

**Attachment A
Property Description**

Parcel 1, R146595

Real property in the County of Multnomah , State of Oregon, described as follows:

Lots 9 and 10, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon,

EXCEPT THEREFROM the Southeasterly 3.4 feet thereof,

ALSO EXCEPT from said hereinabove described Lots 9 and 10, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65°30. East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 2, R146593

Real property in the County of Multnomah , State of Oregon, described as follows:

The Northwesterly 20 feet of Lot 8, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon,

EXCEPT THEREFROM the Southwesterly 10 feet thereof,

ALSO EXCEPT from said hereinabove described parcel, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65° 30. East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 3, R323670

Real property in the County of Multnomah , State of Oregon, described as follows:

A tract of land situated in the Northwest one-quarter of Section 1 and the Northwest one-quarter of Section 12, Township 1 North, Range 1 West of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at a point on the Easterly line of N. Lombard Street (Jersey Street), which point is the most Westerly line of Lot 10. DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon; running thence Northeasterly along the Northwesterly line of that certain tract described in Deed to H.C. Campbell recorded March 26, 1891 in Book 155 page 261, Records of Multnomah County, Oregon, 177.3 feet, more or less, to an iron pipe at the most Northerly corner of Lot 9, said Depot Addition to St. Johns; thence Northwesterly parallel with the Easterly line of said Lombard Street (Jersey Street), 50 feet to a point; thence Southwesterly parallel with the Northwesterly side line of said Campbell tract to the Easterly line of North Lombard Street (Jersey Street); thence Southeasterly along said Easterly line to the point of beginning.

EXCEPT from said hereinabove described tract of land, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65°30. East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 4, R146594

Real property in the County of Multnomah , State of Oregon, described as follows:

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The Southeasterly 3.4 feet of Lots 9 and 10, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon.

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AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY

FOR THE DOWNTOWN ST. JOHNS BROWNFIELD PROJECT

8735 NORTH LOMBARD STREET

BETWEEN

THE CITY OF PORTLAND BUREAU OF ENVIRONMENTAL SERVICES

AND

2/3RDS PROJECT LLC

DISPOSITION AND DEVELOPMENT AGREEMENT

This DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered this ____ day of _____, 2014 (the "Effective Date"), by and between the CITY OF PORTLAND ("the City"), a municipal corporation of the State of Oregon, acting by and through the BUREAU OF ENVIRONMENTAL SERVICES ("BES"), and 2/3RDS PROJECT LLC, an Oregon limited liability company ("Developer"). BES and Developer may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

RECITALS

- A. BES has undertaken a program for the redevelopment of contaminated properties known as brownfields within the city limits;
- B. BES acquired the Property (defined below) with the goal of remediating contamination and aiding its redevelopment;
- C. In furtherance of that redevelopment objective, on December 4, 2009, BES issued a Request for Qualifications for redevelopment of the Property;
- D. In response to the Request for Qualifications, Developer, then doing business as Cavanaugh + Cavanaugh LLC, submitted a proposal for redevelopment of the Property;
- E. BES selected Developer's proposal and BES and Developer entered into negotiations for conveyance of the Property to Developer and for Developer's redevelopment of the Property as a mixed-use facility;
- F. The Parties have completed their negotiations and now desire to enter into this Agreement setting forth the terms and conditions under which BES will convey the Property to Developer for redevelopment as a mixed-use facility (the "Project," as further defined in Exhibit A);
- G. The completion of the Project according to the terms of this Agreement, including the Scope of Development (defined in Exhibit A) and the Schedule of Performance (defined in Exhibit A), is a material inducement to BES to enter into this Agreement; and
- H. BES 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.
- I. Therefore, BES desires to sell to Developer and Developer desires to acquire from BES and redevelop the Property and, accordingly, the Parties desire to enter into this Agreement setting forth the terms and conditions under which Developer will acquire the Property.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and the conditions, covenants and agreements set forth below, the Parties hereby agree as follows:

1. DEFINED TERMS

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

2. GENERAL TERMS OF CONVEYANCE

- 2.1. Agreement for Disposition and Development.** BES agrees to sell and convey to Developer, and Developer agrees to purchase from BES and develop, the Property upon the terms and conditions set forth in this Agreement.
- 2.2. Description of the Property.** The Property which is subject to this Agreement consists of the following: The land located at 8735 North Lombard Street, Portland, Oregon, as more particularly described in Exhibit B attached hereto (the "Land"), together with (i) all rights, privileges and easements appurtenant to the Land owned by BES, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the Land, as well as development rights, air rights, water rights related to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land; and (ii) all improvements and fixtures located on the Land, including, without limitation all buildings and structures presently located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the improvements and fixtures (which Land, together with the elements described above in (i) and (ii), is collectively referred to herein as the "Property").
- 2.3. Covenants Running with the Land**
- 2.3.1.** Developer covenants and agrees that up through the issuance of the Certificate of Completion and continuing for a period of ten (10) years from the date of the Certificate of Completion it will use the Property only for purposes substantially consistent with this Agreement, including the Scope of Development and Final Construction Plans and Specifications.
- 2.3.2.** Developer covenants and agrees that prior to the issuance of the Certificate of Completion the Design Review provisions contained in section 7.2 of this Agreement shall survive any foreclosure or transfer of the Property by a deed in lieu of foreclosure or any other transfer of the Property.

2.3.3. Developer and BES hereby declare and agree that the covenants set forth in this section shall be deemed covenants running with the land for the applicable periods set forth above and shall pass to and be binding upon the Developer's successors in title to the Property, including, without limitation, any Mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property and upon the respective heirs, executors, administrators, devisees, designees, successors, and assigns of any Mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property

2.4. Purchase Price. The Purchase Price for the Property is one dollar (\$1.00). Developer shall pay the Purchase Price in cash.

2.5. Title Review.

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

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

2.6. Title Insurance. Escrow Agent will provide Developer with a standard coverage Owner's Policy of Title Insurance covering the Property when conveyed, and insuring Developer in the amount of \$ 400,000, that fee simple title to the Property is vested in Developer, free and clear of

encumbrances, except Final Permitted Exceptions. BES shall pay the costs of the standard coverage Owner's Policy of Title Insurance described in the previous sentence. Developer, at its option and its expense, may elect to obtain extended coverage under such policy of title insurance and BES agrees to execute any affidavits or other documents reasonably required by the Escrow Agent to enable Developer to obtain such coverage. Developer may also elect to obtain a survey at its own expense.

3. REPRESENTATIONS AND WARRANTIES

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

- 3.1.1.** BES has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein; and all requisite action has been taken by BES in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required. This Agreement and all documents required to be executed by BES are and shall be valid, legally binding obligations of and enforceable against BES in accordance with their terms. Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which BES is a party. The persons executing this Agreement and the instruments referred to herein on behalf of BES have the legal power, right and actual authority to bind BES to the terms and conditions of this Agreement.
- 3.1.2.** To BES's knowledge, except as has been disclosed to Developer in the Environmental Due Diligence Reports, BES has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, Released or produced Hazardous Substances on the Property, and no underground storage tanks exist on the Property, except in compliance with Environmental Laws currently in effect, and BES has not received notice of the Release of any Hazardous Substances on the Property since the issuance of the NFA Letter for the Property by DEQ.
- 3.1.3.** BES is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.
- 3.1.4.** To BES's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, or BES's ability to perform its obligations under this Agreement.

- 3.1.5. To BES's knowledge, and except as otherwise disclosed in writing to Developer before the Effective Date, the Property has been operated in compliance with all applicable laws, rules, regulations, ordinances and other governmental requirements ("Laws").
- 3.1.6. To BES's knowledge, BES has not received any notice stating that the Property is in violation of any applicable laws, rules, regulations, ordinances or other governmental requirements.
- 3.1.7. No representation, warranty or statement of BES in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.
- 3.2. Developer Representations and Warranties.** Developer's representations and warranties under this Agreement are limited to the following. Developer hereby warrants and represents to BES as of the Effective Date and as of the Closing Date the following:
- 3.2.1. Kevin Cavenaugh, Leathernan Property Development, LLC, Andres Ochoa and Peter Andrews are the sole members of the Developer.
- 3.2.2. Developer has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Developer in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required to enter into this Agreement.
- 3.2.3. This Agreement and all documents required to be executed by Developer are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms.
- 3.2.4. Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Developer is a party.
- 3.2.5. No representation or warranty of Developer in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation or warranty not misleading.
- 3.2.6. Developer enters into this Agreement without reliance on verbal representations by BES, its employees, agents or consultants, regarding any aspect of the Property, the Project, its feasibility, financing, or compliance with any governmental regulation.

3.2.7. As of the Effective Date, Developer is not in default under this Agreement and no event has occurred that, with the passage of time or the giving of notice or both, would constitute a default of Developer under this Agreement.

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

4. CONDITIONS PRECEDENT TO CLOSING

4.1. **Conditions.** Developer and BES are not obligated to proceed with the conveyance of the Property to the Developer unless the following conditions are satisfied prior to Closing. The Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied.

4.1.1. The following events have occurred:

- (i) Title Company is prepared to issue to Developer the owner's Title Insurance Policy selected by Developer under Section 2.6, covering the Property in an amount not less than \$400,000, subject only to the Final Permitted Exceptions; and
- (ii) Developer shall have received the Phase I Environmental Assessment; and
- (iii) BES has approved any Mortgagee providing financing for construction of the Project if the Mortgagee is not M&T Bank or an affiliate.

