DDA") for the disposition and redevelopment of PDC property located at 123 NE Third Avenue on the Burnside Bridgehead Site in the Central Eastside Urban Renewal Area with BEAM Development, LLC, substantially in the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED that the Executive Director may approve changes to the DDA if such modifications do not materially increase PDC's obligations or risks, as determined by the Executive Director in consultation with the PDC General Counsel;

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized to prepare and execute such loan documents and agreements, subject to approval by PDC legal counsel and subsequent to underwriting approved by the Financial Investment Committee, as are necessary or desirable to evidence and implement the Commercial Property Redevelopment Loan to Beam, for the Project, in an amount not to exceed Two Million Three Hundred Thousand and NO/100 Dollars (\$2,300,000) on terms and conditions consistent with those set forth in the DDA; and

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

Adopted by the Portland Development Commission October 26, 2011.



Recording Secretary

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6905

Title:

AUTHORIZING AN AGREEMENT FOR THE DISPOSITION AND DEVELOPMENT OF CERTAIN PDC-OWNED REAL PROPERTY LOCATED AT 123 NE THIRD AVENUE ON THE BURNSIDE BRIDGEHEAD SITE IN THE CENTRAL EASTSIDE URBAN RENEWAL AREA WITH BEAM DEVELOPMENT, LLC; AND AUTHORIZING A LOAN TO BEAM DEVELOPMENT, LLC, IN THE AMOUNT OF \$2,300,000.

Adopted by the Portland Development Commission on October 26, 2011.

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

Certification

The undersigned hereby certifies that:

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



Recording Secretary

Date: October 26, 2011

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

IN THE CENTRAL EASTSIDE URBAN RENEWAL AREA

between

THE PORTLAND DEVELOPMENT COMMISSION

and

BEAM CONSTRUCTION AND MANAGEMENT, LLC

dated

October____2011

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

This AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY is made and entered this ___ day of October 2011 (the "Effective Date"), by and 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 BEAM CONSTRUCTION AND MANAGEMENT, LLC, an Oregon limited liability company ("Developer"). PDC and Developer may be referred to jointly in this Agreement as the "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 within the city limits and in connection therewith prepared and approved an Urban Renewal Plan for the Central Eastside Urban Renewal Area (the "URA"), which was approved by the City Council of the City on August 27, 1986 by Ordinance No. 158940 (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, and is by this reference made a part hereof;
- C.** Section 400 of the Urban Renewal Plan calls for preservation and enhancement of the unique characteristics of the Central Eastside Industrial District as a near-in employment center with a diverse industrial base complimented by concentrations of commercial and residential uses in appropriately designated areas, and increasing the attractiveness of the Central Eastside as an industrial center, particularly for specialty manufacturing and distribution firms desiring convenient access to regional transportation network;
- D.** PDC, finding it necessary and in the public interest to implement the Urban Renewal Plan, acquired certain real property within the URA pursuant to the *Eastbank at Burnside: Lower East Burnside Redevelopment Plan* (the "Redevelopment Plan"). The Redevelopment Plan was adopted by PDC and the City Council in 1999. The Redevelopment Plan, guided by a Steering Committee composed of property and business owners, addresses the corridor between NE Couch and SE Ankeny and from 2nd to 12th Avenue. The intent of the Redevelopment Plan was to provide a basis for urban design, architectural and economic analysis, and guide the development of actions, policies and strategies for improving this part of the Central City;

- E.** The overall vision outlined by the Redevelopment Plan was to “create a distinct cultural identity that reflects the character of the Central Eastside and serves the people and employers of the area by attracting Portlanders as well as major corporate investors, and is supported by a mix of uses including retail, commercial, housing, transit, leisure and culture”;
- F.** To that end, PDC issued a Request for Proposals on August 16, 2004 (the “RFP”) to invite proposals to create a significant mixed-use “gateway” development on the Burnside Bridgehead Site (as hereinafter defined) which would serve as a catalyst for other redevelopment in the area and link the east side of the central city to Downtown Portland and the surrounding west side;
- G.** PDC acquired Blocks 67, 68, and 76, and portions of Blocks 69 and 75 (collectively, the “Burnside Bridgehead Site”) in the URA to implement the Eastbank at Burnside Plan;
- H.** The City of Portland’s Economic Development Strategy, a Five-Year Plan for Promoting Job Creation and Economic Growth, identifies the Burnside Bridgehead Site as a key catalytic site within the Central City and calls for the creation of a significant mixed-use gateway development at this location;
- I.** The Parties entered into a Memorandum of Understanding on February 27, 2009 (the “MOU”) to develop a Framework Plan for the Burnside Bridgehead Site to partner on the creation of a Framework Plan (the “Framework Plan”) that provides a strategic guide to redevelopment of the 4.04 acre Burnside Bridgehead Site;
- J.** In consideration of Developer’s role as Strategic Project Advisor during the Framework Plan process, the MOU contemplated that Developer would receive the right to exclusive negotiations with PDC to develop, a minimum of twenty percent of the Burnside Bridgehead Site;
- K.** The Framework Plan vision is to create a strategic design approach for the redevelopment of the Burnside Bridgehead Site that will catalyze and identify the URA as an attainable, productive, and sustainable district;
- L.** Principles intended to guide and direct planning, development and investment decisions for the project are:
Site as Potential: Balance land uses development densities, and phasing, with market reality
Site as Attainable: Develop new approaches or strategies to maintain affordability in construction and accessibility for a broad spectrum of users
Site as Productive: Create an incubator for employment with business-supportive redevelopment
Site as Sustainable: Integrate innovative, attainable, sustainable design
Site as Vibrant: Provide opportunities for a mix of uses – commercial, employment, and residential – that build on the unique character of the community and activate the site;

- M.** The Framework Plan initiates the vision with an initial phase that focuses on strategic incremental development on the Burnside Bridgehead Site to catalyze the site and the URA while not precluding long-range density and development goals for the site;
- N.** The Framework Plan provides a guidebook to redevelopment of the Burnside Bridgehead Site that aligns with PDC's Strategic Plan 2010 to promote the growth of high wage jobs and the industry cluster strategy in the Central City through partnerships, targeted tenanting, and focused public investments;
- O.** The Burnside Bridgehead Citizen Advisory Committee endorsed the Framework Plan as the guiding document for the evaluation of future development proposals on the Burnside Bridgehead Site;
- P.** The PDC Board of Commissioners (the "Board") adopted the Framework Plan as the guiding document for the evaluation of future development of the Burnside Bridgehead Site;
- Q.** Developer, as a result of the Framework Plan process, has elected to develop a portion of the Burnside Bridgehead Site commonly known as Block 68, Block 69 and the portion of Block 67 that is located within the vacated Couch Street right-of-way and located at 123 NE 3rd Avenue, Portland, Oregon 97232 and more particularly described in Section 2.2 herein, including Exhibit A attached hereto (the "Property");
- R.** Developer's development of the Property shall consist of, among other things, the adaptive reuse of the Convention Plaza Building (the "Building"), including structural upgrades to the Building, the potential addition of a penthouse, new mechanical infrastructure, new windows and new retail storefronts, and the reconfiguration and upgrade of the parking lot located on the portion of Block 68 to the west of the Building and the Couch Street Improvements (as hereinafter defined) (collectively, the "Project"). The Project is more specifically described in the Scope of Development (as hereinafter defined);
- S.** The Project also includes certain public improvements at the southern portion of the Property at Couch Street for public access connecting Third Avenue through the Burnside Bridgehead Site (collectively, the "Couch Street Improvements");
- T.** The parcel on which the Couch Street Improvements will be located is depicted on the attached Exhibit M and shall be conveyed to Developer as a separate legally subdivided parcel (the "Couch Street Parcel"), and prior to the Closing, PDC shall cause to be recorded against the Couch Street Parcel and all other real property that comprises the Burnside Bridgehead Site, a Declaration of Covenants, Conditions and Restrictions in the form attached as Exhibit N (the "Couch Street CC&Rs"), pursuant to which, among other things, the owner of the Couch Street Parcel shall

have the obligation to maintain, operate, manage, repair and replace the improvements on the Couch Street Parcel and each owner of property located within the Burnside Bridgehead Site shall be responsible for their respective pro rata share of the cost of the maintenance, operation, management, repair and replacement of the improvements on the Couch Street Parcel;

- U. With the exception of the Building and the surface parking areas, the majority of the Burnside Bridgehead Site has been cleared and is ready for redevelopment, and in connection therewith, all Building tenants have been relocated and substantially all hazardous materials have been removed from the Building interior;
- V. The completion of the Project according to the terms of this Agreement, including the Scope of Development and the Schedule of Performance (as hereinafter defined), is a material inducement to PDC to enter into this Agreement; and
- W. 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 good and valuable consideration, and the conditions, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINED TERMS

Words that are capitalized, and which are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Agreement. Some defined terms are first defined in the text of this Agreement and some are first defined in Exhibit B, which is a glossary of defined terms not defined in the text of this Agreement. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. If there is any difference between the definition of a defined term in the text of this Agreement and a definition of that term in Exhibit B, the definition in the text controls. Defined terms may be used in the singular or the plural.

2. GENERAL TERMS OF CONVEYANCE

2.1. Agreement for Disposition and Development. PDC agrees to sell and convey to Developer, and Developer agrees to purchase from PDC, and develop the Property upon the terms and conditions set forth in this Agreement.

2.2. Description of the Property. The Property which is subject to this Agreement collectively consists of the following: The land located at 123 NE 3rd Avenue, Portland, Oregon, commonly known as Block 68, Block 69 and the portion of Block 67 that is

located within the vacated Couch Street right-of-way as more particularly described in Exhibit A attached hereto (the "Land"), together with: (i) all rights, privileges, licenses, and easements appurtenant to the Land owned by PDC, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the Land, as well as development rights, air rights, water rights related to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land; (ii) all improvements, equipment, fixtures or other personal property of every kind located on the Land, including, without limitation all buildings and structures presently located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the improvements and fixtures; and (iii) any and all permits, warranties, intangible property and any other personal property assets owned by PDC with respect to the Land and the improvements thereon.

2.3. [Reserved]

2.4. Purchase Price. The purchase price for the Property is an amount equal to the appraised value of the Property as determined by an appraisal mutually acceptable to PDC and Developer dated no later than twelve (12) months prior to the date of this Agreement, which amount is TWO MILLION THREE HUNDRED THOUSAND DOLLARS (\$2,300,000) (the "Purchase Price").

2.5. Payment of the Purchase Price. On the Closing Date (as hereinafter defined) the Purchase Price, subject to the adjustments specified herein, shall be paid by Developer by way of a promissory note (the "Carry Back Note"), which Carry Back Note shall be secured by a trust deed (the "Carry Back Trust Deed"). The business terms of the Carry Back Note and the Carry Back Trust Deed shall be consistent with the financing term sheet attached hereto as Exhibit M (the "Financing Term Sheet"), including the loan forgiveness performance measures, attached hereto as Exhibit N (the "Earn Down Matrix") and evidenced by a loan agreement and other documentation required by PDC, which, together with the Carry Back Note and Carry Back Trust Deed shall be collectively referred to herein as the "Loan Documents".

2.6. Prorations and Costs.

2.6.1. Closing Costs. The costs for recording a Memorandum of this Agreement (as hereinafter defined) shall be paid by PDC. The costs for recording the Bargain and Sale Deeds, substantially in the form attached hereto as Exhibit C (the "Deeds"), the Carry Back Trust 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 Ticor Title Company (the "Escrow Agent"). All other Closing costs, if any, shall be allocated in accordance with the customary practice in Multnomah County.

2.6.2. Prorations of Taxes. All property taxes attributable to the year in which the Closing occurs shall be prorated and adjusted as of the Closing Date as an adjustment at the Closing (regardless of whether such taxes and special assessments are then due and payable or delinquent). PDC agrees that any taxes, assessments and encumbrances that will be a lien against the Property at the Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be

satisfied by PDC. If PDC shall fail to do so, Developer may pay any such tax, assessment, encumbrance or other charge and deduct an amount equal to any such payment from the Purchase Price of the Property. Regular real property taxes payable during the year in which the Closing occurs and any rents or income applicable to the Property shall be prorated as of the Closing Date. Developer shall pay any property taxes accruing to the Property as a result of the transfer of the Property from public ownership, and therefore the change of the Property's status from tax exempt to taxable. In addition, the Developer shall pay property taxes on the Property from and after the Closing.

2.6.3. Utilities. PDC shall cause all meters for electricity, gas, water, sewer or other utility usage at the Property, if any to be read on the Closing Date and PDC shall pay all charges for such utility charges which have accrued on or prior to the Closing Date. If the utility companies are unable or refuse to read the meters on the Closing Date, all charges for such utility charges to the extent unpaid shall be prorated and adjusted as of the Closing Date based on the most recent bills therefore.

2.6.4. Other Prorations and Costs. Except as otherwise provided herein, all other items to be prorated, including rents, operating expenses, revenues, and other income, if any, shall be prorated as of the Closing Date. For the purpose of calculating prorations, the Developer shall be deemed to be entitled to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date. PDC shall pay any and all special assessments in full, whether or not annual installments are permitted. Developer and the PDC shall each pay their own legal and professional fees of other consultants incurred by Developer and PDC, respectively.

