

**PORTLAND DEVELOPMENT COMMISSION  
Portland, Oregon**

**RESOLUTION NO. 6340**

**AUTHORIZING A DISPOSITION AND DEVELOPMENT  
AGREEMENT WITH VANPORT PARTNERS, LLC FOR  
REAL PROPERTY LOCATED IN THE OREGON  
CONVENTION CENTER URBAN RENEWAL AREA; AND  
PROVIDING FINANCIAL ASSISTANCE IN THE AMOUNT  
OF \$6,800,000.**

**WHEREAS**, the Oregon Convention Center Urban Renewal Plan, adopted by the City Council in May 1989, and as amended, provides tax increment funding and authority to support the accomplishment of community goals in Northeast Portland, including the revitalization of NE Martin Luther King Jr. Blvd. (MLK Jr. Blvd.); and

**WHEREAS**, the Vanport Square Project is a key effort that supports community goals to revitalize MLK Jr. Blvd., and the Portland Development Commission (PDC) has taken a number of steps over the past few years to facilitate development of the Vanport Square Project; and

**WHEREAS**, PDC staff and Vanport Partners, LLC (Developer) have collaborated to generate a development concept for Phase One of the Vanport Square Project, which contemplates, among other things, the renovation of the Marco Machine Works building at 5225 NE MLK Jr. Blvd. (Property) and sale of individual condominium units within Phase One of the Vanport Square Project to owner-occupied businesses; and

**WHEREAS**, on August 31, 2005, PDC and the Developer entered into a Memorandum of Understanding pursuant to which the parties agreed to pursue the activities necessary to negotiate a Disposition and Development Agreement (DDA); and

**WHEREAS**, the PDC and Developer have substantially negotiated terms for the disposition and development of the Property as set forth in a DDA, attached hereto as Exhibit A; and

**WHEREAS**, the total project cost for development of Phase One of the Vanport Square Project is estimated to not exceed \$8,700,000 and shall be financed under a New Markets Tax Credit financing structure which shall utilize a New Markets Tax Credit Allocation of up to \$10,000,000 received by the Portland New Markets Fund I, LLC on May 6, 2004; and

**WHEREAS**, under the New Markets Tax Credit financing structure, (a) PDC, as specified in the attached DDA, would be anticipated to provide a senior loan up to \$6,800,000 to an investment fund, (b) the investment fund would make a "qualified equity investment" in the same amount of the senior loan and the cash sum of net proceeds generated from the sale of the New Markets Tax Credits, as equity into an entity certified as a "sub-CDE" of Portland New Markets Fund I, LLC (CDE) and (c) using the equity contribution from the investment fund, the CDE would make a real estate loan to Developer to finance the total project cost for development of Phase One of the Vanport Square Project; and

**WHEREAS**, as specified in the attached DDA, PDC would additionally contribute funds for project predevelopment in the form of a second predevelopment loan to Developer in an amount not to exceed \$412,000 to help defray predevelopment costs; and

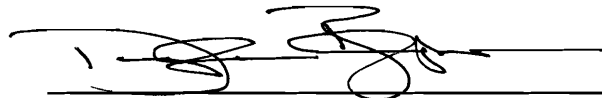
**WHEREAS**, pursuant to a Predevelopment Loan Agreement authorized by the PDC Board of Commissioners (Board) on October 12, 2005 (Resolution No. 6297), between PDC and the Developer, PDC agreed to make a predevelopment loan to Developer in an amount not to exceed \$188,000 to finance a portion of the predevelopment costs attributable to the development of Phase One of the Vanport Square Project; now, therefore be it

**RESOLVED** that the Executive Director is hereby authorized to enter into a DDA with Vanport Partners LLC substantially in the form attached hereto as Exhibit A; and be it

**FURTHER RESOLVED** that the Executive Director may approve changes to the DDA if such modifications do not materially change the Commission's obligations or risks from those approved by the Board; and be it

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

**ADOPTED by the Commission March 8, 2006.**



Douglas C. Blomgren, Acting Chair



Mark P. Rosenbaum, Acting Secretary

**AGREEMENT FOR DISPOSITION AND REDEVELOPMENT****OF PROPERTY AT****5225 N.E. MARTIN LUTHER KING JR. BOULEVARD**

THIS AGREEMENT FOR DISPOSITION AND REDEVELOPMENT OF PROPERTY (this “Agreement”) is made as of \_\_\_\_\_, 2006, by the CITY OF PORTLAND (the “City”), a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland (“PDC”) and VANPORT PARTNERS, LLC, an Oregon limited liability company (“Developer”). PDC and Developer are referred to jointly in this Agreement as “Parties” and individually as a “Party.”

**RECITALS**

1. PDC is the duly authorized urban renewal agency of the City of Portland, Oregon, and administers the City's urban renewal plans.
2. The urban renewal plan for the Oregon Convention Center Urban Renewal Area was approved by the City Council of the City on May 18, 1989 by Ordinance No. 161925, as amended from time to time (which plan, as so amended and as it may hereafter be further amended from time to time pursuant to law, is hereinafter referred to as the “Urban Renewal Plan”). A counterpart of the Urban Renewal Plan has been recorded in the Official Records of Multnomah County, Oregon and is incorporated herein by reference for all purposes.
3. In order to enable PDC to achieve the objectives of the Urban Renewal Plan, PDC has previously acquired, and made, certain land, including the Property, available for redevelopment by private enterprise in accordance with the uses specified in the Urban Renewal Plan.
4. As reflected in PDC Resolution No. 5569 dated November 8, 2000, PDC has previously found it necessary and in the public interest to implement the Urban Renewal Plan through the acquisition of the Property. PDC purchased the Property in July 2001 to offer the Property for redevelopment for mixed use development consistent with the goals of the Urban Renewal Plan.
5. PDC issued the Request for Proposals #00-12 dated July 18, 2001 (“RFP”) for development of the Property.
6. The Project will serve as a strong expression of PDC’s commitment to the goals set forth in the Urban Renewal Plan, including the creation of quality jobs and maximum job density, the mitigation of traffic impacts in the surrounding neighborhoods and on collector streets, the mitigation of potential immediate-neighbor impacts including, but not limited to: outdoor storage, garbage, noise, nighttime operations, deliveries, graffiti, outdoor maintenance, outdoor lighting, and odors, and hiring and procurement from the local community for services and contracting opportunities.

7. The Project will serve as a model of well-designed, high quality, sustainable “green” development, and will be designed to enhance the neighborhood and to encourage additional private investment on NE MLK. The redevelopment of the Property in a manner consistent with the Plan is pivotal to attracting the private investment necessary to area-wide revitalization.
8. The completion of the Project according to the terms of this Agreement, including the Scope of Development and Schedule of Performance, is a material inducement to PDC's participation in and support for the Project. PDC and Developer acknowledge that the proposed plan for redevelopment of the Property provides for no public subsidies of the redevelopment in the form of grants, loans, write downs, fee reductions or waivers, other than those expressly provided for herein.
9. PDC finds that Developer's redevelopment of the Property, pursuant to this Agreement, will help achieve the community and City goals for neighborhood revitalization and creation of jobs. PDC also finds that the fulfillment of this Agreement, and the intentions set forth herein, are in the vital and best interests of the City and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of the applicable state and federal laws and requirements under which the Property has been acquired, and the plan for public financial assistance supporting development of the Property.

### **AGREEMENT**

This Agreement shall incorporate by this reference, the Recitals, the Definitions and all Exhibits hereto. The Parties, in consideration of the premises and the agreements set forth herein and for other valuable consideration the receipt and adequacy of which are hereby acknowledged, covenant and agree as follows:

### **DEFINITIONS**

The following terms have the designated meanings in this Agreement:

1. **“25% Construction Drawings”** means all plans and specifications required to complete the construction of the Project pursuant to the terms of this Agreement at the stage of twenty-five percent completion. The 25% Construction Drawings shall include the Demolition and Seismic Upgrade Plans.
2. **“2005 Predevelopment Loan”** shall have the meaning ascribed thereto in Section 3.1.3.
3. **“2005 Predevelopment Loan Agreement”** shall have the meaning ascribed thereto in Section 3.1.3.
4. **“2006 Predevelopment Loan”** shall have the meaning ascribed thereto in Section 3.1.3.

5. “**2006 Predevelopment Loan Agreement**” shall have the meaning ascribed thereto in Section 3.1.3.
6. “**Affiliate**” means any entity that is owned at least fifty-one percent (51%) by Developer.
7. “**Agreement**” means this Agreement for Disposition and Redevelopment of Property at 5225 N.E. Martin Luther King Jr. Boulevard, and all attached Exhibits.
8. “**Alley Vacation**” means the vacation of the public alley running north-south through Block 10 of the Property from NE Emerson Street to NE Sumner Street.
9. “**Appraisal**” means an appraisal of the fair market value of the Property to be prepared by an independent certified appraiser or firm of appraisers who are MAI designated member(s) of the Appraisal Institute and licensed by the State of Oregon, pursuant to the appraisal instructions dated January 6, 2006, which have been mutually accepted by the Parties. The Appraisal has been prepared using the sales comparison approach.
10. “**Base Figure**” shall have the meaning ascribed thereto in Section 5.12.
11. “**BDS**” shall have the meaning ascribed thereto in Section 1.5.1(a)(4).
12. “**Capitalized Debt Service Payments**” shall have the meaning ascribed thereto in Section 1.5.1(c)(9).
13. “**Capitalized Maintenance Fee Payments**” shall have the meaning ascribed thereto in Section 3.1.2(b)(11).
14. “**Certificate of Completion**” means a certificate to be issued by PDC to Developer pursuant to Section 3.9 of this Agreement indicating PDC’s material acceptance of the Project that will be issued by PDC to Developer subsequent to issuance of the architect’s certificate of substantial completion and the City’s issuance of a certificate of occupancy for the building.
15. “**City**” means the City of Portland, Oregon and its constituent bureaus and agencies, except PDC.
16. “**Close**” or “**Closing**” means the conveyance of the Property to Developer by PDC by Deed.
17. “**Closing Date**” means the date on which PDC conveys the Property to Developer.
18. “**Conditions Precedent**” or “**Conditions Precedent to Closing**” or “**Conditions Precedent to Conveyance**” means those conditions precedent set forth in Section 1.5 which are required to be satisfied prior to the conveyance of the Property by PDC to Developer by Deed.
19. “**Condominium Association**” means the association of Condominium Unit Owners which shall be organized pursuant to the Condominium Documents to serve as a means through which the Condominium Unit Owners may take action with regard to the administration, management and operation of the Project Condominium.

20. **“Condominium Documents”** means all documentation Developer is required to record pursuant to Oregon state law (including the Oregon Condominium Act) to create the Project Condominium, including without limitation, the Declaration, the bylaws and the plat.
21. **“Condominium Unit”** means each individual unit in the Project Condominium which is subject to the condominium form of ownership, as described in the Oregon Condominium Act.
22. **“Condominium Unit Owner”** means either (a) the person owning fee simple interest in a Condominium Unit, (b) the holder of a vendee’s interest in a Condominium Unit under a recorded installment contract of sale or (c) in the case of a leasehold condominium, the holder of the leasehold estate in a Condominium Unit. The term “Condominium Unit Owner” shall mean with respect to each Condominium Unit, initially Developer until Developer sells each such Condominium Unit to another entity.
23. **“Condominium Unit Owner Promissory Notes”** means collectively, the promissory note to be executed by each Condominium Unit Owner in favor of Developer to evidence the obligation of the Condominium Unit Owner to pay the balance of the purchase price for a particular Condominium Unit in connection with such Condominium Unit Owner’s purchase of such respective Condominium Unit.
24. **“Condominium Unit Owner Trust Deeds”** means collectively, the trust deed to be executed by each Condominium Unit Owner in favor of Developer to secure the repayment obligations of such Condominium Unit Owner under the respective Condominium Unit Owner Promissory Note with respect to a particular Condominium Unit.
25. **“Condominium Unit Sales Agreement”** means a written offer or agreement for the sale of a Condominium Unit which when fully executed will be binding on all parties thereto. The term “Condominium Unit Sales Agreement” includes without limitation, an earnest money receipt and agreement to purchase and other such agreement of sale. The term “Condominium Unit Sales Agreement” does not include a Reservation Agreement.
26. **“Construction Contract”** means a construction contract to be executed by Developer and a general contractor for the construction and rehabilitation of the Project for a guaranteed maximum price that is consistent with the Final Construction Plans and Specifications, together with any contract executed by Developer in amendment, supplement or replacement thereof.
27. **“Construction Cost Contingency”** means a portion of the Real Estate Loan proceeds set aside during the Construction Period of the Real Estate Loan for the purpose of maintaining a construction contingency reserve which shall be made available to pay unforeseen Project Capital Costs and/or unanticipated increases in Project Capital Costs.
28. **“Construction Period”** means (a) with respect to the PDC Senior Loan, the period commencing on the date of initial disbursement of the PDC Senior Loan and ending on the Construction Period Expiration Date or Extended Construction Period Expiration Date, as applicable and (b) with respect to the Real Estate Loan, the period commencing on the date of initial disbursement of the Real Estate Loan and ending on the Construction Period Expiration Date or Extended Construction Period Expiration Date, as applicable.

29. **“Construction Period Expiration Date”** means (a) with respect to the PDC Senior Loan, September 15, 2007, if no Loan Extensions have been granted with respect to the PDC Senior Loan and (b) with respect to the Real Estate Loan, September 15, 2007, if no Loan Extensions have been granted with respect to the Real Estate Loan.
30. **“Declaration”** means the instrument described in the Oregon Condominium Act by which the Project Condominium is created and as modified by any amendment or supplemental declaration recorded in accordance with the Oregon Condominium Act.
31. **“Deed”** means the form of Bargain and Sale Deed conveying fee simple title to the Property to Developer substantially in the form attached to this Agreement as **Exhibit A**.
32. **“Demolition and Seismic Upgrade Plans”** shall mean drawings and specifications depicting the scope of the demolition and seismic improvements the Developer intends to undertake pursuant to the permits required by Section 1.5.1(a)(4).
33. **“Deposit”** means the \$10,000 escrow deposit paid by Developer to the benefit of PDC and held by the Escrow Agent pursuant to Section 1.8 below.
34. **“Developer”** means (i) with respect to the Real Estate Loan, Vanport Partners, LLC, an Oregon limited liability company, or an entity to be formed by Vanport Partners, LLC which will serve as initial borrower under the Real Estate Loan and of which Vanport Partners, LLC will be managing member and (ii) with respect to all other matters, Vanport Partners, LLC, an Oregon limited liability company, or its approved assignee.
35. **“Developer Promissory Note”** means the promissory note to be executed by Developer in favor of Marco CDE to evidence its obligation to repay the Real Estate Loan.
36. **“Developer Trust Deed”** means the trust deed to be executed by Developer in favor of Marco CDE to secure its repayment obligations under the Developer Promissory Note with respect to the Project.
37. **“Down Payment”** means the nonrefundable six percent (6%) cash down payment paid by prospective purchasers of Condominium Units at the time that such prospective purchasers enter into binding Condominium Unit Sales Agreements with Developer for the purchase of Condominium Units.
38. **“Down Payment Escrow”** shall have the meaning ascribed thereto in Section 1.5.1(c)(10).
39. **“Effective Date”** means the date that all Parties have executed this Agreement.
40. **“Environmental Laws”** means all federal, state and local laws, ordinances, rules and regulations pertaining to the protection or regulation of the environment that apply to the Property, including without limitation, RCRA (defined herein), CERCLA (defined herein), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
41. **“Environmental Reports”** means any and all environmental reports, studies, data and other such materials prepared for PDC relating to PDC’s environmental clean-up of the Property, which are requested by Developer.

