

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6910

**AUTHORIZING THE STATION PLACE GARAGE PARKING
AGREEMENT WITH PEARL HOTEL INVESTORS, LLC IN THE RIVER
DISTRICT URBAN RENEWAL AREA**

WHEREAS, Pearl Hotel Investors, LLC. ("PHI") is or will be the assignee of Hoyt Street Properties, L.L.C. ("HSP") under that certain Disposition and Development Agreement for Station Place Redevelopment dated September 2, 2002, between HSP and the Portland Development Commission ("PDC") (as amended from time to time, the "DDA") for the development of certain HSP-owned real property subject to the DDA known as Station Place Lot 4 (the "Property") in the River District Urban Renewal Area (the "URA");

WHEREAS, PHI desires to build a 225-room hotel on the Property;

WHEREAS, the proposed hotel will have no parking opportunities on the Property;

WHEREAS, PHI desires to lease one hundred (100) parking stalls at a market rate from PDC in the Station Place Garage for a ten-year term with four (4) ten-year extensions in accordance with the terms of the Station Place Garage Parking Agreement attached hereto as Exhibit A (the "Parking Agreement");

WHEREAS, the Parking Agreement fulfills the transportation goal of the URA Plan by more fully utilizing existing parking within the URA; and

WHEREAS, the Parking Agreement is anticipated to generate approximately \$1.5 million in public revenue for the initial ten-year term and approximately \$1.5 million for each ten-year term thereafter.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to execute the Parking Agreement and may approve changes to the Parking Agreement prior to and subsequent to execution, if such changes, in the opinion of the Executive Director and General Counsel, do not materially change PDC's obligations or risks; and; and

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

Adopted by the Portland Development Commission December 14, 2011.



Recording Secretary

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6910

Title: **AUTHORIZING THE STATION PLACE GARAGE PARKING AGREEMENT WITH PEARL HOTEL INVESTORS, LLC IN THE RIVER DISTRICT URBAN RENEWAL AREA**

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

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

Certification

The undersigned hereby certifies that:

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



Recording Secretary

Date: December 14, 2011

STATION PLACE GARAGE PARKING AGREEMENT

THIS AGREEMENT is entered into as of _____, 201_ (the “Effective Date”) by and between 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 **PEARL HOTEL INVESTORS, LLC**, an Oregon limited liability company (“PHI”).

RECITALS

- A. PDC owns that certain real property described as Lot 3, Station Place subdivision, recorded in Plat Book 1257, Pages 84-86, Multnomah County Plat Records in the City of Portland, County of Multnomah, State of Oregon (“Parking Land”) on which PDC has constructed and currently operates a parking garage (“Parking Garage”).
- B. PDC and Hoyt Street Properties, L.L.C., an Oregon limited liability company (“Hoyt Street”) are parties to that certain Disposition and Development Agreement as it relates to Lot 4 – Station Place Redevelopment dated September 27, 2002, a memorandum of which was recorded on December 17, 2002 in the real property records of Multnomah County under document number 2002-230977, as amended (the “DDA”).
- C. On or before the Effective Date, Hoyt Street will assign its rights and obligations under the DDA to PHI and PHI will acquire from Hoyt Street that certain real property more particularly described as Lot 4, Station Place, in the City of Portland, County of Multnomah, State of Oregon (“Lot 4 Land”). (Each of the Parking Garage Land and the Lot 4 Land are sometimes referred to herein as a “parcel.”) PHI intends to construct a hotel on the Lot 4 Land consistent with plans and specifications approved by PDC as provided in the DDA (“Hotel Building”).
- D. PHI and PDC desire to enter into an agreement for the use, allocation and operation of parking spaces in the Parking Garage as provided in this Agreement.