2.7. Access, Inspection and Due Diligence Materials

2.7.1. Access and Inspection. The Parties acknowledge that they have entered into a Permit of Entry granting Developer and its authorized agents or representatives access to the Property to make such investigations, studies and tests as Developer deems necessary or advisable.

2.7.2. Due Diligence Materials. PDC agrees to provide Developer: (a) a Preliminary Title Report or Reports covering the Property, and exception documents referenced in the Preliminary Title Report or Reports (collectively, the "Preliminary Title Report") within ten (10) days of the Effective Date; (b) copies of all studies, reports, site analyses, engineers certificates, existing surveys, existing title insurance policies, contracts, leases, licenses and permits with respect to the Property that PDC has in its possession, or that it has access to, including, without limitation: (i) any site analyses with respect to oil, asbestos, underground storage tanks, Hazardous Materials, lead paint, or lead plaster; or (ii) any reports regarding compliance with laws (including, but not limited to, ADA, zoning and all other land use matters) (collectively, the "Due Diligence Materials"). Unless otherwise indicated, during the Due Diligence Period (as hereinafter defined), PDC agrees to make such items available to Developer and Developer's agents, at reasonable times at the mutual convenience of Developer and PDC.

2.7.3. Due Diligence Period. Developer shall notify PDC no later than one hundred twenty (120) days after Effective Date (the "Due Diligence Period") of the results of its due diligence. In the event that Developer's due diligence shall reveal any matters which are not acceptable to Developer, in Developer's sole discretion may elect, by written notice to PDC, on or before 5:00 p.m. on the expiration of the Due Diligence Period, not to proceed with the transaction contemplated herein, in which event this Agreement shall be null and void without recourse to either Party hereto. The failure of Developer to waive Developer's due diligence contingency prior to the expiration of the Due Diligence Period shall be deemed Developer's decision to terminate this Agreement.

2.8. Title Review.

2.8.1. Within ten (10) days after the Effective Date, PDC will deliver to Developer a preliminary title report on the Property and copies of all exception documents (the "Title Report"). Developer will have twenty (20) days after receiving the Title Report to notify PDC in writing if Developer objects to any item in the Title Report. Those items to which Developer does not object are "Permitted Exceptions". If Developer objects to any item, then PDC shall have twenty (20) days after receiving Developer's written objection to notify Developer in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If PDC does not respond to Developer's objections within the twenty (20) day time period or if PDC refuses to remove any such objected to exceptions, Developer shall have twenty (20) days to terminate this Agreement by written notice to PDC. If Developer terminates this Agreement under this section, no remedies shall accrue to either Party and all rights and obligations of the Parties under this Agreement shall terminate other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Multnomah County. If this Agreement is not so terminated, the Permitted Exceptions shall also include those exceptions, if any, that Developer originally objected to and that PDC refused to remove or failed to respond to.

2.8.2. Developer may obtain an update to the Title Report on the Property at any time prior to the Closing. Developer shall promptly give to PDC a copy of any updated Title Report. Within twenty (20) days after receiving an updated Title Report, Developer shall give PDC notice, in writing, of any objections to the exceptions (that are not Permitted Exceptions) to title that appear on the updated Title Report. Within twenty (20) days of Developer's written notice to PDC described in the preceding sentence, PDC shall notify Developer in writing of its intention to remove or not remove the objected to exceptions to title prior to Closing. If PDC does not give its response to Developer's objections within the twenty (20) day time period or if PDC refuses to remove any such objected to exceptions, Developer shall have twenty (20) days to terminate this Agreement by written notice to PDC. If this Agreement is not terminated in accordance the exceptions that Developer objected to and that PDC refused to remove or failed to respond to will be included as Final Permitted Exceptions. Any exceptions that Developer accepts at Closing are the Final Permitted Exceptions.

2.9. Title Insurance. PDC will cover the cost of a standard coverage Owner's Policy of Title Insurance, issued by Escrow Agent, covering the Property when conveyed, and insuring Developer in the amount of the Purchase Price, free and clear of encumbrances, except Final Permitted Exceptions. Developer, at its option and its expense, may elect to obtain extended coverage under such policy of title insurance and PDC agrees to execute any affidavits or other documents reasonably required by the Escrow Agent to enable Developer to obtain such coverage. Developer may also elect to obtain a survey at its own expense.

3. REPRESENTATIONS AND WARRANTIES

3.1. PDC Representations and Warranties. PDC's representations and warranties under this Agreement are limited to the following. PDC hereby warrants and represents to Developer as of the Effective Date and as of the Closing Date the following:

- 3.1.1.** PDC has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein; and all requisite action has been taken by PDC in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein.
- 3.1.2.** To PDC's knowledge, except as has been disclosed to Developer in the Environmental Due Diligence Reports, PDC has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, Released or produced Hazardous Substances on or under the Property, and no underground storage tanks exist on the Property, except in compliance with Environmental Laws currently in effect, and PDC has not received notice of the Release of any Hazardous Substances on the Property.
- 3.1.3.** PDC is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.
- 3.1.4.** 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, or PDC's ability to perform its obligations under this Agreement;
- 3.1.5.** To PDC's knowledge and except as otherwise disclosed in writing to Developer before the Effective Date, during PDC's ownership of the Property, the Property has been operated in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements ("Laws").
- 3.1.6.** PDC has not received any notice stating that the Property is in violation of any applicable laws, rules, regulations, ordinances or other governmental requirements.
- 3.1.7.** To PDC's knowledge, utility connections are available to the Property.
- 3.1.8.** PDC is the legal and beneficial fee simple titleholder to the Property and the Property is free and clear of all liens, encumbrances, claims, covenants, conditions,

restrictions, easements, rights of way, options, or judgments, except as disclosed by the Title Report.

3.1.9. Except as set forth on Schedule 3.1.9 attached hereto, there are no leases or service contracts that affect the Property that are not terminable at the Closing and there are no options to purchase the Property or rights of first refusal to purchase the Property.

3.1.10. This Agreement and all documents required to be executed by PDC are and shall be valid, legally binding obligations of and enforceable against PDC in accordance with their terms.

3.1.11. Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which PDC is a party.

3.1.12. No representation, warranty or statement of PDC in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.

3.1.13. The persons executing this Agreement and the instruments referred to herein on behalf of PDC have the legal power, right and actual authority to bind PDC to the terms and conditions of this Agreement.

3.2. Developer Representations and Warranties. Developer's representations and warranties under this Agreement are limited to the following. Developer hereby warrants and represents to PDC as of the Effective Date and as of the Closing Date the following:

3.2.1. Bradley Malsin, Jonathan Malsin and Pete Eggspuehler are the sole members of the Developer.

3.2.2. Developer has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Developer in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.

3.2.3. This Agreement and all documents required to be executed by Developer are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms.

- 3.2.4.** Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Developer is a party.
- 3.2.5.** No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.
- 3.2.6.** Developer enters into this Agreement without reliance on verbal representations by PDC, its employees, agents or consultants, regarding any aspect of the Property, the Project, its feasibility, financing, or compliance with any governmental regulation.
- 3.2.7.** As of the Effective Date, Developer is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of Developer under this Agreement.
- 3.2.8.** The persons executing this Agreement and the instruments referred to herein on behalf of Developer have the legal power, right and actual authority to bind Developer to the terms and conditions of this Agreement.

4. CONDITIONS PRECEDENT TO CLOSING

4.1. Conditions. Developer and PDC are not obligated to proceed with the conveyance of the Property to the Developer unless the following conditions are satisfied prior to Closing. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied. To the extent the failure of a condition to be satisfied occurs and such failure of the satisfaction of such condition constitutes a default under this Agreement, the non-defaulting party shall have all rights and remedies against the defaulting party that are available to such non-defaulting party under this Agreement.

4.1.1. To the reasonable satisfaction of both PDC and Developer, which conditions must be waived in writing by both PDC and Developer if not satisfied:

- (i) Both the Design Development Drawings and Final Construction Plans and Specifications have been approved by all required governmental entities and/or agencies, including PDC's design review pursuant to Section 7.2 below.
- (ii) All land use approvals and permits for the Project required by Title 33 of the Code of the City of Portland shall 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 was filed, it shall have been finally resolved.

- (iii) All financing necessary to construct the Project has closed or will close simultaneously with the Closing.
- (iv) The Parties have agreed to the final form of the Loan Documents.
- (v) The Couch Street Parcel is a separate properly subdivided legal lot.
- (vi) No litigation is pending that prevents PDC or Developer from performing their respective obligations under this Agreement.
- (vii) The Parties have agreed to the terms and final form of the documents necessary to dedicate a portion of the Property as right of way for NE Davis Street.

4.1.2. To Developer's reasonable satisfaction, which conditions may be waived in writing solely by Developer if not satisfied:

- (i) PDC is not in default under this Agreement and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of PDC under this Agreement.
- (ii) No material adverse change in the physical or legal condition of the Property has occurred.
- (iii) Title Company is prepared to issue to Developer the form of Title Insurance selected by Developer under Section 2.9, covering the Property in an amount equal to the Purchase Price, subject only to the Final Permitted Exceptions.
- (iv) The Couch Street CC&Rs have been recorded against the Burnside Bridgehead Site.
- (v) PDC shall have assigned any leases listed on Schedule 3.1.9.
- (vi) PDC shall enter into an agreement with Developer regarding the configuration and funding strategy for the Couch street extension ("Couch Tail") off of the Couch/Burnside Couplet within one (1) year of Closing.

4.1.3. To PDC's reasonable satisfaction, which conditions may be waived in writing solely by PDC if not satisfied:

- (i) PDC has received documentation indicating that the City of Portland Bureau of Development Services is ready to issue the building permits that are required to construct the Project, subject only to Developer's ownership of the Property.

- (ii) Developer has provided to PDC documentation that:
 - (a) Developer is a limited liability company qualified to do business in the state of Oregon;
 - (b) The Articles of Organization of Developer have not been altered since the Effective Date in any manner that may materially adversely affect PDC's interests after the Closing;
 - (c) Developer has full power and authority to enter into and perform its obligations under this Agreement; and
 - (d) This Agreement has been executed and delivered, for and on behalf of Developer, by an authorized individual.

- (iii) Title Company has issued to PDC a binding commitment, satisfactory to PDC, to issue a lender's extended title insurance policy covering the Property in the amount of funding to be provided by PDC.

- (iv) PDC has approved the Final Project Budget and Developer has demonstrated financial feasibility for the Project, consistent with the Final Project Budget, by providing to PDC:
 - (a) Copies of binding commitment letters from private lenders for the construction financing for the Project; and
 - (b) Written evidence of necessary equity commitments, including the commitment of Historic Tax Credits, if applicable, to the Project as further described in Section 7.1 below.

- (v) Developer has registered the Project for LEED certification and has provided PDC with documentation of the Project's LEED credits, evidencing anticipated credits sufficient to reach at least LEED silver certification.

- (vi) Developer is not in default under this Agreement and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of Developer under this Agreement.

- (vii) Developer shall have entered into, or shall be prepared to enter into at Closing, the Compliance Agreement described in Section 7.4.

- (viii) Developer shall have entered into, or shall be prepared to enter into at Closing, a non-remonstrance agreement with respect to the anticipated Local Improvement District on Davis Street.

4.2. Elections upon Non-Satisfaction of Conditions. If any condition in this Section 4 is not fulfilled to the satisfaction of the benefited Party or Parties as of the Closing Date (or such later date, if any, designated pursuant to Section 4.2(c) below or determined in accordance with Section 3), then such benefited Party or Parties may elect as follows; provided, however, to the extent the failure of a condition to be satisfied occurs and such failure of the satisfaction of such condition constitutes a default under this Agreement, the non-defaulting party shall have all rights and remedies against the defaulting party that are available to such non-defaulting party under this Agreement:

- (a) Terminate this Agreement by and effective upon written notice to the other Party; or
- (b) Waive in writing the benefit of that condition and proceed in accordance with the terms hereof; or
- (c) Designate in writing a later date for the Closing, to allow additional time for the condition to be satisfied, if the condition can be satisfied and the other Party agrees in writing to the later date.

4.3. Final Termination Date. If all of the conditions precedent to the Closing set forth in Section 3 have not been satisfied or waived by the later of (a) the Closing Date or (b) such later date, if any, designated pursuant to Section 4.2(c) or determined in accordance with Section 15.8.3, then this Agreement shall terminate sixty (60) days after written notice from the Party seeking termination unless the specified condition shall have been satisfied or waived and Closing shall have occurred within such 60-day period.

4.4. Effect of Termination for Non-Satisfaction of Conditions Precedent to Closing. If this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to the Closing and neither Party is in default under this Agreement, then all rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Multnomah County. If a Party is in default under this Agreement on the date this Agreement terminates or is terminated for non-satisfaction of the conditions precedent to Closing, then the rights and remedies accruing to the other Party under this Agreement as a result of such default shall survive termination of this Agreement.

5. CLOSING

5.1. Manner of Closing.

- 5.1.1.** The Closing of the purchase and sale of the Property will occur in an escrow to be administered by the Escrow Agent.
- 5.1.2.** The Parties agree to provide the Escrow Agent with escrow instructions consistent with the terms of this Agreement ("Escrow Instructions").
- 5.1.3.** On the Closing Date, the Escrow Agent shall deliver or cause to be delivered the sums and documents pursuant to the Escrow Instructions. In the event that the Escrow Agent cannot, or refuses to, handle this transaction, the Parties shall appoint an escrow company mutually satisfactory to the Parties, which is licensed in the state of Oregon.