42. **“Escrow Agent”** means \_\_\_\_\_ Title Insurance Company, \_\_\_\_\_, Portland, Oregon 972\_\_\_\_.
43. **“Extended Construction Period Expiration Date”** means (a) with respect to the PDC Senior Loan, the Construction Period Expiration Date for the PDC Senior Loan, as adjusted by one or more Loan Extensions granted by PDC with respect to the PDC Senior Loan and (b) with respect to the Real Estate Loan, the Construction Period Expiration Date for the Real Estate Loan, as adjusted by one or more Loan Extensions granted by Marco CDE with respect to the Real Estate Loan, as shall be evidenced by notice delivered by Marco CDE to PDC. The Extended Construction Period Expiration Date for the PDC Senior Loan shall mean a date no later than March 15, 2008. The Extended Construction Period Expiration Date for the Real Estate Loan shall mean a date no later than March 15, 2008.
44. **“Final Construction Plans and Specifications”** means all plans and specifications required to complete the construction of the Project pursuant to the terms of this Agreement, approved by PDC and the appropriate City agencies. The “Final Construction Plans and Specifications” shall include the Demolition and Seismic Upgrade Plans.
45. **“Final Permitted Exceptions”** shall have the meaning set forth therein in Section 1.3.2.
46. **“Final Termination Date”** shall have the meaning ascribed thereto in Section 1.5.3.
47. **“Garfield Lots”** means Lots 1 through 7, Block 10, Walnut Park Addition, City of Portland, County of Multnomah, State of Oregon.
48. **“Hazardous Substances”** means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substances as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. (“CERCLA”), or any other Environmental Law.
49. **“Investment Fund” or “Fund”** means Marco Investment Fund, LLC, a [Delaware] limited liability company.
50. **“Land Division”** means the division of the Property in a manner resulting in creation of new legal lots for the Project as shown in Exhibit H.
51. **“Laws”** shall have the meaning ascribed thereto in Section 1.6.5.
52. **“Loan Extension(s)”** shall mean (a) with respect to the PDC Senior Loan, up to two additional 3-month extensions of the Construction Period that may be granted by PDC to the Investment Fund for the PDC Senior Loan upon no less than 30 days’ prior written notice by the Investment Fund upon satisfaction of terms and conditions set forth in Section 3.1.2(b)(1) and (b) with respect to the Real Estate Loan, up to two additional 3-month extensions of the Construction Period that may be granted by Marco CDE to Developer for the Real Estate Loan upon no less than 30 days’ prior written notice by Developer upon satisfaction of terms and conditions set forth in Section 3.1.2(b)(1).



53. **“Loan Term”** means (a) with respect to the PDC Senior Loan, collectively, the Construction Period and the Permanent Period for the PDC Senior Loan and (b) with respect to the Real Estate Loan, collectively, the Construction Period and the Permanent Period for the Real Estate Loan.
54. **“Marco CDE”** means MARCO/PNMF SUB-CDE LLC, a Delaware limited liability company, formed, and awaiting certification as a sub-CDE of Portland New Markets Fund I, LLC, for the purpose of receiving a sub-allocation of New Markets Tax Credits from Portland New Markets Fund I, LLC to facilitate the financing of the Project as described in Section 3.1 below.
55. **“Maximum Project Costs”** means collectively (a) the Project Capital Costs plus (b) the amounts which shall be made available for disbursement to pay Capitalized Debt Service Payments and Capitalized Maintenance Fee Payments. The term “Maximum Project Costs” shall not include the six percent (6%) Down Payment paid by each prospective purchaser on the purchase of each Condominium Unit.
56. **“Mortgage”** means a mortgage or deed of trust against the Property, or any portion thereof, recorded in the real property records of Multnomah County, Oregon.
57. **“Mortgagee”** means the holder of any Mortgage affecting or encumbering the Property or any portion thereof, together with any successor or assignee of such holder. The term “Mortgagee” shall include any Mortgagee as owner of the property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a mortgage but shall not include (a) any other party who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee.
58. **“New Markets Tax Credits” or “NMTC”** means credits against taxpayer federal tax liability available pursuant to IRC Section 45D.
59. **“Notice”** means any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by the Oregon Department of Environmental Quality (“DEQ”), the United States Environmental Protection PDC, PDC, and other federal, state or local authority or any other government having jurisdiction with respect to the Property.
60. **“OCCURA” or “Area”** means the area included in the urban renewal plan area of the Urban Renewal Plan for the Oregon Convention Center Urban Renewal Area.
61. **“Oregon Condominium Act”** means Chapter 100 of the Oregon Revised Statutes, or any successor provision thereto.
62. **“Permanent Period”** means (a) with respect to the PDC Senior Loan, the period commencing on the date of the Construction Period Expiration Date or the Extended Construction Period Expiration Date, as applicable, for the PDC Senior Loan and ending on the twentieth (20) anniversary thereof and (b) with respect to the Real Estate Loan, the period commencing on the date of the Construction Period Expiration Date or the Extended Construction Period Expiration Date, as applicable, for the Real Estate Loan and ending on the twentieth (20) anniversary thereof.

63. **“Project”** or **“Phase I Project”** generally means the Property, fixtures and the buildings, and other improvements to be rehabilitated or newly constructed by Developer on the Property, including Condominium Units which will be offered as commercial condominiums for local owner-occupied businesses, landscaping, sidewalk improvements, and parking, all as initially described in the Scope of Development (**Exhibit C-1**) and Schematic Design Documents (**Exhibit C-2**). The terms “Project” and “Phase I Project” will not include Tenant Improvements.
64. **“Project Condominium”** means the form of unit ownership to be created on the Property pursuant to the Oregon Condominium Act which shall consist of the Condominium Units.
65. **“Project Capital Costs”** means the sum of (a) the costs of acquiring the Property, plus (b) the costs of constructing and rehabilitating the Project and all other related costs, including all fees to be paid to Developer pursuant to Section 5.12. The term “Project Capital Costs” does not include (y) the amounts which shall be made available for disbursement to pay Capitalized Debt Service Payments, Capitalized Maintenance Fee Payments or Construction Cost Contingency nor (z) the six percent (6%) Down Payment to be paid by each prospective purchaser on the purchase of each Condominium Unit.
66. **“Property”** means Lots 8 through 14, Block 10, Walnut Park Addition, City of Portland, County of Multnomah, State of Oregon, together with not more than the eastern seventy feet of the Garfield Lots, together with the vacated public alley running north-south through Block 10 from NE Emerson Street to NE Sumner Street.
67. **“Purchase Price”** means the price Developer shall pay to PDC for the Property to be conveyed by PDC to Developer pursuant to Section 1.2.
68. **“Qualified Equity Investment”** means an investment of equity to be made by the Investment Fund in Marco CDE, and which meets the definition under IRC Section 45D(b)(1).
69. **“Real Estate Closing”** means the Closing.
70. **“Real Estate Collateral Documents”** mean \_\_\_\_\_.
71. **“Real Estate Loan”** means the financing that Marco CDE provides to Developer for acquisition of the Property and construction of the Project pursuant to this Agreement and the Real Estate Loan Documents.
72. **“Real Estate Loan 10-Year Period”** means the first ten (10) years of the Permanent Period of the Real Estate Loan.
73. **“Real Estate Loan Documents”** means the Developer Promissory Note, Developer Trust Deed, loan agreement, financing statement and any other documents, as approved by PDC, and executed by Marco CDE and Developer in relation to or securing the Real Estate Loan.
74. **“Real Estate Loan Promissory Notes”** means collectively, (i) with respect to Developer, the Developer Promissory Note and (ii) with respect to all other Condominium Unit Owners other than the Developer, the Condominium Unit Owner Promissory Notes.

75. **“Real Estate Loan Trust Deeds”** means collectively, (i) with respect to Developer, the Developer Trust Deed and (ii) with respect to all other Condominium Unit Owners other than the Developer, the Condominium Unit Owner Trust Deeds.
76. **“Release”** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
77. **“Reservation Agreement”** means an agreement relating to the future sale of a Condominium Unit which is not binding on the prospective purchaser and which grants such prospective purchaser the right to cancel the agreement without penalty and obtain a refund of any funds deposited at any time until the prospective purchaser executes a Condominium Unit Sales Agreement.
78. **“Schedule of Performance”** means the document describing the schedule by which pre-construction activities, construction and development will be completed, which is attached hereto as **Exhibit B**.
79. **“Schematic Design Documents”** mean collectively, (a) cost estimates for the Project and (b) the design documentation set forth below, all of which have been submitted by Developer to PDC and accepted by PDC on or about February 17, 2006 and attached hereto as **Exhibit C-2**:
- Documents describing the Project program and establishing the design of the Project illustrating the scale and relationship of the Project components;
  - Documents that include a site plan, site elevations, preliminary building plans, sections and elevations;
  - Three-dimensional representations of the Project in the site that may include study models, perspective sketches, electronic modeling or combinations of this media;
  - Preliminary selections of major building systems and construction material shall be noted on the drawings or described in writing.
80. **“Scope of Development”** means the detailed description of the new improvements to be built comprising the Project, which is attached hereto and incorporated herein as **Exhibit C-1**.
81. **“Senior Loan”** or **“PDC Senior Loan”** means the financing that PDC provides to the Investment Fund on such terms and conditions as may be approved by the PDC Loan Committee, as part of the Project funding structure described in Section 3.1 below.
82. **“Tax Counsel”** means an attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to NMTCs, duly admitted to practice law before the highest court of any state of the United States of America.
83. **“Tax Credit Investor”** means the entity purchasing the New Markets Tax Credits.
84. **“Tenant Improvements”** means tenant improvements and/or equipment which will be independently financed, acquired, constructed and installed by each Condominium Unit Owner within its respective Condominium Unit.

85. **“Transaction Documents”** means the documents necessary to implement the financing structure described in Section 3.1, including without limitation the following: (a) the Collateral Agency Agreement to be executed by \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_; (b) the Senior Loan Agreement to be executed by PDC and the Investment Fund; (c) the Operating Agreement of the Investment Fund; (d) the Operating Agreement of Marco CDE; (e) the Real Estate Collateral Documents; (f) the Condominium Unit Sales Agreement for each Condominium Unit in the Project Condominium; (g) the Real Estate Loan Promissory Notes; (h) the Real Estate Loan Trust Deeds; (i) the Assignment Agreements to be executed by Developer to assign to Marco CDE Developer’s interest in each Condominium Unit Owner Promissory Note and each Condominium Unit Owner Trust Deed; (j) all documentation evidencing full/partial satisfaction of Developer’s obligations under the Developer Promissory Note as Developer assigns to Marco CDE its interest in the Condominium Unit Owner Promissory Notes and the Condominium Unit Owner Trust Deeds; (k) the Pledge Agreement to be executed by \_\_\_\_\_; (l) the Real Estate Loan Documents; (m) all documentation evidencing the transfer to PDC of all interest of Marco CDE in each Real Estate Loan Promissory Note and each Real Estate Loan Trust Deed at the end of the Real Estate Loan 10-Year Period; and (n) all documentation evidencing satisfaction of obligations of the Investment Fund under the PDC Senior Loan, all as will be defined in those documents approved by PDC.
86. **“Unavoidable Delay”** shall have the meaning ascribed thereto in Section 8.9.

## 1. GENERAL TERMS OF CONVEYANCE

- 1.1 Conveyance of Property.** Upon satisfaction of the Conditions Precedent to Conveyance in Section 1.5 hereof, and upon Developer’s payment of the Purchase Price, PDC will convey the Property to Developer pursuant to a Bargain and Sale Deed in substantially the form attached hereto as **Exhibit A**. Closing shall occur in an escrow closing at the office of the Escrow Agent not later than the date set forth in the Schedule of Performance, unless the Closing Date is extended by the Parties
- 1.2 Purchase Price.** The Purchase Price for the Property is FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000). At Closing, the Deposit described in Section 1.8 below shall be converted to cash and credited to the Purchase Price.
- 1.3 Title Review.**
- 1.3.1 Within fifteen (15) days following the Effective Date PDC will deliver to Developer an updated preliminary title report and copies of all exception documents (the “Title Report”). Within twenty days following its receipt of the Title Report, Developer may object to PDC in writing to any exceptions to title. If Developer does not object to any exceptions to title in writing within the twenty-day period, the Developer shall be deemed to have accepted the title as shown in the Title Report. Within ten (10) days of Developer’s written notice to PDC objecting to any exceptions to title, if any, PDC shall notify Developer in writing of its intention to remove or not remove the objectionable exceptions to title prior to Closing. If PDC refuses to remove any such objected to exceptions, Developer may terminate this Agreement or proceed to close subject to same. If Developer does not object to any

exceptions to title in writing within the twenty-day period, the Developer shall be deemed to have accepted the title as shown in the Title Report.

Following the lapse of all time periods referenced in the immediately preceding paragraph, PDC agrees, so long as no default has occurred under this Agreement and until the time of Closing set forth in the Schedule of Performance attached hereto as **Exhibit B**, to (a) timely pay all taxes, assessments, charges or liens that may be levied or assessed upon the Property, before any tax, assessment, charge or lien becomes past due or delinquent, and before commencement of any foreclosure or collection proceedings and (b) refrain from voluntarily creating or assuming any lien or encumbrance upon any portion of the Property, except for liens that have been bonded against pursuant to Oregon law, encumbrances for property taxes not yet due and payable, and encumbrances which arise in connection with the Alley Vacation, the Land Division, the possible addition of new utilities to the Property, the relocation of existing utilities located on the Property and the recording of memoranda to evidence the execution of this Agreement. With the exception of those encumbrances listed in the last clause of the immediately preceding sentence, PDC shall not, without Developer's prior written consent, otherwise voluntarily place or allow any liens or encumbrances to be placed on the Property.

- 1.3.2 Developer may obtain an update to the Title Report at any time prior to the Closing and Developer shall promptly provide PDC with a copy of any such updated Title Report. Within twenty days following its receipt of an update, Developer may object to PDC in writing to any exceptions to title. If Developer does not object to any exceptions to title in writing within the twenty-day period, the Developer shall be deemed to have accepted the title as shown in the update. Within ten (10) days after Developer's written notice to PDC objecting to any exceptions to title, if any, PDC shall notify Developer in writing of its intention to remove or not remove the objectionable exceptions to title prior to Closing. If PDC refuses to remove any such objected to exceptions, Developer may terminate this Agreement or proceed to close subject to same. Any exceptions to which Developer does not timely object in writing or otherwise accepts at Closing are the "Final Permitted Exceptions".

- 1.4 Title Insurance, Survey, Property Taxes and Closing Costs.** PDC, at its expense, shall provide Developer with a standard coverage ALTA Owner's Policy of Title Insurance, issued by Escrow Agent, covering the Property insuring Developer in the amount of the Purchase Price, free and clear of encumbrances except the Final Permitted Exceptions. Developer, at its option and its expense, may elect to obtain extended coverage under such policies of title insurance and PDC agrees to execute any affidavits or other documents required by the Escrow Agent to enable Developer to obtain such coverage. Developer may elect to obtain a survey of the Property at its own expense. The costs for recording a Memorandum of this Agreement, the Deed and any other documents required by Developer to be recorded will be paid by Developer. Each Party shall pay one-half (1/2) of any escrow fees charged by Escrow Agent. Developer shall be obligated to pay all property taxes from and after the Closing Date, including any property taxes due on the Property as a result of its transfer to a taxable entity and the subsequent loss of the public ownership tax exemption. Any assessments on the Property shall be prorated as of the Closing Date, except that PDC shall be obligated to pay installments due through the Closing Date for any assessments that may be paid in installments, and Developer shall be responsible for installment payments due after

the Closing Date. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Multnomah County.