4.1.2. To the reasonable satisfaction of both BES and Developer:

- (i) Both the Design Development Drawings and Final Construction Plans and Specifications have been approved by all required governmental entities and/or agencies, including BES's design review pursuant to Section 7.2 below.
- (ii) All land use approvals for the Project required by Title 33 of the Code of the City of Portland shall have been secured and no appeal of any required approval shall have been filed, and the time for any such appeal shall have expired. If an appeal was filed, it shall have been finally resolved.
- (iii) All financing necessary to construct the Project has closed or will close simultaneously with the Closing.
- (iv) The Parties have agreed to the final form of any documents necessary to close the conveyance of the Property to Developer.
- (v) No litigation is pending that prevents BES or Developer from performing their respective obligations under this Agreement.
- (vi) The NFA Letter issued by DEQ with respect to the Property is in form and substance acceptable to Developer.

4.1.3. To Developer's reasonable satisfaction:

- (i) BES is not in default under this Agreement and no event has occurred that, with notice or passage of time or both notice and passage of time, would constitute a default of BES under this Agreement.
- (ii) No material adverse change in the physical or legal condition of the Property has occurred.

4.1.4. To BES's reasonable satisfaction:

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

(a) City of Portland building permits

- (ii) Developer has provided to BES documentation that:

- (a) Developer is a limited liability company existing in the state of Oregon;
- (b) The Articles of Organization and Operating Agreement of the Developer have not been altered since the Effective Date in any manner that may adversely affect BES's interests after the Closing;
- (c) Developer has full power and authority to enter into and perform its obligations under this Agreement;
- (d) Developer has the financial capability to undertake and complete the Project; and
- (e) This Agreement has been executed and delivered, for and on behalf of Developer, by an authorized individual.

- (iii) BES has received an acceptable Final Project Budget.

- (iv) Developer has demonstrated financial feasibility for the Project, consistent with the Final Project Budget, by providing to BES:

- (a) Copies of commitment letters acceptable to BES from private lenders for the construction financing for the Project,
- (b) Copies of commitment letters acceptable to BES from private lenders for the permanent financing for the Project after completion of construction and required lease-up as may be required by the private lender,

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

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4.2. **Elections upon Non-Satisfaction of Conditions.** If any condition in this Section 4 is not fulfilled to the satisfaction of the benefited Party or Parties as of the Closing Date (or such later date, if any, designated pursuant to Section 4.2(c) below or determined in accordance with Section 16.10 or Section 15.8.3), then such benefited Party or Parties may elect to:

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

4.3. **Final Termination Date.** If all of the conditions precedent to the Closing set forth in Section 3 have not been satisfied or waived by the later of (a) the Closing Date or (b) such later date, if any, designated pursuant to Section 4.2(c) or determined in accordance with Section 16.10 or Section 15.8.3, then this Agreement shall automatically terminate sixty (60) days after the later of the foregoing dates.

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

5. CLOSING

5.1. **Manner of Closing.**

5.1.1. On the Closing Date, Developer shall deliver or cause to be delivered to BES the purchase price.

5.2. **Closing Date.**

5.2.1. The Closing Date shall occur on or before June 30, 2014.

5.2.2. The Closing Date may not be extended without the consent of both Parties, unless extended pursuant to Section 16.10 or Section 15.8.3. In no event shall the Purchase Price be lower than the amount set forth above in Section 2.4.

5.3. **Payment of Purchase Price.** Subject to satisfaction of the Conditions Precedent to Closing set forth above, at the Closing Developer shall accept the conveyance of the Property and pay the Purchase Price to BES in the manner set forth in Section 2.4.

5.4. **Conveyance by Deed.** Subject to satisfaction of the Conditions Precedent to Closing set forth above and upon Developer's payment to BES of the Purchase Price, at the Closing BES will convey the Property to the Developer by a statutory Bargain and Sale Deed, substantially in the form of Exhibit C ("Deed").

5.5. Prorations and Costs.

5.5.1. **Closing Costs.** The costs for recording a Memorandum of this Agreement, a form of which is attached as Exhibit I, shall be paid by BES. The costs for recording the Deed and any other documents required by Developer to be recorded will be paid by Developer. The escrow fee charged by Escrow Agent for this transaction will be paid by Developer. All other closing costs, if any, shall be allocated in accordance with the customary practice in Multnomah County.

5.5.2. **Prorations of Taxes.** All property taxes attributable to the year in which the Closing occurs shall be prorated and adjusted as of the Closing Date as an adjustment at the Closing (regardless of whether such taxes and special assessments are then due and payable or delinquent). BES agrees that any taxes, assessments and encumbrances that will be a lien against the Property at the Closing, whether or not those charges would constitute a lien against the Property at settlement, shall be satisfied by BES. Regular real property taxes payable during the year in which the Closing occurs and any rents or income applicable to the Property shall be prorated as of the Closing Date. Developer shall pay any property taxes accruing to the Property as a result of the transfer of the Property from public ownership, and therefore the change of the Property's status from tax exempt to taxable. In addition, the Developer shall pay property taxes on the Property from and after the Closing.

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

5.5.4. **Other Prorations and Costs.** Except as otherwise provided herein, all other items to be prorated, including rents, revenues, and other income, if any, shall be prorated as of the Closing Date. For the purpose of calculating prorations, the Developer shall be deemed to be entitled to the Property and, therefore, entitled to the income and responsibility for the expenses for the entire day following the Closing Date. BES shall pay only the annual payments due through the Closing Date for the Property's pro rata share of any special assessments that have been paid in annual installments. Developer shall assume liability for payment of any annual payments due after the Closing Date for any special assessments that have been paid in annual installments. Developer and the BES shall each pay their own legal and professional fees of other consultants incurred by Developer and BES, respectively.

6. INFRASTRUCTURE, UTILITIES AND LAND CONDITION

6.1. **Infrastructure Improvements.** As part of the Project, Developer, at its own cost, will design, construct, fund and obtain permits for all Infrastructure.

6.2. **Site Preparation.** Unless otherwise provided for in Section 9, Developer will, as part of the Project and at its own cost, complete all necessary site preparation in accordance with the Schedule of Performance.

6.3. **Utility Service.** As part of the Project, Developer shall install, connect, and upgrade new and existing utilities necessary to serve the Project.

6.4. **Subsurface, Surface and Building Conditions.** BES shall convey the Property to Developer, and Developer shall accept the Property, in "AS IS" condition on the Closing Date, without warranty of any kind except as otherwise specifically set forth in this Agreement. In particular, BES makes no warranties or representations that the soil conditions, Environmental Conditions or any other conditions of the Property or structures thereon are suitable for any improvements. Developer acknowledges that it has not relied on any verbal representations made by the BES as to the soil conditions, Environmental Conditions or any other conditions of the Property. Developer acknowledges that it has had free access to BES's records with respect to the condition of the Property, specifically including the Environmental Due Diligence Reports, which are attached as Exhibit J.

7. DEVELOPMENT

7.1. **Project Financing.** Developer will be responsible for obtaining from third parties all funds and financing necessary to acquire the Property and construct and operate the Project. BES will not provide any financing for the Project and the Project will not receive other financial aid or assistance from BES. Developer shall obtain financing for the Project from private persons and institutions and the Parties agree that no public financial assistance will be provided for the Project, other than the grant received from the Portland Development Commission in the amount of approximately \$12,000. The Parties anticipate that the Project financing will be structured generally as shown in the Project Budget. The parties acknowledge and agree that the Project Budget is only a projection and that a number of factors may change this projection including interest rates, lender requirements, market shifts, and the soft and hard development costs. If required by Developer's private lender, Developer shall provide its private lender with a completion guarantee and a repayment guarantee, from Kevin Cavanaugh, Lee Leatherman and Andres Ochoa, for the full amount of the Project construction.

7.2. **Plans, Drawings and City Design Review and Approval.**

7.2.1. **The City Design Review and Approval, in General.** The Scope of Development is described in Exhibit F. Developer has prepared Preliminary Design Documents for the Project that is the basis for entering into this Agreement. Developer shall prepare Design Development Drawings and Construction Drawings and Technical Specifications for the Project and submit them to the City for review and approval as discussed below and in accordance with the Schedule of Performance. Review meetings with the Design Team and City representatives are encouraged to facilitate the review and approval process. City approval of Design Development Drawings must be obtained prior to submission for City Design Review. All plans and specifications referred to in this Section 7.2 are referred to herein as the "Drawings."

7.2.2. **Standards for City Design Review and Approval.** The City will not withhold its approval of any Drawings for the Project that, in the City's sole discretion, adequately address the following design objectives:

- (a) **Urban and Pedestrian Environment.** The Project should be designed to foster active pedestrian environments along Lombard Street that enhance the level of commercial activity. The Project should create an urban environment that feels safe and friendly to pedestrians, with window glass that is transparent and non-reflective, landscape improvements, building lighting, and storefront entries located on the street.
- (b) **Neighborhood Compatibility.** The Project should be designed such that the buildings, site improvements, and landscaping build pride, reflect neighborhood character, and show commitment to the cultural and architectural heritage of the neighborhood. Designs and materials should incorporate high-quality, durable materials and colors.