5.2. Closing Date.

- 5.2.1.** The Closing Date shall occur on or before the date that is eighteen (18) months after the Effective Date (the "Closing Date").

5.2.2. The Closing Date may not be extended without the consent of both Parties, unless extended pursuant to Section 16.1 or Section 16.8.3. If the Parties agree to extend the date for Closing six months or more beyond the date set forth above in paragraph 5.2.1, then, absent contrary agreement at the time of agreement, the Purchase Price shall be increased by: (i) the percentage increase in the Consumer Price Index between the Execution Date and the adjusted Closing Date; or (ii) the increase reflected in an updated appraisal, the cost of such updated appraisal shall be at Developer's sole cost and expense.. In no event shall the Purchase Price be lower than the amount set forth above in Section 2.3.

5.3. Conveyance by Deeds. Subject to satisfaction of the Conditions Precedent to Closing set forth above and upon Developer's payment to PDC of the Purchase Price, at the Closing PDC will convey the Property to the Developer by the Deeds.

5.4. Documents to Be Deposited Into Escrow by PDC. On or before the Closing Date, PDC shall deposit into Escrow all of the following:

5.4.1. A duly executed and acknowledged Deeds;

5.4.2. An original certificate of non-foreign person duly executed by PDC and notarized.

5.4.3. Such documents as the Escrow Agent may require to establish the authority of PDC to complete the sale of the Property as contemplated by this Agreement, and to issue title insurance in the form required by Developer.

5.4.4. Such documents as the Escrow Agent may require to complete the sale of the Property as contemplated by this Agreement.

5.4.5. The duly executed and acknowledged Couch Street CC&Rs.

5.5. Documents and Sums to Be Deposited Into Escrow by Developer. On or before the Closing Date, Developer shall deposit into Escrow such funds (by wire transfer) as are necessary to complete payment of the Purchase Price in accordance with Section 2.3 of this Agreement and to pay Developer's portion of the Closing costs. Developer shall also deposit into Escrow the following:

5.5.1. Such documents as the Escrow Agent may require to complete the sale of the Property as contemplated by this Agreement.

5.5.2. Executed Loan Documents, including, but not limited to, the Carry Back Note.

5.5.3. Executed and acknowledged Carry Back Trust Deed.

6. INFRASTRUCTURE, UTILITIES AND LAND CONDITION

6.1. Infrastructure Improvements. As part of the Project, Developer, at its own cost except as otherwise provided herein, will design, construct, fund and obtain permits for all Infrastructure, including the Couch Street Improvements.

- 6.2. Site Preparation.** As part of the Project, Developer will, at its own cost, complete all necessary site preparation generally in accordance with the Schedule of Performance, subject to extensions for force majeure events. To the extent practicable, Developer shall deconstruct materials from the Building for reuse in the Project or donation.
- 6.3. Utility Service.** As part of the Project, Developer shall install, connect, and upgrade new and existing utilities necessary to serve the Project.
- 6.4. Fiber-Optic Service.** As part of PDC's negotiations with Integra Telecom regarding an easement across the Property, PDC shall use its best efforts to secure an agreement from Integra Telecom to install fiber-optic internet service to serve the Project on commercially reasonable terms and conditions.
- 6.5. Subsurface, Surface and Building Conditions.** PDC shall convey the Property to Developer, and Developer shall accept the Property, in "AS IS" condition on the Closing Date, without warranty of any kind except as otherwise specifically set forth in this Agreement and in the conveyance documents executed by PDC at the Closing. In particular, except as otherwise specifically set forth in this Agreement and in the conveyance documents executed by PDC at the Closing, PDC makes no warranties or representations that the soil conditions, Environmental Conditions or any other conditions of the Property or structures thereon, including the Building, are suitable for any improvements, except as specifically set forth in this Agreement. Developer acknowledges that it has not relied on any verbal representations made by the PDC as to the soil conditions, Environmental Conditions or any other conditions of the Property. Developer acknowledges that it has had free access to PDC's records with respect to the condition of the Property, specifically including the Environmental Due Diligence Reports.
- 6.6. Parking.** As more specifically set forth in the Scope of Development, Developer shall bring the existing parking area on the portion of the Property located on Block 68 up to current code standards. The Parties acknowledge and agree that the existing parking area on the portion of the Property located on Block 68 may eventually be developed in accordance with the Framework Plan (the "Phase II Project"). Nothing contained in this Agreement shall impose any requirements with respect to the parking area on the portion of the Property located on Block 69, except to the extent that such requirements may be imposed by other governmental regulations.

7. DEVELOPMENT

7.1. Project Financing.

Except as described in Sections 0 and 7.1.2 below, Developer will be responsible for obtaining from third parties all funds and financing necessary to construct and operate the Project. The Parties anticipate that the Project financing will be structured generally as shown in the Project Budget. The Parties acknowledge and agree that the Project Budget is only a projection and that a number of factors may change this projection including interest rates, lender requirements, market shifts, and the soft and hard development costs.

- 7.1.1. Prior to the Effective Date, PDC and Developer entered into that certain Predevelopment Loan Agreement dated July 1, 2010 in the amount of \$200,000 to fund predevelopment activities related to the Project.
- 7.1.2. The Predevelopment Loan Agreement was amended by that certain First Amendment to Predevelopment Loan Agreement dated January 6, 2011, for an additional \$256,000.
- 7.1.3. PDC will finance the Purchase Price, to be evidenced at the Closing by the execution of the Loan Documents by Developer in favor of PDC, subject to satisfaction of PDC's customary underwriting criteria, as reasonably determined by the PDC Executive Director based on the recommendation of the PDC Financial Investment Committee, and agreement on definitive loan documentation which may contain additional terms and conditions not specified herein but consistent with the terms and conditions set forth in the Financing Term Sheet and the Earn Down Matrix. The definitive loan documentation shall be in PDC's customary form and shall be consistent, in all material respects, with the terms and conditions set forth herein, unless otherwise approved by Developer and the Board.

7.2. Plans, Drawings and PDC Design Review and Approval.

- 7.2.1. **PDC Design Review and Approval, in General.** The Scope of Development is described in Exhibit F. Developer has prepared Preliminary Design Documents for the Project that is the basis for entering into this Agreement. Developer shall prepare Design Development Drawings and Construction Drawings and Technical Specifications for the Project and submit them to PDC for review and approval as discussed below and in accordance with the Schedule of Performance. Review meetings with the Design Team and PDC representatives are encouraged to facilitate the review and approval process. PDC approval of Design Development Drawings must be obtained prior to submission for City Design Review. All plans and specifications referred to in this Section are referred to herein as the "Drawings." In connection with the review of any Drawings, the approval or rejection of such Drawings by PDC, in its sole discretion, shall not be unreasonably withheld, conditioned or delayed.
- 7.2.2. **Standards for PDC Design Review and Approval.** In connection with the review of any Drawings, the approval or rejection of such Drawings by PDC, in its sole discretion, shall not be unreasonably withheld, conditioned or delayed. The Drawings shall adequately address the following design objectives:
 - (a) **Urban and Pedestrian Environment.** The Project should be designed to foster active pedestrian environments that enhance the level of commercial activity. The Project should create an urban environment that feels safe and friendly to pedestrians, with window glass that is transparent and non-reflective, landscape improvements, building lighting, and storefront entries located on the street.
 - (b) **Neighborhood Compatibility.** The Project should be designed such that the buildings, site improvements, and landscaping build pride, reflect

- (c) neighborhood character, and show commitment to the cultural and architectural heritage of the neighborhood. Designs and materials should be complementary to and compatible with the existing building forms, incorporating high-quality, durable materials and colors.
- (d) **Green Building Principles.** The Project should be designed to achieve at least LEED silver certification incorporating Green Building, energy efficiency and sustainability practices and designs.

7.2.3. Limitations on Review of Design. PDC's review and approval of Drawings will occur in stages and approvals will be progressive in nature, but limited to the following elements:

- (a) **Draft Design Development Drawings (50% DD).** Elements, including Green Building elements, draft Design Review Application and Narrative, draft Development Drawings (50%) material and color samples, and draft Design Development Drawings (50%) cost estimate, depicted in the draft Design Development Drawings (50%) that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Preliminary Design Documents;
- (b) **Final Design Development Drawings (100% DD).** Elements, including Green Building elements, Final Design Review Application and Narrative, final Design Development Drawings material and color samples, and final Design Development Drawings cost estimate, depicted in the final Design Development Drawings that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved draft Design Development Drawings (50%);
- (c) **Draft Construction Drawings and Technical Specifications (50% CD).** Elements, including Green Building elements, draft Construction Drawings and Technical Specifications (50%) cost estimate, and material and color samples, depicted in the draft Construction Drawings and Technical Specifications (50%) that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Draft Design Drawings;
- (d) **Draft Construction Drawings and Technical Specifications (90% CD).** Elements, including Green Building elements, draft Construction Drawings and Technical Specifications (90%) cost estimate, and material and color samples, depicted in the draft Construction Drawings and Technical Specifications (90%) that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved Draft Construction Drawings and Technical Specifications (50%);
- (e) **Final Construction Drawings and Technical Specifications (100% CD).** Elements, including Green Building elements, final Construction Drawings and Technical Specifications cost estimate, and material and

- (f) color samples, depicted in the final Construction Drawings and Technical Specifications that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved draft Construction Drawings and Technical Specifications (90%);
- (g) **Construction Shop Drawings and Product Submittals.** Elements including design build, shop drawings and product submittals that were not approved, that were not: (i) previously approved, (ii) at a level of detail to be approved, or (iii) in conformance with the approved final Construction Drawings and Technical Specifications.

7.2.4. Changes in Approved Drawings. The Developer shall submit to PDC for review any substantial changes to any previously approved Drawings. A substantial change shall mean any change that would have a material impact on the function, appearance or cost of the Project. Developer acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals shall be sought after PDC has approved the changes. PDC shall assist Developer throughout any City design review process of the appropriate bureaus or agencies within the City, but PDC does not represent or warrant that its assistance will guarantee approval. If the approval of PDC is sought under this Section, such approval shall not be unreasonably withheld, conditioned or delayed.

7.2.5. Project Rendering. Developer will provide PDC with at least one electronic and one hardcopy color rendering of the Project at the time the Project is submitted for City Design Review and another set of copies upon completion of final Design Development Drawings after completion of City Design Review if changes are made during the review process.

7.2.6. PDC Design Review Process.

- (a) **PDC Staff Review of Design.** PDC and Developer acknowledge that the Schedule of Performance attached hereto as Exhibit G (the "Schedule of Performance") for the Project requires expeditious review and response from PDC and responsiveness and cooperation from Developer and its Design Team in connection with the design review process. The Parties agree that efficient communication between all concerned is necessary to resolve design issues in a timely manner. PDC staff may attend regularly scheduled design meetings for the Project on a schedule mutually agreeable to PDC staff and Developer. The PDC Project Manager will meet with Developer and its Design Team regularly as scheduled by the Parties, or upon the request of either Party to the other, to review progress on the resolution of design and related issues. The scope of PDC's review will be consistent with Sections 7.2.2 and 7.2.3 of this Agreement. If PDC does not provide its approval or rejection of any Drawings by the due date for such Drawings set forth in the Schedule of Performance, then such Drawings shall be deemed approved by PDC.
- (b) **PDC Design Advisor.** PDC may retain a design advisor for the Project. The role of the design advisor is to review the design of the Project, to

present the design to PDC as needed, and to advise PDC as to design considerations consistent with this Agreement. These reviews will take into consideration building codes and other governmental regulations but will not include any analysis of compliance with the same. PDC may designate additional or substitute PDC design advisors without amendment to this Agreement.

- (c) **Community Input.** PDC and Developer have coordinated on outreach efforts regarding the Project and its design. It is expected that if Developer changes the design of the Project in a material way from that presented to the Burnside Bridgehead Citizen Advisory Committee, or other identified stakeholder, Developer will present the revised Project design to the foregoing groups for their input and advice.

7.3. Diligent Completion. Subject to the terms and conditions of this Agreement (including any Unavoidable Delay as defined in Section 16.8), Developer covenants to use commercially reasonable efforts to complete the development of the Project in substantial conformance with the final Construction Drawings and Technical Specifications and in accordance with the Schedule of Performance. Developer shall use commercially reasonable efforts to complete development of the Project no later than the date for completion of construction set forth in the Schedule of Performance. Developer agrees to keep PDC informed of its progress with respect to development of the Project during construction, with periodic reports to be issued no less frequently than once a month until PDC issues the Certificate of Completion for the Project. Project development shall include:

7.3.1. Entering into all necessary architectural and construction contracts;

7.3.2. Securing all necessary public entitlements and building permits;

7.3.3. Securing all financing necessary to complete the Project, consistent with the Final Project Budget.

7.4. Oregon Prevailing Wage Law.

The Parties have entered into, and shall perform and discharge their obligations under, that certain Compliance Agreement of even date herewith, which is hereby incorporated into this Agreement by this reference, pursuant to which Developer agrees to comply with the Oregon Prevailing Wage Law (ORS 279C.800 to 279C.870) with respect to the Project (as defined on the attached Exhibit F).

