

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(EASTBANK PROPERTIES)**

This ASSIGNMENT AND ASSUMPTION AGREEMENT (EASTBANK PROPERTIES) (this "Agreement") is entered into as of _____, 2012 (the "Effective Date"), by and between The City of Portland, a municipal corporation of the State of Oregon (the "City"), acting by and through its duly authorized and acting urban renewal agency, the Portland Development Commission ("PDC"), and the City, acting by and through Portland Parks and Recreation ("Parks"). PDC and Parks may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

RECITALS

- A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, PDC has undertaken a program for the development and redevelopment of blighted areas in the City and in connection therewith prepared and approved an Urban Renewal Plan for the Central Eastside Urban Renewal Area, which was approved by the Portland City Council ("Council") on August 27, 1986, by Ordinance No. 158940 (as amended from time to time, the "Urban Renewal Plan" or the "Plan").
- B. In order to further the objectives of the Plan, PDC and Parks implemented the Eastbank Esplanade Park Master Plan to promote and make available to the public greater access to the river and to create light watercraft recreational opportunities.
- C. The Eastbank Esplanade was completed in two phases: Phase I in 1998, including the floating walkway from the Steel Bridge to the Burnside Bridge, and Phase II in 1999, from the Burnside Bridge to the Hawthorne Bridge.
- D. PDC has also completed a number of projects along the Eastbank Esplanade including the redevelopment of the Holman Building, now known as the Rivers East Center; construction of the Festival Parking Lots; and construction of two public docks: the Madison Street Dock (located north of the Hawthorne Bridge) and the Light Watercraft Dock (located south of the Hawthorne Bridge) (collectively, the "Docks").
- E. PDC holds a combination of leases and easements to several pieces of property in connection with the Eastbank Esplanade located on the east bank of the Willamette River.
- F. Accordingly, the Parties desire to enter into this Agreement setting forth the terms and conditions under which PDC will convey the Property (as hereinafter defined) to Parks.
- G. PDC finds that the fulfillment, generally, of this Agreement, and the intentions set forth herein, are in the vital and best interest of the City and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of the applicable state and federal laws and requirements under which the Urban Renewal Plan was adopted.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PDC and Parks hereby agree as follows:

1. **Assignment and Assumption.** PDC hereby assigns to Parks, effective on the Effective Date, all of PDC's right, title and interest in, to, and under each of the agreements listed on Exhibit A (collectively, the "Assigned Agreements"), whether now or hereafter existing, and Parks hereby receives and accepts the same effective on the Effective Date. PDC hereby delegates to Parks, effective on the Effective Date, all of PDC's duties and obligations, arising on or after the Effective Date, under each of the Assigned Agreements and Parks hereby accepts and assumes and agrees to perform and discharge those duties and obligations, effective on the Effective Date. PDC is assigning the Assigned Agreements to Parks **AS IS**, without representation or warranty of any kind. PDC's assignment of rights under the Assigned Agreements is without recourse to PDC. PDC agrees and acknowledges that Parks is not assuming any liability, duty or obligation of PDC under the Assigned Agreements that arose or accrued prior to the Effective Date, with any such liability, duty or obligation remaining the responsibility of PDC.

2. **Transfer of Real Property.** On or promptly after the Effective Date, PDC, pursuant to that Easement for Use and Occupancy of Building and Land (recorded July 19, 2002 #2002-128099; hereinafter "Easement") and Amended and Restated Easement for Use and Occupancy of Building and Land (recorded May 18, 2006, #2006-091900) (the "Transferred Property") shall transfer all of PDC's right, title and interest in and to the Transferred Property to Parks. PDC is transferring the Transferred Property to Parks **AS IS**, without representation or warranty of any kind other than representations or warranties, if any, that PDC may have received from the owner at the time PDC acquired a parcel of Transferred Property, which representations and warranties PDC hereby assigns to Parks, to the extent they are assignable. PDC's assignment of any such representations and warranties to Parks is without recourse to PDC.

3. **Transfer of Personal Property.** PDC will transfer to Parks all of PDC's right, title and interest in the Docks (the "Personal Property") by means of Bills of Sale, substantially in the forms attached hereto as Exhibit B-1 and B-2, and Parks will receive and accept same. PDC is transferring the Personal Property to Parks **AS IS**, without representation or warranty of any kind.

The Personal Property, the Assigned Agreements and Transferred Property are collectively referred to herein as the "Property".

4. **Purchase Price.** The purchase price for the Property shall be Zero Dollars (\$0).