## **1.5 Conditions Precedent to Conveyance.**

1.5.1 **Conditions Precedent.** Developer and PDC are not obligated to close unless the following Conditions Precedent are satisfied to the reasonable satisfaction of the benefited Party. The Party benefited by a particular Condition Precedent shall not unreasonably withhold approval of a Condition Precedent or delay acknowledgment that the Condition Precedent has been satisfied. The Parties shall act diligently and in good faith to satisfy Conditions Precedent over which they have control or influence.

(a) To the Satisfaction of Both PDC and Developer:

- (1) The Final Construction Plans and Specifications (including the Demolition and Seismic Upgrade Plans) relating to the Project shall have been approved by PDC pursuant to Section 3.2 herein.
- (2) Reserved.
- (3) All land use approvals for the Project required by Title 33 of the Code of the City of Portland, have been secured and no appeal of any required approval shall have been filed, and the time for any such appeal shall have expired. If an appeal has been filed, it has been finally resolved.
- (4) The City of Portland Bureau of Development Services (“BDS”) shall be ready to issue at minimum one of the following: a limited foundation, seismic and/or demolition building permit which would be required to initiate construction of the Project, to undertake demolition of certain improvements necessary to construct the Project and/or to undertake certain seismic improvements, subject only to Developer’s ownership of the Property. No appeal of such permit shall have been filed, and the time for such appeal shall have expired. If an appeal has been filed, it has been finally resolved.
- (5) Developer shall provide to PDC a draft commitment for the Real Estate Loan at least one (1) month prior to the Closing Date set forth in the Schedule. Developer shall have received a final commitment for the Real Estate Loan, in form and on terms acceptable to Developer and PDC, on or before five (5) business days prior to the Closing Date in the Schedule.
- (6) Developer shall have demonstrated the financial feasibility of the Project, including acquisition, rehabilitation and new construction, by providing to PDC evidence satisfactory to PDC that the Marco CDE is prepared to close the Real Estate Loan in

- an amount sufficient to fund the Project, not later than five (5) business days prior to the Closing Date in the Schedule.
- (7) Developer shall have entered into a Construction Contract for the construction and rehabilitation of the Project.
  - (8) All Transaction Documents shall be in form and substance acceptable to PDC and Developer.
  - (9) All Real Estate Loan Documents shall be in form and substance acceptable to PDC and Developer.
  - (10) The Condominium Unit Sales Agreement shall be in form and substance acceptable to PDC and Developer.
  - (11) There shall be no litigation pending that prevents PDC or Developer from performing their respective obligations under this Agreement.
  - (12) Neither party shall be in default under any material term or condition of this Agreement, including the completion of each task shown on the Schedule of Performance to be completed as of Closing. Each party represents to the other that, as of the date hereof, there are no material defaults under this Agreement or events, that now or with the passage of time would constitute a material default under this Agreement.
  - (13) Developer shall have accepted or waived exceptions to title and the condition of the Property, subject only to the Final Permitted Exceptions.
  - (14) PDC shall have received an opinion from Tax Counsel selected by the Portland Family of Funds, addressed to PDC, in form and substance satisfactory to PDC, which opines that the sale of Condominium Units, including the assumption of the Real Estate Loan by the prospective purchasers of the Condominium Units, (A) is permitted under NMTC regulations, (B) will not result in recapture, loss or disallowance of all or a portion of NMTCs and (C) will not have a material, adverse effect on the amount and timing of NMTCs projected to be available to the Tax Credit Investor in accordance with financial projections to be prepared by the Portland Family of Funds (and approved by PDC) for the Project.
  - (15) Reserved.
  - (16) The Board of Commissioners of the Portland Development Commission shall have authorized the transaction contemplated by this Agreement.
  - (17) Reserved.
  - (18) All Condominium Documents (other than the plat) shall (i) be in form and substance acceptable to PDC and Developer and (ii) have been approved by PDC in accordance with Section 5.3.

- (19) The tax credit investor(s) for the purchase of the New Market Tax Credits shall have entered into binding agreements, in form and substance satisfactory to PDC, with the Investment Fund for the purchase of the New Market Tax Credits.
- (20) The Closing of the PDC Senior Loan shall have occurred or shall be consummated simultaneously with the conveyance of the Property by PDC to Developer.
- (21) The Closing of the Real Estate Loan by Marco CDE and Developer shall have occurred or shall be consummated simultaneously with the conveyance of the Property by PDC to Developer.
- (22) Neither party shall be in default under any material term or condition of Transaction Documents. Each party represents to the other that, as of the date hereof, there are no material defaults under the Transaction Documents or events, that now or with the passage of time would constitute a material default under the Transaction Documents.
- (23) Escrow Agent shall have issued to Developer and PDC a binding commitment (a) satisfactory to Developer, to issue to Developer an Owner's Title Insurance Policy covering the Property in an amount not less than the Purchase Price, subject only to the Final Permitted Exceptions; and (b) satisfactory to Developer and PDC, as lender, to issue a Lender's Extended Title Insurance Policy in an amount not less than the PDC Senior Loan, the PDC predevelopment loans and all other financing to be provided directly or indirectly by PDC to finance the costs of the Project.
- (24) The Land Division and Alley Vacation shall be final and the plat recorded.
- (25) All documentation necessary to evidence the restrictive covenant described in Section 5.10 shall have been recorded against the Property in form and substance satisfactory to PDC and shall include a provision which indicates that such restrictive covenants will be effective with respect to each Condominium Unit once the Condominium Documents have been recorded in the real property records of Multnomah County, Oregon.
- (26) Developer shall have provided to PDC a development budget (including itemized sources and uses of funds) for the Project, in form and substance satisfactory to PDC and Developer.
- (27) Developer shall have secured equity commitments to the extent necessary to complete acquisition, rehabilitation and new construction of the Project.



- (28) PDC shall have approved the basic traffic management plan for site operations described in Section 5.4.
  - (29) Fully executed original counterparts of all Transaction Documents and Real Estate Loan Documents shall have been delivered to the Escrow Agent for the Closing.
  - (30) Developer shall have entered into a Good Neighbor Agreement with the King Neighborhood Association, as described in Section 5.7.
- (b) **To Developer's Satisfaction:**
- (1) Developer shall have determined that PDC has title to the Property subject only to the Final Permitted Exceptions.
  - (2) Reserved.
  - (3) PDC shall not be in default under any material term or condition of this Agreement. As of Closing, PDC shall represent to Developer that there are no material defaults by PDC under this Agreement or events which with the passage of time would constitute a material default by PDC under this Agreement.
  - (4) PDC's representations and warranties stated in Section 1.6 herein are true and correct as of the Closing Date.
  - (5) Reserved.
  - (6) Developer shall be reasonably satisfied with the physical and environmental condition of the Property as of the Closing Date.
- (c) **To PDC's Satisfaction:**
- (1) Developer shall have made the Escrow Deposit at the time and in the amount specified in this Agreement.
  - (2) Developer shall provide evidence satisfactory to PDC that Developer has satisfied all conditions precedent to the initial disbursement of the Real Estate Loan, including without limitation, the terms set forth in this Agreement (including **Exhibit I**) and all Real Estate Loan Documents.
  - (3) Reserved.
  - (4) Reserved.
  - (5) Developer shall have provided to Escrow Agent articles of organization, operating agreement and a certificate of good standing from the Secretary of State of the State of Oregon dated no earlier than ten days prior to Closing.
  - (6) Developer shall have provided to Escrow Agent evidence of the corporate approvals of Developer authorizing (i) the execution of

the Real Estate Loan Documents, (ii) the execution of the Transaction Documents, and (iii) the performance of the transactions contemplated by this Agreement, the Real Estate Loan Documents and the Transaction Documents, including without limitation, the Closing and acquisition, rehabilitation, and new construction of the Project.

- (7) Reserved.
- (8) Developer shall have provided evidence satisfactory to PDC that demonstrates that there will be Real Estate Loan proceeds available for draw (in excess of those amounts which are necessary to fund the Project Capital Costs, the Capitalized Debt Service Payments and the Capitalized Maintenance Fee Payments) in the minimum amount of \$450,000, as shown in the final Project development budget (including itemized sources and uses of funds) as of the date of Closing, which will serve as a Construction Cost Contingency.
- (9) Developer shall have demonstrated the ability of the Project to generate sufficient revenues to pay debt service on the Real Estate Loan by providing evidence satisfactory to PDC that Developer has (i) executed binding Condominium Unit Sales Agreements for 50% or more of the saleable square footage contained in all Condominium Units in the Project with prospective purchasers of Condominium Units which have been approved by PDC in accordance with Section 5.9 and (ii) demonstrated that there will be Real Estate Loan proceeds available for draw (in excess of those amounts which are necessary to fund the Project Capital Costs, the Capitalized Maintenance Fee Payments and the Construction Cost Contingency) in amounts sufficient, as shown in the final Project development budget (including itemized sources and uses of funds) as of the date of Closing, to pay a proportionate share of debt service on such portion of the Real Estate Loan which is allocable to any unsold Condominium Units for a minimum period of at least one year from the date on which debt service payments on the Real Estate Loan commence (“Capitalized Debt Service Payments”). A credit to the amount required to be available for draw under the PDC Senior Loan and the Real Estate Loan, respectively, for Capitalized Debt Service Payments will be made for any lease revenues generated from one or more lessees of unsold Condominium Unit(s) that are being leased by Developer for a term of at least three years and at lease rates sufficient to generate net operating income to pay a proportionate share of debt service on the Real Estate Loan which is allocable to such leased Condominium Unit(s) for a minimum period of at least three years from the date on which debt service payments on the Real Estate Loan commence.

- (10) Developer shall (a) provide to PDC a copy of each executed Condominium Unit Sales Agreement for each Condominium Unit sold by Developer and (b) provide to PDC evidence satisfactory to PDC that Developer has collected and deposited into an irrevocable escrow account a six percent (6%) nonrefundable Down Payment from each prospective purchaser of a Condominium Unit (“Down Payment Escrow”). The applicable amounts deposited into the Down Payment Escrow shall be released to Developer upon closing of the sale for each respective Condominium Unit.
- (11) Developer shall have registered for LEED certification and shall provide PDC with documentation of the Project’s anticipated LEED credits, evidencing anticipated credits sufficient to reach the LEED Silver level.
- (12) Developer shall not be in default under any material term or condition of this Agreement. As of Closing, Developer shall represent to PDC that there are no material defaults by Developer under this Agreement or events which with the passage of time would constitute a material default by Developer under this Agreement.
- (13) Developer shall have provided evidence satisfactory to PDC that demonstrates that there will be Real Estate Loan proceeds, available for draw to pay Capitalized Debt Service Payments and Capitalized Maintenance Fee Payments (in excess of those amounts which are necessary to fund the Project Capital Costs and the Construction Cost Contingency), equal to the greater of (i) \$68,000 or (ii) an amount equal to \$4.72 multiplied by the total saleable square footage in the Condominium Units that remain unsold at Closing (for purposes of this Section 1.5.1(c)(13), unsold Condominium Units are units with respect to which there is neither a binding Condominium Unit Sales Agreement nor a binding lease with a term of at least three years and with lease rates sufficient to generate net operating income to pay a proportionate share of debt service on the Real Estate Loan allocable to the leased Condominium Unit and to pay the condominium association fees and assessments assessed to the leased Condominium Unit, for a minimum period of at least three years from the date on which debt service payments on the Real Estate Loan commence.).
- (14) Developer’s representations and warranties stated in Section 1.7 herein are true and correct as of the Closing Date.

1.5.2 **Elections upon Non-Occurrence of Conditions Precedent.** Except as provided below, if any Condition Precedent in Section 1.5.1 is not fulfilled to the satisfaction of the benefited Party or Parties on the earlier of (i) the date designated for satisfaction of the Condition Precedent, or (ii) on the date scheduled for Closing,

subject to any extension that may be granted pursuant to this Section 1.5.2, then such benefited Party or Parties may elect to:

- (a) Terminate this Agreement, which termination shall become effective thirty (30) days after the notice of termination is sent (“Termination Date”) unless, before the thirty (30) day period ends, the other Party fulfills such unfulfilled Condition or Conditions Precedent to the reasonable satisfaction of the benefited Party or Parties; or
- (b) Waive in writing the benefit of that Condition Precedent to its obligation to perform under this Agreement, and proceed in accordance with the terms hereof; or
- (c) Extend the Termination Date by which the applicable Condition Precedent may be satisfied, and if the other Party agrees in writing to the extension.

### 1.5.3 Final Termination Date.

- (a) If all of the Conditions Precedent to Conveyance under Section 1.5.1. have not been satisfied, waived or otherwise resolved pursuant to this Agreement on or before September 15, 2006, then this written Agreement shall automatically terminate on September 30, 2006 (“Final Termination Date”) unless the date for satisfying the unsatisfied Condition(s) Precedent is extended by agreement of the Parties prior to the Final Termination Date, or unless the failure of satisfaction of the Conditions Precedent is the result of an Unavoidable Delay, as described in Section 8.9 below (Force Majeure).
- (b) If the Final Termination Date is extended for a period of unavoidable delay, the maximum period of unavoidable delay shall be no longer than 180 days.
- (c) If the Agreement is terminated for failure of satisfaction of the Conditions Precedent, then the obligations of the Parties to each other under this Agreement shall terminate and the Deposit, plus interest earned thereon, if any, shall be returned to Developer as the exclusive remedy for such termination.

## 1.6 PDC Representations and Warranties. PDC represents that:

- 1.6.1 Except as has been disclosed to Developer in the Environmental Reports, to PDC’s knowledge, there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, release or production of Hazardous Substances, or other dangerous or toxic substances or solid wastes on the Property, or underground storage tanks existing 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.

- 1.6.2 PDC has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by PDC in connection with the execution of this Agreement and the transactions contemplated hereby.
- 1.6.3 PDC is not a “foreign person” within the meaning of Section 1445(f) (3) of the Internal Revenue Code of 1986, as amended.
- 1.6.4 To the best of PDC’s knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, PDC’s ability to perform its obligations under this Agreement, or Developer’s ability to develop the Project.
- 1.6.5 To the best of PDC’s knowledge, and except as disclosed in writing to Developer, the Property is in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements (“Laws”).
- 1.6.6 Except as disclosed to Developer in the Environmental Reports, PDC has not received or given any notice stating that the Property is in violation of any Laws; provided, however that PDC makes no representation as to the availability or suitability of utility connections to the Property.
- 1.6.7 No representation, warranty or statement of PDC in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.
- 1.6.8 As of the date hereof, there are no defaults by PDC under this Agreement or events that with the passage of time would constitute a default of PDC under this Agreement.
- 1.6.9 “PDC’s knowledge” shall mean the actual knowledge of the managerial and supervisory personnel of PDC having responsibility for the supervision of the Property.

**1.7 Developer Representations and Warranties.** Developer represents that:

- 1.7.1 Developer has full power and authority to enter into and perform this Agreement in accordance with its terms, and Developer has taken all requisite corporate action in connection with, and obtained all requisite corporate approvals for, the execution of this Agreement and the transactions contemplated hereby.
- 1.7.2 No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

1.7.3 As of the date hereof there are no defaults by Developer under this Agreement or events that with the passage of time would constitute a default of Developer under this Agreement.

1.7.4 Developer enters into this Agreement without reliance upon any verbal representation of any kind by PDC, its employees, agents or consultants regarding any aspect of the site, the Project, its feasibility, financing or compliance with any governmental regulation.

**1.8 Escrow Deposit.** Within five business days following execution of this Agreement Developer will deposit TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) in the form of a promissory note (“Deposit”) with the Escrow Agent. The Escrow Agent will hold the Deposit, with escrow instructions consistent with this Section 1.8.

1.8.1 Upon Closing, the Deposit shall be converted to cash by Developer and shall be credited to the Purchase Price.

1.8.2 If Conditions Precedent to Closing are not satisfied or waived for reasons other than a default by the other Party, and a Party terminates the Agreement for failure of Conditions Precedent to Closing, then the Escrow Agent shall dispose of the Deposit according to the terms of Section 1.5.3 above.