7.5. Inspection and Property Access.

7.5.1. Before Closing. Before Closing, PDC may allow Developer and/or Developer's employees, agents and consultants to enter upon the Property in reasonable furtherance of the transaction contemplated in this Agreement pursuant to a written permit of entry.

7.5.2. After Closing. After Closing, during construction of the Project, and until the 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.

7.6. Safety Matters and Indemnification. Developer shall:

7.6.1. Safety. Comply with all safety laws and take all safety measures necessary to protect its employees and PDC's employees, agents, contractors, subcontractors, licensees and invitees, their personal property, and improvements of each, from injury or damage caused by or resulting from the performance of its construction.

7.6.2. Indemnity from Liability Claims. Indemnify, defend (at PDC's request) and hold harmless PDC, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the property of any person during the process of the construction work or the performance of Developer's other obligations under this Agreement, except to the extent caused solely by PDC. The indemnity set forth in this Section 7.6.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

7.6.3. Indemnity from Liens. Indemnify, defend (at PDC's request) and hold harmless PDC, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics', materialmen's, laborers' or other construction or statutory liens filed against any portion of the Property or the Project or arising from or related to construction on the Property or the Project performed by or at the request of Developer or Developer's contractors or agents. The indemnity set forth in this Section 7.6.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

7.7. Liens. If any statutory lien shall be filed prior to PDC's issuance of the Certificate of Completion against any portion of the Project by reason of labor, services or materials supplied to or at the request of Developer or Developer's contractors or agents or in connection with any construction on the Project, Developer shall, within thirty (30) days after the filing thereof, take whatever action is necessary and proper (including posting a bond or a cash deposit and taking such further action as may be required by the Oregon Construction Lien Law), so that the Project shall thereafter be entirely free of the lien. Alternatively, Developer may elect to leave the lien of record and to contest its validity, amount or applicability by appropriate legal proceedings, but only if Developer shall, within the 30-day period following the filing of the lien, furnish a bond over such lien in an amount and form satisfactory to induce the title insurance company which insured title to the Property to insure over such lien or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such lien; provided, further, that in the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Developer, Developer shall within thirty (30) days thereafter cause the lien to be discharged of record.

7.8. Compliance with Laws and Use Restrictions. Developer will comply with, or cause the Project to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Developer, the Project, or the operation thereof, including, without limitation:

7.8.1. All applicable health and safety, environmental, and zoning laws, and

7.8.2. All requirements or restrictions pertaining to the construction, use, occupancy or operation of the Project arising from the original source of any funds used by Developer to complete the Project.

7.9. Certificate of Completion.

7.9.1. When Developer is Entitled to Certificate of Completion. Upon substantial completion of the Project as described in this Section 7.9 on or before the date for completion of the construction set forth in the Schedule of Performance and provided Developer is not in default under this Agreement, PDC will furnish Developer with a Certificate of Completion for the Project. The Project will be deemed to be substantially complete when:

- i.** PDC determines that the Project is complete according to the Final Construction Drawings and Technical Specifications, except for punch-list items that do not materially affect the use of the Project for the purposes intended under this Agreement;
- ii.** Developer has completed all environmental remediation and abatement on the Property, if any, required of Developer under Section 8;
- iii.** The City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project; and
- iv.** Developer has submitted all materials to the United States Green Building Council necessary to obtain LEED silver certification required by the Green Building Policy with respect to the Project.

7.9.2. Form and Effect of the Certificate of Completion. A Certificate of Completion shall be substantially in the form of Exhibit H and in a form that can be recorded in the real property records of Multnomah County. The Certificate of Completion shall provide for termination of obligations under this Agreement and limitation of remedies of PDC as expressly provided for in the Certificate of Completion. At Developer's request, the Certificate of Completion shall state which terms and conditions of this Agreement are of no further force and effect.

7.9.3. Procedure Where PDC Refuses to Issue. If PDC refuses or fails to provide a Certificate of Completion in accordance with this Section 7.9, then PDC, within thirty (30) 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 thirty (30) day period shall be deemed PDC's approval of Developer's request for the Certificate of Completion.

8. ENVIRONMENTAL CONDITION OF THE PROPERTY AND PARTIES' RESPONSIBILITIES

8.1. Environmental Due Diligence Reports. Developer acknowledges receipt of copies of the Environmental Due Diligence Reports, as set forth in Exhibit I, other than the Phase I Environmental Site Assessment described in Section 8.2 below.

8.2. Phase I Environmental Site Assessment. During the Due Diligence Period, Developer shall cause completion of a Phase I Environmental Site Assessment of the Property in conformance with the ASTM E 1527-05 process in compliance with the United States Environmental Protection Agency All Appropriate Inquiries (40 CFR Part 312). Developer shall provide a copy of the Phase I Environmental Site Assessment to PDC, promptly after Developer's receipt thereof.

8.3. Unforeseen Environmental Conditions. If Developer encounters, after Closing and prior to issuance of the Certificate of Completion, an Unforeseen Environmental Condition on the Property that was not otherwise identified as a Recognized Environmental Condition in the Environmental Due Diligence Reports, substantially differs as to nature and extent from a Recognized Environmental Condition in the Environmental Due Diligence Reports, or that was not caused directly or indirectly by Developer, Developer shall suspend all related construction activities pending PDC's investigations under this Section 8.3. Developer 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, Developer 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. Developer hereby grants a license to PDC for PDC to enter on the Property to perform the foregoing surveys, tests and investigations which PDC shall conduct in accordance with applicable Environmental Laws. PDC will provide Developer 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 Developer shall then complete as part of the Project, as a condition to issuance of the Certificate of Completion and in a manner necessary to obtain a NFA Letter. Developer shall comply with all restrictions, limitations, conditions and obligations set forth in the NFA 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 or perform remediation or abatement of the Unforeseen Environmental Condition itself, as it determines necessary or appropriate in its sole discretion as a matter of right but not obligation, and Developer shall permit PDC access to the Property to do so.

8.4. Indemnification. Developer shall be responsible for compliance with all Environmental Laws with respect to the Property, its business and the operation of the Project from and after Closing, including but not limited to compliance with all restrictions, limitations, conditions and obligations imposed by DEQ pursuant to a No Further Action Letter, Underground Storage Tank Closure letter or Easement and Equitable Servitude applicable to the Property, if any. In addition Developer shall be responsible for all environmental remediation and abatement of Recognized Environmental Conditions and Unforeseen Environmental Conditions on the Property. Developer shall defend (at PDC's request), indemnify and hold harmless PDC, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, 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 person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer, Developer's failure to comply with a restriction, limitation, condition or obligation imposed by DEQ pursuant to a NFA Letter, UST Closure Letter or E&ES applicable to the Property, if any, or Developer's failure to complete any environmental remediation or abatement of Recognized Environmental Conditions or the remediation or abatement of any Unforeseen Environmental Conditions on the Property required of Developer by Sections or 8.3 above. The indemnity set forth in this Section 8.4 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

8.5. 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.

9. ASSIGNMENT AND TRANSFER PROVISIONS

9.1. Restrictions on Transfer of the Property and Assignment of the Agreement Prior to Issuance of Certificate of Completion. 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 provisions of this Section 8.1 are reasonable and necessary to provide to each Party the benefit of the transaction implemented through this Agreement.

9.1.1. Except as provided in Section 9.2, prior to the issuance of a Certificate of Completion, Developer shall not partially or wholly transfer or dispose of or agree to transfer or dispose of the Property, the Project, or Developer's interest in this Agreement without the prior written approval of the PDC, which may be withheld in PDC's sole discretion. Without limiting PDC's discretion to withhold its approval

in any event, PDC is unlikely to approve a transfer or disposition if: (a) the transfer or disposition violates another provision of this Agreement, (b) the proposed transferee does not possess qualifications and financial capacity equal to or superior to that of Developer, or (c) the transfer or disposition will cause a material delay in completion of the Project.

9.1.2. Bradley Malsin ("Developer's Principals") shall retain a controlling ownership interest in the Developer and retain control of the operations of the Developer.

9.2. Approved Transfers Prior to Issuance of Certificate of Completion. Notwithstanding Section 9.1 above, and provided that Developer provides PDC with copies of all agreements related to the transfer at least ten (10) Business 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:

9.2.1. An assignment of Developer's rights under this Agreement and interest in the Property (which interest will remain subject to the terms and conditions of this Agreement) to a partnership, limited liability company or limited partnership provided that Developer's Principals hold a controlling ownership interest in the assignee, are the managing members or general partners of such assignee and retain control of the operations of the assignee. Notwithstanding an assignment under this Section 9.2.1, Developer shall remain fully responsible to PDC for performance of this Agreement.

9.2.2. Any Mortgage, including any assignment of rights under this Agreement to any Mortgagee, as approved by PDC.

9.3. Transfers After Issuance of the Certificate of Completion. After PDC's issuance of the Certificate of Completion, Developer may transfer or dispose of any portion of the Property or the Project, or Developer's interest in this Agreement without the consent or approval of PDC only upon completion of the Feasibility Study.

10. COMPLIANCE WITH PDC POLICIES

10.1. Business and Workforce Equity Policy. PDC has adopted the Business and Workforce Equity Policy to ensure fair and equitable opportunities to Portland's diverse populations, promote prosperity in all segments of Portland's diverse communities, foster economic growth, and expand competition in the market. The Business and Workforce Equity Policy is set forth in Exhibit J. The Business and Workforce Equity Policy is comprised of two (2) separate and distinct programs:

- The Business Equity Program; and
- The Workforce Equity Program

Within ten (10) days of the Effective Date, Developer shall contact the PDC Contracts Coordinator to obtain the Business Equity Program Specifications and the Workforce Equity Program Specifications (each, the "Specifications") that outline the procedural requirements of the respective programs, including the reporting

requirements to the City. The Project is subject to both the Business Equity Program and the Workforce Equity Program as follows:

10.1.1. Business Equity Program. The purpose of the Business Equity Program is to ensure that PDC provides professional, supplier and construction contracting opportunities to State certified minority-owned, women-owned and emerging small businesses (collectively, "Certified Firms") and to encourage the participation of businesses owned by veterans in connection with PDC projects. The utilization goal for Certified Firms in connection with the Project is twenty percent (20%) of the Project's hard construction costs. The Developer shall comply with the Business Equity Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the Specifications of the Business Equity Program and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the Specifications in connection with the Project. Developer shall also comply with all portions of the Business Equity Program applicable directly to Developer. The failure of Developer or Developer's General Contractor, or the subcontractors thereof, to comply with the Specifications within the applicable notice and cure periods shall constitute a breach of a material provision of this Agreement. Provided that the Specifications are followed, failure to meet the specific utilization goal for Certified Firms shall not constitute a breach of a material provision of this Agreement.

10.1.2. Workforce Equity Program. The purpose of the Workforce Equity Program is to maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and women and encourage the employment of people with disabilities and veterans in connection with PDC projects. In connection with the Project, Developer shall comply with the Workforce Equity Program by: (i) including provisions in its contract with its General Contractor that require the General Contractor to comply with the Workforce Equity Program Specifications and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the Workforce Equity Program in connection with the Project; and (ii) complying with all portions of the Workforce Equity Program applicable directly to Developer. Projects subject to the Workforce Equity Program require contractors to ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the General Contractor and subcontractors are worked by state-registered apprentices. The failure of Developer or Developer's General Contractor, or the subcontractors thereof, to comply with the Specifications or to meet the required percentage of apprentice hours (not the specific goals for participation by People of Color or women on the Project) of the Workforce Equity Program within the applicable notice and cure period shall constitute a breach of a material provision of this Agreement.

10.2. Green Building Policy. In connection with the Project, Developer shall comply with PDC's Green Building Policy. Among other things, this policy requires Developer to construct the Project in the manner necessary to meet the applicable Green Building standard set forth in the Green Building Policy. Within ten (10) days after the Effective Date, Developer shall provide PDC with the initial Green Building Progress Report, and Developer shall submit subsequent Green Building Progress Reports to PDC every thirty (30) days thereafter until PDC has issued a Certificate of Completion for the Project. If

the applicable Green Building standard is some level of LEED certification, then Developer shall submit all materials necessary to obtain LEED silver certification for the Project to the United States Green Building Council prior to PDC's issuance of a Certificate of Completion for the Project and submission of such materials is a condition precedent to PDC's obligation to issue the Certificate of Completion. Developer will cooperate with PDC staff in the follow-up and monitoring of the effectiveness of the green building standards, and will provide PDC access to the building utility bills.

10.3. EEO Certification. Developer shall comply with the City's EEO Certification Program by including provisions in its contract with its General Contractor that require the General Contractor to comply with the EEO Certification Program and otherwise causing its General Contractor, and the subcontractors thereof, to comply with the EEO Certification Program. Developer shall also comply with all portions of the EEO Certification Program applicable directly to Developer and 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 failure of Developer or Developer's General Contractor, or the subcontractors thereof, to comply with the EEO Certification Program or other applicable equal employment opportunity law within the applicable notice and cure periods shall constitute a breach of a material provision of this Agreement. The EEO Certification Program is set forth in Attachment C of the Fair Contracting and Hiring Guideline Index.

11. COMPLIANCE WITH OTHER PDC POLICIES

11.1. Prohibited Uses. For the term of any outstanding PDC financing, the following user types are specifically prohibited: vehicle servicing or repair, self-service storage, heavily industrial uses and drive-thrus. PDC may institute legal action to void any lease entered into contrary to these provisions.