AGREEMENT

WHEREFORE, based on the recitals set forth above and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. **Parking Garage Parking.** PDC agrees that from and after completion of the Hotel Building and issuance of a certificate of occupancy for the Hotel Building

by the City of Portland Bureau of Development Services (“Commencement Date”), PDC shall cause one-hundred (100) parking spaces of the Parking Garage to be allocated and available to PHI for use by the guests, employees, visitors, invitees and customers of the Hotel Building on a 24-hour 7-day a week basis. All of the one-hundred (100) parking spaces shall remain as unmarked and undesignated spaces in the Parking Garage. Commencing five (5) years after the Commencement Date, PHI may upon 30 days’ written notice to PDC reduce the number of parking spaces allocated to PHI. Three (3) years after the Commencement Date, PDC may upon 30 days’ written notice to PHI reduce the number of parking spaces allocated to PHI to no less than eighty (80), and five (5) years after the Commencement Date, PDC may upon 30 days’ written notice to PHI reduce the number of parking spaces allocated to PHI to no less than seventy (70). Prior to each extension of the Term as provided in Section 3 below, the parties will confer about increasing or reducing the number of spaces allocated to PHI, but, subject to Section 40, in no event will the number of spaces be reduced to less than seventy (70). In addition, from time to time the parties will confer and will discuss in good faith whether the 24-hour, 7-day a week use permitted can be adjusted to allow shared use of spaces at different times during the day.

2. **Initial Term.** The initial term of this Agreement shall be for ten (10) years effective as of the Commencement Date (“Initial Term”).
3. **Option to Extend Term(s).** PHI shall have the option to extend this Agreement after the Initial Term for four (4) additional terms of ten (10) years each, as provided below, so long as no Event of Default under this Agreement on the part of PHI is then existing at the time of the extension. If PHI exercises all four options to extend, PDC agrees to consider in good faith any request by PHI to further extend the term beyond the expiration of the last option term. All other terms and conditions of this Agreement shall remain the same during any extension term. Exercise of each extension option shall be by notice given to PDC at least ninety (90) days prior to the expiration of the original and any extension terms.
4. **Parking Rates and Payment Procedures.** The monthly rate per parking space charged to PHI shall be based on the then current monthly parking rate per parking space charged to the general public in the North Pearl Neighborhood but in any event shall not be less than \$110.00 per month per parking space as of the Commencement Date. For the purposes of the previous sentence, i) the “current monthly parking rate.....charged to the general public” shall be the rate charged in structured, multi-leveled parking garages and shall not include the rate charged for “on street” parking or in open-air parking facilities, provided, however, if there are no comparable parking structures in the North Pearl Neighborhood, then the rate shall be based on the then current monthly rate charged to the general public in the Parking Garage, and ii) the North Pearl Neighborhood is the area described in the map attached as Exhibit __ hereto. PDC and PHI hereby agree to enter into a future **“Supplemental Memorandum**

to Station Place Parking Garage Agreement” upon mutual agreement of the Commencement Date and said Memorandum shall correctly state the monthly rate per parking space for the first year of this Agreement. PHI, and not the individual parking pass holder, shall make a gross monthly payment for all one-hundred (100) parking spaces to PDC, or a parking manager of the Parking Garage designated in writing by PDC, and the gross monthly payment shall be due on or before the first day of each month during the term of this Agreement. The rates shall be prorated for any partial month at the beginning or end of the term. The monthly parking rate shall be timely paid without set off, offset, abatement or deduction of any kind.

The parking spaces are for the sole use of PHI, its guests, employees, invitees, customers and agents and PHI shall not be allowed to make any profit off of or re-sale any of the monthly parking passes issued for the parking spaces. PHI shall provide PDC with any documentation PDC reasonably requests to determine PHI's compliance with this provision. Notwithstanding the foregoing, PHI will provide valet parking for, or access cards to its, guests, employees, invitees, customers and agents and such arrangements will not be considered to be making a profit from or resale of the monthly parking passes.

5. **Changes in Parking Rates.** The monthly parking rate shall automatically increase annually by a minimum of 3%. If the market parking rate (defined in Section 4) on the date of the annual increase is greater than 3% above the previous parking rate, PDC may increase the parking rate by more than 3% to the then-current market parking rate, provided in no event may PDC increase the parking rate by more than 6% in any given year. If PDC intends to increase the parking rate by more than 3%, PDC shall give PHI at least 30 days prior notice of the new proposed monthly parking rate and will provide to PHI all information from PDC concerning the applicable market rate. If PHI disagrees that the new monthly parking rate is the current market rate, it may submit additional information for PDC to consider. However, unless the parties otherwise agree in writing, so long as the increase in the monthly parking rate is not more than 3% greater than the previous year's monthly parking rate, the monthly rate increased at 3% shall be conclusively presumed to be the current market monthly parking rate.
6. **Maintenance and Repair Obligations; Operating Expenses.** Subject to Section 7, during the initial 10-year term of this Agreement and the two 10-year extension terms if elected, PDC will keep and maintain the Parking Garage and all of its landscaping, mechanical, structural and other physical elements and systems (including security systems, lighting and elevators) and its physical appearance in good condition and repair, and will promptly and diligently repair and replace all damaged, destroyed, worn or non-operative elements as may be reasonably necessary in PDC's reasonable judgment.
7. **Obligations in the event of damage and/or destruction.** Unless this Agreement is terminated under Section 11, below, the obligations of PDC and