1.8.3 If either Party is in default prior to Closing, and the Agreement is terminated by the non-defaulting Party, the Escrow Agent shall dispose of the Deposit according to Section 8.2 or Section 8.6, whichever is applicable.

## 2. PROPERTY CONDITION AND ENVIRONMENTAL MATTERS

**2.1 Utility Service.** PDC makes no representation as to the availability or suitability of utility connections to the Property. Developer shall pay any costs of installation, connection, or upgrade. Developer shall pay all costs of new utilities to serve the Project. Developer has determined that public and private utilities are available to the Property with sufficient capacity to serve the Project and that any utilities located within the Property are acceptable or shall be removed by Developer.

**2.2 Infrastructure.** Except as otherwise expressly provided in this Agreement, Developer shall design and construct, at its own expense, any infrastructure improvements relating to the Project, and/or required as conditions of City permits or land use approvals, including, but not limited to, sidewalks, lighting, and landscaping.

**2.3 Reserved.**

**2.4 Subsurface, Surface and Building Conditions.** Except for the representations and obligations of PDC set forth in this Agreement, PDC will convey the Property to Developer “AS IS” upon satisfaction of all Conditions Precedent set forth in Section 1.5. Except as otherwise specifically provided in this Agreement, PDC makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the

Property or of any structures thereon for any improvements to be constructed by the Developer, and Developer warrants that it has not relied on any representations or warranties, made by the PDC as to the environmental condition of the Property, the suitability of the soil conditions or any of the conditions of the Property for any improvements to be constructed by the Developer. Except for a breach of PDC representations and warranties expressly set forth in this Agreement, Developer agrees that PDC will not be liable for any loss, cost or damage which may be caused or incurred by Developer by reason of any such soil or physical conditions on the Property. PDC has allowed Developer free access to PDC's records with respect to conditions of the soils and will assist in obtaining the cooperation of other public and private agencies having such information.

## 2.5 Environmental Matters

2.5.1 **Environmental Remediation Activities.** PDC has removed or otherwise abated:

- (a) all known and accessible regulated and hazardous building materials in strict compliance with the "Marco Machine Shop, 5225–5231 NE MLK, Clayton Group Services Report" dated July 10, 2003; and
- (b) all known and accessible impacted soil on the Property in strict compliance with (i) the "Site Closure Report, Vanport Project Site – 5001-5231 NE MLK, Hart Crowser" dated December 9, 2004 and (ii) Department of Environmental Quality ("DEQ") Independent Cleanup Pathway voluntary agreement (ESCI Site ID No. 4115), which resulted in an unrestricted DEQ No Further Action determination letter dated April 4, 2005.

2.5.2 **Indemnification.** Developer shall comply with all Environmental Laws with respect to its business and the operation of the Project from and after the date of Conveyance, except for matters caused in whole or in part by the act or failure to act of PDC, its employees, agents, contractors, or invitees. Developer shall defend, indemnify and hold harmless PDC, its successors and assigns, against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by PDC, its successors or assigns, or asserted against PDC, its successors or assigns, by any other party or parties, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer. The indemnity set forth in this Section 2.5.2 shall survive the issuance of the Certificate of Completion.

2.5.3 **Contribution.** The foregoing indemnity does not limit any rights of contribution that the parties may have against others under applicable law or agreement. The indemnity is intended only as an allocation of responsibility between the parties to this Agreement.

### 3. DEVELOPMENT

**3.1 Project Financing.** Developer will obtain all construction and permanent financing in a total amount not to exceed EIGHT MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$8,700,000) to finance the Maximum Project Costs. The Parties acknowledge an innovative funding structure for the Project, which, by its nature, requires a series of complex transactions to convey the Property and to provide the public and private funds necessary to finance the Maximum Project Costs. The following is a general description of the financing structure. The financing structure will be more specifically described in the Real Estate Loan Documents and the Transaction Documents.

**3.1.1 General.** Developer will obtain a commitment from the Marco CDE to make available the Real Estate Loan in an amount sufficient to finance the Maximum Project Costs. The total amount of the Real Estate Loan disbursed by Marco CDE to Developer to enable Developer to pay for the Project Capital Costs and the amount of actual disbursements of the Capitalized Debt Service Payments and the Capitalized Maintenance Fee Payments may be less than or equal to the Maximum Project Costs. Developer will pay for the Project Capital Costs and the amount of actual disbursements of the Capitalized Debt Service Payments and the Capitalized Maintenance Fee Payments using funds derived from the Real Estate Loan. The proceeds of the Real Estate Loan will be generated from multiple sources: (a) the Senior Loan and (b) the cash sum of the anticipated net proceeds from the sale of New Markets Tax Credits derived from the Project. To effect the investment of these funds into the Project, PDC will make the Senior Loan to the Investment Fund, and the Investment Fund will make a Qualified Equity Investment in the amount of the PDC Senior Loan and the cash sum of net proceeds generated from the sale of New Markets Tax Credits, as equity into Marco CDE. Marco CDE, after satisfaction or waiver by PDC of (i) all Conditions Precedent to conveyance of the Property stated in Section 1.5 above and (ii) all conditions precedent to the closing and disbursement of the Senior Loan, and satisfaction of all conditions precedent to disbursement of the Real Estate Loan, will make the Real Estate Loan to the Developer in the manner described in the immediately succeeding paragraph.

To finance the Maximum Project Costs, Marco CDE will make a Real Estate Loan to Developer in an amount not to exceed the Maximum Project Costs. In return, Developer will execute (a) a Developer Promissory Note in favor of Marco CDE in the amount of the Maximum Project Costs to evidence the obligation of Developer to repay all amounts disbursed under the Real Estate Loan and (b) a Developer Trust Deed which shall secure Developer obligations under the Developer Promissory Note.

Upon completion of the Project, Developer will record all Condominium Documents necessary to form the Project Condominium form of ownership for the Project. Developer will own all Condominium Units in the Project until Developer conveys its ownership interest in such Condominium Units to owner-occupied businesses. Developer will sell ownership interests in all Condominium Units of the Project to owner-occupied businesses at a total sales price which equals not more than the sum of (a) the Project Capital Costs, plus (b) the amount of actual



disbursements of Capitalized Debt Service Payments and Capitalized Maintenance Fee Payments for the Project, plus (c) the six percent (6%) Down Payment to be paid by each prospective purchaser on the purchase of each Condominium Unit, plus (d) the Construction Cost Contingency. Upon acquiring fee title to a Condominium Unit in the Project, each Condominium Unit Owner will execute (a) a Condominium Unit Owner Promissory Note in favor of Developer which evidences the obligation of the Condominium Unit Owner to pay the purchase price for a particular Condominium Unit in connection with such Condominium Unit Owner's purchase of such respective Condominium Unit and (b) a Condominium Unit Owner Trust Deed which shall secure obligations of such Condominium Unit Owner under the corresponding Condominium Unit Owner Promissory Note. Each Condominium Unit Owner Promissory Note shall be made in an amount which equals such portion of the Real Estate Loan allocable to each respective Condominium Unit, excluding the six (6%) Down Payment.

As the closing for the sale of each Condominium Unit is consummated, Developer shall assign its interest in each Condominium Unit Owner Promissory Note and corresponding Condominium Unit Owner Trust Deed to Marco CDE and thereby achieve a corresponding partial satisfaction of a proportionate amount of Developer's obligation under the Developer Promissory Note with respect to the Real Estate Loan.

As of the date when Developer's ownership interest in 100% of the square footage of all Condominium Units in the Project has been conveyed to third party Condominium Unit Owners, (a) the sum total of all Condominium Unit Owner Promissory Notes will equal in aggregate (i) the Project Capital Costs, (ii) the amount of actual disbursements of Capitalized Debt Service Payments and Capitalized Maintenance Fee Payments for the Project, and (iii) the Construction Cost Contingency and (b) the Developer Promissory Note shall be fully satisfied.

The first draw on the Real Estate Loan will be used to (1) pay off any outstanding predevelopment loan balances owed by the Developer to PDC in connection with the 2005 Predevelopment Loan and the 2006 Predevelopment Loan in accordance with Section 3.1.3 and (2) pay to PDC the cost of acquiring the Property which serves as the site for the Project.

Each Condominium Unit Owner shall be responsible for financing, acquiring, constructing and installing Tenant Improvements within its own respective Condominium Unit. A community bank has agreed to provide a standard loan package to prospective Condominium Unit purchasers.

3.1.2 **PDC Senior Loan.** At Closing, PDC agrees to make the Senior Loan in the amount not to exceed SIX MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,800,000) to the Investment Fund. The terms and conditions of the PDC Senior Loan shall be approved by the PDC Loan Committee within the parameters set forth in this Section 3.1.2. However, at a minimum, no disbursement of the Senior Loan will occur unless and until:

- (a) All of the following conditions precedent to closing the Senior Loan have been satisfied:

- (1) The Investment Fund has been validly organized and is in good standing in the state where organized. The form and substance of the operating agreement (and other organizational documents) of the Investment Fund have been approved by PDC.
- (2) Marco CDE has been validly organized and is in good standing in the state where organized. The form and substance of the operating agreement (and other organizational documents) of Marco CDE have been approved by PDC.
- (3) PDC shall have approved the form and content of all Transaction Documents, all Real Estate Loan Documents and any other related agreements. Approval of the Real Estate Loan Documents shall not be unreasonably withheld so long as the terms and conditions of the Real Estate Loan are consistent with the terms and conditions included in this Agreement, including without limitation, Section 3.1 and **Exhibit I**.
- (4) All other funds to be loaned or invested in the Project have been committed to the satisfaction of PDC.
- (5) Reserved.
- (6) The City of Portland BDS shall be ready to issue at minimum one of the following: a limited foundation, seismic and/or demolition building permit which would be required to initiate construction of the Project, to undertake demolition of certain improvements necessary to construct the Project and/or to undertake certain seismic improvements, subject only to Developer's ownership of the Property. No appeal of such permit shall have been filed, and the time for such appeal shall have expired. If an appeal has been filed, it has been finally resolved.
- (7) The Land Division and Alley Vacation shall be final and the plat recorded.
- (8) All land use approvals for the Project required by Title 33 of the Code of the City of Portland shall have been obtained and no appeal of any required approval shall have been filed, and the time for such appeal shall have expired. If an appeal has been filed, it has been finally resolved.
- (9) PDC shall have received an opinion from Tax Counsel selected by the Portland Family of Funds, addressed to PDC, in form and substance satisfactory to PDC, which opines that the sale of Condominium Units, including the assumption of the Real Estate Loan by the prospective purchasers of the Condominium Units, (A) is permitted under NMTC regulations, (B) will not result in the recapture, loss or disallowance of all or a portion of NMTCs and (C) will not have a material, adverse effect on the amount and timing of NMTCs projected to be available to the Tax Credit

- Investor in accordance with financial projections to be prepared by the Portland Family of Funds (and approved by PDC) for the Project.
- (10) Fully executed original counterparts of all Transaction Documents and Real Estate Loan Documents shall have been delivered to the Escrow Agent for the Closing.
  - (11) PDC shall have received either (a) a commitment letter from private lender agreeing to provide financing for Tenant Improvements to sold Condominium Units in the Project and the terms and conditions of such commitment shall be acceptable to PDC, (b) evidence satisfactory to PDC that the prospective purchaser(s) of all sold Condominium Units have the ability to independently finance Tenant Improvements from personal assets, or (c) a combination of both (a) and (b).
  - (12) All Condominium Documents (other than the plat) shall have been approved by PDC in accordance with Section 5.3.
  - (13) Reserved.
  - (14) Reserved.
  - (15) PDC shall have conveyed the Property to Developer in accordance with the terms of this Agreement.
- (b) Terms and conditions of PDC's commitment to make the PDC Senior Loan are as follows:
- (1) The Loan Term of the PDC Senior Loan will equal (a) the Construction Period and (b) a Permanent Period of twenty (20) years. The Construction Period of the PDC Senior Loan will equal (x) a period of 12 months beginning with the date of initial disbursement of PDC Senior Loan proceeds, plus (y) up to two Loan Extensions that may be granted by PDC to the Investment Fund for the PDC Senior Loan upon receipt of no less than 30 days' prior written notice of the Investment Fund provided that (i) no default has occurred under the PDC Senior Loan, (ii) no event has occurred, which with the passage of time would constitute a default under the PDC Senior Loan, (iii) PDC shall have received an opinion from Tax Counsel opining that the Loan Extensions have no material adverse impact on the New Market Tax Credits or the financing for the Project, (iv) PDC has determined, upon a re-evaluation as to the quantity of unsold Condominium Units which shall exist as of the date of expiration of the Loan Extension(s), that there shall be sufficient amounts of Real Estate Loan Proceeds available to fund Capitalized Debt Service Payments under Section 1.5.1(c)(9) and Capitalized Maintenance Fee Payments under Section 3.1.2(b)(11) for all unsold Condominium Units as of the date of expiration of the Loan Extension(s), (v) no default has occurred under this Agreement,

the Transaction Documents or the Real Estate Loan Documents, (vi) no event has occurred, which with the passage of time would constitute a default under this Agreement, the Transaction Documents or the Real Estate Loan Documents, (vii) all representations and warranties of Developer set forth in this Agreement, the Transaction Documents and the Real Estate Loan Documents shall be true and correct as of the date on which the Loan Extension(s) takes effect and (viii) Marco CDE is unconditionally prepared to grant the request for Loan Extension(s) for the Real Estate Loan. PDC will make the Senior Loan to the Investment Fund, and the Investment Fund will make a Qualified Equity Investment in the amount of the PDC Senior Loan and the cash sum of net proceeds generated from the sale of New Markets Tax Credits, as equity into Marco CDE.

As a condition to the PDC's commitment to make the Senior Loan, PDC will require that the Marco CDE provide the Real Estate Loan to Developer for a Loan Term equal to (a) the Construction Period and (b) a Permanent Period of twenty (20) years. The Construction Period for the Real Estate Loan will equal (x) a period of 12 months beginning with the date of initial disbursement of Real Estate Loan proceeds, plus (y) up to two Loan Extensions that may be granted by Marco CDE to Developer upon receipt of no less than 30 days' prior written notice of Developer provided that (i) no default has occurred under the Real Estate Loan, (ii) no event has occurred, which with the passage of time would constitute a default under the Real Estate Loan, (iii) Marco CDE shall have received an opinion from Tax Counsel opining that the Loan Extensions have no material adverse impact on the New Market Tax Credits or the financing for the Project, (iv) no default has occurred under the Transaction Documents, (v) no event has occurred, which with the passage of time would constitute a default under the Transaction Documents, (vi) all representations and warranties of Developer set forth in the Transaction Documents and the Real Estate Loan Documents shall be true and correct as of the date on which the Loan Extension(s) takes effect and (vii) PDC shall have granted the request for the Loan Extension(s) for the PDC Senior Loan.

At the end of the Real Estate Loan 10-Year Period, the Parties anticipate that (i) the Marco CDE will effect the transfer to PDC of its interest in the Real Estate Loan (and all underlying Real Estate Loan Documents, all outstanding Real Estate Loan Promissory Notes and all corresponding Real Estate Loan Trust Deeds), (ii) in consideration of the transfer by Marco CDE to PDC of the Real Estate Loan described in clause (i) above, the PDC Senior Loan will be deemed paid in full, (iii) the Investment Fund will dissolve, (iv) the Vanport CDE will dissolve and (v) PDC will become the holder of all outstanding Real Estate Loan Promissory Notes and corresponding Real Estate Loan Trust Deeds.