11.2. Public Participation Plan. The adopted Framework Plan for the redevelopment of the Burnside Bridgehead Site included extensive public participation consistent with PDC's Public Participation Policy. The Burnside Bridgehead Citizen Advisory Committee participated in the formulation of the Framework Plan and endorsed the adoption of the plan by the Board.

11.3. Transportation Management Plan. Developer agrees to formulate a transportation management plan acceptable to PDC that addresses the transportation impacts of the Project, including a description of anticipated building tenant and public parking. The transportation management plan should encourage the use of mass transit and will explore the use of methods including, without limitation, the implementation of TriMet's PassPort program, providing bike locker and showers for bike commuters, electric vehicle charging stations, and encouraging carpooling and use of Zipcar or other similar short term rental service.

11.4. Burnside Bridgehead Framework Plan. Developer agrees to develop Property in general accordance with the Vision, Objectives and Principles of the Framework Plan.

11.5. Funding Acknowledgement / Signage. Developer shall display a sign, provided by PDC, near the Project, readily visible to the public, specifying that the Project is being "*funded by the Portland Development Commission*". The sign shall remain in place until PDC issues the Certificate of Completion.

12. PHASE II PROJECT. Developer shall, within five years from the Effective Date undertake a study to determine the feasibility of the Phase II Project (the "Feasibility Study"). The Feasibility Study shall evaluate the potential for a Phase II project on the remainder of the Property. Upon the completion of the Feasibility Study, PDC shall issue such letter as Developer reasonably requests acknowledging that Developer has completed the Feasibility Study and that Developer has no further obligations or responsibilities with respect to such Feasibility Study.

13. [Reserved]

14. CONTINUING COVENANTS SURVIVING TERMINATION OF AGREEMENT OR COMPLETION OF CONSTRUCTION

14.1. Surviving Sections. The following Sections of this Agreement shall survive and remain in effect for the periods identified herein notwithstanding issuance of the Certificate of Completion: Section 7.6.2 (INDEMNITY FROM LIABILITY CLAIMS), Section 7.6.3 (INDEMNITY FROM LIENS), Section 8.4 (INDEMNIFICATION) and Section 11 (COMPLIANCE WITH OTHER PDC POLICIES), and Section 12 (PHASE II PROJECT).

15. MORTGAGEE PROTECTION PROVISIONS

15.1. Effect of Revesting on Mortgages. Any reversion and revesting of the Property or any portion thereof in PDC pursuant to this Agreement shall always be subordinate to, subject to and limited by, and shall not defeat, render invalid, or limit in any way, except as expressly set forth herein, any Mortgage.

15.2. 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 Project or to guarantee such construction or completion.

15.3. Copy of Notice of Default to Mortgagee. If PDC delivers a notice or demand to Developer with respect to Developer's breach of 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. Failure of PDC to send a copy of such notice or demand to a Mortgagee shall not prevent or limit in any way PDC's rights and remedies under this Agreement or create any liability for PDC.

15.4. Mortgagee's Options to Cure Defaults. After Developer's default of this Agreement and if Developer fails to cure or remedy said default within the required time period, then each Mortgagee shall have sixty (60) days after passage of the latest date for Developer's cure or remedy of the default, to commence the cure or remedy the default itself and thereafter diligently pursue such cure to completion; provided, however, that such sixty (60) day cure period shall be tolled during any period that Mortgagee is legally precluded

15.5. from acting (such as an automatic stay period under the US Bankruptcy Code). If a Mortgagee does commence to cure or remedy the default within said sixty (60) day period, the Mortgagee may add the cost thereof to the Mortgage debt and the lien of its Mortgage, if permitted by its loan documents. If the default is with respect to construction of the Project, 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 approved Final Construction Drawings and Technical 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 7.9 above.

15.6. 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 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.

16. DEFAULT AND REMEDIES

16.1. Default and Cure.

16.1.1. Default by Developer.

- (a) Developer shall be in default under this Agreement if Developer breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from PDC specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Developer shall be in default under this Agreement if Developer does not commence the cure of the breach within thirty (30) days after Developer receives written notice from PDC and thereafter diligently prosecute to completion such cure within a sixty (60) days after the written notice from PDC.
- (b) Developer shall also be in default under this Agreement if Developer makes an assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment.
- (c) Developer shall also be in default under this Agreement and PDC shall be irreparably harmed by such default, if Developer constructs or operates any portion of the Project in a manner materially inconsistent with Final Construction Drawings and Technical Specifications.

16.1.2. Default by PDC. PDC shall be in default under this Agreement if PDC breaches a material provision of this Agreement, whether by action or inaction, and such

breach continues and is not remedied within thirty (30) days after PDC receives written notice from Developer specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, PDC shall be in default under this Agreement if PDC does not commence the cure of the breach within thirty (30) days after PDC receives written notice from Developer and thereafter diligently prosecute to completion such cure within sixty (60) days after the written notice from Developer.

16.2. PDC's Pre-Conveyance Remedies. If a Developer default (as described in Section 16.1.1) occurs before the Property is conveyed to Developer, PDC may, at its option: (i) terminate this Agreement by written notice to Developer, (ii) seek monetary damages against Developer, or (iii) specifically enforce the obligations of Developer under this Agreement. If PDC terminates this Agreement as provided in this Section 16.2, then Developer shall deliver to PDC, without any representation or warranty, within thirty (30) days of PDC's notice thereof, copies of all Project market research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties, and which Developer is authorized to release. PDC may use any of the foregoing documents in any manner that PDC deems appropriate with the consent of any party having approval rights thereunder. PDC shall pay no compensation to Developer for the foregoing Project documents. Notwithstanding the preceding sentence, PDC shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from Developer in connection with Developer's default.

16.3. PDC's Post-Conveyance Remedies. If a Developer default (as described in Section 16.1.1) occurs during the period commencing on the date the Property is conveyed to Developer and ending on the date the Project is substantially complete, then PDC shall have the following remedies; provided, that in no event may PDC shall seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from Developer in connection with Developer's default:

16.3.1. Subject to the Mortgagee protections specified in Section 15, 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 16.4 below. The conveyance of the Property to Developer shall be made upon, and the Deed shall provide for, a condition subsequent to the effect that, in the event of a Developer default (as described in Section 16.1.1), PDC, at its option, may, upon 30 days written notice of termination to Developer and the Escrow Agent and the failure of Developer to commence to cure such default diligently to completion, declare a termination of Developer's rights, title, and interest in the Property. After delivery of such notice of termination, and in the event Developer fails to commence to remedy, end or abrogate such default within the 30-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 the 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 K. Any delay by PDC in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 16.3 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.

16.3.2. Developer shall deliver to PDC within thirty (30) days after reconveyance of the Property pursuant to Section 16.3.1, without any representation or warranty, copies of all Project market research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties, and which Developer is authorized to release. PDC may use any of the foregoing documents in any manner that PDC deems appropriate with the consent of any party having approval rights thereunder. PDC shall pay no compensation to Developer for the foregoing Project documents.

16.4. PDC Resale. If title to the Property reverts in PDC in accordance with the provisions of Section 16.3, PDC may, at its option, bring the improvements to a state of completion deemed by PDC as reasonably necessary to protect the improvements from the elements or other dangers, and shall, pursuant to its responsibilities under Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, use its best efforts consistent with prudent business practices and generally in accordance with the terms of this Agreement to resell at a reasonable price the Property and such improvements (subject to any Mortgages) as soon and in such a manner as PDC shall find feasible and consistent with the objectives of such laws and 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. Upon such resale, the proceeds thereof shall be applied as follows:

16.4.1. PDC Reimbursement. First, to PDC on its own behalf to reimburse PDC for all costs and expenses reasonably incurred by it in retaking, completing and selling the Property and its improvements, including, but not limited to, the following:

- (a) Salaries of personnel in connection with the recapture, management and resale of the Property; Any expenditures made or costs incurred in completing the construction of the Project;
- (b) Any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property 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 in favor of PDC or others;
- (c) 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, assessment, or charges, as determined by the County assessing official, as would have been payable if the Property were not so exempt); and

- (d) Any amounts owed to the City as lease or license fees, and any amounts otherwise owing PDC by Developer or its successor or transferee.

16.4.2. Developer Reimbursement. Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of:

- (a) Any portion of the Purchase Price of the Property that Developer has paid to PDC; and
- (b) The PDC-approved development costs for the Project or part thereof paid by Developer, or for which Developer remains liable, that were not funded by PDC (if PDC provided financing for the Project) less any gains or income withdrawn or made as to the Project.

16.4.3. Balance to PDC. Third, any balance remaining after the reimbursements described above shall be retained by PDC.

16.5. Developer's Pre-Conveyance Remedies. If a PDC default (as described in Section 16.1.2) occurs before PDC conveys the Property to Developer, Developer may, at its option: (i) terminate this Agreement by written notice to PDC without waiving any cause of action Developer may have against PDC, (ii) specifically enforce the obligations of PDC under this Agreement, or (iii) seek monetary damages against PDC.

Notwithstanding the preceding sentence, Developer shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from PDC in connection with PDC's default.

16.6. Developer's Post-Conveyance Remedies. If a PDC default (as described in Section 16.1.2) 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 incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from PDC in connection with PDC's default.

16.7. Nonexclusive Remedies. The rights and remedies provided by this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to any and all rights and remedies 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 shall not limit or affect the obligations of a Party under any contractual indemnities set forth herein.

16.8. Unavoidable Delay.

- 16.8.1.** Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation ("Unavoidable Delay") is a result of conditions unforeseeable, beyond the Party's reasonable control, and without the Party's fault or negligence, including, without limitation, events such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, shortages of labor or materials, strike, malicious mischief, or explosion.
- 16.8.2.** A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party's obligation must, 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 estimated time of correction. The Party must thereafter do everything in its power to resume performance of the delayed obligation.
- 16.8.3.** Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay. In no event will the time or times for performance of an obligation be extended for more than 180 days in the aggregate.

17. MISCELLANEOUS PROVISIONS

- 17.1. PDC Project Manager.** For the purposes of managing the implementation of the provisions of this Agreement on behalf of PDC, PDC shall designate a Project Manager. At the Effective Date, the Project Manager is Geraldene Moyle.
- 17.2. Discrimination.** Developer, for itself and its successor and assigns, agrees that, during the construction of the Project, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.
- 17.3. 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, (b) when received if personally delivered, or (c) if sent by e-mail or other form of electronic transmission, with receipt of confirmation that such transmission has been received, and:

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

Beam Development
Attn: Jonathan Malsin
1001 SW Water Ave., Suite 120
Portland, OR 97214
jonathan@beamdevelopment.com

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

Portland Development Commission
Attn: Geraldene Moyle

222 NW 5th Ave.
Portland, OR 97209
moyleg@pdc.us

with a copy to:

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

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.

- 17.3.1.** If either Party's notice contact person or address changes, that Party shall provide the other Party with the updated contact information.
- 17.4. 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.
- 17.5. 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.
- 17.6. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 17.7. 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.
- 17.8. Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under 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 at trial or on any appeal 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.

- 17.9. Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the *in personam* jurisdiction of said courts.
- 17.10. 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.
- 17.11. 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.
- 17.12. Legal Purpose.** Developer agrees to use the Project solely for lawful purposes.
- 17.13. 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.
- 17.14. Entire Agreement.** This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.
- 17.15. Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties, with the approval of the Board, if required. Notwithstanding this general requirement, the PDC Executive Director may approve minor modifications to this Agreement without Board approval. Any modifications to this Agreement made without the approval of the Board must include an acknowledgement by PDC's General Counsel that such approval is not necessary.
- 17.16. Successors and Assigns.** Subject to the provisions of Section 8.1, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.
- 17.17. 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 other than that of independent contracting parties.
- 17.18. Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, 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.

17.19. Approvals. Where this Agreement requires the approval of PDC, PDC will approve or disapprove in writing within thirty (30) business days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary, and further excepting construction change orders, to the extent governed by applicable loan documents, which will be processed according to the applicable loan documents. Failure by PDC to approve or disapprove within said period of time shall be deemed an approval. Any disapproval shall state the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to PDC's sole discretion in this Agreement. Developer, upon receipt of such disapproval, shall revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to PDC within forty-five (45) days after receipt of the notice of disapproval.

17.20. Approval by PDC Executive Director. Except as provided for elsewhere in this Agreement, 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 his or her designee.

17.21. Time of Essence. Time is of the essence of this Agreement.

17.22. No Third-Party Beneficiary Rights. No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.

17.23. Recording of Memorandum of Agreement. PDC shall record a memorandum of this Agreement ("Memorandum of Agreement") within ten (10) days after the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit L 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 surviving covenants of this Agreement.

17.24. Incorporation. The exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

17.25. 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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS

2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. 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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

(signatures appear on the following page)

Executed in multiple counterparts as of the Effective Date.