the obligation of PHI under this Agreement shall terminate at the earlier of i) The last day of the 24th month after the date that the Parking Garage is destroyed or damaged to a degree that it is not reasonably available for parking use consistent with this Agreement and PDC does not (A) complete restoration or reconstruction or replacement of the Parking Garage (or structure which provides parking) and (B) resume Parking Garage operations within such 24-month period, subject to extension for force majeure delays, or ii) the last day of the 24th month after the date that the Hotel Building is razed or destroyed and not rebuilt or replaced with another hotel structure within such 24-month period, subject to extension for force majeure delays. During any period when either or both the Parking Garage and/or the Hotel Building are so damaged, razed or destroyed and not yet rebuilt or replaced to functional units, PHI shall be entitled to an abatement in the charges it pays for parking spaces that are not reasonably and commercially acceptable and available for use serving the Hotel Building as provided in this Agreement (in the case of damage or destruction of the Parking Garage) or that PHI determines it may temporarily suspend its parking rights with respect thereto during its repair, construction or reconstruction work (in case of damage or destruction of the Hotel Building). PHI shall notify PDC in writing of the number of such parking spaces that PHI agrees temporarily to release back to PDC and the period of such release for such parking spaces and PDC may reallocate such parking spaces to other users, but only for the period designated by PHI. At the end of the temporary release period, unless PHI otherwise agrees or directs in writing, such parking spaces shall be returned to PHI use and availability. Any such restoration or reconstruction or replacement of the Parking Garage shall be at the sole discretion of PDC.

8. **Covenant Runs with Land.** During the Initial Term and all extension terms, this Agreement is intended to run with the land for the benefit of the owners of the Lot 4 Land and shall burden the owners of the Parking Land, and their respective successors and assigns as to such lands.
9. **Recordation.** This Agreement shall not be recorded unless both parties agree otherwise.
10. **Default.** Each of the following occurrences shall be an “Event of Default” under this Agreement:
 - 10.1 PHI fails to pay PDC any sum owed PDC by PHI under this Agreement within thirty (30) days after written notice from PDC that it is past due; or
 - 10.2 Either party fails to perform or observe any of its respective covenants or agreements contained in this Agreement and such failure continues and is not remedied within thirty (30) days after such party receives written notice from the other party specifying the breach or, in the case of a breach which cannot with due diligence be cured within a period of thirty (30) days, if the breaching party shall not within such thirty (30) day

period commence the cure of the breach and thereafter diligently prosecute to completion such cure.

11. **Remedies Upon Event of Default.** Whenever any Event of Default shall have occurred and be continuing under this Agreement, the non-defaulting party may
 - 11.1 If the defaulting party is PHI, PDC may suspend the availability of the parking spaces otherwise allocable to PHI under this Agreement so long as such Event of Default is continuing and is not cured as prescribed within Section 10 above. If PDC wishes to exercise its option to terminate this Agreement under this Section 11.1 during the continuance of an Event of Default by PHI and before taking any action to terminate this Agreement for a PHI default, PDC will provide PHI with written notice of PDC's intent to pursue its termination remedy if the default is not cured as provided below ("Termination Notice") (which Termination Notice shall be in addition to the original notice to PHI respecting such Event of Default under Section 10, above), and (2) such termination right may not be exercised and no Termination Notice given hereunder will be effective if PHI or any Financing Party or other person acting through or on behalf of PHI or any Financing Party commences and/or recommences and continues such curative action on or before sixty (60) days after such Termination Notice and thereafter diligently pursues the same to completion as soon as practicable.
 - 11.2 Exercise any and all other remedies available at law or in equity, subject to the foregoing limitation on PDC's right to terminate.
 - 11.3 In no event shall PHI have the right of set off against monthly parking charges with regard to a disputed claim against PDC.
12. **Nonexclusivity of Remedies/Lender Protection Agreement.** No remedy conferred in this Agreement upon or reserved to either party is intended to be exclusive of any other available remedy or remedies, except to the extent of the limitation on PDC's right to terminate as set forth above, but, except as so limited, each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing pursuant to any other agreement at law or in equity or by statute. Notwithstanding anything to the contrary appearing in this Agreement, PDC agrees to enter into a commercially reasonable mortgagee protection agreement with PHI's lender or other party providing financing secured in whole or part by the Lot 4 Land and/or the Hotel Building and allowed or otherwise approved under the DDA or this Agreement ("**Financing Party**") upon PHI's or such Financing Party's request at any time. Such arrangement will include reasonable notice and cure rights in favor of the Financing Party and a covenant not to disturb the use of the Parking Garage provided by this Agreement upon a foreclosure by the Financing Party, as long as an Event of Default does not exist under this Agreement.

