

Greg Close  
Submitted  
10-3-13



**MEMORANDUM**

**OCTOBER 3, 2013**

**TO: PORTLAND CITY COUNCIL**

**FROM: WYSE INVESTMENT SERVICES COMPANY**

**RE: IMMEDIATE AND IRREPARABLE INJURY AND DAMAGES TO ZIBA DESIGN AND ITS TENANT BUSINESSES FROM THE MOVE OF R2D2 TO LOT 7 OF STATION PLACE**

Ziba Design acquired lot 2 Station Place from the City through the PDC in 2008. Ziba developed an approximate 77,500 square foot building on lot 2, which lot is directly adjacent to Lot 7 Station Place.

Ziba spent approximately \$22.4 Million constructing and leasing its building.

Besides Ziba, the building is occupied by Asula Wellness; Scanlon Kemper Bard Companies and Jama Software.

Ziba and its tenants will suffer irreparable injury and economic damages from the City's move of R2D2 to Lot 7 Station Place on account of the following:

- Real estate professionals (letters and emails attached hereto) observe that leasing difficulty, rental reductions, increased vacancies, lower property values and business closures all resulted in Old Town following the opening of the current homeless camp at 4<sup>th</sup> and Burnside.
- Per professional opinion, rental discounts and value reductions can easily run to the range of 15% to 25%.
- The lender for the Grove Hotel project required a 'reappraisal' of the property when the current camp moved in across the street. The value reduction, \$890,000, represented 23% of the value of the project and the lender pulled the plug.
- Using simple appraisal methodology, with a 25% reduction in rental rates, Ziba's building would be worth over \$6.9 Million less than its current value, using a conservative capitalization rate of 7%. The same analysis would produce a value reduction of \$4.2 Million using a 15% discount in rental rates.
- Ziba's lender requires that the property maintain minimum levels of cash flow and value in order for the lender to avoid declaration of a default and call the loan. The base line rent and value covenants in place are far above either the 15% or 25% discounts cited herein.
- If the bank provides notice of default to Ziba, resulting from income and value reductions caused by the camp, Ziba will be damaged economically in ways that are difficult to quantify – the damage to the firm's reputation would be catastrophic.



- Any default or impairment of Ziba's ability to repay its loan on account of the move of the homeless camp to the lot adjacent to its business would presumably give rise to a claim for interference of a contract between Ziba and its lender.
- Ziba's business operations rely on talent recruited from all over the globe; such talent is attracted to Ziba due to the firm's sterling reputation as an award winning international design firm and due to its state of the art working environment in Station Place. Ziba attracts customers, nationally and internationally, for the same reasons.(See attached memorandum from Ziba's Sohrab Vossoughi.) A large percentage of Ziba's employees are female who park in the neighborhood nearby. Businesses and real estate professionals are on record as indicating that employees have difficulty being near a concentrated population of homeless individuals, such as the camp produces. If Ziba cannot attract and maintain high level talent, and a key customer base, its business will be significantly and materially impaired – in ways that are not directly quantifiable in terms of money damages or pure economics.
- The other businesses located in Ziba's building will have the same injuries and damages brought about by the move of the homeless camp to Lot 7 adjacent to their place of business.

The injuries and damages cited in this memorandum are substantial and unreasonable.

The injuries and damages cited in this memorandum are likely in the event the homeless camp relocates to lot 7 adjacent to Ziba's building and business.

Much of the injuries and damages cannot be quantified nor can they be compensated adequately in terms of money damages.

The damages are probable, not threatened or feared, based on the evidence presented in this memorandum and in the attachments hereto.

**Greg V. Close**

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**From:** Sohrab Vossoughi <Sohrab\_Vossoughi@ziba.com>  
**Sent:** Tuesday, September 24, 2013 5:49 PM  
**To:** Greg V. Close  
**Subject:** Ziba's contribution to PDX  
**Attachments:** ZIBA Cont..docx

Greg,

Attached is several bullet points about the major contributions of Ziba to the City and its exposure/recognition as a design/creative center.