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

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

Construction Drawings and Technical Specifications (50%);

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

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

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

7.2.6. City Design Review Process.

- (a) **City Staff Review of Design.** The City and Developer acknowledge that the Schedule of Performance for the Project requires expeditious review and response from the City and responsiveness and cooperation from Developer and its Design Team in connection with the design review process. The Parties agree that efficient communication between all concerned is necessary to resolve design issues in a timely manner. City staff shall be notified in advance and may attend regularly scheduled design meetings for the Project. The BES Project Manager will meet with Developer and its Design Team regularly as scheduled by the Parties, or upon the request of either Party to the other, to review progress on the resolution of design and related issues. The scope of the City's review will be consistent with Sections 7.2.2 and 7.2.3 of this Agreement. If the City does not provide its approval or rejection of any Drawings by the due date for such Drawings set forth in the Schedule of Performance, then such Drawings shall be deemed approved by the City.
- (b) **City Design Advisor.** The City may retain a design advisor for the Project. The role of the design advisor is to review the design of the Project, to present the design to the City as needed, and to advise the City as to design considerations consistent with this Agreement. The City may designate additional or substitute City design advisors without amendment to this Agreement.
- (c) **Community Input.** The City and the Developer have coordinated on outreach efforts regarding the Project and its design. If Developer changes the design of the Project in a material way from that presented to the City or the St. Johns

Brownfield Advisory Committee, Developer will present the revised Project design to the foregoing groups for their input and advice as provided for in the Public Participation Plan, if applicable.

7.3. Diligent Completion. Subject to the terms and conditions of this Agreement, Developer covenants to complete the development of the Project in substantial conformance with the final Construction Drawings and Technical Specifications and in accordance with the Schedule of Performance, subject to extension for any period of Unavoidable Delay in accordance with Section 15.8. Developer shall complete development of the Project no later than the date for completion of construction set forth in the Schedule of Performance subject to extension for any period of Unavoidable Delay in accordance with Section 15.8. Developer agrees to keep BES informed of its progress with respect to development of the Project during construction, with periodic reports to be issued once a week until the City issues the Certificate of Completion for the Project. Project development shall include:

- 7.3.1. Entering into all necessary architectural and construction contracts;
- 7.3.2. Securing all necessary public entitlements and building permits;
- 7.3.3. Securing all financing necessary to complete the Project, consistent with the Final Project Budget.

7.4. Inspection and Property Access.

- 7.4.1. **Before Closing.** Before Closing, BES may allow Developer and/or Developer's employees, agents and consultants to enter upon the Property in reasonable furtherance of the transaction contemplated in this Agreement pursuant to a written permit of entry in a form to be provided by BES. Developer agrees not to interfere with any tenants or other occupants of the Property.
- 7.4.2. **After Closing.** After Closing, during construction of the Project, and until the Certificate of Completion is issued for the Project, Developer's work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of the City. The City agrees not to interfere with the work occurring on the Property.

7.5. Safety Matters and Indemnification. Developer shall:

- 7.5.1. **Safety.** Comply with all safety laws and take all safety measures necessary to protect its employees and the City's employees, agents, contractors, subcontractors, licensees and invitees, their personal property, and improvements of each, from injury or damage caused by or resulting from the performance of its construction.
- 7.5.2. **Indemnity from Liability Claims.** Indemnify, defend (at the City's request) and hold harmless the City and its successors from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the property of any person to the extent occurring in the performance of the construction work or the performance of Developer's other obligations under this Agreement, except to the extent caused by the City, its employees or agents. The indemnity set forth in this Section 7.5.2 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

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7.5.3. Indemnity from Liens. Indemnify, defend (at the City's request) and hold harmless the City and its successors from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics', materialmen's, laborers' or other construction or statutory liens filed against any portion of the Property or the Project and arising from construction on the Property or the Project performed by or at the request of Developer or Developer's contractors or agents. The indemnity set forth in this Section 7.5.3 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

7.6. Liens. If any statutory lien shall be filed prior to BES's issuance of the Certificate of Completion against any portion of the Project by reason of labor, services or materials supplied to or at the request of Developer or Developer's contractors or agents or in connection with any construction on the Project performed by or at the request of Developer, Developer shall, within thirty (30) days after the filing thereof, take whatever action is necessary and proper (including posting a bond or a cash deposit and taking such further action as may be required by the Oregon Construction Lien Law), so that the Project shall thereafter be entirely free of the lien. Alternatively, Developer may elect to leave the lien of record and to contest its validity, amount or applicability by appropriate legal proceedings; provided, that in such event, (i) Developer shall indemnify and hold harmless BES 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 lien, and (ii) in the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Developer, Developer shall within thirty (30) days thereafter cause the lien to be discharged of record.

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

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

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

7.8. Certificate of Completion.

7.8.1. When Developer is Entitled to Certificate of Completion. Upon substantial completion of the Project as described in this Section 7.8 on or before the date for completion of the construction set forth in the Schedule of Performance and provided Developer is not in default under this Agreement, BES will furnish Developer with a Certificate of Completion for the Project. The Project will be deemed to be substantially complete when:

- i. BES determines that the Project is complete according to the Final Construction Drawings and Technical Specifications, except for punch-list items that do not materially affect the use of the Project for the purposes intended under this Agreement;
- ii. The City has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project, and

- iii. BES determines that any other improvements required by this Agreement are complete in all material respects.

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

7.8.3. Procedure Where BES Refuses to Issue. If BES refuses or fails to provide a Certificate of Completion in accordance with this Section 7.8, then BES, within thirty (30) days after written request by Developer for such Certificate of Completion, shall provide Developer with a written statement indicating in detail in what respects Developer has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts Developer must take or perform to obtain such Certificate of Completion. BES's failure to furnish Developer with such detailed written statement within such thirty (30) day period shall be deemed BES's approval of Developer's request for the Certificate of Completion.

8. ENVIRONMENTAL CONDITION OF THE PROPERTY AND PARTIES' RESPONSIBILITIES

8.1. Phase I and II Environmental Site Assessments. BES has caused completion of Phase I and Phase II Environmental Site Assessments of the Property in conformance with the ASTM E 1527-05 process in compliance with the United States Environmental Protection Agency All Appropriate Inquiries (40 CFR Part 312). BES shall provide copies of the Phase I and Phase II Environmental Site Assessments to Developer within ten (10) days after the Effective Date.

8.2. Environmental Cleanup. The following environmental cleanup actions to remediate or abate, as appropriate, the Recognized Environmental Conditions on the Property (8735 N. Lombard Street) have been completed: Seven USTs were decommissioned by removal. DEQ has issued an NFA Letter with respect to the Property. A copy of the NFA Letter is attached as Exhibit K. From and after Closing until Developer ceases to own the Property and in connection with the Project, Developer shall comply with all restrictions, limitations, conditions and obligations set forth in the NFA Letter.

8.3. Unforeseen Environmental Conditions. If Developer encounters, after Closing and prior to issuance of the Certificate of Completion, an Unforeseen Environmental Condition on the Property that was not otherwise identified as a Recognized Environmental Condition in the Environmental Due Diligence Reports, substantially differs as to nature and extent from a Recognized Environmental Condition in the Environmental Due Diligence Reports, or that was not caused directly or indirectly by Developer, Developer shall suspend all related construction activities pending BES's investigations under this Section 8.3. Developer shall also, promptly thereafter, notify DEQ (to the extent required by applicable law) and BES of the Unforeseen Environmental Condition and provide BES with any documentation regarding the circumstances of the discovery of the Unforeseen Environmental Condition, including but not limited to any documentation on the release of a Hazardous Substance on the Property. After discovery of an Unforeseen Environmental Condition on the Property, Developer shall allow BES access to the Property to make such surveys and conduct such tests and investigations as BES deems

reasonably necessary or desirable to determine the nature and extent of the Unforeseen Environmental Condition. Developer hereby grants a license to BES for BES to enter on the Property to perform the foregoing surveys, tests and investigations which BES shall conduct in accordance with applicable Environmental Laws. BES will provide Developer with copies of any reports arising from such surveys, tests and investigations. Promptly after BES's completion of the surveys, tests and investigations, the Parties shall meet to agree upon a source and method for funding the remediation or abatement, as applicable, of the Unforeseen Environmental Condition, which Developer shall then complete as part of the Project, as a condition to issuance of the Certificate of Completion and in a manner necessary to obtain an NFA Letter or other required approval. Developer shall comply with all restrictions, limitations, conditions and obligations set forth in the NFA Letter or other required approval once issued by DEQ. If the Parties are unable to agree on a source and method for funding the remediation or abatement, then BES shall have the right, but not the obligation, in its sole discretion, to pursue other responsible parties of the Unforeseen Environmental Condition or perform remediation or abatement of the Unforeseen Environmental Condition itself, as it determines necessary or appropriate in its sole discretion as a matter of right but not obligation, and Developer shall permit BES access to the Property to do so.