13. **No Implied Waiver** No failure on the part of either party to exercise, and no delay in exercising, any right, power, or privilege under this Agreement shall operate as a waiver thereof or any other right, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any further exercise thereof or the exercise of any other such right, power, or privilege,
14. **Notices.** Notices given under this Agreement shall be in writing and will be deemed given and effective when delivered in person to the addressee (or when delivery is attempted by the postal authority but not accepted) after being deposited in the U.S. Mails, postage prepaid, and sent by registered or certified mail to the party's address for notices, which shall initially be:

Pearl Hotel Investors, LLC
c/o Williams/Dame Associates, Inc.
1308 NW Everett Street
Portland, OR 97209
Attn: Gary Finicle
PH: 503-227-6593
FAX: _____
e-mail: gary@wddcorp.com

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

[Name]
[Title]
Portland Development Commission
222 N.W. Fifth Avenue
Portland, OR 97209
PH: 503-823-3200
FAX: 503-823-3368
e-mail: _____

with a copy to:

Portland Development Commission
Attn. General Counsel
222 N.W. Fifth Avenue
Portland, OR 97209
PH: 503-823-3200
FAX: 503-823-3368

Either party may change its address for notices by written notice to the other party. In the absence of such notice of a party's address for notice purposes, any notice under this Agreement may be given to the address to which property

tax statements for the applicable parcel of land are delivered by the taxing authority.

15. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns. Every obligation under this Agreement shall run with the land and shall be binding upon each party and upon the heirs, personal representatives, successors and assigns of the respective party with respect to its parcel for the benefit of the other party and their respective successors and assigns with respect to the ownership of their respective parcels. Any reference in this Agreement to a party shall apply to a party only so long as the party has a fee ownership interest in a benefited or burdened parcel, and thereafter such reference shall be intended to apply to such party's successor or assign with respect to such fee ownership of such parcel. Any transferee of fee ownership of a parcel shall automatically be deemed, by acceptance of title to such property, to have assumed all of the obligations set forth in this Agreement relating to such parcel thereafter accruing, and to have taken such interest subject to all obligations of this Agreement. The transferring party conveying its entire fee ownership interest in a parcel shall, when such transfer is consummated, be relieved of all liability with respect to such parcel that arises thereafter under this Agreement, but such party shall not thereby be relieved of liability that arose during such party's ownership period before such time and which remains unsatisfied.
16. **Assignment.** Neither this Agreement nor any of the rights or obligations under this Agreement shall be assigned by PHI without the prior written consent of PDC, which consent shall not be unreasonably withheld, delayed or conditioned. The restrictions on transfer by PHI shall not apply to any assignment to a Financing Party or any transferee acquiring the Lot 4 Land and/or the Hotel Building through any foreclosure or deed in lieu of foreclosure or as security to any Financing Party or to any third party who purchases the Hotel Building and Land for value or to any other successor fee owner of all or part of the Hotel Building and Lot 4 Land.
17. **Taxes and Other Charges**
 - 17.1 **Real Property Taxes.** PHI shall pay all real estate taxes and assessments on the Parking Garage and Parking Land to the extent levied as a direct result of PHI's use of the Parking Garage and Parking Land and PHI shall discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all business and occupation taxes, assessments and all other governmental impositions and charges of every kind and nature whatsoever arising from such direct use of the Premises by PHI ("Tax"). Any Tax shall be considered as arising solely from PHI's direct use only if and to the extent such Tax would not be assessed or levied from use of the Parking Garage as hourly or monthly reserved parking by the general public. PDC will promptly notify PHI if PDC receives any notice or other written communication from any taxing