Moreover, we have over 80% of our clients from out of state. We have been exposing all the major international fortune 500 companies to Portland. Every year we have over 10 national and international coverage that exposes Portland and our company and its work. We have single handedly, made Portland a hub of design and innovation (the other two hubs that have an organization like ours are, SF and Boston). There has been several spinoff from Ziba as well.

Let me know if this is enough.

Thanks

Sohrab

Sohrab Vossoughi | President | Ziba Design, Inc. | 503.223.9606 | [www.ziba.com](http://www.ziba.com)

- Worked with Mayor Katz and PDC to develop the creative industry initiative (2003 – 2008)
- Created and ran the Portland Design Collaborative board (Mayor Katz initiative) to help support the creative culture and to attract future creative/design industry to Portland. (2003-2008)
- Contributed over \$25k and many volunteer hours to the Portland Design Collaborative and created the Portland Design Festival which attracted national and international attention to Portland as a creative/design center (National and international guests and media coverage) (2003-2008)
- Worked with Mayor Adams and PDC to create the Portland's creative resource organization; Design Forum PDX (2008 – present). Brought in international design organizations as partners. Created and recruited a board of directors, including the top 3 educational organizations in the state, local businesses and creative industries. Spent many volunteer time and over \$30k to fund the organization and its expenses.
- Persuaded the Industrial Design Society of America (IDSA) to bring their annual international conference to Portland (the first and only time in the Northwest). Over 700 delegates from startups to fortune 500 companies from all over the world gathered in Portland for 4 days. The event was covered by the national and international media. Again, Ziba spend many hours and dollars (\$20k) to organize and chair the event.
- Located and helped establish the Design and Innovation Center for LiNing (the Nike of China) to Portland. Helped them recruit designers and staff for the center (over 30 employees).
- In talks to locate and establish the North America's Design and Innovation Center for the largest Chinese information technology company to Portland.
- Helped establish and have been supporting the Product Design program at University of Oregon (2006- 2007)



**Greg V. Close**

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**From:** Rennie Dunn [<mailto:rennie@apexcre.com>]

**Sent:** Tuesday, October 01, 2013 1:17 PM

**To:** Greg V. Close

**Subject:** RE: Rental and Value discounts in Old Town and at Ziba from Homless Camp Move

Since we took back a 4,620 SF space o NW 5<sup>th</sup> and Davis, above Davis Street Tavern Fall of 2012, we have not been about to lease the space and have subsequently had to reduce the rental rate to \$21 psf. If we cannot find a tenant soon. We will need to further reduce the rental rate from the original asking rate of \$23 per square foot.

I happen to represent a growing consulting company that is looking for 4,000 SF. When I informed them of the space above Davis Street Tavern (open/creative with brick and large timber beams and carpet tiles) they indicated that they would not consider Old Town for the safety concerns of their female employees.

With Jama Software looking for larger space and thus will be vacating the ground floor of the Ziba HQ, given the office market demand for creative office space in the Pearl, I expect that space to least between \$28-32 per square foot. With the homeless camp moving to the Lovejoy bridge, lease rates will likely fall to \$24 per square foot.

You may also want to reach out to Christopher Hanford who runs Davis Street Tavern. I think he would be happy to detail the decrease in business due to the camp's presence in old town.

[Christopher.hanford@gmail.com](mailto:Christopher.hanford@gmail.com)

Rennie E. Dunn  
Associate Director  
**Apex Real Estate Partners**

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p: 503.595.2845 c: 503.853.2141 f: 503.595.2669

Please consider the environment before printing this email.



real estate

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October 3, 2013

Mr. Sohrab Vossoughi  
Ziba Design  
1044 NW 9<sup>th</sup> Avenue  
Portland, OR 97209

**RE: Proposed Homeless Camp – Lot 7 – Station Place**

Dear Sohrab:

I am writing to voice my concerns over the consideration of placing a homeless camp on Lot 7 – Station Place and the negative impact it will have on the values of adjacent businesses and residents. Ziba being just one of many of which will be significantly impacted.