- (2) During the Real Estate Loan 10-Year Period, (i) the PDC Senior Loan will be secured by a security interest in the ownership interest of the Investment Fund in the Marco CDE and (ii) the Real Estate Loan will be secured by one or more Real Estate Loan Promissory Notes and one or more Real Estate Loan Trust Deeds against the Property. The Real Estate Loan Trust Deeds will be subordinate to the interest of other lenders providing tenant improvement loans to the Condominium Unit Owners of Condominium Units in the Project. The Parties anticipate that the Transaction Documents will document the scope of the security interest with the security document(s) giving PDC the right to act as the collateral agent on behalf of Marco CDE for purposes of directing all enforcement actions to be taken by Marco CDE in case of default under the Transaction Documents, including without limitation, foreclosure on the Property.
- (3) There will be no payments of principal and interest on the PDC Senior Loan during the Construction Period or the first 10 years of the Permanent Period of the PDC Senior Loan. Simple interest will (i) accrue on the PDC Senior Loan during the first 10 years of the Permanent Period of the PDC Senior Loan at rate of three percent (3%) per annum and (ii) be payable at the end of the first 10-years of the Permanent Period of the PDC Senior Loan. No interest shall accrue on the PDC Senior Loan during the Construction Period.
- As a condition of PDC's commitment to make the PDC Senior Loan, PDC shall require (i) the Real Estate Loan to bear interest at a rate not to exceed three quarters of one percent (0.75%) per annum during the Real Estate Loan 10-Year Period and (ii) semi-annual interest-only payments on the Real Estate Loan during the Real Estate Loan 10-Year Period. No interest shall accrue on the Real Estate Loan during the Construction Period. Marco CDE shall collect the interest-only payments on the Real Estate Loan during the Real Estate Loan 10-Year Period for application at the end of the Real Estate Loan 10-Year Period towards paying all unpaid interest which accrued on the PDC Senior Loan.
- (4) As a condition of PDC's commitment to make the PDC Senior Loan, PDC shall require that (i) at the end of the Real Estate Loan 10-Year Period, the Real Estate Loan will bear simple interest at a rate not to exceed three percent (3%) per annum, (ii) level monthly payments of principal and interest will commence on the Real Estate Loan at the end of the Real Estate Loan 10-Year Period with the monthly payment calculated on the basis of a twenty year amortization even though final maturity of the Real Estate Loan will occur ten years after the end of the Real Estate Loan 10-Year Period, and (iii) a balloon payment will be made at the end of the Permanent Period in the amount of all remaining unpaid principal and accrued interest on the Real Estate Loan .

- (5) All unpaid principal and accrued interest on the PDC Senior Loan will be due and payable in full at maturity or, at PDC's option, upon the occurrence of an event of default under the loan agreement for the PDC Senior Loan or any other loan document executed in connection therewith (including without limitation, a sale of the Property or Project in violation of this Agreement) if such event occurs prior to maturity of the PDC Senior Loan but after the expiration of the NMTC compliance period.
- (6) As a condition of PDC's commitment to make the PDC Senior Loan, PDC shall require that obligations under the Real Estate Loan may be assigned only with the prior written consent of PDC, which consent may be conditioned on, among other things, the assignee's suitability under PDC's underwriting standards and the assignee's acceptance of any new or revised loan terms and conditions required by PDC.
- (7) PDC shall act as the disbursement agent for the Senior Loan and shall have the right to approve any disbursements of the Real Estate Loan in the form of loans or grants from Marco CDE to Developer. Such rights will be further described in the Transaction Documents and the Real Estate Loan Documents.
- (8) As a condition of PDC's commitment to make the PDC Senior Loan, PDC shall require that while the Real Estate Loan is outstanding, all transfers, by sale, lease or otherwise, of Condominium Units shall be subject to review and approval by PDC to the extent of and in accordance with Sections 5.9 and 5.10.
- (9) As a condition of PDC's commitment to make the PDC Senior Loan, PDC shall require that at the conclusion of the Real Estate Loan 10-Year Period, all undisbursed amounts of the Real Estate Loan, including without limitation, those amounts which have been held back for Capitalized Debt Service Payments and Capitalized Maintenance Fee Payments, will not be available for disbursement to Developer for any purpose.
- (10) Reserved.
- (11) Developer shall have provided evidence satisfactory to PDC that demonstrates that there will be Real Estate Loan proceeds available for draw (in excess of those amounts which are necessary to fund the Project Capital Costs, the Capitalized Debt Service Payments and the Construction Cost Contingency) in amounts sufficient, as shown in the final Project development budget (including itemized sources and uses of funds) as of the date of Closing, to pay a proportionate share of condominium maintenance fee assessments which are allocable to any unsold Condominium Units for a minimum period of at least one year from the date on which such condominium maintenance fee

assessments commence (“Capitalized Maintenance Fee Payments”).

### 3.1.3 PDC Predevelopment Loans.

- (a) **Existing Predevelopment Loan.** PDC has previously made a predevelopment loan (“2005 Predevelopment Loan”) to Developer in an amount not to exceed \$188,000 to finance a portion of the pre-development soft costs attributable to development of the Project pursuant to a certain Predevelopment Loan Agreement dated as of \_\_\_\_\_, 2005 (“2005 Predevelopment Loan Agreement”), executed by and between PDC and Developer. All 2005 Predevelopment Loan funds disbursed by PDC to Developer will be repaid from the first construction loan draw for the Project if the Project proceeds to Closing. If the Project does not proceed to Closing, then (i) the 2005 Predevelopment Loan will be forgiven and (ii) Developer shall assign to PDC all contract rights including work product on contracts to which the 2005 Predevelopment Loan funds have been applied.
- (b) **Additional Predevelopment Loan.** Subject to the approval by the PDC Loan Committee, PDC and Developer shall enter into a second predevelopment loan agreement (“2006 Predevelopment Loan Agreement”), making available to the Developer a predevelopment loan (“2006 Predevelopment Loan”) in an amount not to exceed \$412,000 for predevelopment services for consulting, architectural and engineering services, design review fees, appraisal fees, permitting fees, legal fees and project management fees necessary for Project development. The 2006 Predevelopment Loan Agreement will without limitation establish minimum requirements for disbursement. The 2006 Predevelopment Loan funds will be disbursed to reimburse Developer for expenses incurred, based on written evidence acceptable to PDC. Any disbursed 2006 Predevelopment Loan funds will bear interest at a rate of zero percent (0%) per annum, but if the Project proceeds to Closing, all 2006 Predevelopment Loan funds disbursed by PDC to Developer will be repaid to PDC from the first construction loan draw for the Project. If the Project does not proceed to Closing, (i) the 2006 Predevelopment Loan will be forgiven and (ii) Developer shall assign to PDC all contract rights including work product on contracts to which 2006 Predevelopment Loan funds have been applied.

## 3.2 Plans, Drawings and PDC Review.

- 3.2.1 Developer will diligently pursue the design work necessary to construct the Project. Developer and PDC will cooperate to complete the following described design

review process in the spirit of an open and collaborative effort. Developer and PDC have agreed to the Scope of Development and the Schematic Design Documents which identify components of the Project that are the basis for entering into this Agreement.

Developer shall prepare 25% Construction Drawings and Final Construction Plans and Specifications and submit them to PDC for review and approval in accordance with the Schedule of Performance. 25% Construction Drawings will be reviewed for general conformance to the Project goals and conformance with this Agreement and approved, if approved, by the Director of Development of PDC upon recommendation of the PDC Project Manager prior to Developer submitting its application to the City for design review. The Final Construction Plans and Specifications will be reviewed for general conformance to the Project goals and conformance with this Agreement and approved by the PDC Project Manager, if approved, prior to their submittal to BDS for building permit approval. All plans and specifications referred to in this Section 3.2 are collectively referred to herein as the “Drawings”.

PDC will respond to request for review or approval within fifteen (15) business days of receipt of documents underlying such request. PDC’s failure to timely respond will be deemed approval or acceptance. Further, PDC will not unreasonably withhold its approval of any Drawings for the Project which, in PDC’s opinion, adequately address the following design and use objectives:

- (a) Pedestrian Environment. The design and materials of the Project foster a safe, friendly and active pedestrian environment in the Project area;
- (b) Neighborhood Compatibility. The design for site and building details, materials and colors are compatible with and complementary to the Project’s neighborhood; The design evidences methods to mitigate immediate neighbor impacts, including, but not limited to, the following topics: outdoor storage, garbage, noise, nighttime operations, deliveries, graffiti, outdoor maintenance, outdoor lighting, and odors; the design is consistent with implementation of the basic traffic management plan required by Section 5.4 below;
- (c) Serves as a Catalyst. The Project will serve as a model of well-designed, high quality, sustainable “green” development, and will be designed to enhance the neighborhood and to encourage additional private investment on NE Martin Luther King, Jr. Blvd.
- (d) Sustainability and LEED Certification. The design meets PDC Sustainability Policy and the LEED Silver Certification level.



- 3.2.2 **Scope of PDC Design Review.** PDC's review and approval of drawings will be limited to conformance with the Project goals and this Agreement with respect to the following elements of the Drawings submitted:
- (a) 25% Construction Drawings. Elements depicted in the 25% Construction Drawings which were not, or are at a level of detail which was not, approved in, or do not conform to the Schematic Design Documents;
  - (b) Final Construction Plans and Specifications. Elements depicted in the Final Construction Plans and Specifications which were not, or are at a level of detail which was not, approved in, or do not conform to, the approved 25% Construction Drawings.
- 3.2.3 **Changes in Approved Drawings.** If Developer wants to substantially change any Drawings or plans after approval by PDC, Developer shall submit the proposed changes to PDC for approval in conformance with Section 3.2.1. 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 PDC design review and any land use process of the appropriate bureaus or agencies within the City, but PDC does not represent or warrant that its assistance will guarantee approval.
- 3.2.4 **Project Rendering.** Developer will provide PDC with a color rendering of the Project at the time the Final Construction Plans and Specifications are submitted to PDC for PDC approval. The color rendering of the Project will be delivered to PDC in both hard copy format and electronic format.
- 3.2.5 **Community Outreach.** Developer shall endeavor to ensure that the Vanport Project advisory committee, local neighbors, and King Neighborhood residents are kept informed of Project progress and provided specific opportunities to provide input into the proposed Project including design, operations and community benefits. The Developer may achieve this objective through, meetings with adjacent residents, broader neighborhood meetings, or a project newsletter. PDC shall help coordinate outreach with the community and provide outreach assistance as mutually determined.

### 3.3 General Development Oversight

3.3.1 Developer shall submit all Developer's construction contract documents to PDC for review and approval in accordance with the Schedule of Performance prior to execution of such documents by Developer and general contractor for the Project.

3.3.2 During the term of Project construction, Developer shall promptly notify the PDC Project Manager of any substantial change in the work. A substantial change shall mean any change that would materially alter the function or external appearance of the Project or delay completion of the Project or exceed the cost established for the Project. The PDC Project

Manager may attend any weekly construction meeting or visit the work site as may be necessary subject to compliance with the Health and Safety Plan for such Project site.

### **3.4 Diligent Completion.**

- 3.4.1 Subject to the terms and conditions of this Agreement, Developer covenants to complete the Project through the rehabilitation of existing improvements on the Property and the construction of new improvements in substantial conformance with the Final Construction Plans and Specifications and to comply with the Schedule of Performance, subject to Force Majeure as provided in Section 8.9. Developer agrees to keep PDC informed of its progress with respect to development of the Project during construction, with periodic reports to be issued no less frequently than once a month until PDC issues a Certificate of Completion for the Project.
- 3.4.2 Project development shall include:
- (a) Entering into all necessary architectural and construction contracts;
  - (b) Securing all necessary public entitlements and building permits, except the Land Division and Alley Vacation which efforts shall be the sole responsibility of PDC; and
  - (c) Securing all financing necessary to complete the Project.
- 3.4.3 PDC will upon Developer's request, assist Developer in obtaining the approvals necessary to commence construction and complete the Project as proposed in this Agreement. The Parties understand and agree that PDC cannot guarantee such approvals, but PDC shall use its best efforts in working with the City and any other parties necessary to accomplish the Project.

### **3.5 Reserved.**

### **3.6 Safety Matters; Indemnification.** Developer shall:

- 3.6.1 **Safety.** Comply with all safety laws and take such measures necessary to protect its employees, and PDC's agents, contractors, subcontractors, licensees and invitees, and the personal property and improvements of each, from injury or damage caused by or resulting from the performance of its construction or other activities in connection with this Agreement.
- 3.6.2 **Liability Claims.** Indemnify and hold PDC harmless from all claims, costs, expenses and liabilities arising from the death of, or accident, injury, loss or damage whatsoever caused to, any person or to the property of any person as occurs in the process of the construction work and other activities undertaken by Developer in connection with the implementation of this Agreement, except for those caused by the negligence of PDC.

3.6.3 Indemnity from Liens. Indemnify, defend and hold PDC harmless from and against all mechanics', materialmen's and laborers' liens, and all costs, expenses and liabilities arising from Developer's construction and other activities undertaken by Developer in connection with the implementation of this Agreement.

**3.7 Liens.** Developer agrees that in the event any statutory lien shall be filed during the term of this Agreement against any portion of the Project by reason of labor, services, or materials supplied to or at the request of Developer or pursuant to any construction in the Project, it shall pay and discharge the same of record within thirty (30) days after the filing thereof, subject also to the provisions of the following sentence. Developer shall have the right to contest the validity, amount or applicability of any such respective liens by appropriate legal proceedings, and so long as it shall furnish bond or indemnity as hereinafter provided, and be prosecuting such contest in good faith, the requirement that it pay and discharge such items within said thirty (30) day period shall not be applicable, provided, however, that in any event, Developer shall within thirty (30) days after the filing thereof, bond in accordance with applicable laws, or in the alternative indemnify against such liens in amount and form satisfactory to induce the title insurance company which insured title to the Project to insure over such liens or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such liens and, further, Developer shall indemnify and save harmless PDC from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such liens. In the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to the Developer, Developer shall within five (5) days thereafter cause the lien(s) to be discharged of record.

**3.8 Inspection and Property Access.**

3.8.1 **Before Conveyance of Property.** Before conveying the Property to Developer, and pursuant to a written Permit of Entry, PDC may allow Developer and Developer's employees, agents and consultants to enter upon the Property, at all reasonable times whenever and to the extent necessary to carry out the purposes of this Agreement.

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

**3.9 Certificate of Completion.**

3.9.1 **When Developer is Entitled to Certificate of Completion.** Upon substantial completion (as defined below) of the Project, and upon satisfaction of the other conditions of this Section 3.9, PDC will furnish Developer with a Certificate of Completion for the Project, substantially in the form attached hereto as **Exhibit G**. The Project will be deemed to be substantially complete when (i) the Project is completed according to the Final Construction Plans and Specifications, (ii) the City has issued all temporary Certificate(s) of Occupancy for all usable or rentable square footage within the Project, and (iii) any other improvements required by the

terms of this Agreement to have been completed at the time the Project is complete are complete in all material respects.

- 3.9.2 **Meaning and Effect of the Certificate of Completion.** The Certificate of Completion shall provide for termination of the construction obligations established under this Agreement and limitation of remedies of PDC as expressly provided for therein.
- 3.9.3 **Form of Certificate of Completion; Procedure Where PDC Refuses to Issue.** A Certificate of Completion shall be in a form that can be recorded in the real property records of Multnomah County. At Developer's request, the Certificate of Completion for the Project shall state that which terms and conditions of this Agreement are of no further force and effect. If PDC refuses or fails to provide a Certificate of Completion in accordance with this section, then PDC, within fifteen (15) days after written request by Developer for such Certificate of Completion, shall provide Developer with a written statement indicating in detail in what respects Developer has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts Developer must take or perform to obtain such Certificate of Completion. Upon receipt of such detailed statement from PDC, Developer shall complete the improvements and/or cure the alleged default in a manner responsive to the stated reasons for disapproval. PDC's failure to furnish Developer with such detailed written statement within such fifteen (15) day period shall be deemed PDC's approval of Developer's request for the Certificate of Completion.