authority that the Parking Garage or Parking Land will or may be subject to any such Tax. Any Tax relating to a fiscal period of the taxing authority, a part of which is within the Term and a part of which is before or after the Term, assessed, on the Parking Garage and Parking Land or shall become payable, during the Term, shall be paid by PHI. If PHI improperly issues a Temporary Use Permit or any other form of use agreement to a third-party or if any third-party's use of the Parking Garage and Parking Land results in the assessment of real property taxes, PDC will hold PHI fully responsible for reimbursement of all real property tax assessments against the Parking Garage and Parking Land.

17.2 Limitation. Nothing contained in this Agreement requires PHI to pay any Tax or Taxes levied, assessed, or imposed against any property other than the Parking Garage and Parking Land or based on any operations other than PHI's use of the Parking Garage and Parking Land.

17.3 Right of Contest. PHI shall have the right at PHI's expense to contest or review the amount or validity of any Tax or to seek a reduction in the assessed valuation on which any Tax is based, by appropriate legal proceedings. Any contest as to the validity or amount of any Tax, or assessed valuation on which such Tax was computed or based, whether before or after payment, may be made by PHI and PDC agrees that it will, at PHI's expense, cooperate with PHI in any such contest to such extent as PHI may reasonably request, it being understood, however, that PDC shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by PHI, and PHI covenants to indemnify and save PDC harmless from any such costs or expenses. PHI shall be entitled to any refund of any such Tax and penalties or interest that have been paid by PHI or by PDC and reimbursed to PDC by PHI.

18. **Insurance.** PHI shall obtain, maintain, and keep during the term of this Agreement comprehensive general liability insurance written on an "occurrence" basis. Such insurance shall be in the amount of not less than \$1,000,000 combined single limit for liability, with a \$2,000,000 aggregate limit, insuring bodily and/or personal injury, including death and disease, and property damages. Insurance shall be without prejudice to coverage otherwise existing and shall include coverage for auto, operations, products and negligent acts. PHI's insurance shall be primary insurance and any insurance or self-insurance maintained by the PDC and/or City of Portland shall not contribute to it. PDC shall have the right to reasonably increase the required insurance required hereunder upon any exercise of an option to extend by PHI. PHI agrees, prior to the commencement of the performance hereunder, to provide a Certificate of Insurance containing an endorsement specifically naming the City of Portland, the Portland Development Commission, its commissioners, officers, agents and employees as additional insureds. The certificate shall provide that coverage afforded and shall not be canceled or amended without prior written notice to the PDC. CG 20 10 11 85 endorsement, or its equivalent, must be attached to the certificate.

19. **Indemnification.** PHI shall indemnify, hold harmless and at PDC's request, defend PDC and the City of Portland and each of their respective commissioners, officers, agent and employees from and against any and all liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, to the extent arising out of or in connection with the use of the Parking Garage by PHI, and its guests, employees, invitees, customers and agents, or error or omission of PHI in connection with or incidental to this Agreement; provided however, that nothing herein shall be construed to require indemnification of PDC, the City of Portland or any other person for any liability, suit, legal proceedings, claim, damage, loss or expense to the extent attributable solely to any act or omission of PDC's or the City of Portland's or any of their respective commissioners, officers, agents or employees.
20. **Waiver of Subrogation.** Notwithstanding any provision in this Agreement to the contrary, neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by (i) fire or any of the risks enumerated in a standard fire insurance policy with extended coverage endorsement or for any loss arising from business interruption, or (ii) for any loss or damage by reason of personal injury or death. In the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid as it relates to a party's insurance company only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such waiver will not adversely affect coverage under the policies. Each party agrees to use its reasonable best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.
21. **Property Damage.** PHI and its guests, employees, invitees, customers and agents are solely responsible for any theft, damage or destruction to any vehicles, equipment or any other property of PHI, or its guests, employees, invitees, customers and agents of the Hotel Building in connection with or incidental to this Agreement, except to the extent caused by PDC or any of its respective commissioners, officers, agents or employees.
22. **Disclaimer of Liability.** The use of the Parking Garage by PHI and its guests, employees, invitees, customers and agents shall be at PHI's and its guests', employees', invitees', customers' and agents' sole risk. PDC, its respective commissioners, officers, agents or employees shall have no liability to PHI or its guests, employees, invitees, customers, or agents of the Hotel Building in connection with or incidental to this Agreement, PHI hereby releases PDC, its respective commissioners, officers, agents and employees from any and all claims related to PHI's or its guests', employees', invitees', customers' or agents' use of the Parking Garage, including, without limitation, any claims related to the condition of the Parking Garage, the lighting of the Parking Garage, the lack of security in the Parking Garage, or the loss of or damage to any property. This Section 22 shall survive the termination of this Agreement.