As a long-term resident and business owner in the Pearl, I speak from experience about the adverse effects that both homeless and vagrants have on the values of properties and businesses. When the Pearl District was in its infancy, there were homeless on the loading docks and vagrants in the area quite a bit. The properties where they were most concentrated simply **did not lease**. When businesses moved into areas close by, there were constant complaints and altercations were not uncommon. These were a few people here and there – not an entire organized camp. The message to potential tenants is very clear – the City will allow crime and vandalism in place of thriving commerce. The former attractions that the City put so many resources into – the Streetcar, subsidies for parks and business/companies to locate here – will be completely overshadowed by this grossly negligent proposal. Would you have located your world-class building and investment in this location had you been told a few short years later a homeless camp would be next door? Would the Marriott have selected this location? Of course this could threaten a newly proposed condominium project a couple of blocks away too – sacrificing much needed tax dollars in favor of paying out more tax dollars for the issues and

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costs that accompany a homeless camp.

Page Two – Ziba

October 3, 2013

What occurs and is not just a perception, is drug dealing and crime – even if managed facilities don't allow it, they go around the corner. Many, many tenants and residents of the area have witnessed this over and over. Significant property vandalism and more serious crimes occur in the entire area surrounding camps such as the one proposed. The leasing rates for properties will plummet by a large percentage. In my estimation, rents would go down by 25 – 35% if you could get tenants at all. In some cases, you will not be able to get a tenant.

A case to consider is how long the commercial space at the base of Old Town Lofts (very close to homeless services and shelters) has been vacant – since it was built in 2001. Twelve years without a single tenant. On the residential side, many of the current sales in that building show a loss from the sales over ten years ago – that is not the case in any other building in the Pearl District.

Camps like this support adverse uses, crime, an unsafe environment and reduce both commercial and residential values tremendously.

Thank you for your support in the effort to make sure this camp is not allowed.

Sincerely,



Debbie Thomas  
Owner and Principal Broker

CC: Via Email  
Greg Close, WISCO  
Mayor Charlie Hales  
Commissioner Amanda Fritz  
Commissioner Nick Fish  
Commissioner Dan Saltzman  
Commissioner Steve Novick

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**Greg V. Close**

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**From:** Bob Scanlan <rscanlan@skbcos.com>  
**Sent:** Tuesday, August 27, 2013 4:20 PM  
**To:** mayorcharliehales@portlandoregon.gov  
**Cc:** dan@portlandoregon.gov; Amanda@portlandoregon.gov; nick@portlandoregon.gov; Greg V. Close; tiffanys@hoytliving.com; patricia gardner; quintonp@pdc.us; Sohrab\_Vossoughi@ziba.com; Sia Vossoughi; dike@wddcorp.com; homer@wddcorp.com; Joe Weston  
**Subject:** Homeless Camp Relocation

SCANLANKEMPERBARD COMPANIES  
REAL ESTATE MERCHANT BANK

ROBERT D. SCANLAN  
CHAIRMAN, CHIEF EXECUTIVE OFFICER, PRINCIPAL

August 27, 2013

Mayor Charlie Hales  
1221 SW 4th Avenue, Room 340  
Portland, OR 97204

Dear Charlie,

I am writing regarding moving the "Right 2 Dream Too" camp to under the NW Lovejoy ramp, adjacent to Ziba Headquarters. We occupy the 3<sup>rd</sup> floor in the Ziba building.

I assume the city has the legal right to do this, otherwise you would not consider it. You might also consider the affect this will have on Ziba Design, ScanlanKemperBard Companies and Jama Software and other adjacent housing and businesses. Also, Marriott will be opening soon for whom this could be debilitating. Virtually half of business travelers are women travelling alone – and they will report back to their associates and friends of this detracton to the Pearl Marriott.