5. **Use Permit.** In consideration of the Transferred Property, Parks hereby agree to allow PDC to continue its non-exclusive use of the gated and fenced storage area located on the western one-half of Parcel 1-B (R149849) and consisting of approximately 2,500 square feet (the "Storage Area") for purposes of storing a collection of historic cast-iron columns owned by PDC

pursuant to a Use Permit agreed to by the parties substantially in the form attached hereto as Exhibit C PDC acknowledges that the storage space may be used by Parks or permittee Rivers West, as space allows.

6. Indemnification. To the extent permitted by law and subject to the limits of the Oregon Tort claims Act, Parks shall defend, save, hold harmless, and indemnify PDC and PDC's officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from Parks' exercise of the rights under the Assigned Agreements assigned to Parks hereunder or use of the Transferred Property or Personal Property or Parks' failure or alleged failure to perform or discharge a duty or obligation of PDC under the Assigned Agreements assumed by Parks hereunder.

To the extent permitted by law and subject to the limits of the Oregon Tort claims Act, PDC shall defend, save, hold harmless, and indemnify Parks and Parks' officers, agents and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from any failure or alleged failure of PDC to perform or discharge a liability, duty, or obligation of PDC under the Assigned Agreements that arose or accrued prior to the date hereof.

7. Amendments. This Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by the Parties.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns.

9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

10. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on the Parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

11. Headings. The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement and are not relevant to the interpretation of any provision of this Agreement.

12. Time is of the Essence. Time is of the essence in the each Party's performance of its obligations under this Agreement.

13. Further Assurances. The Parties will cooperate with each other, and sign other documents and take other actions reasonably necessary to further effect and evidence the transactions contemplated by this Agreement.

14. Severability. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

15. **Exhibits.** Any exhibits referenced in this Agreement are part of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

PDC:

THE CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through its duly authorized and acting urban renewal agency, the **Portland Development Commission**

By: _____

Patrick Quinton, Executive Director

APPROVED AS TO FORM:

PDC Legal Counsel

Parks:

PORTLAND PARKS AND RECREATION

By: _____

APPROVED AS TO FORM:



Chief Deputy City Attorney

Exhibit A

Assigned Agreements

- Oregon Department of Transportation Lease (dated July 19, 2002)
- Amended and Restated Oregon Department of Transportation Lease (dated May 18, 2006)
- Agreement Regarding Rent Abatement Reserve Account for Holman Building Redevelopment (dated May 18, 2006)
- Assignment and Assumption of [Holman] Lease Agreement to Rivers East LLC (dated May 18, 2006)
- Holman Building Lease between Portland Development Commission and Portland Boathouse (dated March 23, 2004)
- Operation & Maintenance Form 2 (dated January 18, 2012, recording # 2012-007028)
- Ground Lease between Portland Development Commission and RiversWest Small Craft Center (dated April 27, 2004)

Exhibit B- 1: Bill of Sale for Fire Dock

BILL OF SALE

The Portland Development Commission ("Seller"), with offices at 222 NW 5th Avenue, Portland, OR 97209, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell and transfer to City of Portland, ("Buyer"), with offices located at 1120 SW 5th Avenue, Portland, OR 97204, all of its right, title and interest to the following personal property, which is sometimes referred to as the "Fire Dock" or the "Madison Street Dock":

The dock, approximately ____ feet in length, with all related appurtenances, located on the east side of the Willamette River approximately between the western terminus of SE Madison and SE Main Streets in Portland, Oregon ("Property").

Seller warrants that it is the lawful owner in every respect of the above-described Property and that it is free and clear of all liens, security agreements, encumbrances, claims, demands and charges of every kind whatsoever.

Buyer understands and agrees that as of the date set forth herein, Seller shall have no further obligations with respect to the Property, including no obligation to maintain or repair the Property and shall terminate its Public Recreation Facility License with the Department of State Lands in connection with the Property. All further obligations related to the Property shall hereafter be the responsibility of Buyer, including entering into a new Public Recreation Facility License with the Department of State Lands.

This Bill of Sale shall be effective as of the ____ day of _____, 2012.

FOR SELLER

FOR BUYER

Mike Abbaté, Director

Exhibit B-2: Bill of Sale for Light Watercraft

BILL OF SALE

The Portland Development Commission ("Seller"), with offices at 222 NW 5th Avenue, Portland, OR 97209 in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell and transfer to City of Portland, by and through its Bureau of Parks & Recreation ("Buyer"), with offices located at 1120 SW 5th Avenue, Portland, OR 97204, all of its right, title and interest to the following personal property:

The Light Watercraft Dock with all related appurtenances ("Property") located on the east side of the Willamette River approximately at the western terminus of SE Clay Street in Portland, Oregon.