8.4. Indemnification. Developer shall be responsible for compliance with all Environmental Laws with respect to the Property, its business and the operation of the Project from and after Closing, and until Developer ceases to own the Property, including but not limited to compliance with all restrictions, limitations, conditions and obligations imposed by DEQ pursuant to the NFA Letter. In addition Developer shall be responsible for all environmental remediation and abatement of Unforeseen Environmental Conditions on the Property to the extent such obligations are imposed on Developer under Section 8.3 above. Developer shall defend (at BES's request), indemnify and hold harmless BES, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by BES, its successors or assigns, or asserted against BES, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer during Developer's ownership of the Property, Developer's failure to comply with a restriction, limitation, condition or obligation imposed by DEQ pursuant to the NFA Letter or Developer's failure to complete any environmental remediation or abatement of Unforeseen Environmental Conditions on the Property if required of Developer by Section 8.3 above. The indemnity set forth in this Section 8.4 shall survive the issuance of the Certificate of Completion and any termination of this Agreement.

8.5. Contribution. The foregoing indemnity does not limit any rights of contribution that the Parties may have against others under applicable law or agreement. The indemnity is intended only as an allocation of responsibility between the Parties.

9. INTENTIONALLY OMITTED

10. INTENTIONALLY OMITTED

11. INTENTIONALLY OMITTED

12. ASSIGNMENT AND TRANSFER PROVISIONS

12.1. Restrictions on Transfer of the Property and Assignment of the Agreement. Because it is a municipal entity, BES is uniquely benefited by completion of the Project. Developer is uniquely qualified to construct and manage the Project. The anti-assignment provisions of Section 12 are reasonable and necessary to provide to each Party the benefit of the transaction implemented through this Agreement.

12.1.1. Except as provided in this Section 12, up through the issuance of the Certificate of Completion and continuing for a period of five (5) years after the date of the Certificate of Completion, Developer shall not partially or wholly transfer or dispose of or agree to transfer or dispose of the Property, the Project, or Developer's interest in this Agreement without the prior written approval of the BES, which may be withheld in BES's sole discretion. Without limiting BES's discretion to withhold its approval in any event, BES is unlikely to approve a transfer or disposition if (a) the transfer or disposition violates another provision of this Agreement, (b) the proposed transferee does not possess qualifications and financial capacity equal to or superior to that of Developer, or (c) the transfer or disposition will cause a material delay in completion of the Project. The terms "transfer or dispose of" under this Section 12 do not include any lease of any portion of the Property by Developer to any tenant of the Property.

12.1.2. Except as provided in this Section 12, up through the issuance of the Certificate of Completion and continuing for a period of five (5) years after the date of the Certificate of Completion, Kevin Cavanaugh and Leatherman Property Development, LLC ("Developer's Principals") shall retain a controlling ownership interest in the Developer and retain control of the operations of the Developer unless BES approves in writing that at least one of either Kevin Cavanaugh or Leatherman Development Property, LLC need not retain a controlling ownership in Developer and control of the operations of Developer.

12.2. Approved Transfers. Notwithstanding Section 12.1 above, and provided that Developer provides BES with copies of all agreements related to the transfer at least fifteen (15) days prior to the effective date of the proposed transfer, and any other information reasonably necessary for BES to determine whether such transfer complies with the requirements of this Agreement, BES hereby consents to:

12.2.1. An assignment of Developer's rights under this Agreement and interest in the Property (which interest will remain subject to the terms and conditions of this Agreement) to a partnership, limited liability company or limited partnership provided that at least one of any of Developer's Principals hold a controlling ownership interest in the assignee, are the managing members or general partners of such assignee and retain control of the operations of the assignee. Notwithstanding an assignment under Section 12, Developer shall remain fully responsible to BES for performance of this Agreement.

12.2.2. The transfer of any membership interests in Developer to any of the members existing as of the date of this Agreement or to a partnership, limited liability company or limited partnership provided that is controlled by such member.

12.2.3. Any Mortgage, approved by BES, which approval shall not be unreasonably withheld or delayed (and further defined below in Exhibit A).]

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

13.1. **Surviving Sections.** The following Sections of this Agreement shall survive and remain in effect for the periods identified in the DDA notwithstanding issuance of the Certificate of Completion: Section 7.5.2 (INDEMNITY FROM LIABILITY CLAIMS), Section 7.5.3 (INDEMNITY FROM LIENS), Section 2.3 (COVENANTS RUNNING WITH THE LAND), and Section 8.4 (INDEMNIFICATION).

14. MORTGAGEE PROTECTION PROVISIONS

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

14.2. **Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of the Agreement, except those that 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 Project or to guarantee such construction or completion.

14.3. **Copy of Notice of Default to Mortgagee.** If BES delivers a notice or demand to Developer with respect to Developer's breach of this Agreement, BES shall at the same time send a copy of such notice or demand to each Mortgagee approved by BES, at the last address of such holder shown in the records of BES. Failure of BES to send a copy of such notice or demand to a Mortgagee shall not prevent or limit in any way BES's rights and remedies under this Agreement or create any liability for BES.

14.4. **Mortgagee's Options to Cure Defaults.** After Developer's default of this Agreement and if Developer fails to cure or remedy said default within the required time period, then each Mortgagee shall have thirty (30) days after passage of the latest date for Developer's cure or remedy of the default, to cure or remedy the default itself, if cure or remedy thereof is permitted by this Agreement. If the default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements, provided that the Mortgagee notifies BES in writing of its intention to complete the Project according to the approved Final Construction Drawings and Technical Specifications. Any Mortgagee who properly completes the Project shall be entitled to issuance of a Certificate of Completion, upon written request made to BES following the procedures set forth in Section 7.8 above.

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

15. DEFAULT AND REMEDIES

15.1. Default and Cure.

15.1.1. Default by Developer.

- (a) Developer shall be in default under this Agreement if Developer breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from BES specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Developer shall be in default under this Agreement if Developer does not commence the cure of the breach within thirty (30) days after Developer receives written notice from BES and thereafter diligently prosecute to completion such cure within ninety (90) days after the written notice from BES.
- (b) Developer shall also be in default under this Agreement if Developer makes an assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment.
- (c) Developer shall also be in default under this Agreement and BES shall be irreparably harmed by such default, if Developer constructs or operates any portion of the Project in a manner materially inconsistent with Final Construction Drawings and Technical Specifications and such breach continues and is not remedied within thirty (30) days after Developer receives written notice from BES specifying the breach. In the case of a breach that cannot with due diligence be cured within a period of thirty (30) days, Developer shall be in default under this Agreement if Developer does not commence the cure of the breach within thirty (30) days after Developer receives written notice from BES and thereafter diligently prosecute to completion such cure within ninety (90) days after written notice from BES.

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

15.2. BES's Pre-Conveyance Remedies. If a Developer default (as described in Section 15.1.1) occurs before the Property is conveyed to Developer, BES may, at its option: (i) terminate this Agreement by written notice to Developer, (ii) seek monetary damages against Developer, or (iii) specifically enforce the obligations of Developer under this Agreement. If BES terminates this Agreement as provided in this Section 15.2, then Developer shall deliver to BES within thirty (30) days after termination, copies of all Project market research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties, without representation or warranty, and which Developer is authorized to release. BES may use any of the foregoing documents in any manner that BES deems appropriate with the consent of any party having approval rights thereunder. BES shall pay no compensation to Developer for the foregoing Project documents.

15.3. BES's Post-Conveyance Remedies. If a Developer default (as described in Section 15.1.1) occurs after the Property is conveyed to Developer, including but not limited to Developer's failure to complete the Project as required by Section 7.3, then BES shall have the following remedies:

- 15.3.1. Subject to the Mortgagee protections specified in Section 14, BES shall have the right to re-enter and take possession of the Property and to terminate (and revert in BES) the estate conveyed by the Deed, terminate Developer's right to develop the Project, and resell the Property pursuant to Section 15.4 below. The conveyance of the Property to Developer shall be made upon, and the Deed shall provide for, a condition subsequent to the effect that, in the event of a Developer default (as described in Section 15.1.1), BES, at its option, may, upon 90 days written notice of termination to Developer, declare a termination of Developer's rights, title, and interest in the Property. After delivery of such notice of termination, and in the event Developer fails to remedy, end or abrogate such default within the 90-day period in the manner stated in the notice of termination, all the title and rights and interest in the Property conveyed to Developer by the Deed, or to any successors or permitted assigns of Developer, shall be reconveyed to BES by quitclaim deed, each as set forth in Exhibit H. Any delay by BES in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 15.3 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that BES should not be constrained because of concepts of waiver, laches or estoppel so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this section or otherwise to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by BES with respect to any specific default by the Developer be considered or treated as a waiver of the rights of BES with respect to any other defaults by the Developer or with respect to any particular default except to the extent specifically waived.
- 15.3.2. Developer shall deliver to BES within thirty (30) days after reconveyance of the Property pursuant to Section 15.3.1, copies of all Project market research, design documents, engineering documents, proformas and financial projections prepared for Developer by unrelated third parties without representation or warranty, and which Developer is authorized to release. BES may use any of the foregoing documents in any manner that BES deems appropriate with the consent of any party having approval rights thereunder. BES shall pay no compensation to Developer for the foregoing Project documents.
- 15.4. **BES Resale.** If title to the Property re-vests in BES in accordance with the provisions of Section 15.3, BES may, at its option, bring the improvements to a state of completion deemed by BES as reasonably necessary to protect the improvements from the elements or other dangers, and shall, pursuant to its responsibilities under Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, use its best efforts consistent with prudent business practices and generally in accordance with the terms of this Agreement to resell at a reasonable price the Property and such improvements (subject to any Mortgages) as soon and in such a manner as BES shall find feasible and consistent with the objectives of such laws and the Urban Renewal Plan, to a qualified and responsible party or parties (as determined by BES in its sole discretion) who will assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to BES. Upon such resale, the proceeds thereof shall be applied as follows:
- 15.4.1. **BES Reimbursement.** First, to BES on its own behalf to reimburse BES for all costs and expenses reasonably incurred by it in retaking, completing and selling the Property and its improvements, including, but not limited to, the following:

- (a) Salaries of personnel in connection with the recapture, management and resale of the Property;

- (b) Any expenditures made or costs incurred in completing the construction of the Project;
- (c) Any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property at the time of re-vesting of title thereto in BES or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees excluding any Mortgage if the Property or improvements are sold subject to such Mortgage;
- (d) All taxes, assessments and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment of such charges during the period of ownership thereof by BES or Developer, an amount equal to such taxes, assessment, or charges, as determined by the County assessing official, as would have been payable if the Property were not so exempt), and
- (e) Any amounts owed to the City as lease or license fees, and any amounts otherwise owing BES by Developer or its successor or transferee.