Sincerely,

Bob

**Robert D. Scanlan | Chairman, CEO, Principal**



810 NW Marshall Street, Suite 300 | Portland, Oregon 97209  
503.552.3560 Direct | 503.220.8760 Fax  
[rscanlan@skbcos.com](mailto:rscanlan@skbcos.com) | [www.skbcos.com](http://www.skbcos.com)

Registered Representative offering securities through SKB Securities,  
Member FINRA SKB Securities is a wholly-owned subsidiary of  
ScanlanKemperBard Companies

Executive Assistant:  
Megan E. McElhaney  
[memcelhaney@skbcos.com](mailto:memcelhaney@skbcos.com)  
503.552.3528



# David Gold

412 NW Couch Street, Suite 220

Portland, Oregon 97209

(503) 539-6910

October 3, 2013

Mayor Charlie Hales

1221 SW 4<sup>th</sup> Avenue, Suite 221

Portland, OR 97204

RE: Right To Dream Too Camp Relocation

Dear Mayor Hales,

Thank you for the opportunity to submit written testimony on this land use issue involving the relocation of R2D2. I regret that I am not able to testify in person.

I would like to preface my remarks by stating that many in our community equate the support for the enforcement of zoning, design review, and building regulations with being anti-homeless. Nothing could be farther from the truth. As an Old Town stakeholder, I have supported many social service agencies in the neighborhood. I worked with the OTCT Visions Committee, a group of residents, property owners, business owners, social service agencies, and other OTCT stakeholders, to reach agreement on difficult neighborhood issues. Many years ago, I was board chair of the Burnside Community Council, commonly known as Baloney Joes. The current controversy is not about support for, or opposition to, homelessness. It is about fair and equitable application of the law – clear and simple. There is no place in the code that allows the City to decide when and when not to enforce the law.

As you know, for four years, I, along with an incredible development team, have been working on redeveloping the vacant Grove Hotel into The Grove Hostel (a combination of a hostel, 7 new retail stores along W. Burnside, and a new restaurant / bar). While I could rehash the entire history of The Grove Hostel development, I will keep my focus to

the effect the R2D2 camp had on our project. A timeline illustrates the impact better than a long narrative:

- In 2010, The Grove Hostel project's as-built appraised value was \$3,950,000.
- In October 2011, R2D2 established itself on the gravel lot at NW4th and Burnside, directly across the street from the proposed Grove Hostel site.
- In November 2012, the same appraiser from 2010, appraised the slightly modified project at \$3,060,000, a loss of \$890,000 (23%) in value.

I would also like to clarify a position reported in the media numerous times; The Grove Hostel investors did not "pull out" of the project – it became financially unfeasible with the loss in as-built value. When our third party lender pulled out, we could not proceed under our DDA with PDC. Now, even PDC no longer wants to be involved in the project as it is presently structured (based on the difference between the as built appraised value and the total project costs).

Recently, my real estate broker, working to lease some space in the Technology and Arts Block building, emailed me that *"the financial firm [told] me that they no longer want to consider Old Town for their office. They felt the "ambiance" was too rough."*

This is a far cry from when we purchased the Technology and Arts Block in 2007 and the Business Journal published stories about tech firms moving to the area. Since the R2D2 camp opened, Ping (the first new Asian restaurant to open in OTCT in years) and Hamburger Mary's have closed, a retail tenant in the Goldsmith Blocks across the street from the camp has decided to move out of OTCT, and the neighborhood has deteriorated generally. What had been a neighborhood on the upswing, suddenly is in decline.

All I ask is that the City apply the same land use process across the board. Frankly, the legal and semantic gymnastics the City has been applying to the current proposed move is embarrassing. Portlanders deserve better.

Thank you for your time and consideration.

Sincerely,

David Gold

**DISPOSITION AND DEVELOPMENT AGREEMENT  
FOR LOT 2 - STATION PLACE REDEVELOPMENT**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is made as of 2/9/06, 2006, by the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland ("PDC"), and **SONEED, LLC**, an Oregon limited liability company ("Developer"). PDC and Developer are referred to jointly in this Agreement as "Parties" and individually as "Party."

**RECITALS**

A. In furtherance of the objectives of Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City of Portland, PDC has undertaken a program for the clearance and reconstruction of blighted areas in the City of Portland, Oregon (the "City") and, in this connection, PDC has prepared and approved an urban renewal plan for the River District Urban Renewal District (the "District") and the urban renewal plan was approved by the City Council of the City on October 21, 1998, (which plan may hereafter be amended from time to time pursuant to law, is hereinafter referred to as the "Urban Renewal Plan"). A counterpart of the Urban Renewal Plan has been recorded in the Official Records of Multnomah County, Oregon and is incorporated herein by reference for all purposes.