#### 4. ASSIGNMENT PROVISIONS

- 4.1 **No Assignment.** Because it is a municipal entity, PDC is uniquely benefited by completion of the Project. Developer is uniquely qualified to construct the Project. Developer's participation in the Project is a material inducement for PDC's participation in, and support of this Project. Therefore, except as otherwise provided in Section 4.2, no assignments of interest in this Agreement shall be permitted without PDC's express written consent. Any attempt to assign or transfer an interest in this Agreement or any portion thereof in violation of this Section 4.1 shall result in immediate termination of this Agreement.
- 4.2 **Permitted Transfers.** Notwithstanding Section 4.1, PDC hereby gives its consent to the following transfers of the Property and, if necessary, assignment of this Agreement:
- 4.2.1 Any Mortgage(s) which Developer may cause to attach to the Property provided that PDC has approved the terms of the Mortgage, such that the mortgage holder becomes a Mortgagee afforded rights under Section 6 of this Agreement as provided herein, which approval shall not be unreasonably withheld.

#### 5. SPECIAL COVENANTS AND CONDITIONS

- 5.1 **Participation in Portland Development Commission Programs.**

- 5.1.1 **Emerging Small Business Opportunity Program.** Developer shall comply with the Portland Development Commission Emerging Small Business Opportunity Program that promotes the participation of Emerging Small Businesses (ESB), Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) in connection with PDC projects (collectively, “ESBs”) described in Attachment B of the Fair Contracting Guideline Index, **Exhibit D**, and made a part hereof. Developer agrees to attach Attachment B to all agreements with the general contractor for the Project and to abide by its provisions. For the purpose of this Section 5.1 and ESB Program, the percentages in Attachment B are to be applied to the Project. PDC will provide technical assistance to Developer in the implementation of the Emerging Small Business Opportunity Program for the Project. Although no goals are required for minority and women-owned firms, Developer will provide utilization information to PDC.
- 5.1.2 **Construction Hiring.** Developer shall comply with the City of Portland Workforce Training and Hiring Program in effect at the Effective Date described in Attachment A of the Fair Contracting Guideline Index, **Exhibit D** and made a part hereof, by requiring its contractors and subcontractors to comply with such Program.
- 5.1.3 **EEO Certification.** Developer shall comply with PDC’s EEO Certification Program in effect at the Effective Date described in Attachment C of the Fair Contracting Guideline Index, **Exhibit D**, and made a part hereof, by requiring its contractors and subcontractors to comply with such Program.
- 5.1.4 **Green Building Standards.** Developer shall comply with PDC’s policy regarding green building standards as of the Effective Date of this Agreement. Developer will provide information to PDC that PDC may reasonably request the analysis of the effectiveness of any green building, sustainability, and energy efficient elements that Developer has incorporated into the Project.
- 5.2 Communications.** The Parties agree that all public communications concerning the Property, e.g., press releases or information provided to the press and all substantive discussions with public agencies having jurisdiction over the Property [excluding discussions which (a) are undertaken with public agencies in the ordinary course of Developer’s business in resolving construction-related issues (i.e. communication regarding design review approval, land use approvals and building permits) and which are not reasonably anticipated to give rise to litigation and/or issues regarding potential liability to PDC], will be undertaken jointly by PDC and Developer and shall be subject to the prior approval of each of PDC and Developer.
- 5.3 Terms of Condominium Documents.** Developer shall submit for PDC review and approval the Condominium Documents for the Project prior to submittal to the Oregon Real Estate Agency for approval. PDC’s review will include review of provisions related to (a) building maintenance and repair, (b) parking lot maintenance and repair, (c) landscaping maintenance, (d) standards for exterior appearance of commercial and office spaces (including signage) and (e) adequacy of reserves for replacement of common elements of the Project. PDC will respond to request for review or approval within fifteen (15) business days of receipt of the

- Condominium Documents underlying such request. PDC's failure to timely respond will be deemed approval or acceptance. PDC review is independent of other City review of the Condominium Documents, if any is required.
- 5.4 Transportation and Circulation.** Developer will formulate a basic traffic management plan for site operations, which would include, for example, the anticipated timing and frequency of delivery vehicles, a general circulation plan, and a description of anticipated employee parking. As a Condition Precedent to Closing, PDC shall have approved such plan.
- 5.5 Community Hiring.**
- 5.5.1 **First Source Agreement.** Developer will endeavor to strongly encourage prospective purchasers of Condominium Units to enter into First Source Agreements. Developer will endeavor to obtain from all prospective purchasers of Condominium Units to provide to PDC such information about positions, wages, and geographic makeup of employees as PDC may reasonably request from time to time during the term of the First Source Agreement, subject to reasonable confidentiality requirements of such prospective purchasers.
- 5.6 Community Benefits.** Developer shall make a good faith effort to hire and procure from the local community for services and contracting opportunities. This might include landscaping, maintenance, janitorial, temporary staffing, and other such services as well as materials and good procurement. PDC will facilitate access to a database of pertinent North and Northeast Portland businesses. Developer will provide to PDC such information about community hiring as PDC may reasonably request from time to time during the term of this Agreement.
- 5.7 Neighborhood Impacts.** In the Design Review Drawings and in a Good Neighbor Agreement to be executed by Developer and the King Neighborhood Association, Developer shall address ways to mitigate potentially negative immediate-neighbor impacts including, but not limited to, and the following topics: construction activities, outdoor storage, garbage, noise, nighttime operations, deliveries, graffiti, parking, outdoor maintenance, outdoor lighting, and odors.
- 5.8 Marketing Efforts.** Developer shall take all commercially reasonable steps to market, lease and re-lease, if necessary, the Project until all Condominium Units in the Project have been sold by Developer following issuance of the Certificate of Completion. Commercially reasonable steps will include the development and maintenance of an active marketing strategy, and the assignment of such Developer personnel, or hiring of other professional persons, as is necessary to implement the strategy.
- 5.9 Transfers of Condominium Units by Developer.** While the Real Estate Loan is outstanding, Developer shall not transfer, by sale, lease or otherwise, any Condominium Unit unless such transfer satisfies the transfer and ownership provisions of Section 3.1.1 and unless and until PDC has approved each prospective purchaser of a Condominium Unit based on the following criteria:
- 5.9.1 PDC shall have determined, upon completion of an evaluation by PDC staff of each such prospective purchaser, that such prospective purchaser has

demonstrated that it has the long-term capability to both (a) generate sufficient revenues to pay debt service on its respective share of the Real Estate Loan and (b) satisfy the goals and objectives established for this Project (if such prospective purchaser were to be approved by PDC to purchase the respective Condominium Unit in accordance with the terms of this Agreement).

5.9.2 Each prospective purchaser shall provide to PDC a binding commitment letter and such other evidence as shall be reasonably required by PDC to independently confirm that such prospective purchaser has obtained financing for Tenant Improvements to Condominium Unit which (a) is in an amount sufficient to complete acquisition, construction, installation and equipment of such Condominium Unit as necessary to enable such prospective purchaser to operate its business and (b) is being supplied on terms and conditions which shall be satisfactory to PDC. Loans for Tenant Improvements must meet all of the conditions set forth below:

- (a) The loan(s) for Tenant Improvements must satisfy the underwriting and credit requirements of the private lending institution which is providing such loan(s); and
- (b) The combined amounts of the loan(s) for the Tenant Improvements and the Real Estate Loan for the applicable Condominium Unit shall not in aggregate exceed (i) the actual cost of the Tenant Improvements, plus (ii) the purchase price to be paid by such prospective purchaser of the respective Condominium Unit, less (iii) the six percent (6%) Down Payment to be paid by such prospective purchaser on the purchase of such Condominium Unit.

**5.10 Agreement of Developer to Record Restrictive Transfer Covenants Against Property.**

Prior to closing on the conveyance of Developer's interest in any Condominium Unit, Developer covenants to cooperate in recording against the Property and each Condominium Unit a covenant which shall run with the land and which shall not be subordinated to Mortgagee(s) for the Project, to implement the following covenant and condition:

Restriction on Transfer by Condominium Unit Owners (other than Developer). While the Real Estate Loan remains outstanding and unpaid, each Condominium Unit Owner (and its successors) shall not transfer, by either (a) sale of any Condominium Unit, (b) lease of 50% or more of the total square footage of any one or more Condominium Unit(s), or (c) otherwise, unless and until PDC has approved each prospective purchaser of a Condominium Unit based on the criteria set forth in Section 5.9 of this Agreement; provided however that PDC shall retain the right during the Real Estate Loan 10-Year Period to approve, for matters which involve compliance with NMTC regulations and other applicable law and conformance with public objectives, transfers by lease of less than 50% of the total square footage of any Condominium Unit if the lease permits the use of the premises for purposes that

are not substantially similar to the purposes for which the remaining portion of the Condominium Unit is used.

- 5.11 Construction Payroll Certification.** Developer covenants that it shall cause its general contractor and/or other appropriate parties to lawfully certify all construction payroll to be paid with respect to the Project. Developer further covenants to maintain such records for a period of six (6) years following the date on which PDC issues the Certificate of Completion for the Project.
- 5.12 Developer Fee.** Developer shall receive compensation for services rendered in connection with the development of the Project and Project management which in total equals five percent (5%) of the lesser of (x) the sum of the Maximum Project Costs and the Construction Cost Contingency or (y) \$8,700,000. The portion of the developer fee which shall be disbursed during the term of this Agreement pursuant to this Section 5.12 shall be the amount calculated in the preceding sentence, less any advancements of developer fees and/or project management fees to Developer from the 2005 Predevelopment Loan, the 2006 Predevelopment Loan or otherwise (“Base Figure”). Payment to Developer of a developer fee and project management fee, in aggregate, shall occur at the times and in the amounts set forth below:
- (a) Twenty percent (20%) of the Base Figure on the Closing Date.
  - (b) Forty-five percent (45%) of the Base Figure during the Construction Period to be paid in twelve (12) equal monthly installments, commencing one (1) month after the Closing Date. If the Construction Period is less than twelve (12) months in duration, then any unpaid balance on the Developer Fee to be paid under this paragraph (b) will be paid one (1) month following the earlier of (i) the lapse of the Construction Period Expiration Date or (ii) the completion of construction activity on the Project.
  - (c) Twenty-five percent (25%) of the Base Figure within fifteen (15) days following the date on which Developer delivers to PDC evidence satisfactory to PDC that the City has issued all temporary Certificate(s) of Occupancy for all usable or rentable square footage within the Project; and
  - (d) Remaining ten percent (10%) of the Base Figure within fifteen (15) days following the date on which both of the following conditions have been satisfied: (i) PDC issues to Developer the Certificate of Completion and (ii) Developer delivers to PDC evidence satisfactory to PDC that Developer has executed binding Condominium Unit Sales Agreements for 100% of the saleable square footage contained in all Condominium Units in the Project with prospective purchasers of Condominium Units which have been approved by PDC in accordance with Section 5.9. Alternatively, Developer may satisfy the condition precedent set



forth under clause (ii) of this paragraph (d) by delivering to PDC evidence satisfactory to PDC that Developer has executed binding lease agreements for any unsold Condominium Unit(s) in the Project with one or more tenants which have been approved by PDC in accordance with Section 5.9 provided that (A) Developer shall have presented executed binding Condominium Unit Sales Agreements for not less than ninety percent (90%) of all saleable square footage contained in all Condominium Units in the Project with prospective purchasers of Condominium Units which have been approved by PDC in accordance with Section 5.9, (B) there shall have been consummated a closing on the sale of each such sold Condominium Unit described in subclause (A) of this paragraph (d), (C) the lease agreement(s) for such leased Condominium Unit(s) shall each contain a lease term of not less than three years and (D) each unsold Condominium Units shall be leased by Developer at lease rates sufficient to generate net operating income to pay a proportionate share of debt service on the Real Estate Loan which is allocable to each such leased Condominium Unit for a minimum period of at least three years from the date on which debt service payments on the Real Estate Loan commence and to pay the condominium association fees and assessments assessed to each such leased Condominium Unit for a minimum period of at least three years from the date on which debt service payments on the Real Estate Loan commence.

The developer fee described in this Section 5.12 shall not include any incentive developer fee which may be received by Developer pursuant to Section 5.13.

**5.13 Application of Excess Construction Cost Contingency Following Completion of Construction.** Upon issuance of the Certificate of Completion by PDC pursuant to Section 3.9, any Construction Cost Contingency not needed to pay Project Capital Costs shall be applied as follows:

- a) Fifty percent (50%) of unused Construction Cost Contingency shall be paid to the Condominium Association (or held in trust by Marco CDE for payment to the Condominium Association if such Condominium Association has not yet been legally organized) for deposit in a capital reserve which shall be held to fund capital replacement of general common elements of the Project Condominium.
- b) Fifty percent (50%) of unused Construction Cost Contingency shall be paid to Developer as an incentive developer fee to incent Developer for cost containment of Project Capital Costs.

**5.14 Application of Excess Set Asides for Payment of Capitalized Debt Service Payments and Capitalized Maintenance Fee Payments Following Completion of Construction.** On the date on which PDC issues the Certificate of Completion pursuant to Section 3.9, (a) a determination shall be made by PDC as to the number of Condominium Units which remain unsold (for purposes of this Section 5.14, unsold Condominium Units are units with respect

to which there is neither a binding Condominium Unit Sales Agreement under which the sale to the prospective purchaser(s) has occurred nor a binding lease with a term of at least three years and with lease rates sufficient to generate net operating income to pay a proportionate share of debt service on the Real Estate Loan allocable to the leased Condominium Unit and to pay the condominium association fees and assessments assessed to the leased Condominium Unit, for a minimum period of at least three years from the date on which debt service payments on the Real Estate Loan commence) as of such date and (y) based on such determination, any amounts set aside for Capitalized Debt Service Payments and Capitalized Maintenance Fee Payments which shall not be needed for unsold Condominium Units (established as of such date) shall be applied: FIRST, to cover construction cost over runs exceeding Project Capital Costs (as set forth in the final Project development budget as of the Closing Date) and SECOND, to fund a reserve to be held by Marco CDE for application against future deficiencies in payment of debt service on the Real Estate Loan or any other lawful purpose. For purposes of this Section 5.14, the amount of Real Estate Loan proceeds which shall be required for Capitalized Debt Service Payments needed for unsold Condominium Units shall be equal to total debt service requirements on the Real Estate Loan during the first full one-year period of the Real Estate Loan 10-Year Period multiplied by the percentage of saleable square footage in unsold Condominium Units to total saleable square footage in all Condominium Units in the Project. For purposes of this Section 5.14, the amount of Real Estate Loan proceeds which shall be required for Capitalized Maintenance Fee Payments needed for unsold Condominium Units shall be equal to total condominium fee assessments assessed to all Condominium Units during the first full one-year period of the Real Estate Loan 10-Year Period multiplied by the percentage of saleable square footage in unsold Condominium Units to total saleable square footage in all Condominium Units in the Project.

## 6. PERMITTED MORTGAGES

### 6.1 Mortgagee Protection Provisions.

#### 6.1.1 Reserved.

6.1.2 **Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of this Agreement (except those which are covenants running with the Property), a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements in the Property or to guarantee such construction or completion. However nothing in this Agreement shall be deemed or construed to permit or authorize (i) any such Mortgagee, (ii) any third party which thereafter obtains title to the Property or portion thereof or any interest therein from or through such Mortgagee or (iii) any purchaser at a foreclosure sale to devote the Property or any part thereof to any uses, or to construct any improvements thereon other than those uses or improvements required or permitted in the Urban Renewal Plan and this Agreement.