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

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

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

15.5. Developer's Pre-Conveyance Remedies. If a BES default (as described in Section 15.1.2) occurs before BES conveys the Property to Developer, Developer may, at its option: (i) terminate this Agreement by written notice to BES without waiving any cause of action Developer may have against BES, (ii) specifically enforce the obligations of BES under this Agreement, or (iii) seek monetary damages against BES. Notwithstanding the preceding sentence, Developer shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from BES in connection with BES's default.

15.6. Developer's Post-Conveyance Remedies. If a BES default (as described in Section 15.1.2) occurs after BES conveys the Property to Developer, Developer may specifically enforce the obligations of BES under this Agreement, or seek monetary damages against BES. Notwithstanding the preceding sentence, Developer shall not seek incidental, indirect, consequential, exemplary, statutory or other special damages or damages for lost opportunity or profits from BES in connection with BES's default.

15.7. Nonexclusive Remedies. The rights and remedies provided by this Agreement shall not be deemed exclusive, except where otherwise indicated, and shall be in addition to any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or of any of its remedies for any other default by the other Party, including, without limitation, the right to compel specific performance. Any limitation of remedies set forth herein shall not limit or affect the obligations of a Party under any contractual indemnities set forth herein.

15.8. Unavoidable Delay.

15.8.1. Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation ("Unavoidable Delay") is a result of conditions unforeseeable, beyond the Party's control, and without the Party's fault or negligence, such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, strike, malicious mischief, or explosion, or failure of a governmental entity to timely issue any necessary permits or approval for the Project.

15.8.2. A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party's obligation must, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and estimated time of correction. The Party must thereafter do everything reasonable in its power to resume performance of the delayed obligation.

15.8.3. Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay.

16. MISCELLANEOUS PROVISIONS

16.1. BES Project Manager. For the purposes of managing the implementation of the provisions of this Agreement on behalf of BES, BES shall designate a Project Manager. At the Effective Date, the Project Manager is Jenn Bildersee.

16.2. Discrimination. Developer, for itself and its successor and assigns, agrees that, during the construction of the Project, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation or national origin.

16.3. Notice. Any notice or communication under this Agreement by either Party to the other shall be deemed given and delivered (a) forty-eight (48) hours after being dispatched by registered or certified U.S. mail, postage prepaid, return receipt requested, (b) when received if personally delivered, or (c) if sent by e-mail or other form of electronic transmission, with receipt of confirmation that such transmission has been received, and:

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

2/3 RDS PROJECT LLC
c/o Kevin Cavanaugh
3435 N 45th #J

Portland OR 97213
Email: kevin.cavenaugh@gmail.com

with a copy to:

Ball Janik LLP
Attn: Bradley S Miller
101 SW Main, Suite 1100
Portland OR 97204
Email: bmiller@balljanik.com
Phone: 503-228-2525

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

Jenn Bildersee
Bureau of Environmental Services
1120 SW 5th Ave. Room 1000
Portland, OR 97204
Email: jenn.bildersee@portlandoregon.gov
Phone: 503-823-7764

with a copy to:

Portland City Attorney's Office
1221 SW4th Ave.
Portland, OR 97204

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.

16.3.1. If either Party's notice contact person or address changes, that Party shall provide the other Party with the updated contact information.

16.4. 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 BES 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.

16.5. 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.

16.6. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

16.7. Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by BES or Developer of any provision of this Agreement or any breach thereof, shall be

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of any force or effect unless in writing and no such waiver shall be construed to be a continuing waiver.

- 16.8. Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge at trial or on any appeal in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.
- 16.9. Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.
- 16.10. Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.
- 16.11. Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.
- 16.12. Legal Purpose.** Developer agrees to use the Project solely for lawful purposes.
- 16.13. Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- 16.14. Entire Agreement.** This Agreement and its exhibits are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.
- 16.15. Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties, with the approval of the BES Board of Commissioners, if required. Notwithstanding this general requirement, the BES Executive Director may approve minor modifications to this Agreement without Board of Commissioners approval. Any modifications to this Agreement made without the approval of the BES Board of Commissioners must include an acknowledgement by BES's General Counsel that such approval is not necessary.

- 16.16. **Successors and Assigns.** Subject to the provisions of Section 12, the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.
- 16.17. **No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties other than that of independent contracting parties.
- 16.18. **Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the Deed, BES is specifically not obligating itself, the City, or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Property, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.
- 16.19. **Approvals.** Where this Agreement requires the approval of BES, BES will approve or disapprove in writing within thirty (30) days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary, and further excepting construction change orders, to the extent governed by applicable loan documents, which will be processed according to the applicable loan documents. Failure by BES to approve or disapprove within said period of time shall be deemed an approval. Any disapproval shall state the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to BES'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 BES within forty-five (45) days after receipt of the notice of disapproval.
- 16.20. **Approval by BES Executive Director.** Except as provided for elsewhere in this Agreement, whenever consent or approval by BES is required under the terms of this Agreement, all such consents or approvals shall be given in writing from the Executive Director of BES or his or her designee.
- 16.21. **Time of Essence.** Time is of the essence of this Agreement.
- 16.22. **No Third-Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.
- 16.23. **Recording of Memorandum of Agreement.** BES shall record a memorandum of this Agreement ("Memorandum of Agreement") within ten (10) days after the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit I to this Agreement. When BES 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.
- 16.24. **Incorporation.** The exhibits attached to this Agreement are incorporated into and made a part of this Agreement.
- 16.25. **STATUTORY WARNING.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING

STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

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 Bureau of Environmental Services.

By: _____

Dean Marriott, Director

APPROVED AS TO FORM



CITY ATTORNEY

APPROVED AS TO FORM:

City Attorney

_____, a _____

By: _____

Name: _____

Title: _____

EXHIBITS

186452

- Exhibit A. Definitions
- Exhibit B. Description of the Property
- Exhibit C. Form of Deed
- Exhibit D. Project Budget
- Exhibit E. Schedule of Performance
- Exhibit F. Scope of Development
- Exhibit G. Form of Certificate of Completion
- Exhibit H. Form of Quitclaim Deed
- Exhibit I. Form of Memorandum of Agreement
- Exhibit J. Environmental Due Diligence Reports
- Exhibit K. No Further Action Letter

EXHIBIT A

DEFINITIONS

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

1. **"Agreement"** means this Agreement for the Disposition and Development of Property and all attached Exhibits.
2. **"Amended Memorandum of Agreement"** has the meaning given in Section 16.23.
3. **"City"** means the municipal corporation of the City of Portland, Oregon and its constituent bureaus and agencies, except BES.
4. **"City Design Review"** means review by the City of Portland, Bureau of Development Services in accordance with Title 33.825 of the Code of the City of Portland.
5. **"Closing"** means the transfer of the Property to Developer by BES by recording of the Deed.
6. **"Closing Date"** means the date on which the Deed from BES to Developer is recorded, as set forth in the Schedule of Performance or such later date as agreed to in Section 4.2(c).
7. **"Construction Drawings and Technical Specifications"** means documents, based upon the Design Development Drawings, that set forth in detail the requirements for construction of the Project pursuant to the terms of this Agreement, approved by BES and the appropriate City agencies. Construction Drawings and Technical Specifications shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project.
8. **"Conveyance"** means the transfer of fee simple title to the Property by BES to Developer.
9. **"Deed"** means a Bargain and Sale Deed which will be used to convey fee simple title to the Property, substantially in the form of Exhibit C.
10. **"Demolition"** means the removal of certain improvements on the Property, including but not limited to the removal of debris from the Property and its lawful disposal.
11. **"DEQ"** means the Oregon Department of Environmental Quality.
12. **"Developer"** means 2/3RDS PROJECT LLC, an Oregon limited liability company.
13. **"Developer's Principals"** has the meaning set forth in Section 12.1.2.
14. **"Design Development Drawings"** means the detailed plans submitted for City Design Review, including but not limited to:
 - Architectural site plans showing all structures upon the site together with all connections to existing or proposed utilities, roads, sidewalks and alleys;
 - A general landscaping concept plan;
 - Elevations of the buildings to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials, of the building exteriors;
 - A calculation of gross building areas, floor areas, height ratios and open spaces;
 - A preliminary Exterior Finish Schedule;
 - Proposed layouts for exterior signage, graphics, and exterior lighting; and

Deleted: <#>"Business and Workforce Equity Policy" means the Business and Workforce Equity Policy adopted by the BES Board of Commissioners on [DATE], by Resolution [NO.], a copy of which is attached hereto as Attachment B to Exhibit J.