B. In order to enable PDC to achieve the objectives of the Urban Renewal Plan, PDC has acquired, and made, and intends to continue to make, certain land available for redevelopment by private enterprise in accordance with the uses specified in the Urban Renewal Plan.

C. In 2002, PDC, Hoyt Street Properties, L.L.C., an Oregon limited liability company ("HSP"), and Station Place, LLC, an Oregon limited liability company ("REACH") entered into a Disposition and Development Agreement ("Original DDA") whereby REACH and HSP undertook development of a portion of a PDC owned triangular-shaped parcel of approximately six (6) acres, located along the east side of NW Ninth Avenue, immediately north of NW Lovejoy Street and bordered on the northeast by the Union Station rail lines, as shown generally on the Site Plan (Exhibit A). Lots 1, 2 and 3, together with the streets dedicated to the City of Portland, comprise the southernmost approximately 5 acres of the site and shall hereafter be referred to as the "Station Place Development Property." The general location and configuration of the Station Place Development Property, the component lots, uses, surface parking, ingress and egress, and the relationship of the various developments (as defined below) to adjacent improvements is also shown on Exhibit A.

D. REACH and PDC have completed development of rental housing and the Parking Garage on Parcels 1A and 2, respectively, as described in the Original DDA. HSP has acquired Parcel 3 pursuant to the Original DDA. Under the Original DDA, REACH was to have developed Parcel 1B, now Lot 2, and referenced herein as "Lot 2". REACH has determined that

it is not interested in developing Parcel 1B and PDC has declared REACH in default, and REACH has waived its rights and obligations relating to Parcel 1B (Lot 2) and Lot 2 has been completely released from and is no longer bound by or covered by the Original DDA

E. Developer desires to develop Lot 2 in accordance with the uses specified in the Urban Renewal Plan, and this Agreement, including the Site Plan, the Scope of Development attached hereto as Exhibit B, and the Schedule of Performance attached hereto as Exhibit C. Developer also wishes to enter into an arrangement with PDC for use of spaces in the Parking Garage located on Parcel 2 as parking for the building to be developed on Lot 2 ("Building").

F. PDC, in consideration of the agreements of the Developer set forth herein, is willing to sell Lot 2 to Developer.

G. PDC has concluded that the redevelopment of Lot 2 pursuant to this Agreement, and the fulfillment generally of this Agreement and the intentions set forth herein, are in the best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of the applicable state and federal laws and requirements under which the Urban Renewal Plan has been undertaken.

H. The Parties now desire to evidence their agreement regarding the foregoing.

### AGREEMENT

In consideration of the premises and the agreements set forth herein and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

### DEFINITIONS

The following terms have the designated meanings in this Agreement:

1. **"Affiliate"** means with respect to any person or entity (i) any other person or entity, that directly or indirectly, controls, is controlled by, or is under common control with, such specified person or entity, or (ii) any person or entity that is an officer, director, general partner, or member of, or that serves in a similar capacity with respect to, such specified person or entity. A person or entity shall be deemed to be controlled by any other person or entity if such other person or entity possesses, directly or indirectly, the power to (i) vote more than ten percent (10%) of the equity or voting interests in the specified person or entity or (ii) to direct the management of the specified person or entity by a contract or otherwise.
2. **"Agreement"** means this Disposition and Development Agreement and all attached Exhibits.
3. **"Certificate of Completion"** means the certificate to be issued by PDC to Developer pursuant to Section 5.8 of this Agreement.
4. **"City"** means the City of Portland, Oregon, a municipal corporation of the State of Oregon.