6.1.3 **Copy of Notice of Default.** If PDC delivers any notice or demand to Developer with respect to any breach of or default by Developer in its obligations or covenants

under this Agreement, PDC shall at the same time send a copy of such notice or demand to each Mortgagee approved by PDC at the last address of such holder shown in the records of PDC. Developer shall use its commercially reasonable best efforts to require as part of the construction loan documents, that a Mortgagee give notice to PDC if such Mortgagee delivers any notice or demand to Developer with respect to any breach of or default by Developer in its obligations to the Mortgagee. The notice to PDC should be given at the same time the Mortgagee sends a copy of such notice or demand to Developer. In any event, if Developer receives a notice of default from a Mortgagee, Developer shall forward a copy of the notice to PDC within three (3) business days of receipt by Developer.

6.1.4 Mortgagee's Options to Cure Defaults.

- (a) After any default in or breach of this Agreement by Developer where Developer fails to cure or remedy said default or breach, then each Mortgagee may, at its option, cure or remedy such breach or default within sixty (60) days after passage of the latest date for Developer's cure of the default, and if permitted by its loan documents, to add the cost thereof to the Mortgage debt and the lien of its Mortgage. 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 (a) notifies PDC in writing of its intention to complete the Project according to the approved Final Construction Plans and Specifications, (b) expressly assumes such obligation to PDC by written agreement in form and substance satisfactory to PDC to complete such construction in accordance with this Agreement and (c) furnishes evidence satisfactory to PDC that such Mortgagee possesses the qualifications and financial capability requisite to performing such obligations. If a Mortgagee undertakes to complete the Project, it shall comply with all terms of this Agreement, including without limitation, Sections 5.1.1 through 5.1.4 of this Agreement. Any Mortgagee who properly completes the Project shall be entitled to issuance of a Certificate of Completion, upon written request made to PDC following the procedures set forth in Section 3.9 above.
- (b) Reserved.
- (i)
- (c) Nothing in this Section 6.1.4 is intended to limit a Mortgagee's other remedies in the case of Developer default under a Mortgage.

- 6.1.5 **Amendments Requested by Mortgagee.** PDC shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to Developer secured by a security interest in all or any part of the Property and/or the Project, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of PDC.

## 7. RESERVED.

## 8. DEFAULT; REMEDIES

### 8.1 Default and Cure.

- 8.1.1 **Default by Developer.** A default shall occur if Developer breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after Developer receives written notice from PDC specifying the breach. Developer failure to act diligently and in good faith to satisfy conditions over which it has control or influence is a breach. In the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, a default shall occur if Developer does not commence the cure of the breach within sixty (60) days after Developer receives written notice from PDC and thereafter diligently prosecute to completion such cure. A default also shall occur if Developer makes any assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment. A default shall occur and PDC shall be irreparably harmed by such default, if Developer or its assignee constructs any portion of the Project in a manner materially inconsistent with PDC approved plans. Developer shall not be in default hereunder for failure to pay any tax, assessment, lien or other charge if Developer in good faith is contesting the same and, if necessary to avoid foreclosure, has furnished an appropriate bond or other undertaking to assure payment in the event Developer's contest is unsuccessful.

- 8.1.2 **Default by PDC.** A default shall occur if PDC breaches any material provision of this Agreement including, without limitation, PDC's failure to adhere to the Schedule of Performance for any element of the Schedule of Performance which is in the control of PDC, whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after PDC receives written notice from Developer specifying the breach or, in the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, if PDC shall not within such sixty (60) days after PDC receives written notice from Developer commence the cure of the breach and thereafter diligently prosecute to completion such cure.

- 8.2 **PDC's Pre-Conveyance Remedies.** If Developer defaults in any material term of this Agreement before the Property is conveyed to Developer, then PDC may, at its option: (i) terminate this Agreement by written notice to Developer, without waiving any cause of action PDC may have against Developer, and instruct the Escrow Agent to pay the Deposit and

- interest earned thereon, if any, to PDC; and (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 8.2, then Developer shall deliver to PDC within thirty (30) days after such termination, copies of all Property market research, design documents, engineering documents, proformas and financial projections prepared for Developer by third parties, and which Developer is authorized to release; and design and construction contracts may be used by PDC in any manner that PDC deems appropriate with the consent of any party having approval rights thereunder.
- 8.3 Restoration.** If, prior to acquiring the Property, Developer performs any construction activities on the Property and Developer does not acquire the Property for any reason, Developer agrees, upon PDC request, to restore the Property to substantially the condition that existed prior to the time that Developer performed any activities thereon. PDC may elect to require that any improvements Developer has installed on the Property remain on the Property.
- 8.4 PDC's Post-Conveyance Remedies.**
- 8.4.1 **Reserved.**
- 8.4.2 **Developer Defaults.** If, after Closing, a Developer default occurs, then PDC may, at its option: (i) seek monetary damages against Developer; or (ii) specifically enforce the obligations of Developer under this Agreement.
- 8.5 Reserved.**
- 8.6 Developer's Pre-Conveyance Remedies.** If PDC defaults as to any material term of this Agreement prior to Closing, 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 and instruct the Escrow Agent to pay the Deposit and interest earned thereon, if any, to Developer; and (ii) seek monetary damages against PDC; or (iii) specifically enforce the obligations of PDC under this Agreement.
- 8.7 Developer's Post-Conveyance Remedies.** In the event of PDC's material default after PDC conveys the Property to Developer, Developer may specifically enforce the obligations of PDC under this Agreement, or seek monetary damages against PDC.
- 8.8 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 otherwise available at law or in equity. The exercise by either Party of one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default by the other Party, including, without limitation, the right to compel specific performance. Any limitation of remedies set forth herein should not limit or affect the obligations of a Party under any contractual indemnities set forth herein.

## **8.9 Unavoidable Delay**

8.9.1 Neither a Party nor Party's successor in interest shall be considered in breach of or in default with respect to any obligation created hereunder or progress in respect thereto if the delay in performance of such obligations (the "Unavoidable Delay") is due to causes that could not be avoided by taking commercially reasonable precautions, are beyond its control, and are without its fault or negligence, including but not limited to acts of God, acts of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, extraordinary delay in the issuance of necessary permits for the Project, malicious mischief, condemnation action, delays of litigation, bankruptcy of suppliers or subcontractors, unusually severe weather, delays of suppliers or subcontractors due to such causes or any similar events and/or occurrences beyond the control of such Party.

8.9.2 It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of PDC or Developer as the case may be, shall be extended for the period of the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section shall, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and the estimated time of correction. The time for Parties' performance shall not be extended by one or more events of Unavoidable Delay for a cumulative period greater than one hundred eighty (180) days, except that the time may be extended beyond one hundred eighty (180) days by agreement of the Parties.

## **9. RESERVED**

## **10. MISCELLANEOUS PROVISIONS**

**10.1 PDC Project Manager.** For the purposes of making determinations relating to provisions of this Agreement on behalf of PDC, (but not for the purpose of approvals or modifications unless the Executive Director has delegated such authority to the Project Manager) the Executive Director of the Portland Development Commission shall designate a Project Manager. Upon the initial execution of this Agreement, the PDC Project Manager is Bernie Kerosky. Developer may likewise designate a Project Manager to act on behalf of Developer in connection with the Project. Upon the initial execution of this Agreement, the Developer Project Manager shall be Jeana Woolley.

**10.2 Compliance with Laws; Discrimination.** Developer shall comply with all applicable laws and, for itself and its successor and assigns, agrees that during the construction of the Property, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.

**10.3 Notice.**

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

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

Ray Leary  
Vanport Partners, LLC  
2906 NE Fremont  
Portland, Oregon 97212  
Telephone: 971-404-4943  
erljrl28@comcast.net

Jean Woolley  
Vanport Partners, LLC  
5006 NE Mallory  
Portland, OR 97211  
Telephone: 503.281.6229 main  
[jamew2@msn.com](mailto:jamew2@msn.com)

with a copy to:

Steve Janik  
Ball Janik LLP  
101 SW Main Street, Suite 1100  
Portland, OR 97204  
Telephone: (503) 228-2525

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

Bernie Kerosky, Project Manager  
Portland Development Commission  
222 NW Fifth Avenue  
Portland, OR 97209  
Telephone: (503) 832-3459  
keroskyb@pdc.us

with a copy to:

Portland Development Commission  
Office of the General Counsel  
222 NW Fifth Avenue  
Portland, OR 97209  
Telephone: (503) 823-3200

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.

- 10.4 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.
- 10.5 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.
- 10.6 Waivers.** Except as otherwise expressly provided in this Agreement, 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.
- 10.7 Attorneys' Fees.** If a suit, action, 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 or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.
- 10.8 Choice of Law.** This Agreement shall be governed by Oregon law.
- 10.9 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.
- 10.10 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.
- 10.11 Legal Purpose.** Developer agrees that it shall use the Property solely for lawful purposes.
- 10.12 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.



**10.13 Entire Agreement.** This Agreement and the attachments hereto are the entire agreement between the Parties. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations made by either Party, implied or express, other than those contained in this Agreement.

**10.14 Modifications.** Any modifications to this Agreement shall be made in writing and executed by both Parties. The Parties recognize that circumstances may change and that it may be in the interest of both Parties that this Agreement be amended from time to time. For this reason, each of the Parties will consider changes that may be proposed by the other during the term of this Agreement. The PDC Executive Director may approve minor modifications to this Agreement without approval of the PDC Board of Commissioners. “Minor Modifications” include:

- (a) Modifications to the Scope of Development that do not increase or decrease the proposed amount of square footage by more than ten percent (10%);
- (b) Changes in the Schedule of Performance when deemed warranted by the PDC Executive Director which do not exceed one hundred eighty days, excluding a change in the Final Termination Date;
- (c) Changes in the Final Termination Date which do not exceed sixty days; and
- (d) Corrections of errors, clarifications, or minor modifications that do not change the substantive content of the Agreement.

All other modifications to the Agreement (including without limitation, any increase in the amount of the Senior Loan) must be approved by the PDC Board of Commissioners.

**10.15 Successors and Assigns.** Subject to the provisions of Section 4, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.

**10.16 Place of Enforcement.** Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Multnomah County, or the United States District Court for the District of Oregon in Portland, Oregon.

**10.17 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.

**10.18 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 public entity 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.

**10.19 Approvals.** Where approvals of PDC are required, PDC will approve or disapprove within ten (10) business days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary. Failure by PDC to approve or disapprove within said period of time shall be deemed approval. Any disapproval shall state in writing 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.

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

**10.21 Recording of Memorandum of Agreement.** PDC shall provide for recording a Memorandum of this Agreement within thirty (30) days of the Effective Date. The form of the Memorandum of Agreement is attached as **Exhibit E** 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.

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

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

By: \_\_\_\_\_  
Bruce A. Warner, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
PDC Legal Counsel

**VANPORT PARTNERS, LLC, an Oregon limited liability company**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBITS**

Exhibit A	Form of Bargain and Sale Deed
Exhibit B	Schedule of Performance
Exhibit C-1	Scope of Development
Exhibit C-2	Schematic Design Documents
Exhibit D	Fair Contracting Guidelines Index
Attachment A	Workforce Training and Hiring Program
Attachment B	Emerging Small Business Opportunity Program
Attachment C	Equal Employment Opportunity Program
Exhibit E	Form of Memorandum of DDA
Exhibit F	Reserved
Exhibit G	Form of Certificate of Completion
Exhibit H	Sketch of Property Partition for Land Division
Exhibit I	Summary of Loan Terms for Real Estate Loan
Exhibit J	Reserved

**EXHIBIT A**

**BARGAIN AND SALE DEED**

After Recording Return to and  
Tax Statements to be sent to:

\_\_\_\_\_  
Vanport Partners, LLC

\_\_\_\_\_  
Portland, Oregon 972\_\_\_\_

**BARGAIN AND SALE DEED**

KNOW ALL PEOPLE, that the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, as the duly designated Urban Renewal Agency of the City of Portland (which, together with any successor public agency designated by or pursuant to law, is herein called the “Agency”), does hereby grant, bargain, sell and convey to VANPORT PARTNERS, LLC, an Oregon limited liability company (the “Developer”), and unto its successors and assigns, all the following described real property, with the tenements, hereditaments and appurtenances (herein called the “Property”), situated in the County of Multnomah and State of Oregon:

[INSERT LEGAL DESCRIPTION UPON RECORDING OF PLAT FOLLOWING FINALIZATION OF LAND DIVISION AND ALLEY VACATION], CITY OF PORTLAND, County of Multnomah, State of Oregon

The conveyance is made pursuant to that certain Agreement for Disposition and Redevelopment of Property located in Multnomah County, between Developer and Agency, dated \_\_\_\_\_, 2006, a Memorandum of which was recorded on \_\_\_\_\_, 2006 as Fee 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. The Developer has given FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000) and other value for this conveyance.

The conveyance is subject to all easements, covenants, restrictions, conditions and encumbrances of record.

This Deed is made by the Agency 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 the urban renewal plan for the Oregon Convention Center Urban Renewal Area, approved by

the City Council of the City of Portland on May 18, 1989, by Ordinance No. 161925, as amended from time to time.

It is intended that the delivery of this Deed shall not effect a merger of those provisions of the DDA that are intended by the terms of said Agreement to continue after the delivery of this Deed.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING AND FOREST PRACTICES AS DEFINED IN ORS 30.390 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)).

IN WITNESS WHEREOF, the Portland Development Commission, as the duly designated urban renewal agency of the City of Portland, a municipal corporation of the State of Oregon, has caused this Deed to be executed this \_\_\_day of \_\_\_\_\_, 2006.

**CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through the Portland Development Commission, as the duly designated urban renewal agency of the City of Portland

By: \_\_\_\_\_  
Chairman

By: \_\_\_\_\_  
Secretary

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_ as Chairman of the Portland Development Commission, on its behalf.

\_\_\_\_\_  
Notary Public for  
My commission expires:\_\_\_\_\_

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_ as Secretary of the Portland Development Commission, on its behalf.