PDC:

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: _____

Patrick Quinton, Executive Director

APPROVED AS TO FORM:

Lisa Gramp, Assistant General Counsel

DEVELOPER:

_____, a _____

By: _____

Name: _____

Title: _____

EXHIBITS

Exhibit A.	Description of the Property
Exhibit B.	Definitions
Exhibit C.	Form of Deed
Exhibit D.	[Reserved]
Exhibit E.	Project Budget
Exhibit F.	Scope of Development
Exhibit G.	Schedule of Performance
Exhibit H.	Form of Certificate of Completion
Exhibit I.	Environmental Due Diligence Reports
Exhibit J.	Business and Workforce Equity Policy
Exhibit K.	Form of Quitclaim Deeds and Escrow Instructions
Exhibit L.	Form of Memorandum of Agreement
Exhibit M.	Financing Term Sheet
Exhibit N.	Earn Down Matrix

EXHIBIT A

DESCRIPTION OF PROPERTY

Parcel 1: All of Block 68 and the West 55 feet of Lots 1,2,3, and 4, Block 69, EAST PORTLAND, in the City of Portland, County of Multnomah, State of Oregon. TOGETHER WITH those portions of NE Davis Street which inured to said tracts by reason of the vacation thereof under City of Portland Ordinance No. 159613 recorded April 22, 1992 in Book 2533, Page 1523, as amended April 2, 1992 in Book 2533, Page 1531.

Parcel 2: Those portions of NE Couch Street which inured to Block 68 and to Block 67 by reason of the vacation thereof under City of Portland Ordinance No. 159613 recorded April 22, 1992 in Book 2533, Page 1523, as amended April 2, 1992 in Book 2533, Page 1531.

EXHIBIT B

DEFINITIONS

The following words and phrases have the designated meanings in this Agreement:

1. **"Agreement"** has the meaning set forth in the caption of this Agreement.
2. **"Board"** has the meaning set forth in Recital P.
3. **"Burnside Bridgehead Site"** has the meaning set forth in Recital G.
4. **"Carry Back Note"** has the meaning set forth in Section 2.5.
5. **"Carry Back Trust Deed"** has the meaning set forth in Section 2.5.
6. **"Certificate of Completion"** means a certificate issued by PDC to Developer pursuant to Section 7.9 of this Agreement.
7. **"City"** means the municipal corporation of the City of Portland, Oregon and its constituent bureaus and agencies, except PDC.
8. **"City Design Review"** means review by the City of Portland, Bureau of Development Services in accordance with Title 33.825 of the Code of the City of Portland.
9. **"Closing"** means the transfer of any portion of the Property to Developer by PDC by recording of the Deed and handling of all other necessary documentation by the Escrow Agent.
10. **"Closing Date"** has the meaning set forth in Section 5.2.1.
11. **"Construction Drawings and Technical Specifications"** means documents, based upon the Design Development Drawings, that set forth in detail the requirements for construction of the Project pursuant to the terms of this Agreement, approved by the appropriate City agencies. Construction Drawings and Technical Specifications shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project.
12. **"Conveyance"** means the transfer of fee simple title to any portion of the Property by PDC to Developer.
13. **"Couch Street CC&Rs"** has the meaning set forth in Recital T.
14. **"Couch Street Improvements"** has the meaning set forth in Recital S.
15. **"Couch Street Parcel"** has the meaning set forth in Recital T.
16. **"Couch Street Tail"** has the meaning set forth in Section 4.1.2(vi).
17. **"Design Development Drawings"** means the detailed plans submitted for City Design Review, including but not limited to:
 - Architectural site plans showing all structures upon the site together with all connections to existing or proposed utilities, roads, sidewalks and alleys;
 - A general landscaping concept plan;
 - Elevations of the buildings to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials, of the building exteriors;
 - A calculation of gross building areas, floor areas, height ratios and open spaces; and
 - A preliminary Exterior Finish Schedule.
18. **"Deeds"** has the meaning set forth in Section 2.6.1
19. **"Due Diligence Materials"** has the meaning set forth in Section 2.7.2.
20. **"Due Diligence Period"** has the meaning set forth in Section 2.7.3.
21. **"Earn Down Matrix"** has the meaning set forth in Section 2.5
22. **"EEO Certification Program"** means the program run by the City requiring contractors to certify that they do not discriminate against any employee or applicant on the basis of race, religion, color, sex, marital status, national origin, age, mental or physical disability,

sexual orientation, gender identity or source of income, and that they take steps to ensure equal opportunity in all aspects of employment aspects including, but not limited to, hiring, promotion, transfer, advertising, layoff, termination, rates of pay, training (including apprenticeship), and terms and conditions of employment.

23. **"Effective Date"** has the meaning set forth in the caption of this Agreement.
24. **"Environmental Conditions"** means the physical condition of the Property as measured by the standards of the Environmental Laws. 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.
25. **"Environmental Due Diligence Reports"** means reports of investigations performed as part of environmental due diligence, which may include Phase I, Phase 2 and Hazardous Building Site Assessments and reports, documents or documentation of Recognized Environmental Conditions that PDC has completed or PDC has in its possession, completed by others. A complete list of the Environmental Due Diligence Reports is attached as Exhibit J and incorporated herein by reference.
26. **"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.
27. **"Escrow Agent"** has the meaning set forth in Section 2.6.1.
28. **"Escrow Instructions"** has the meaning set forth in Section 5.1.2.
29. **"Feasibility Study"** has the meaning set forth in Section 12.
30. **"Final Project Budget"** means the updated and revised estimated sources and uses of funds, cash flow, and Project Budget, submitted by Developer to PDC prior to Closing.
31. **"Financing Term Sheet"** has the meaning set forth in Section 2.5.
32. **"Framework Plan"** has the meaning set forth in Recital I.
33. **"General Contractor"** means Bremik Construction or any other contractor as Developer may elect consistent with this Agreement.
34. **"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 Project to abutting potable water and sewer and storm sewer mains, connecting the Project to gas and electric and other necessary utility services, and all permitting for any of the above as further described in the Scope of Development set forth in Exhibit F attached hereto and incorporated herein by this reference.
35. **"Land"** has the meaning set forth in Section 2.2.
36. **"Laws"** has the meaning set forth in Section 3.1.5.
37. **"LEED"** means
38. **"Loan Documents"** has the meaning set forth in Section 2.5.
39. **"Mortgage"** means a mortgage, deed of trust or master lease against the Property (or any portion thereof) to finance the Project that is approved by PDC and recorded in the real property records of Multnomah County, Oregon.
40. **"Mortgagee"** means the holder of any Mortgage, including a master lease and trust deed, 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 person or entity who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale.

41. **"MOU"** has the meaning set forth in Recital I
42. **"NFA Letter"** means the No Further Action Letter issued by DEQ pertaining to the Property, dated **[date]**.
43. **"PDC's knowledge"** means the actual current knowledge of the PDC Project Manager, without any duty of inquiry or investigation.
44. **"Phase II Project"** has the meaning set forth in Section 6.6.
45. **"Preliminary Design Documents"** means the site drawings for the Project including schematic, massing, feasibility and preliminary cost estimates for the Project in the form approved by PDC and that were the basis for entering into this Agreement.
46. **"Project"** has the meaning set forth in Recital Q and the Scope of Development.
47. **"Project Budget"** means the summary financial analysis for the Project set forth in Exhibit D, attached hereto and incorporated herein by this reference. The Project Budget represents the estimated sources and uses of funds, cash flow and Project costs as of the Effective Date.
48. **"Public Participation Policy"** means the policy adopted by the Board Resolution 6266 on June 22, 2005.
49. **"Purchase Price"** has the meaning set forth Section 2.4.
50. **"Schedule of Performance"** means the document describing the schedule by which construction and development of the Project will occur, attached hereto as Exhibit E and incorporated herein by this reference.
51. **"Scope of Development"** means the description of the improvements to be built comprising the Project, attached hereto as Exhibit F.
52. **"Title Report"** has the meaning set forth in Section 2.8.1.
53. **"URA"** has the meaning set forth in Recital A.
54. **"Urban Renewal Plan"** has the menaing set forth in Recital A.

SCHEDULE 3.1.9

Existing Leases

Block 69: Verizon lease on PDC owned portion

Block 69: AT&T lease on PDC owned portion

Block 69: PDC lease on BES owned portion

Block 69: PDC lease on ODOT owned portion

EXHIBIT C

FORM OF DEEDs

After recording return to and,
until a change is requested, all
tax statements shall be sent to:

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 (together with any successor public agency designated by or pursuant to law, "PDC"), conveys to _____, a _____ ("Developer"), the following described real property (herein called the "Property"):

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

The conveyance is subject to the following:

1. 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 30 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, and its successors and assigns, in the Property. After delivery of such Notice of Termination, and in the event the Developer fails to remedy, end, or abrogate such default within the 30-day period in the manner stated in the Notice of Termination, Developer or its successors or assigns shall reconvey the Property to PDC by quitclaim deed, pursuant to the Escrow Instructions in Exhibit I to the DDA.
2. 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 entry to the Property and power of termination in PDC described in subparagraph 1 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 _____ Urban Renewal Area approved by the City Council of the City on _____, 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 the DDA to continue after the delivery of this Deed.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. 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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

Dated this ____ day of _____, 20__.

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 City of Portland Development Commission, on its behalf.

Notary Public for Oregon

My commission expires: _____

STATE OF OREGON)

) ss.

County of Multnomah)

The foregoing instrument was acknowledged before me on _____, 20____, by
_____ as Secretary of the City of Portland Development Commission, on its behalf.

Notary Public for Oregon

My commission expires: _____

Schedule 1
Liens and Encumbrances

EXHIBIT E

PROJECT BUDGET

CONVENTION PLAZA RENOVATION						
ESTIMATED DEVELOPMENT COSTS						
						Total
LAND COSTS				SF	\$/SF	1/5/2011
	Land Purchase			40,000	\$57.50	2,300,000
	Tax Proration					-
	Closing Costs					-
	Geotech Study					10,000
	Appraisals					8,000
	Legal - Buyer					15,000
	Other-Title & Recording					22,070
	Subtotal					2,355,070
	Contingency		1%			23,551
	Total Land Cost			40,000	\$59.47	2,378,621
HARD COSTS						
	Development Costs			97,550		
	Pre Development Costs					
	Selective Demo				\$ 0.26	25,000
	Materials Testing				\$ 0.05	5,000
	Other				\$ 0.05	5,000
	Hazardous Materials Abatement				\$ 0.05	5,000
	Division 01 — General Requirements		10	41,410	\$ 4.24	414,097
	Division 02 — Site Construction				\$ 7.35	717,343
	Division 03 — Concrete				\$ 8.95	872,819
	Division 04 — Masonry				\$ 0.10	9,440
	Division 05 — Metals				\$ 6.40	624,775
	Division 06 — Wood and Plastics				\$ 5.25	512,256
	Division 07 — Thermal and Moisture Protection				\$ 2.50	243,673
	Division 08 — Doors and Windows				\$ 7.96	776,534
	Division 09 — Finishes				\$ 6.06	591,177
	Division 10 — Specialties				\$ 0.78	76,427
	Division 11 — Equipment					-
	Division 12 — Furnishings					26,783
	Division 13 — Special Construction					-
	Division 14 — Conveying Systems					120,400
	Division 15 — Mechanical					1,584,538
	Division 16 — Electrical					502,689
	Tenant Improvment Allowance			64,679	\$ 25.00	1,616,975
	Contractor's Contingency		5%		\$ 3.65	355,648
	Contractor Overhead & Profit				\$ 2.78	270,814
	Insurance and Bonding				\$ 0.82	80,000
	Subtotal				\$ 96.73	9,436,388
	Owner Contingency		5%		\$ 4.47	436,496
	Total Hard Cost				\$ 101.21	9,872,884

SOFT COSTS						
	Architectural - Early Start			97,550	\$ 0.15	15,000
	Architectural - PreDev Bid Set, As-Builts				\$ 1.37	133,950
	Architectural - Construction Documents				\$ 1.97	192,225
	Architectural - Construction Administration				\$ 0.88	85,400
	Architectural - Tenant Improvements				\$ 1.00	97,550
	Architectural - Reimbursables				\$ 0.21	20,000
	Structural			97550	\$ 0.40	39,200
	Civil				\$ 0.29	27,950
	Landscape				\$ 0.41	40,400
	MEP (Design Build Spec)				\$ 0.36	35,000
	Envelope				\$ 0.10	10,000
	LEED Consultant				\$ 1.13	110,000
	Traffic Study				\$ -	-
	Land Use Review				\$ -	-
	Historical Consultant				\$ 0.21	20,000
	Permitting-Plan Review				\$ 0.11	10,773
	Permitting-Building Permit				\$ 1.00	98,000
	SDC - Parks				\$ 1.13	110,000
	SDC - Transit				\$ 0.82	80,000
	SDC - Water				\$ 1.38	134,500
	Developer's Overhead				\$ 0.26	25,000
	Project Manager/Owner Rep				\$ 0.77	75,000
	Signage & Advertising				\$ 0.15	15,000
	Non-Wrap Insurance (Course of Construction)				\$ 0.31	30,000
	Developer's Bond (Developer's liability)				\$ 0.05	5,000
	Brokerage Commissions-Retail			1	\$ 0.51	50,000
	Brokerage Commissions-Office			1	\$ 2.05	200,000
	Leasing Legal Fees			1	\$ 0.10	10,000
	Marketing Costs			1	\$ 0.10	10,000
	Market Analysis				\$ 0.05	5,000
	Property Tax - during construction				\$ -	-
	Accounting Fees-Closing & Project Management				\$ 0.51	50,000
	Accounting Fees-Tax Credit Management				\$ 0.26	25,000
	Security				\$ 0.05	5,000
	Tax Credit Transaction Costs-Internal				\$ 0.26	25,000
	Survey				\$ 0.06	5,500
	Construction Inspector				\$ 0.55	54,000
	3rd Party Consultants				\$ 1.03	100,000
	Subtotal					1,949,448
	Contingency			5.0%		97,472
	Total Soft Costs				\$ 20.98	2,046,920
	Developer Fees			6.5%		1,000,000
	TOTAL PROJECT COST EXCLUDING FINANCING					15,298,425
INTEREST FEES/CARRY COST						
	Construction Financing Interest				\$ 2.56	250,000
	Construction Financing Fees				\$ 0.26	25,000
	Interest Reserve				\$ 2.56	250,000
	RTC Legal Costs				\$ 0.77	75,000
	Total Financing Costs				\$ 6.15	600,000
	TOTAL DEVELOPMENT COSTS				\$162.98	15,898,425

EXHIBIT F

SCOPE OF DEVELOPMENT

The Project, as initially referenced in Recital R, shall mean the rehabilitation of the Building, including the following improvements:

1. Seismic upgrade;
2. Code upgrade of fire and life safety infrastructure, including but not limited to the sprinkler and fire alarm systems;
3. Common areas, not including completion of building circulation;
4. Electrical infrastructure upgrades;
5. HVAC infrastructure upgrades;
6. Necessary upgrade of the plumbing infrastructure, including common area bathrooms;
7. Replacement of exterior windows;
8. Completion of Building envelope improvements;
9. New Building entries; and
10. New elevator.