5. “Close,” or “Closing” means PDC’s conveyance of Lot 2 to Developer by Deed.
6. “Closing Date” means the date of Closing.
7. “Commencement of Construction” means the date excavation for the Project is begun after issuance of permits from the City necessary for such excavation
8. “CC&R’s” means the conditions, covenants and restrictions on the Station Place Development Property, attached hereto as Exhibit I, which address issues of common interest among the property owners, including but not limited to design review and uses of the properties.
9. “Conveyance” means the transfer by PDC to Developer of Lot 2 property ownership.
10. “Deed” means the form of Special Warranty Deed attached hereto as Exhibit E conveying fee simple title to Lot 2.
11. “Deposit” shall mean the combination of the Initial Deposit and the Additional Deposit. The “Initial Deposit” is the \$25,000 paid by Developer to PDC as earnest money at the Effective Date. The “Additional Deposit” is the \$25,000 to be paid by Developer to PDC at the end of the 120-day period after the Effective Date on the conditions described in Section 1.6.1 below.
12. “District” means the area included in the Urban Renewal Plan.
13. “Effective Date” means the date that this Agreement is fully executed by both Parties.
14. “Environmental Abatement” means the testing for, and containment and/or removal of all Hazardous Substances from Lot 2.
15. “Environmental Laws” means all federal, state and local laws, ordinances, rules and regulations pertaining to the protection or regulation of the environment that apply to Lot 2, including without limitation, RCRA (defined herein), CERCLA (defined herein), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
16. “Environmental 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, PDC, and other federal, state or local authority or any other government having jurisdiction with respect to Lot 2.
17. “Escrow Agent” means *First American Title Insurance Company of Oregon*.
18. “Final Construction Plans and Specifications” means all plans and specifications required to complete the Project pursuant to this Agreement, approved by Developer, its lender(s), PDC and the appropriate City, state and other governmental agencies with approval rights under this Agreement or applicable law.
19. “Hazardous Substances” means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous



substances as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. ("CERCLA"), or any other Environmental Law.

20. **"Incremental Costs"** or **"incremental costs"** shall mean the costs described in Section 3.2.1(a) to be paid by PDC.
21. **"Infrastructure Improvements"** means all design and construction of public streets and public utilities up to face of curb, alleys, and driveway approaches; establishment of public rights of way; stormwater mitigation; coordinating the connection of Lot 2 to gas and electric utility services; any other site improvements so designated in this Agreement and all permitting for any of the above.
22. **"Lot 2"** means the parcel of land specifically described in Exhibit D.
23. **"Mortgage"** means a mortgage or deed of trust against Lot 2, or any portion thereof, recorded in the real property records of Multnomah County, Oregon.
24. **"Mortgagee"** means the holder of any Mortgage affecting or encumbering Lot 2 or any portion thereof, together with any successor or assignee of such holder. The term "Mortgagee" shall include any Mortgagee as owner of the property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a mortgage but shall not include (a) any other party who thereafter obtains title to Lot 2 or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee.
25. **"Original DDA"** means the Disposition and Development Agreement for the Station Place Redevelopment, dated September 27, 2002, and a memorandum of which was recorded on December 17, 2002, as Document No. 2002-230977 Records of Multnomah County, Oregon.
26. **"Pedestrian Connection"** means the walkway connection for pedestrian access between the third floor of the Station Place Tower and the Parking Garage.
27. **"Parking Garage"** means the publicly owned parking facility located at 720 NW Marshall Portland, OR 97209, and including approximately 410 spaces.
28. **"Party"** or **"Parties"** means either of the Developer or PDC and jointly, PDC and the Developer.
29. **"Project"** means the acquisition of Lot 2, and Developer's development of commercial space including not less than 40,000 gross square feet of enclosed area, but no more than 60,000 gross square feet of enclosed area, on Lot 2, as more fully described in the Scope of Development, and the completion of the Pedestrian Connection unless Developer is not responsible for constructing the Pedestrian Connection pursuant to Section 5.3.1(c), below, in which event "Project" shall not include the Pedestrian Connection..
30. **"Purchase Price"** means the price Developer shall pay to PDC for conveyance of Lot 2, as specifically described in Section 1.4.