Seller warrants that it is the lawful owner in every respect of the above-described Property and that it is free and clear of all liens, security agreements, encumbrances, claims, demands and charges of every kind whatsoever.

Buyer understands and agrees that as of the date set forth herein, Seller shall have no further obligations with respect to the Property, including no obligation to maintain or repair the Property and shall terminate its Public Recreation Facility License with the Department of State Lands in connection with the Property. All further obligations related to the Property shall hereafter be the responsibility of Buyer, including entering into a new Public Recreation Facility License with the Department of State Lands.

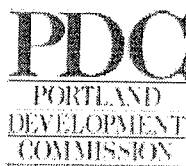
This Bill of Sale shall be effective as of the _____ day of _____, 2012.

FOR SELLER

FOR BUYER

Mike Abbaté, Director

Exhibit C – Form of Use Permit

PERMIT OF ENTRY

[Public Entry]

THIS REVOCABLE PERMIT OF ENTRY, hereafter called "Permit" is hereby granted by the City of Portland, Bureau of Parks and Recreation hereafter referred to as "City", to the City of Portland acting by and through the Portland Development Commission, the duly designated urban renewal agency hereafter hereinafter referred to as "Permittee" for the temporary use of City leased Property located directly underneath the Interstate 5 Freeway Ramp and bounded by the Willamette River (West Boundary), SE Salmon Street (South Boundary), SE Water Avenue (East Boundary) and SE Taylor Street (North Boundary) commonly known Festival Lot Number 1B for the purpose of the storage of cast iron columns as further described below, subject to the following terms and conditions

Section 1. Location, Activities and Maintenance of Property

- 1.1 Permittee is hereby permitted to enter upon and use that certain real property located directly underneath the Interstate 5 Freeway Ramp and bounded by the Willamette River (West Boundary), SE Salmon Street (South Boundary), SE Water Avenue (East Boundary) and SE Taylor Street (North Boundary) commonly known Festival Lot Number 1B and consisting of approximately 2,500 square feet of land also identified by Multnomah County Real Property Roll Description of EAST PORTLAND: BLOCK 8 TL 1600 and Real Property Tax ID Number R149849 in the City of Portland, County of Multnomah, State of Oregon ("Property"). The Property and area of use is depicted on the attached Exhibit "A".
- 1.2 Permittee may use the Property only for the storage of the historic Eric Ladd cast iron column collection and for no other purpose.
- 1.3 Permittee shall maintain and keep the Property in a clean and orderly condition at all times and shall remove litter, scrap, rock, or debris of any kind at the end of the permit period, whether this material was left by permittee or not.
- 1.4 Permittee shall, upon completion of its activities restore the Property to the same or better condition as that existing immediately prior to its entry upon the Property, or to such other condition as the City may reasonably require. If restoration is impossible or in lieu of restoration, at the City's discretion, Permittee shall compensate City for any physical damage to the Property in the amount the City may reasonably determine.
- 1.5 Permittee's use of and entry upon the Property shall be without expense of any kind (direct or indirect) whatsoever to City. Permittee shall be solely responsible for all maintenance and operating costs that may result from its use of the Property. Should the City incur costs as a result of Permittee's temporary use of the Property, Permittee shall reimburse the City promptly upon the presentation of billing and reasonable documentation of such expense.

- 1.6 The City, its agents, employees and representatives may at any reasonable time, enter into or upon the Property for the purposes of examining the condition thereof, or for any other lawful purpose.