The Project shall also include the following site improvements:

1. Completion of improvements to the parking lot west of the Building; and
2. Completion of the Couch Street Improvements

EXHIBIT G

SCHEDULE OF PERFORMANCE

TASK	DUE DATE
1. PDC to provide Preliminary Title Report to Developer - Section 2.8.1	Complete
2. Developer to submit to the City of Portland Bureau of Development Services, a Design Advice Request (DAR)	Complete
3. Developer to re-submit to the City of Portland Bureau of Development Services, a second Design Advice Request (DAR)	Complete
4. Developer to submit to the City of Portland Bureau of Development Services, an application for Design Review Approval	Complete
5. Developer to provide 50% Design Development Drawings & Project Budget - Section 7.2.3(a)	Complete
6. PDC to complete review of 50% Design Development Drawings & Project Budget	Complete
7. Developer to provide final Design Development Drawings & Project Budget - Section 7.2.3(b)	Complete
8. PDC to complete review of final Design Development Drawings & Project Budget	Complete
9. Developer to provide 50% Construction Drawings and Technical Specifications & Project Budget - Section 7.2.3(c)	Complete
10. PDC to complete review of 50% Construction Drawings and Technical Specifications & Project Budget	Complete
11. Developer to provide to provide 90% Construction Drawings and Technical Specifications & Project Budget - Section 7.2.3(d)	December 2011
12. PDC to complete review of 90% Construction Drawings and Technical Specifications & Project Budget	January 2012
13. Developer to provide Final Construction Drawings and Technical Specifications & Project Budget - Section 7.2.3(e)	February 2012

TASK	DUE DATE
14. PDC to complete review of Final Construction Drawings and Technical Specifications & Project Budget	March 2012
15. PDC to complete review of Shop Drawings and Product Submittals	March 2012
16. Developer to secure land use approvals and permits - Section 4.1.1(ii); 4.1.34.1.3	January 13, 2013
17. Developer to secure building permits from BDS - Section 4.1.1(i); 4.1.34.1.3	January 13, 2013
18. Developer to provide documentation of required financing - Section 4.1.3(i) .	January 13, 2013
19. PDC to provide final form of Deed - Section 5.3	January 13, 2013
20. Developer to provide Organizational Documents, Certificate of Existence, and Authorizing Resolution - Section 4.1.3(i)	January 13, 2013
21. Developer to submit Final Project Budget - Section 4.1.3(iii)	January 13, 2013
22. PDC to complete review of Final Project Budget - Section 4.1.3(iii)	February 13, 2013
23. Conditions precedent to Closing are complete	See Section 4 of DDA
24. PDC Commercial Property Redevelopment Loan Approved	February 13, 2013
25. Closing/Conveyance of Property to Developer - Section 5	March 13, 2013
26. Developer to begin construction	April 1, 2013
27. Final Termination Date (if Closing does not occur by March 13, 2013 - Section 4.3	March 14, 2013
28. Developer to complete construction and secure Certificate of Occupancy for the Project - Section 7.9.iii	February 15, 2014
29. Developer to request Certificate of Completion from PDC – Section 7.9	February 15, 2014
30. PDC to issue Certificate of Completion (assuming compliance with DDA) - Section 7.9.1	March 15, 2014
31. Earn Down Performance Matrix Review – Year 1	March 14, 2014
32. Earn Down Performance Matrix Review – Year 2	March 14, 2015

TASK	DUE DATE
33. Earn Down Performance Matrix Review – Year 3	March 14, 2016
34. Earn Down Performance Matrix Review – Year 4	March 14, 2017
35. Earn Down Performance Matrix Review – Year 5	March 14, 2018
36. Commercial Property Redevelopment Loan Balance Reconciliation	March 15, 2018
37. Phase II Feasibility Study	March 15, 2018

EXHIBIT H

FORM OF CERTIFICATE OF COMPLETION

After recording return to:

CERTIFICATE OF COMPLETION

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") hereby determines that _____, a _____ ("Developer"), has substantially completed construction of the Project as described in the Agreement for Disposition and Development of Property (_____), dated _____, 20__ (the "DDA"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. _____ on _____, 20__. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 7.9 of the DDA, PDC hereby determines that:

- (i) the Project is complete according to the Final Construction Drawings and Technical Specifications, except for punch-list items that 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(s) of Occupancy with respect to the Project, and
- (iii) Developer has provided PDC evidence that the Project meets the applicable Green Building standard set forth in the Green Building Policy.

This Certificate of Completion constitutes 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 shall automatically cease and become of no further effect, except as otherwise provided in this Certificate of Completion. This Certificate of Completion represents and determines 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 of Completion ("Surviving Sections"): 7.6.2 (INDEMNITY FROM LIABILITY CLAIMS), Section 7.6.3 (INDEMNITY FROM LIENS), Section 8.4 (INDEMNIFICATION) and Section 11 (COMPLIANCE WITH OTHER PDC POLICIES), and Section 12 (PHASE II PROJECT).

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 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 entry to the Property or power to terminate Developer's title to the Property and revest such title in PDC.

IN WITNESS WHEREOF, PDC has caused this instrument to be executed this ____ day of _____, 20__.

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: _____

Name: _____

Executive Director

STATE OF OREGON)

) ss.

County of Multnomah)

This instrument was acknowledged before me on _____, 20__, by _____, Executive Director of the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland, on its behalf.

Notary Public for Oregon

My commission expires: _____

EXHIBIT I

ENVIRONMENTAL DUE DILIGENCE REPORTS

- Geotechnical Engineering Services – Convention Center Plaza, Blocks 66-69, 75& 76 – GeoEngineers 2004
- Phase II Environmental Site Assessment Report – Convention Center Plaza, 123 NE 3rd Avenue Hahn and Associates, 2004 (A Phase I is also available, Hahn and Associates, 2003) – electronic only
- Haz Mat Abatement Scope of Work and Certificate of Substantial Completion, 123 NE 3rd Avenue, – 2008
- DEQ UST closure documentation – November 24, 2008

EXHIBIT J

Business and Workforce Equity Policy (Amended April 28, 2010)

A. OBJECTIVES OF THE POLICY

The objective of the **Business and Workforce Equity Policy** (the “Policy”) is to:

- Ensure that the Portland Development Commission’s (“PDC’s) work provides professional, supplier and construction contracting opportunities to small businesses that have been historically under utilized including businesses owned by People of Color, Women and Emerging Small Businesses (collectively, “M/W/ESBs”) and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources including Interagency and Intergovernmental Agreements; and
- Maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and Women and encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.

In this way, it is PDC’s aim to ensure fair and equitable opportunities to Portland’s diverse populations, promote prosperity in all segments of Portland’s diverse communities, foster economic growth, and expand competition in the market.

The Policy replaces the existing policy adopted by the Board on December 18, 1997 (Resolution No. 5066) that authorized implementation of the Disparity Study Implementation Plan and policies concerning fair contracting and workforce training, including the Good Faith Effort Program and Workforce Training and Hiring Program.

The Policy objectives are pursued through the establishment of two separate and distinct programs.

- **The Business Equity Program;** and
- **The Workforce Equity Program.**

B. DEFINITIONS

1. **“Board”** means the PDC Board of Commissioners.
2. **“Business Financial Resource Tools”** means certain PDC business financial assistance programs including, but not limited to, the Quality Jobs Program, the Economic Opportunity Fund, the Direct Tax Increment Loan, and the EDA Revolving Loan and Real Estate Fund.
3. **“Certified Firms”** include M/W/ESB firms that have been certified by the State of Oregon as a Minority-owned business, a Women-owned business or an emerging small business.
4. **“DA” or “DDA”** means, respectively, a Development Agreement or a Disposition and Development Agreement that is typically entered into by and between a developer and PDC that sets forth the terms and conditions of property conveyance, if any, and the requirements for redevelopment of the property.
5. **“Direct Contracting”** included all professional, supplier and construction services purchased directly by PDC.
6. **“Enterprise Zone”** is a 5-year, 100% tax abatement program designed to encourage existing and new industrial firms to invest in new capital outlays in certain designated areas. Participating firms are required to create or retain quality jobs while maximizing the economic benefits for residents of Portland who are currently earning at or below 80% Median Family Income.
7. **“Flexible Service Contract”** is a contract for services that has repetitive requirements on an as-needed basis and may include Personal Services Contracts that have such repetitive requirements.

8. **"Hard Construction Costs"** is the cost to build improvements on a property, including all related construction labor and materials, including fixed and built-in equipment costs. Costs not directly related to the construction of an improvement, such as entity overhead, administration or taxes, or other professional services including architectural or engineering, shall not be considered a part of the Hard Construction Costs.
9. **"Intergovernmental Agreement"** is an agreement between PDC and another government entity, including the City of Portland.
10. **"Land Transactions"** is the sale of real property by PDC at any price for the purpose of a private or public project through a DDA.
11. **"PDC-Owned Construction Contracts"** include contracts where PDC has a direct contractual relationship with the contractor and where PDC is the owner of the project.
12. **"PDC Resources"** include:
 - (i) PDC funds in the form of grants, loans or payments. For purposes of calculating PDC Resources, any PDC funds used by a single entity for a single project in the form of grants, loans or payments shall be combined to determine the total amount of PDC Resources; and
 - (ii) The value of a Land Transaction. For purposes of calculating the value of a Land Transaction the value shall be that specified in the DDA.
13. **"PDC Sponsored Projects"** include all projects that are privately owned and constructed involving a Disposition and Development Agreement, Development Agreement, loan agreement, or other type of financial assistance agreement with PDC.
14. **"People of Color"** as used in this Policy includes persons who self identify as being other than Caucasian.
15. **"Personal Services Contract"** is a contract for specialized skills, knowledge or unique resources in the application of highly-technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Such services include, but are not limited to the services of architects, engineers, surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers.
16. **"Utilization Goal"** shall mean the percentage goals set for Certified Firms and workforce utilization on contracts and projects subject to the Policy.
17. **"Workforce Goals"** means the goals covering construction trades to utilize People of Color and Women as a percentage of total construction hours worked in a PDC Project.
18. **"Workforce Training and Hiring Program"** means the Workforce Training and Hiring Program originally authorized by the Board on December 18, 1997 (Resolution No. 5066) and further amended on September 16, 1998 (Resolution No. 5171) and reauthorized on February 27, 2008 (Resolution No. 6561) that pertains to apprentice utilization.

C. THE BUSINESS EQUITY PROGRAM

1. **Purpose of the Business Equity Program.** To ensure PDC provides professional, supplier and construction contracting opportunities to Certified Firms and to encourage the participation of businesses owned by veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.
2. **Applicability.** Direct Contracting entities, entities involved in a Land Transaction or entities receiving PDC Resources shall be obligated to comply with the Business Equity Program, upon meeting any one of the following criteria:
 - a) A PDC Personal Services Contract for any amount;
 - b) A PDC-Owned Construction Contract greater than \$200,000;

- c) A PDC Sponsored Project receiving more than \$300,000 of PDC Resources to finance a project with Hard Construction Costs greater than \$300,000; or
 - d) Intergovernmental Agreement with Hard Construction Costs greater than \$200,000 and more than \$100,000 in PDC Resources, whether performed by PDC or another agency. The Executive Director or the Executive Director's designee may defer to the other agency's program if its program is similar to PDC's program. If PDC defers to the other agency's program, utilization reports shall be provided to PDC by the other agency on a monthly basis.
- 3. Utilization Goals for Certified Firms.** The following Utilization Goals are established upon the initial adoption of the Policy. The Executive Director is responsible thereafter for annually reviewing the Utilization Goals, and is authorized to modify them based on such annual analysis:
- a) Personal Services Contracts: 25 percent of the payments made under such contracts;
 - b) PDC-Owned Construction Contracts: 20 percent of Hard Construction Costs;
 - c) PDC Sponsored Projects: 20 percent of Hard Construction Costs for residential low-rise construction and 20 percent of the Hard Construction Costs for commercial high-rise construction as calculated by an analysis of availability and capacity of Certified Firms for the specific project;
 - d) Interagency and Intergovernmental Agreements: the PDC program shall apply. However, PDC may defer to the other agency's program if their program is similar to PDC's program with monthly reporting provided to PDC; and
 - e) Flexible Service Contracts:
 - (i) 30 percent of the total number of contracts in any fiscal year; AND
 - (ii) 25 percent of the payments made under such contracts.
- 4. Notice and Timing.** Should a party receive PDC Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the Business Equity Program, PDC (the project manager, with assistance from the M/W/ESB Coordinator) may negotiate a Certified Firm participation level that is reasonable and may provide technical assistance to achieve that negotiated Utilization Goal.
- 5. Prompt Payment.** The Contractor and/or Developer shall pay all subcontractors and suppliers within ten calendar days after receiving payment from PDC on all PDC-owned and sponsored construction projects.