31. **"Remedial Action Plan"** or **"RAP"** means the *Remedial Action Work Plan, Station Place Redevelopment Site, Portland, Oregon, July 2003*, prepared by AMEC Earth and Environmental, a copy of which has been provided to Developer.
32. **"Release"** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
33. **"Schedule of Performance"** means the document describing the schedule by which construction and development will be finished attached hereto as Exhibit C.
34. **"Scope of Development"** means the detailed description of the Building and the new improvements to be built comprising the Project, attached hereto and incorporated herein as Exhibit B.
35. **"Site Plan"** means the site plan for Lot 2 attached hereto as Exhibit A, that includes location and extent of the buildings, streets, public areas, ingress and egress, parking and related improvements on Lot 2.
36. **"Station Place Tower"** means the 14-story building consisting of 176 apartment units for seniors with ground floor parking, lobby and retail space located on Parcel 1A (Lot 3) of Station Place Development Property.
37. **"Urban Renewal Plan"** the River District Urban Renewal Plan District approved by the City Council of the City on October 21, 1998, (which plan may hereafter be amended from time to time pursuant to law).

## **1 TERMS OF CONVEYANCE**

**1.1 Conveyance by Deed.** Subject to the terms, covenants and conditions of this Agreement, PDC will convey Lot 2 to Developer at Closing.

**1.2 Closing.** The Conveyance to Developer shall occur at the office of the Escrow Agent not later than the deadline for Closing set forth in the Schedule of Performance, provided that PDC shall convey Lot 2 within ten (10) days after the conditions set forth in Section 1.5 of this Agreement are satisfied. Developer shall Close no later than September 15, 2006. Developer shall accept Conveyance and pay the Purchase Price to PDC in the manner set forth in Section 1.4.

**1.3 Title Insurance, Survey, Lot 2 Taxes and Closing Costs.** PDC, at its expense, shall provide Developer with an extended coverage Owner's Policy of Title Insurance, in Form B-1992, issued by Escrow Agent, covering Lot 2, insuring Developer in the amount of the Purchase Price, all free and clear of encumbrances except Permitted Exceptions. Developer, at its option and its expense, may elect to obtain such other or greater coverages under such policies of title insurance and PDC agrees to execute any affidavits or other documents required by the Escrow Agent to enable Developer to obtain such coverage. PDC will pay the cost for recording a Memorandum of this Agreement. Developer will pay the cost of recording the Deed, and any other documents required by Developer. Developer shall pay one-half (1/2) of any escrow fees charged by Escrow Agent. PDC shall pay one-half (1/2) of any escrow fees charged

by Escrow Agent attributable to Parcel 1. Lot 2 taxes, if any are due for the year in which Closing occurs, shall be prorated as of the date of the Closing.

**1.4 Purchase Price.** The Purchase Price for Lot 2 is One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000). At Closing, the following credits will be applied to the Purchase Price:

**1.4.1** The Deposit described in Section 1.6 below;

**1.4.2** A \$175,000 credit for Developer's extraordinary costs of design and engineering, as further specified in Section 6.2 below; and

**1.4.3** A Quality Jobs Program Conditional Loan and Economic Opportunity Grant, as described in Section 6.1 below, provided that the Developer is prepared to and does close the Project construction loan contemporaneously with the Closing. If the Developer does not close the Project construction loan contemporaneously with the Closing, then PDC will disburse the Quality Jobs Program Conditional Loan and Economic Opportunity Grant at the time Developer closes the Project construction loan.

**1.5 Conditions Precedent to Conveyance.**

**1.5.1 Conditions.** PDC and Developer are not obligated to Close the Conveyance unless the following conditions are satisfied to their respective complete satisfaction by the dates provided in the Schedule of Performance. The Party benefited by a particular condition shall not unreasonably withhold, condition or delay acknowledgment that the condition has been satisfied. The Parties shall act diligently and in good faith to satisfy conditions over which they have control or influence.