23. **Rules and Regulations.** PHI, and its respective guests, employees, invitees, customers and agents of the Hotel Building, shall follow all rules and regulations for the purpose of promoting safety, order, cleanliness and good service of the Parking Garage consistent with PHI's rights under this Agreement reasonably imposed on their use of the Parking Garage by PDC or the parking manager of the Parking Garage by not less than sixty (60) days prior written notice to PHI. Such rules may include procedures for the use of/or access to the parking garage.
24. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.
25. **No Relocation Benefits.** PHI acknowledges that it is not entitled to any relocation benefits as defined under ORS 35.500 et seq. and by PDC's relocation policies, and will assert no claim for such statutory relocation benefits based on this Agreement.
26. **Brokerage Commissions.** Each party represents that it has not had dealings with any real estate broker, finder, or other person with respect to this Agreement in any manner.
27. **Security Access Cards Deposits.** PHI shall pay a refundable deposit in the amount of \$25.00 for each security access card issued. This deposit will only be refunded if the card(s) are returned and are in proper working condition.
28. **Amendments.** This Agreement may be amended only by an instrument in writing executed by the parties.
29. **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.
30. **Further Assurances.** Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, in order to carry out the intent and accomplish the purposes of this Agreement.
31. **Time of Essence.** Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.
32. **Expenses.** Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear the party's own expenses in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement.

33. **Waiver.** Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
34. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict-of-laws principles.
35. **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.
36. **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.
37. **Injunctive and Other Equitable Relief.** The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties shall be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.
38. **Exhibits.** The exhibits, if any, referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.
39. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.
40. **Termination.** In the event that the Hotel Building is not completed in accordance with the Schedule of Performance set forth in the DDA, this Agreement shall automatically terminate and neither party shall have any further rights or obligations hereunder. In addition, after the 18th year following the Commencement Date, PDC may notify PHI (“Termination Notice”) in writing of PDC’s intent to terminate PHI’s use of parking spaces in the Parking Garage due to redevelopment of the Garage Land with a new or redesigned building that maximizes the site on the following terms:
 - 40.1 PHI’s rights to use the Parking Garage under this Agreement will terminate on the later of (a) two (2) years after the date of the Termination Notice, or (b) the date that demolition or reconstruction commences.

- 40.2 If the redevelopment project retains parking or provides for construction of new parking (onsite or offsite) as part of the redevelopment project, replacement parking for the benefit of PHI and the Hotel Building on the terms and conditions of this Agreement will be incorporated into the redevelopment project. In such case, PHI's rights to use the retained or replacement parking will revive when a certificate of occupancy is issued for such improvements. The redeveloper will be required to enter into a parking agreement with PHI on the same terms and conditions of this Agreement for such replacement parking. If PDC or the City or any City agency is the redeveloper, this Agreement will simply be tolled during the period of redevelopment, and the parking rights and obligations of this Agreement will recommence upon issuance of a certificate of occupancy.
- 40.3 If PDC gives a Termination Notice, PHI may upon 30 day's written notice to PDC elect to (a) terminate this Agreement completely (including the rights to the replacement parking) at any time prior to the date that a demolition or building permit is issued for the redevelopment project, and/or (b) accelerate the termination date or commencement of the tolling period, while retaining the rights to replacement parking as provided in Section 40.2.

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.

PEARL HOTEL INVESTORS, LLC, an Oregon limited liability company

By: _____
Patrick Quinton
Executive Director

By: _____
Name: _____
Title: Authorized Signer

APPROVED AS TO FORM:

PDC Legal Counsel