D. THE PDC WORKFORCE EQUITY PROGRAM

- 1. Purpose of the Workforce Equity Program.**
- a) To maximize apprenticeship opportunities in the construction trades and ensure employment opportunities for People of Color and Women on Direct Contracting, Land Transactions and on work utilizing PDC Resources; and
 - b) To encourage the employment of people with disabilities and veterans on Direct Contracting, Land Transactions and on work utilizing PDC Resources.
- 2. Applicability.** Direct Contracting entities, entities entering into a DA or DDA or entities receiving PDC Resources shall be obligated to comply with the Workforce Equity Program upon meeting any one of the following criteria:
- a) On a PDC-Owned Construction Contract or an Intergovernmental Agreement greater than \$200,000, the Workforce Equity Program shall apply to:
 - (i) The prime contract; and
 - (ii) Any subcontract greater than \$100,000.

- (iii) The Executive Director or the Executive Director’s designee may defer to the other agency’s program if its program is similar to PDC’s program. If PDC defers to the other agency’s program, utilization reports shall be provided to PDC by the other agency on a monthly basis.
- b) On a PDC Sponsored Project the Workforce Equity Program shall apply if the project receives \$300,000 or more of PDC Resources to finance a project with a Hard Construction Cost greater than \$1,000,000 and shall apply to:
 - (i) The prime contract; and
 - (ii) Any subcontract greater than \$100,000.

3. Requirements.

- a) Projects subject to the Workforce Equity Program shall:
 - (i) Comply with the Workforce Training and Hiring Program to, among other things, ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed by the contractor and subcontractors are worked by state-registered apprentices, as such requirements are further described therein; and
 - (ii) Work toward achieving the Workforce Goals phased over a ten-year period as outlined in the table below. The percentage of hours set forth below includes both apprenticeship hours and journey level hours.

Workforce Goals

Fiscal Year	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
Female	6%	7%	8%	9%	10%	11%	12%	13%	14%	15%
People of Color	25.5%	26%	26.5%	27%	27.5%	28%	28.5%	29%	29.5%	30%

- (iii) Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the unions, the apprenticeship programs and other community resources.
- b) Projects subject to the Workforce Equity Program are encouraged to employ people with disabilities and veterans.

4. Notice and Timing. Should a party receive PDC Resources after it has expended funds on a project, started construction, or taken other action that would impair its ability to comply with the Workforce Equity Program, PDC (the Project Manager, with assistance from the M/W/ESB Coordinator) may negotiate a level of compliance that is reasonable and may provide technical assistance to achieve that negotiated Workforce Goal.

E. Equal Employment Opportunity Certification. Contractors and subcontractors subject to the Policy must be certified by the City of Portland as an Equal Employment Opportunity Employer.

F. Damages. The procedural requirements of the Policy are contractual obligations. In the event that PDC determines, in its sole and absolute discretion, that the procedural requirements of the Policy have not been complied with, then PDC’s finding may result in one or more of the following:

1. A finding of breach of contract.
2. Disqualification of the developer, contractor or subcontractor to receive future PDC Resources or

bid on future PDC solicitations.

3. A claim for liquidated damages.
4. Withholding of progress payments.

G. Administration. The Executive Director shall develop and administer administrative procedures and/or guidelines, and make any determinations necessary, to implement and manage the Policy.

H. Exemptions.

1. The Policy shall not apply to projects within an Enterprise Zone or PDC Resources derived from Business Financial Resource Tools that are intended to be used for working capital or property acquisition.
2. Any exemption or waiver of requirements of the Policy other than those stated in the Policy shall require approval of the Board.

EXHIBIT K

FORM OF QUITCLAIM DEED AND ESCROW INSTRUCTIONS

After recording return to and,
until a changes is requested,
all tax statements shall be sent to:

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

QUITCLAIM DEED

_____, a _____ ("Grantor"), releases and
quitclaims to 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 (together with any successor public agency designated by
or pursuant to law, "Grantee"), all right, title and interest in and to the following described real
property:

Other property or value was either part or the whole consideration.

It is intended that the delivery of this Deed shall not effect a merger of the provisions of that
certain Disposition and Development Agreement for the Project, dated **[date]**, a memorandum of
which was recorded on **[date]** as Document No. ____, Records of Multnomah County, Oregon (the
"DDA"). Including, without limitation, Section 16.4 of the DDA, that are intended to continue
after delivery of this Deed.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING
FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS
195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424,
OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS
2009. 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 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

Dated this ____ day of _____, 20__.

_____, a _____

By: _____

Name: _____

Title: _____

Accepted this ____ day of _____, 20__.

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: _____

Name: _____

Title: Executive Director

STATE OF OREGON)

) ss.

County of Multnomah)

This instrument was acknowledged before me on _____, 20__, by
_____, as _____ of _____, a
_____, on its behalf.

Notary Public for
My commission expires: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20__, by
_____, Executive Director of the PORTLAND DEVELOPMENT COMMISSION,
the duly designated urban renewal agency of the City of Portland, on its behalf.

Notary Public for
My commission expires: _____

EXHIBIT K (Continued)

ESCROW INSTRUCTIONS FOR QUITCLAIM DEEDS

_____ Title Insurance Company

Attention: [INSERT TITLE OFFICER]

Re: Escrow No. _____

_____, a _____ ("Developer"), has entered into that certain Agreement for Disposition and Development of Property in the _____ Urban Renewal Area (the "DDA") with the City of Portland, Oregon, acting by and through the Portland Development Commission ("PDC") dated as of _____, 20__, a Memorandum of which was recorded _____, 20__ as Document No. _____, Records of Multnomah County, Oregon, whereby PDC will convey to the Developer or its assignees certain real property (the "Property"). The Property is the subject of this escrow and is described in the accompanying quitclaim deed ("Quitclaim Deed").

Section 16.3 of the DDA provides that, under certain circumstances, PDC is entitled to reconveyance of the Property pursuant to a 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 PDC a notice signed by PDC's Executive Director certifying that a copy of said notice has been delivered concurrently to Developer and certifying that a termination of all rights, title and interest of Developer in the Property has occurred, and that rights to the Property described in the Quitclaim Deed have reverted in PDC pursuant to the DDA ("Notice of Termination"), you shall at the end of thirty (30) days after receipt of said instructions record the subject Quitclaim Deed unless within said thirty (30) day period, you are notified by PDC that PDC has withdrawn the Notice of Termination.

In the event that you receive a copy of a Certificate of Completion issued by PDC with respect to the Project (either an original or one certified by Developer as being a duplicate of the original), you will promptly 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 PDC 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,

_____, a _____

By: _____

Name: _____

Title: _____

Very truly yours,

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: _____

Name: _____

Title: _____

Accepted and agreed to this

___ day of _____, 20__

_____, Title Insurance Company

By: _____

Name: _____

Title: _____

EXHIBIT L

FORM OF MEMORANDUM OF AGREEMENT

After recording return to:

Portland Development Commission
222 NW Fifth Avenue
Portland, OR 97209
Attn: _____

Memorandum of Agreement

THIS MEMORANDUM OF 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 _____, a _____ ("Developer"), with an address of _____, entered into an Agreement for Disposition and Development of Property in the _____ Urban Renewal Area, (_____) dated as of _____, 20__ ("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.

PDC and Developer execute this Memorandum to acknowledge being bound by the Agreement and to give notice of the Agreement to third parties.

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: _____

Name: _____

Title: Executive Director

_____, a _____

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20__,
by _____, Executive Director of the PORTLAND
DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of
Portland, on its behalf.

Notary Public for
My commission expires: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 200__, by
_____, _____ of _____, a _____, on its behalf.

Notary Public for
My commission expires: _____

EXHIBIT A TO MEMORANDUM OF AGREEMENT

Description of Property

EXHIBIT M

Financing Term Sheet

Loan	Commercial Property Redevelopment Loan – Permanent Loan
URA	Central Eastside
Purpose	Acquisition of PDC owned property
Appraised Value	\$2,300,0000 Integra, September 2010, update in process
Eligible Purpose	Costs associated with the redevelopment of real property
Eligible Borrower	Beam Development (Borrower) is in negotiation for acquisition of this PDC owned property
Loan Amount	Up to \$2,300,000.
Interest Rate	Fixed Rate: Prime + 3%. Potential to meet specific requirements for point reduction: 1) Preservation of an older building 2) Supportive of permanent job growth or job retention in target clusters LEED Gold
Fee	1% of loan paid at time of closing with construction loan proceeds.
Term	10 years, with 20 year amortization
Payments	Principal and capitalized interest; no payments for the initial 5 years
Borrower's equity contribution	At least 10% of the project cost Project Cost: \$14,800,000 Owner Equity: \$2,500,000, 16.9%
Collateral	Interest in the subject property or other real estate
Guarantee	Personal and/or corporate guarantees of all principals and entities with at least a 20% ownership interest in the business
Credit	Required
Combined Loan to Value	Up to 100%
Leverage of PDC dollars	1:1 minimum
Debt Service Coverage Ratio	1.15 minimum

EXHIBIT N
Earn Down Matrix

Objective	Goal	Value	Calc.	Max. Loan Earn Down	Notes
1.Couch Street Plaza	Design and construction of Couch St Plaza	100%	Actual cost	\$750,000	Couch Street Plaza is an important element of the Project as identified in the Framework Plan. It provides connectivity between parcels and also serves as open space. This improvement must be completed prior to receiving any credit for the objectives set forth below.
2.Tenants	Tenant with employers representing PDC's target industries and/or entrepreneurial focus. Qualifying tenants are subject to PDC review and approval.	125 – 175%	RSF X effective lease rate X (1.25 to 1.75)	\$2,100,000	Approximate Maximum Rentable Square Feet (RSF): 74,602 with penthouse. Formula: lease rate X RSF X (1.25 to 1.75) Effective Lease Rate to Value connection: \$18.00 and above/RSF = 1.25 earn down value at maximum RSF of \$18.35 \$17.99 - \$17.00/RSF = 1.35 earn down value \$16.99 - \$16.00/RSF = 1.5 earn down value \$15.99 and below/RSF = 1.75 earn down value. Earn-Out value only valid for first tenant within the tenant space within the first five years. Effective Lease Rates are based on a NNN lease structure. If the lease rate is not NNN (i.e. modified gross lease structure – net of tenant utilities only) the Effective Lease Rate will be reduced by \$4.50/RSF (the projected NNN expenses), which will be adjusted to reflect the actual NNN expenses once the building is placed into service.
3.OSU / Digital Hub	Provide 2 years free lease space to OSU and/or Digital Hub	225%	SF X 2.25 X standard lease rate for space	\$420,000	Assumes 10,000 SF (Digital Hub / Open Source Lab @ 2,000 SF / OSU @ 8,000 SF)
4.Penthouse Leaseable Space / Rooftop Outdoor Space	Construct 4,000 SF leaseable penthouse and outdoor rooftop event space	75%	Actual construction cost	\$500,000	Increase leaseable area by adding penthouse space. Provide rentable outdoor program space
5.Street Ornamental Lighting	Install single or twin ornamental lights on 3 rd Ave	100%	Actual cost, up to \$20k per light	\$60,000	Three required
6.Electric Vehicle Charging Stations	Provide charging stations w/in 2 nd Ave parking lot	100%	Actual cost up to \$20k per station, 2 stations	\$40,000	Charging stations and premier parking
Total Reductions				\$3,870,000	
Maximum Possible				\$2,300,000	

If the Developer meets every performance measure, it has the opportunity to achieve incentive reductions of \$2,300,000; however, the reduction is capped at the Purchase Price.

Notes:

- A. Objective 1 requires City of Portland Certificate of Occupancy to be eligible
- B. Objective 2: PDC will review lease terms of prospective tenants and provide BEAM with confirmation, or not, of meeting objective criteria prior to lease finalization.
- C. annual reconciliation of total reductions allocated to be completed by PDC and Beam Development
- D. Objective 3 requires City of Portland Certificate of Occupancy to be eligible
- E. Objective 4 requires City of Portland Certificate of Occupancy to be eligible
- F. Effective Lease Rate is the total Base Rent owed to Landlord in Year 1 of the Lease divided by the total Rentable Square Feet of the Tenant's Premises.