\_\_\_\_\_

Notary Public for

My commission expires: \_\_\_\_\_

**EXHIBIT B****SCHEDULE OF PERFORMANCE**

DATE	ACTION	PARTY
8/31/05	Memorandum of Understanding (MOU) executed	PDC/VP
12/30/05	Execute Contract with Architect	VP
1/11/06	City Council approval of alley vacation	PDC
1/13/06	Submission of Marco Building Schematic Design Documents for PDC Approval	VP
2/15/06	Submission of Project development budget (including itemized sources and uses of funds) for PDC Approval	VP
2/22/06	PDC Investment Committee approval of Terms & Conditions of transaction	PDC
3/8/06	PDC Board of Commission approval of Disposition and Development Agreement (DDA) (including parameters for PDC Senior Loan, Real Estate Loan and 2006 Predevelopment Loan)	PDC
3/15/06	Execution of DDA	PDC/VP
3/22/06	Submit \$10,000 Good Faith Deposit in form of Promissory Note (in accordance with Section 1.8)	VP
3/31/06	Submission of Office/Retail Pad Building Schematic Design Documents for PDC Approval	VP
3/31/06	Execute loan documents for 2006 Predevelopment Loan	PDC/VP
4/15/06	Submission of registration documentation to USGBC for LEED Certification	VP
4/15/06	Submission of 25% Construction Drawings for PDC review.	VP
5/19/06	Submission of Final Construction Plans and Specifications (including Demolition and Seismic Upgrade Plans) to PDC for approval.	VP
5/22/06	Submission of Condominium Documents (other than plat) to PDC for approval	VP



8/9/06	Submission of Final Construction Plans and Specifications (including Demolition and Seismic Upgrade Plans) to City	PDC/PFF/VP
9/1/06	Obtaining Real Estate Loan	PDC/PFF/VP
9/15/06	Submission of Final Condominium Documents to Oregon Real Estate Agency for approval	PDC/PFF/VP
9/1/06	Submit to PDC Evidence of Approval of Final	VP
7/16/06	Submission of Final Project Development Budget (including itemized sources and uses of funds) for PDC approval	PFF/VP
9/1/06	Record documents evidencing alley vacation	PDC
7/23/06	Evaluation of ability of Project to generate sufficient revenues to pay debt service on the Real Estate Loan in accordance with Section 1.5.1(c)(9)	PDC/PFF/VP
9/13/06	Construction begins transaction	RFF
10/30/06	Submission of Construction Contract to PDC for approval	VP
8/10/06	Full Building Permit issued by City for construction and rehabilitation of Project	PDC
8/10/06	PDC Loan Committee approves PDC Senior Loan terms	PDC
8/21/06	Submit to PDC for approval of plat satisfying all requirements of Oregon Condominium Act, including without limitation, all requirements of ORS 90.115	VP
8/21/06	Execute Construction Contract for a Guaranteed Maximum Price (GMP)	VP
9/15/07	Construction Complete	VP
8/22/06	Submission of evidence to PDC that City is prepared to issue limited foundation, seismic and/or demolition building permit (subject only to acquisition of Property by Developer)	VP
9/30/07	Record Restrictive Transfer Covenants in real property records of Multnomah County, Oregon	PDC/VP
8/25/06	Execute Good Neighbor Agreement with King Neighborhood Association	VP
8/25/06	Execution of binding Condominium Unit Sales Agreements between Developer and prospective Condominium Unit purchasers	VP
8/25/06	Prospective Condominium Unit purchasers commit to purchase & sale of Condominium Units by depositing nonrefundable 6% cash Down Payment in Down Payment Escrow	VP
8/25/06	Record documents evidencing Property partitioning by City	PDC
8/29/06	Submit documentation indicating all Conditions Precedent to Property Conveyance, disbursement of PDC Senior Loan and disbursement of Real Estate Loan have been met (or will occur in escrow closing)	VP
9/1/06	Delivery of Tax Counsel opinion.	PFF

**EXHIBIT C-1****SCOPE OF DEVELOPMENT****Development Team**

The development team is composed entirely of local small developers and local real estate professionals these are Vanport Partners LLC (Ray Leary and Jeana Woolley) assisted by development consultant Jeff Sackett of Capstone Partners LLC, and commercial real estate broker Michele Reeves of Windermere Cronin and Caplan.

**Development Description**

- 1)\_The renovation of the former Marco Manufacturing at 5225 NE Martin Luther King Jr. Boulevard including new construction on the northeast corner of the property resulting in at a total of at least 36,000 sf of usable office, retail and flexible space and 69 on-site parking spaces.
- 2) The alley running south to north between NE Sumner and NE Emerson streets will be vacated and become part of the development along with the eastern 70 feet of the block to the west of the current alley bringing the total land conveyed to be approximately 70,000 sf,
- 3) The Developers will market the project as commercial condominiums to primarily local small businesses.
- 4) The project will be financed by a PDC Senior loan and net proceeds generated from the sale of New Markets Tax Credits.
- 5) Maximum Project Cost, including \$500,000 purchase of Property by Developer, shall not exceed \$8,700,000.

**Project Goals**

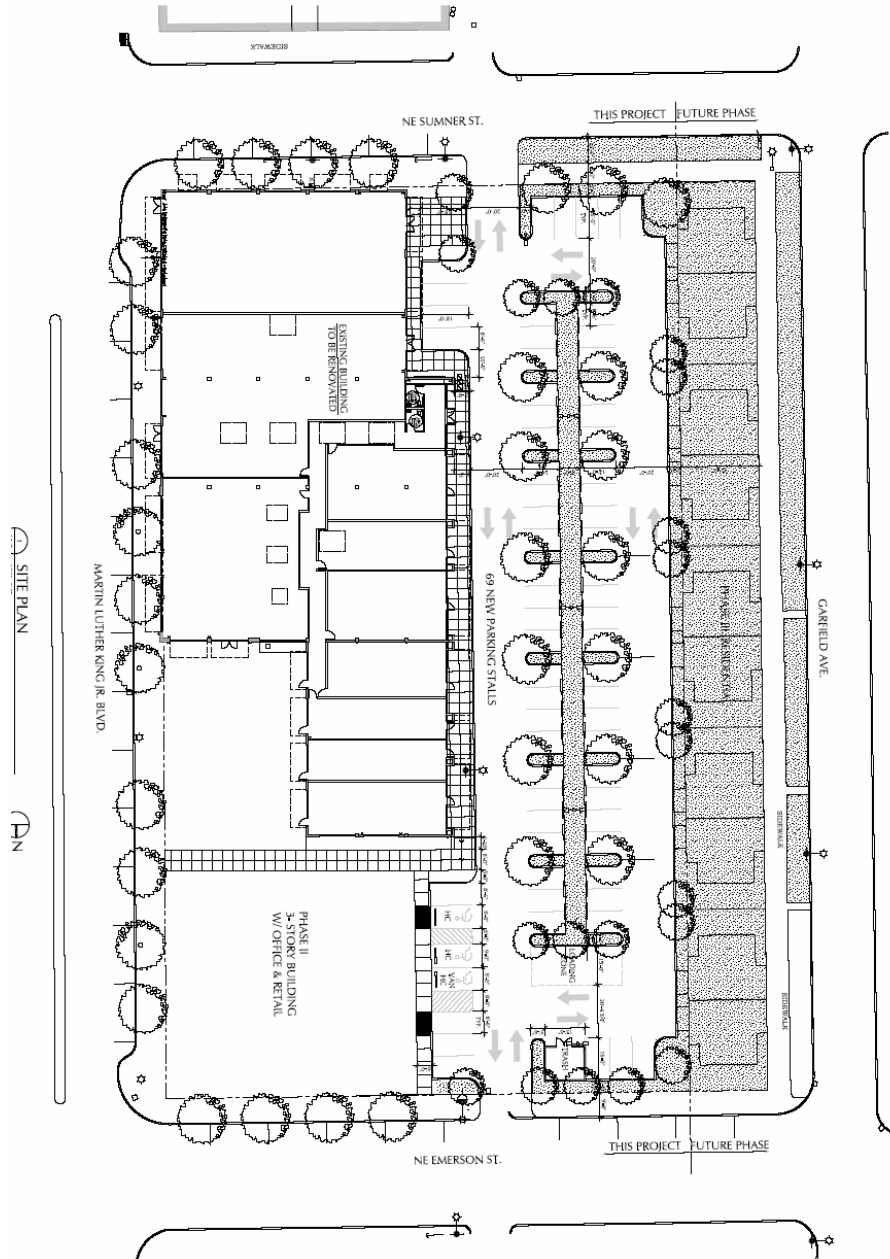
- 1)\_ Project will serve as a model of well-designed, high quality, sustainable “green” development, and will be designed to enhance the neighborhood ;
- 2) Encourage additional private investment on NE MLK Jr. Blvd;
- 3) Foster community wealth creation;
- 4) Provide opportunities for local, small business ownership and business expansion;
- 5) Provide retail and service opportunities to the neighborhood;
- 6) Creation and retention of jobs in North/Northeast Portland..

**Project Timeline**

- |         |   |
|---------|---|
| 8/31/05 | Memorandum of Understanding (MOU) reached.                      |
| 3/8/06  | PDC Board approves Disposition and Development Agreement (DDA). |
| 9/1/06  | Property Conveyed to Vanport Partners LLC.                      |
| 9/15/07 | Project complete, Vanport Square open for business.             |

**EXHIBIT C-2**

**SCHEMATIC DESIGN DOCUMENTS**



**EXHIBIT D**

**FAIR CONTRACTING GUIDELINES INDEX**

**Attachment A** - Workforce Training and Hiring Program

**Attachment B** - Emerging Small Business Opportunity Program

**Attachment C** - Equal Employment Opportunity Program

**EXHIBIT E**

**FORM OF MEMORANDUM OF AGREEMENT**

After recording return to:

Portland Development Commission  
Attn: Real Estate Services  
222 NW Fifth Avenue  
Portland, Oregon 97209

**Form of Memorandum of Agreement For Disposition And Redevelopment**

THIS MEMORANDUM OF AGREEMENT FOR DISPOSITION AND REDEVELOPMENT 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”), and **VANPORT PARTNERS, LLC**, an Oregon limited liability company (“Developer”), entered into an Agreement For Disposition And Redevelopment of Property dated as of \_\_\_\_\_, 2006 (“Agreement”) relating to the real property conveyed by PDC (the “PDC Property”) located in Multnomah County, Oregon. The PDC Property is more particularly described as: [INSERT LEGAL DESCRIPTION UPON FINALIZATION OF LAND DIVISION AND ALLEY VACATION], City of Portland, County of Multnomah, State of Oregon.

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

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: \_\_\_\_\_

Bruce A. Warner, Executive Director

Date: \_\_\_\_\_

**DEVELOPER:**

**VANPORT PARTNERS, LLC**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[Acknowledgments on next page]*

STATE OF OREGON )

) ss.

County of Multnomah )

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by Bruce A. Warner, Executive Director of the PORTLAND DEVELOPMENT COMMISSION, and the duly designated urban renewal agency of the City of Portland.

\_\_\_\_\_  
Notary Public for  
My commission expires:\_\_\_\_\_

STATE OF OREGON )

) ss.

County of Multnomah )

This instrument was acknowledged before me on \_\_\_\_\_, 2006, by \_\_\_\_\_, \_\_\_\_\_(title) of Vanport Partners, LLC, an Oregon limited liability company, as its duly authorized representative.

\_\_\_\_\_  
Notary Public for  
My commission expires:\_\_\_\_\_

**EXHIBIT F**

**RESERVED**



**EXHIBIT G****FORM OF CERTIFICATE OF COMPLETION**

CITY OF PORTLAND (the “City”), a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland (“PDC”) hereby certifies that VANPORT PARTNERS, LLC, an Oregon limited liability company (“Developer”) has satisfactorily completed construction of the Project as described in the Agreement for Disposition and Redevelopment of Property at 5225 N.E. Martin Luther King Jr. Boulevard, dated \_\_\_\_\_, 2006 (herein called the “DDA”), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Fee No. \_\_\_\_\_, on \_\_\_\_\_, 2006. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 3.9 of the DDA, PDC hereby certifies that:

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

This Certificate of Completion is and shall be a conclusive determination of the satisfaction of all of the agreements, covenants and conditions contained in the DDA with respect to the obligations of Developer, its successors and assigns, as to the construction of the Project, and such obligations are hereby terminated. This Certificate represents and certifies the completion of Developer’s construction obligations described herein as to PDC only.

Further,

- (1) Any party acquiring or leasing any portion of the Project shall not (because of such purchase or lease) have any obligation under the DDA with respect to the construction of the Project, and
- (2) The following Sections of the DDA shall survive and remain in effect for the periods identified in the DDA notwithstanding issuance of this Certificate (“Surviving Section”):

The obligations evidenced at Section 5 of the DDA (including without limitation Section 5.9 of the DDA), as applicable to post-construction activities by their terms.

Other than its right to enforce the Surviving Section, PDC shall hereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the

DDA with respect to the construction of the Project, or as a result of a default in or breach of any provisions of the DDA relating to construction by the Developer, or by any successors in interest or assigns of Developer. Without limitation, PDC confirms that PDC no longer has any right of termination of the DDA.

IN WITNESS WHEREOF, PDC has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 200\_.

PORTLAND DEVELOPMENT COMMISSION

By: \_\_\_\_\_  
\_\_\_\_\_, Executive Director

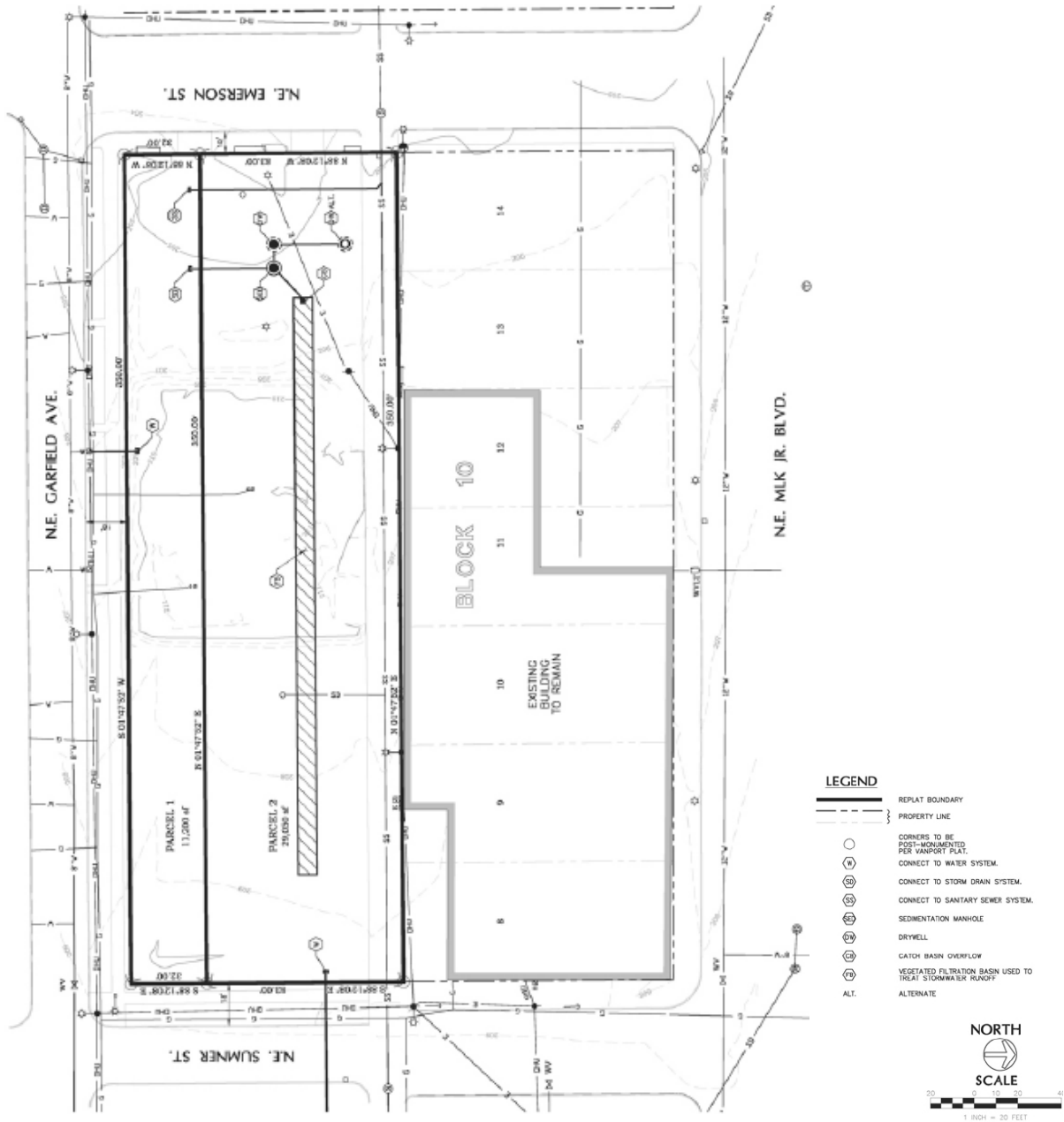
STATE OF OREGON )  
 ) ss.  
County of Multnomah )

This instrument was acknowledged before me on \_\_\_\_\_, 200\_, by \_\_\_\_\_, Executive Director of the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland.

\_\_\_\_\_  
Notary Public for  
My commission expires: \_\_\_\_\_

**EXHIBIT H**

**SKETCH OF PROPERTY PARTITION FOR LAND DIVISION**



**EXHIBIT I**

**SUMMARY OF LOAN TERMS FOR REAL ESTATE LOAN**

**EXHIBIT J  
RESERVED**