- A description of servicing requirements, trash collection locations, loading docks and related functional areas.

15. **"Drawings"** has the meaning set forth in Section 7.2.1.
16. **"Effective Date"** means the date stated in the first paragraph of this Agreement.
17. **"Environmental Conditions"** means the physical condition of the Property as measured by the standards of the Environmental Laws. Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.
18. **"Environmental Laws"** means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Property or the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (as defined in the definition of Hazardous Substances, below), CERCLA (defined in the definition of Hazardous Substances, below), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
19. **"Environmental Due Diligence Reports"** means reports of investigations performed as part of environmental due diligence, which may include Phase 1, Phase 2 and Hazardous Building Site Assessments and reports, documents or documentation of Recognized Environmental Conditions that BES has completed or BES has in its possession, completed by others. A complete list of the Environmental Due Diligence Reports is attached as Exhibit J and incorporated herein by reference.
20. **"Final Permitted Exceptions"** has the meaning set forth in Section 2.5.2.
21. **"Final Project Budget"** means the updated and revised estimated sources and uses of funds, cash flow, and Project Budget, submitted by Developer to BES prior to Closing.
22. **"Hazardous Substances"** means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. ("CERCLA"), or any other Environmental Law.
23. **"Infrastructure"** means public streets, sidewalks, alleys, and driveway approaches, connections to garages, planting street trees and grass in planting strips, stormwater mitigation, street and parking lot lighting, construction and connection of the Project to abutting potable water and sewer and storm sewer mains, connecting the Project to gas and electric and other necessary utility services, and all permitting for any of the above as further described in the Scope of Development set forth in Exhibit F attached hereto and incorporated herein by this reference.
24. **"Land"** has the meaning set forth in Section 2.2.
25. **"Laws"** has the meaning set forth in Section 3.1.5.
26. **"Memorandum of Agreement"** has the meaning set forth in Section 16.23.
27. **"Mortgage"** means a mortgage or deed of trust against the Property (or any portion thereof) to finance the Project that is approved by BES (which approval shall not be unreasonably withheld or delayed) and recorded in the real property records of Multnomah County, Oregon.

28. **"Mortgagee"** means the holder of any Mortgage, together with any successor or assignee of such holder. The term "Mortgagee" shall include any Mortgagee as owner of the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a Mortgage but shall not include (a) any other person or entity who thereafter obtains title to the Property or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale.
29. **"NFA Letter"** means the No Further Action Letter issued by DEQ pertaining to the Property, dated August 18, 2008 and attached as Exhibit N.
30. **"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 Agency, BES, or other federal, state or local authority or any other government having jurisdiction with respect to the Property.
31. **"Party" or "Parties"** means BES and Developer, jointly or individually.
32. **"Certificate of Completion"** means a certificate issued by the City to Developer pursuant to Section 7.8 of this Agreement.
33. **"BES's knowledge"** means the actual current knowledge of the BES Project Manager, without any duty of inquiry or investigation.
34. **"People of Color"** has the meaning given in the Business and Workforce Equity Policy.
35. **"Permitted Exceptions"** has the meaning set forth in Section 2.5.1.
36. **"Phase I Environmental Assessment"** has the meaning set forth in Section 8.1.
37. **"Preliminary Design Documents"** means the site drawings for the Project including schematic, massing, feasibility and preliminary cost estimates for the Project in the form approved by BES and that were the basis for entering into this Agreement.
38. **"Project"** means the Property, and the new improvements to be constructed by Developer on the Property as described in the Scope of Development set forth in Exhibit E.
39. **"Project Budget"** means the summary financial analysis for the Project set forth in Exhibit D, attached hereto and incorporated herein by this reference. The Project Budget represents the estimated sources and uses of funds, cash flow and Project costs as of the Effective Date.
40. **"Project Manager"** has the meaning set forth in Section 16.1.
41. **"Property"** means the real property located at 8735 N. Lombard Street in the City of Portland, County of Multnomah, State of Oregon, and as described in Exhibit B.
42. **"Purchase Price"** means the price Developer shall pay to BES for the Property to be conveyed by BES to Developer. The Purchase Price is set forth in Section 2.4.
43. **"Recognized Environmental Conditions"** means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Property or into the ground, ground water, or surface water of the Property, whether or not the Release is in compliance with applicable law. Recognized Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would

not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

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44. **"Release"** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
45. **"Schedule of Performance"** means the document describing the schedule by which construction and development of the Project will occur, attached hereto as Exhibit E and incorporated herein by this reference.
46. **"Scope of Development"** means the description of the improvements to be built comprising the Project, attached hereto as Exhibit F.
47. **"Title Company"** means First American Title Insurance Company with offices located at 200 SW Market, Portland Oregon.
48. **"Unavoidable Delay"** has the meaning set forth in Section 15.8.
49. **"Unforeseen Environmental Conditions"** means the presence of a Hazardous Substance on the Property that is not identified in the Environmental Due Diligence Reports and that constitutes a Recognized Environmental Condition that, pursuant to Environmental Laws, will require remediation or abatement using means and methods that are prescribed by the Oregon Department of Environmental Quality.

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EXHIBIT B

186452

Parcel 1, R146595

Real property in the County of Multnomah , State of Oregon, described as follows:

Lots 9 and 10, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon,

EXCEPT THEREFROM the Southeasterly 3.4 feet thereof,

ALSO EXCEPT from said hereinabove described Lots 9 and 10, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65°30. East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 2, R146593

Real property in the County of Multnomah , State of Oregon, described as follows:

The Northwesterly 20 feet of Lot 8, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon,

EXCEPT THEREFROM the Southwesterly 10 feet thereof,

ALSO EXCEPT from said hereinabove described parcel, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65° 30. East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 3, R323670

Real property in the County of Multnomah , State of Oregon, described as follows:

A tract of land situated in the Northwest one-quarter of Section 1 and the Northwest one-quarter of Section 12, Township 1 North, Range 1 West of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at a point on the Easterly line of N. Lombard Street (Jersey Street), which point is the most Westerly line of Lot 10, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon; running thence Northeasterly along the Northwesterly line of that certain tract described in Deed to H.C. Campbell recorded March 26, 1891 in Book 155 page 261, Records of Multnomah County, Oregon, 177.3 feet, more or less, to an iron pipe at the most Northerly corner of Lot 9, said Depot Addition to St. Johns; thence Northwesterly parallel with the Easterly line of said Lombard Street (Jersey Street), 50 feet to a point; thence Southwesterly parallel with the Northwesterly side line of said Campbell tract to the Easterly line of North Lombard Street (Jersey Street); thence Southeasterly along said Easterly line to the point of beginning.

EXHIBIT C

Page 1

Revised February 3, 2010

EXCEPT from said hereinabove described tract of land, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65°30' East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 4, R146594

Real property in the County of Multnomah, State of Oregon, described as follows:

The Southeasterly 3.4 feet of Lots 9 and 10, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon.

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EXHIBIT C

FORM OF
BARGAIN AND SALE DEED

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

BARGAIN AND SALE DEED

The **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, acting by and through the **BUREAU OF ENVIRONMENTAL SERVICES** (together with any successor public agency designated by or pursuant to law, "BES"), conveys to **2/3RDS PROJECT LLC**, an Oregon limited liability company ("Developer"), the following described real property (herein called the "Property"):

See Exhibit B

The conveyance is made pursuant to that certain Agreement for Disposition and Development of Property between Developer and BES, dated _____, 2014, a Memorandum of which was recorded on _____, 2014 as Document No. _____, Records of Multnomah County, Oregon (the "DDA"). Any capitalized terms in this Deed shall have the meanings set forth in the DDA, unless otherwise defined herein. Other property or value was either part or the whole consideration.

The conveyance is subject to the following:

1. The covenants set forth in the DDA that the parties intend by the terms of the DDA to be real covenants running with the land.
2. A condition subsequent to this conveyance, that, pursuant to Section 15.3 of the DDA, BES shall have the option, in the event of a default (as described in Section 15.1.1 of the DDA) by Developer under the DDA before Developer is entitled under the DDA to a Certificate of Completion for the Project, and upon 90 days written notice (hereinafter "Notice of Termination") to said Developer, to declare a termination in favor of BES of the title, and of all the rights and interest of Developer, and its successors and assigns, in the Property. After delivery of such Notice of Termination, and in the event the Developer fails to remedy, end, or abrogate such default within the 90-day period in the manner stated in the Notice of Termination, Developer or its successors or assigns shall reconvey the Property to BES by quitclaim deed, pursuant to the instructions in Exhibit I to the DDA. In the event the Property is reconveyed to BES pursuant to this paragraph, BES shall acquire the Property subject to the provisions of Sections 15.4, 15.4.1, and 15.4.2 of the DDA.
3. After the BES Certificate of Completion for the Project is recorded, BES shall thereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the DDA with respect to the design or construction of the Project, including but not limited to the right of entry to the Property and power of termination in BES described in subparagraph 2 immediately above.