Section 2. Insurance and Indemnification

- 2.1 To the extent permitted by the Oregon Tort Claims Act and the Oregon Constitution, Permittee shall indemnify, hold harmless and at the City's request, defend the City and the City of Portland from and against any and all liability or alleged liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or in connection with or incidental to Permittee's use of the Property, or error or omission of Permittee or anyone acting on behalf of Permittee in connection with or incidental to this Permit; provided however, that nothing herein shall be construed to require indemnification of the City for liability attributable to the City's sole negligence.
- 2.2 The City and Permittee, as further consideration for the execution of this Permit, do each hereby agree and covenant to the other that they shall waive their respective rights to subrogate to their respective insurance carrier all claims of recovery for loss, damage, or any injury sustained by City and Permittee, and arising out of or incident to fire, explosion in, on or about said Property, including other perils included in the standard insurance policies with extended coverage endorsement attached as used in the state of Oregon, whether such loss, damage, or injury is due to the negligence of City or Permittee, their agents or employees or otherwise. Provided, however, this covenant shall be dependent upon both City and Permittee having the contractual right with their respective insurance carrier to waive subrogation.
- 2.3 Permittee shall agree to keep the Property as secure as possible from the unauthorized entry of other persons during the time of this Permit. Furthermore, the Permittee shall assume all liability related to injury, death or disease to invitees, licensees, or trespassers, whether resulting from latent or patent Property defects.
- 2.4 Permittee is solely responsible for any theft, damage or destruction to any materials, equipment or any other property of Permittee, or anyone acting on behalf of Permittee in connection with or incidental to this Permit.

Section 3. Restrictions on Use and Hazardous Substances

- 3.1 Permittee shall in its use and entry upon the Property, observe all rules, regulations, and laws now in effect by any municipality, county, state or federal authority having jurisdiction over the Property, as they relate to the use of the Property. Permittee is solely responsible for obtaining any permits or approvals from other agencies or licensing bodies as may be necessary for Permittee's authorized entry upon and use of the Property. Furthermore, Permittee agrees to indemnify the City as provided above for any damages caused by the violation thereof of any permits or approvals that may so be required.
- 3.2 Use of explosives or highly flammable material is not permitted without prior written authorization from the Portland Development City.
- 3.3 Permittee shall not have the right to use the electricity, gas, water, sewer and other utilities on the Property unless otherwise specified in Section 6 below.

- 3.4 Permittee shall not allow any lien of any kind, type or description to be placed or imposed upon the Property or upon any improvements on the Property (if any).
- 3.5 Permittee shall not cause or permit to occur the use, generation, release, manufacture, handling, processing, storage, disposal or improper use of any Hazardous Substance, pollutant, or contaminant, on, under, or about the Property or the transportation to or from the Property of any Hazardous Substance except as may specifically detailed in Section 6 below. Prohibited Substances are substances regulated under any environmental law or regulation now or hereafter enacted by any governmental federal, state or local authority. Furthermore, Permittee agrees to indemnify the City as provided above for any damages caused by the violation thereof of any permits or approvals that may otherwise be required.

Section 4. Processing Fee, Use Fee and Term

- 4.1 Permittee shall pay to the City an initial, non-refundable permit-processing fee in the amount of zero dollars (\$0.00).
- 4.2 As complete and full payment for entry to the Property, Permittee agrees to pay the City the sum of zero-dollars (\$0.00) upon the signature of this Permit by the parties.
- 4.3 The Permit will commence on the date that all parties execute this Permit and shall continue under a month-to-month tenancy unless earlier terminated or extended in writing by the City ("Term").
- 4.4 The Permit shall be personal to Permittee, and may not transferable or assignable to any other party or entity unless otherwise approved in writing by the City.

Section 5. Termination, Notice and Amendments

- 5.1 The Permit may be terminated upon ninety (90) calendar days' written notice for any reason whatsoever by either party. Ninety (90) calendar day's notice of termination is acknowledged by the parties to be reasonable, and adequate to fully mitigate any damages which might otherwise accrue due to early termination.
- 5.2 Notices under this agreement shall be made in writing by U.S. Mail or facsimile to:

CITY	PERMITTEE
City of Portland	Portland Development Commission
Bureau of Parks and Recreation	Attn: Real Estate Section
Attn: Real Property Management	222 NW Fifth Avenue
1120 SW Fifth Avenue, Suite 1302	Portland, OR 97209
Portland, OR 97204	
Tel: 503-823-7529	Tel: 503-823-3200
Fax: 503-823-6007	Fax: 503-823-3368

- 5.3 The parties agree that any Amendments to the Permit shall be made in writing and become effective upon execution by both parties.

Section 6. Special Conditions

There are no Special Conditions to this Permit

ALL TERMS AND CONDITIONS OF THIS ENTRY PERMIT ARE HEREBY ACCEPTED:

CITY		PERMITTEE	
City of Portland		Portland Development Commission	
Bureau of Parks and Recreation		222 NW Fifth Avenue	
1120 SW Fifth Avenue, Suite 1302		Portland, OR 97209	
Portland, OR 97204			
<hr/>		<hr/>	
Authorized Signature	Date	Director Signature	Date
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Written Name	Title	Written Name	Title
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ATTACHMENT: Exhibit "A" Property Map and Use Limits