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

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BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this ____ day of _____, 2014.

CITY OF PORTLAND, a municipal corporation of the
State of Oregon, acting by and through the BUREAU OF
ENVIRONMENTAL SERVICES

By: _____

Chairman

By: _____

Secretary

STATE OF OREGON)

) ss.

County of Multnomah)

The foregoing instrument was acknowledged before me on _____, 20____, by
_____ as _____ of the Bureau of Environmental Services, on its behalf.

Notary Public for Oregon

My commission expires: _____

186452

STATE OF OREGON)

) ss.

County of Multnomah)

The foregoing instrument was acknowledged before me on _____, 20____, by
_____ as _____ of the City of Portland Bureau of Environmental Services, on its
behalf.

Notary Public for Oregon

My commission expires: _____

APPROVED AS TO FORM



CITY ATTORNEY

826081

EXHIBIT E

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SCHEDULE OF PERFORMANCE

PRE-CLOSING

TASK	DUE DATE
1. Execute Memorandum of Understanding	Completed
2. Substantial Draft DDA	December, 2013
3. Council Approval of DDA	March 14, 2014
4. Complete Public Participation Plan	May 1, 2014
5. BES records Memorandum of DDA	March 24, 2014
6. BES to provide Preliminary Title Report to Developer - Section 2.5.1	March 24, 2014
7. Developer to submit to the City of Portland Bureau of Development Services, an application for Design Review Approval	April 18, 2014
8. Developer to provide Final Construction Drawings and Technical Specifications & Project Budget - Section 7.2.3(e)	April 18, 2014
9. Developer to secure land use approvals and permits - Section 4.1.2(ii); 4.1.4(i)	April 18, 2014
10. Developer to secure building permits from BDS - Section 4.1.2(i); 4.1.4(i)	April 18, 2014
11. Developer to provide documentation of required financing - Section 4.1.4(ii).	April 18, 2014
12. BES to provide final form of Deed - Section 5.4	April 18, 2014
13. Developer to provide Organizational Documents, Certificate of Existence, and Authorizing Resolution - Section 4.1.4(ii)	April 18, 2014
14. Developer to submit Final Project Budget - Section 4.1.4(iii)	April 18, 2014
15. BES to complete review of Final Project Budget - Section 4.1.4(iii)	April 18, 2014
16. Closing/Conveyance of Property to Developer - Section 5	July 31, 2014
17. Final Termination Date (if Closing does not occur by _____) - Section 4.3	March 31, 2015

POST-CLOSING

186452

TASK	DUE DATE
1. Developer to commence construction	On or before July 31, 2014
2. Developer to complete construction and secure Certificate of Occupancy for the Project - Section 7.8.1ii	On or before March 31, 2015
3. Developer to request Certificate of Completion from BES – Section 7.8	April 30, 2015
4. BES to issue BES Certificate of Completion (assuming compliance with DDA) - Section 7.8.1	May 31, 2015

826081

EXHIBIT F

SCOPE OF DEVELOPMENT

186452

The 2/3rds Project will be a new development by Guerrilla Development Co. It will in essence function like a traditional mixed-use building, with housing on top, retail on the ground floor, and offices sandwiched in the middle. However Guerrilla Development has decided, instead of erecting a larger monolithic building, to knock the concept over - spreading the 3 functions onto the site with the most public (retail) stationed at the sidewalk while the most private (housing) will sit at the back far from the street.

There will be 7 separate buildings in the project, and their negative spaces will create 9 distinctive private courtyards. This arrangement allows for the public to circulate deep into the site and through to the Racquet Center, the project's rear-lot neighbor. There will be 2 public pedestrian alleyways that lead to the 3 offices and 6 residential lofts. The storefront spaces will contain 3 eateries and 1 retailer.

Guerrilla Development coined the project "The 2/3rds Project" because it will 1) cover 2/3rds of the site, 2) use 2/3rds of the energy consumption as compared to a typical commercial building, and 3) be activated 2/3rds of a 24-hour day. This last element will be achieved thanks to the tenant mix, with the offices open at 8 in the morning and the restaurants open until later in the night. And each of the 3 eateries will have their own dedicated exterior seating, further enlivening N. Lombard and St. Johns.

FORM OF CERTIFICATE OF COMPLETION

After recording return to:

CERTIFICATE OF COMPLETION

The CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the BUREAU OF ENVIRONMENTAL SERVICES ("BES"), hereby determines that 2/3RDS PROJECT LLC, An Oregon limited liability company ("Developer"), has substantially completed construction of the Project as described in the Agreement for Disposition and Development of Property, dated _____, 2014 (the "DDA"), a memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. _____ on _____, 2013. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 7.8 of the DDA, BES hereby determines that:

- (i) the Project is complete according to the Final Construction Drawings and Technical Specifications, except for punch-list items that do not materially affect the use of the Project for the purposes intended under the DDA,
- (ii) the City of Portland has issued a temporary or permanent Certificate(s) of Occupancy with respect to the Project,

This Certificate of Completion constitutes a conclusive determination of the satisfaction of all of the agreements, covenants and conditions contained in the DDA with respect to the obligations of Developer, its successors and assigns, as to the construction of the Project, and such obligations shall automatically cease and become of no further effect, except as otherwise provided in this Certificate of Completion. This Certificate of Completion represents and determines the completion of Developer's construction obligations described herein as to BES 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 design and construction of the Project, and
- (2) The following Sections of the DDA shall survive and remain in effect for the periods identified in the DDA notwithstanding issuance of this Certificate of Completion ("Surviving Sections"): Section 7.5.2 (INDEMNITY FROM LIABILITY CLAIMS), Section 7.5.3 (INDEMNITY FROM LIENS), Section 2.3 (COVENANTS RUNNING WITH THE LAND), and Section 8.4 (INDEMNIFICATION).

Other than its right to enforce the Surviving Sections, BES 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 design or construction of the Project, or as a result of a breach of any provisions of

the DDA relating to design or construction by the Developer, or by any successors in interest or assigns of Developer. Without limitation, BES confirms that BES no longer has any right of entry to the Property or power to terminate Developer's title to the Property and revest such title in BES.

186452

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

CITY OF PORTLAND, a municipal corporation of the
State of Oregon, acting by and through the BUREAU
OF ENVIRONMENTAL SERVICES

By: _____
Name: Dean Marriott, Director

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20__, by
Dean Marriott, Director of the BUREAU OF ENVIRONMENTAL SERVICES, on its behalf.

Notary Public for Oregon
My commission expires: _____

861281

EXHIBIT H

186452

FORM OF QUITCLAIM DEED

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

Scott Turpen
Bureau of Environmental Services
1120 SW 5th Avenue
Portland, OR 97204

QUITCLAIM DEED

2/3RDS PROJECT LLC, a limited liability company ("Grantor"), releases and quitclaims to the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the BUREAU OF ENVIRONMENTAL SERVICES (together with any successor public agency designated by or pursuant to law, "Grantee"), all right, title and interest in and to the following described real property:

Parcel 1, R146595

Real property in the County of Multnomah , State of Oregon, described as follows:

Lots 9 and 10, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon,

EXCEPT THEREFROM the Southeasterly 3.4 feet thereof,

ALSO EXCEPT from said hereinabove described Lots 9 and 10, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65°30. East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 2, R146593

Real property in the County of Multnomah , State of Oregon, described as follows:

The Northwesterly 20 feet of Lot 8, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon,

EXCEPT THEREFROM the Southwesterly 10 feet thereof,

ALSO EXCEPT from said hereinabove described parcel, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65° 30' East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 3, R323670

Real property in the County of Multnomah, State of Oregon, described as follows:

A tract of land situated in the Northwest one-quarter of Section 1 and the Northwest one-quarter of Section 12, Township 1 North, Range 1 West of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at a point on the Easterly line of N. Lombard Street (Jersey Street), which point is the most Westerly line of Lot 10, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon; running thence Northeasterly along the Northwesterly line of that certain tract described in Deed to H.C. Campbell recorded March 26, 1891 in Book 155 page 261, Records of Multnomah County, Oregon, 177.3 feet, more or less, to an iron pipe at the most Northerly corner of Lot 9, said Depot Addition to St. Johns; thence Northwesterly parallel with the Easterly line of said Lombard Street (Jersey Street), 50 feet to a point; thence Southwesterly parallel with the Northwesterly side line of said Campbell tract to the Easterly line of North Lombard Street (Jersey Street); thence Southeasterly along said Easterly line to the point of beginning.

EXCEPT from said hereinabove described tract of land, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65°30' East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 4, R146594

Real property in the County of Multnomah, State of Oregon, described as follows:

The Southeasterly 3.4 feet of Lots 9 and 10, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon. Other property or value was either part or the whole consideration.

It is intended that the delivery of this Deed shall not effect a merger of the provisions of that certain Disposition and Development Agreement for the Project, dated [DATE], a memorandum of which was recorded on [DATE] as Document No. ____, Records of Multnomah County, Oregon (the "DDA"). Including, without limitation, Section 14 and Section 15.4 (including Sections 15.4.1 and 15.4.2) of the DDA, that are intended to continue after delivery of this Deed.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE

PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this ____ day of _____, 20____,
_____, a _____

By: _____
Name: _____
Title: _____

Accepted this ____ day of _____, 20____.

CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the BUREAU OF ENVIRONMENTAL SERVICES.

By: _____
Name: _____
Title: Director

STATE OF OREGON)
) ss.
County of Multnomah)

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

Notary Public for
My commission expires: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 20____, by
_____, Director of the BUREAU OF ENVIRONMENTAL SERVICES, on its behalf.

Notary Public for
My commission expires: _____

821081

EXHIBIT H (Continued)

186452

INSTRUCTIONS FOR QUITCLAIM DEED

_____ Title Insurance Company

Attention: [INSERT TITLE OFFICER]

2/3RDS PROJECT LLC, a limited liability company ("Developer"), has entered into that certain Agreement for Disposition and Development of Property (the "DDA") with the City of Portland, Oregon, acting by and through the Bureau of Environmental Services ("BES") dated as of _____, 2014, a Memorandum of which was recorded _____, 2014 as Document No. _____, Records of Multnomah County, Oregon, whereby BES will convey to the Developer or its assignees certain real property (the "Property"). The Property is described in the accompanying quitclaim deed ("Quitclaim Deed").

Section 15.3 of the DDA provides that, under certain circumstances, BES is entitled to reconveyance of the Property pursuant to a Quitclaim Deed. This document constitutes those instructions and is for the purpose of irrevocably instructing you as to the disposition of the accompanying Quitclaim Deed.

In the event that you receive from BES a notice signed by BES's Director certifying that a copy of said notice has been delivered concurrently to Developer and certifying that a termination of all rights, title and interest of Developer in the Property has occurred in accordance with Section 15.3 of the DDA, and that rights to the Property described in the Quitclaim Deed have reverted in BES pursuant to the DDA ("Notice of Termination"), you shall at the end of thirty (30) days after receipt of said instructions record the subject Quitclaim Deed unless within said thirty (30) day period, you are notified by BES that BES has withdrawn the Notice of Termination.

In the event that you receive a copy of a Certificate of Completion issued by BES with respect to the Project (either an original or one certified by Developer as being a duplicate of the original), you will promptly return the Quitclaim Deed to Developer. In the event that there still remains in your possession an undisposed Quitclaim Deed by **[INSERT DATE EIGHTEEN (18) MONTHS AFTER DDA SCHEDULED DATE FOR COMPLETION OF IMPROVEMENTS]** you shall contact BES and Developer as to its disposition.

These instructions may not be withdrawn or in any way amended, modified or waived without the prior written consent of both of the parties hereto.

Please indicate your acceptance of and agreement to carry out these instructions as indicated below.

Very truly yours,

_____, a _____

By: _____
Name: _____
Title: _____

Very truly yours,

CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the
BUREAU OF ENVIRONMENTAL SERVICES.

186452

By: _____
Name: _____
Title: _____

Accepted and agreed to this
____ day of _____, 20__

_____, Title Insurance Company

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM


CITY ATTORNEY

FORM OF MEMORANDUM OF AGREEMENT

After recording return to:

Bureau of Environmental Services
1120 SW 5th Avenue
Portland, OR 97204
Attn: Jenn Bildersee

Memorandum of Agreement

THIS MEMORANDUM OF AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY ("Memorandum") shall serve as notice to all persons that the CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the BUREAU OF ENVIRONMENTAL SERVICES ("BES"), with an address of Bureau of Environmental Services, 1120 SW 5th Ave., Portland, Oregon 97204, and 2/3RDS PROJECT LLC, an Oregon limited liability company ("Developer"), with an address of 3435 N 45th #J, Portland OR 97213, entered into an Agreement for Disposition and Development of Property dated as of _____, 2014 ("Agreement") relating to the real property located in Multnomah County, Oregon, as more particularly described in Exhibit A attached hereto (the "Property").

Among other things, the Agreement requires BES to convey the Property to Developer upon the satisfaction of certain conditions precedent, and requires Developer to construct and complete certain infrastructure and project improvements on the Property, all as more particularly set forth in the Agreement and subject to the terms and conditions in the Agreement.

The Agreement also imposes the following covenants running with the land: (a) Developer covenants and agrees to use the Property only for purposes substantially consistent with the Agreement, including the Scope of Development and Final Construction Plans and Specifications for a period of ten (10) years following the issuance of the Certificate of Completion (described in the Agreement), and (b) prior to the issuance of the Certificate of Completion, the Design Review provisions of Section 7.2 of the Agreement will survive any foreclosure or transfer of the Property by a deed in lieu of foreclosure or any other transfer of the Property. BES and Developer also declare and agree that these covenants described in this paragraph are covenants running with the land for the applicable periods set forth above and shall pass to and be binding on Developer's successors in title to the Property, including, without limitation, any Mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property and upon the respective heirs, executors, administrators, devisees, designees, successors, and assigns of any Mortgagee, purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest in the Property.

As a condition subsequent to the Property conveyance, in the event of a default by Developer under the Agreement (as described in Section 15.1.1 of the Agreement) that occurs after the Property is conveyed to Developer and prior to the time Developer is issued a Certificate of Completion, BES shall have the option, upon 90 days written notice ("Notice of Termination") to Developer, to declare a termination in favor of BES of all the title, rights and interests of Developer in the Property. After delivery of such Notice of Termination and in the event Developer fails to remedy, end or abrogate such default within the 90-day period in the manner stated in the Notice of Termination, Developer shall reconvey the Property to BES by

quitclaim deed, pursuant to the instructions in Exhibit I attached to the Agreement. In the event the Property is reconveyed to BES pursuant to this paragraph, BES shall acquire the Property subject to the provisions of Sections 15.4, 15.4.1, and 15.4.2 of the Agreement. After a Certificate of Completion is recorded as to the Project, BES shall thereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the Agreement with respect to the design or construction of the Project, or as a result of a default in or breach of any provisions of the Agreement by Developer, or by any successors in interest or assigns of Developer, except for those surviving sections described in the Certificate of Completion. BES shall thereafter have no further right of entry to the Property or power to terminate the title, rights and interests of Developer in the Property as described above.

BES 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
BUREAU OF ENVIRONMENTAL SERVICES.

186452

By: _____
Name: Dean Marriott
Title: Director

2/3RDS PROJECT LLC, an Oregon limited liability company

By: _____
Name: _____
Title: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 2014, by
Dean Marriott, Director of the BUREAU OF ENVIRONMENTAL SERVICES, on its behalf.

Notary Public for
My commission expires: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____, 2014, by _____,
_____ of _____, a _____, on its behalf.

Notary Public for
My commission expires: _____

824285

EXHIBIT A TO MEMORANDUM OF AGREEMENT

186452

Description of Property

Parcel 1, R146595

Real property in the County of Multnomah , State of Oregon, described as follows:

Lots 9 and 10, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon,

EXCEPT THEREFROM the Southeasterly 3.4 feet thereof,

ALSO EXCEPT from said hereinabove described Lots 9 and 10, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65°30. East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 2, R146593

Real property in the County of Multnomah , State of Oregon, described as follows:

The Northwesterly 20 feet of Lot 8, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon,

EXCEPT THEREFROM the Southwesterly 10 feet thereof,

ALSO EXCEPT from said hereinabove described parcel, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65° 30. East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 3, R323670

Real property in the County of Multnomah , State of Oregon, described as follows:

A tract of land situated in the Northwest one-quarter of Section 1 and the Northwest one-quarter of Section 12, Township 1 North, Range 1 West of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at a point on the Easterly line of N. Lombard Street (Jersey Street), which point is the most Westerly line of Lot 10. DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon; running thence Northeasterly along the Northwesterly line of that certain tract described in Deed to H.C. Campbell

recorded March 26, 1891 in Book 155 page 261, Records of Multnomah County, Oregon, 177.3 feet, more or less, to an iron pipe at the most Northerly corner of Lot 9, said Depot Addition to St. Johns; thence Northwesterly parallel with the Easterly line of said Lombard Street (Jersey Street), 50 feet to a point; thence Southwesterly parallel with the Northwesterly side line of said Campbell tract to the Easterly line of North Lombard Street (Jersey Street); thence Southeasterly along said Easterly line to the point of beginning.

EXCEPT from said hereinabove described tract of land, that portion described in Deed to the City of Portland, a municipal corporation recorded February 29, 1980 in Book 1423 page 821, Records of Multnomah County, Oregon, more particularly described as follows:

That portion of that certain tract of land described in Deed to the City of Portland, acting by and through the Portland Development Commission, recorded November 17, 1976 in Book 1140 page 456, Records of Multnomah County, Oregon and more particularly described as follows:

Beginning at the most Northerly corner of said tract; thence Southwesterly along the Northwest line thereof 59.35 feet; thence Southeasterly parallel to the Southwest line of said tract 43.00 feet; thence South 65°30'. East 119.0 feet, more or less, to the most Northerly Northeast corner of said tract; thence along the Northeast line of said tract 145.0 feet, more or less, to the point of beginning.

Parcel 4, R146594

Real property in the County of Multnomah , State of Oregon, described as follows:

The Southeasterly 3.4 feet of Lots 9 and 10, DEPOT ADDITION TO ST. JOHNS, in the City of Portland, County of Multnomah and State of Oregon.