**1.5.2 To the Satisfaction of both PDC and Developer:**

(a) There shall be no litigation pending that prevents PDC or Developer from performing their respective obligations under this Agreement; provided that, in the event of the filing of any such litigation, Developer may extend this contingency, and the Closing, to no later than September 15, 2006;

(b) Neither PDC nor Developer shall be in default beyond any applicable cure period under any material term or condition of this Agreement, including the completion of each task shown on the Schedule of Performance to be completed as of Closing. PDC and Developer represent to the each other that there are no material defaults under this Agreement or events, that now or with the passage of time, would constitute a material default under this Agreement;

(c) PDC, Developer, and REACH shall have approved the CC&R's, and be prepared to execute the CC&R's upon Conveyance;

(d) PDC and Developer's review and approval, and the execution and recording of cross-easements for public space, common improvements and driveways which materially integrate all the development on the Station Place Development Property. The cross-easements shall provide necessary access to common features and pedestrian and vehicle circulation systems to, from and within Lot 2 for all property owners; and

(e) PDC and Developer shall have approved in writing a Project name and a separate enforceable agreement for the Parking Garage and allocation of parking spaces in the Parking Garage to the Project to be entered into by the Parties and effective at Closing.

### 1.5.3 To Developer's Satisfaction:

(a) Developer shall have determined that PDC has title to Lot 2 subject only to conditions and exceptions reasonably satisfactory to and approved by Developer as provided herein, including those exceptions required in order to satisfy the conditions precedent to Closing, such as the recording of the final decision of the City Design Commission approving the Project design, subject to Developer's right to review and approve the same ("**Permitted Exceptions**"). As part of this condition, within thirty (30) days after the Effective Date, PDC will deliver to Developer, a preliminary title report of Lot 2 and copies of all exception documents referenced therein (the "**Title Report**"). Developer will have twenty (20) days after it has received the Title Report to notify PDC in writing if Developer disapproves of any special exception or matter set forth in the Title Report; provided that all standard printed exceptions (and any reiterations of the same in the special exceptions), monetary liens other than taxes for the tax year in which Closing occurs and that are to be prorated at Closing, and any vesting of the Property other than in PDC shall be deemed disapproved. If Developer disapproves of any item, then PDC shall have twenty (20) days after receiving Developer's written notice of disapproval to either: (i) remove the item of record and cause the same to be deleted from said Title Report; or, (ii) to agree by written notice to Developer given within such 20-day period, to make such other arrangements for satisfying Developer's concern with the item as is reasonably acceptable to and approved in writing by Developer. If PDC does not do either or both of (i) or (ii), above, as to all items so objected to or deemed objected to by Developer within the twenty (20) day time period, Developer may, as its sole remedy, terminate this Agreement by written notice to PDC. If Developer does not terminate the Agreement pursuant to this section 1.5.3(a), the exceptions remaining on title to Lot 2 (except those for which PDC has agreed to make arrangements to remove at or prior to Closing as approved by Developer as provided above and the exceptions deemed disapproved above) shall become Permitted Exceptions;

(b) Escrow Agent shall have issued to Developer a binding commitment satisfactory to Developer (i) to issue an ALTA Owner's Title Insurance Policy as described in Section 1.3, above, covering Lot 2 in an amount not less than the Purchase Price, subject only to the Permitted Exceptions, and (ii) to issue a Lender's Extended Title Insurance Policy covering Lot 2, in the amount of the funding to be provided by an approved lender or lenders (if more than one is involved) to Developer satisfactory to Developer and any lender(s) identified by Developer;

(c) PDC shall have caused an ALTA survey of Lot 2 to be completed at PDC's expense meeting the latest ALTA/ACSM standards and Items 2-11 and 13-16 of Table A, and a copy of the survey certified to Developer, its Lender(s) and Escrow Agent shall have been delivered to Developer and Escrow Agent within forty-five days after the Effective Date. Developer will have thirty (30) days after the later of the dates that (i) it has

received the ALTA survey, the Effective Date of this Agreement, and (ii) it has received the Title Report and copies of all documentary exceptions referenced therein to notify PDC in writing if Developer disapproves of any item in the survey. If Developer disapproves of any item, then PDC shall have twenty (20) days after receiving Developer's written notice of disapproval to make arrangements in writing with Developer for satisfying Developer's concern with the item as is reasonably acceptable to Developer. If PDC does not do so within the twenty (20) day time period, Developer may, as its sole remedy for such failure, terminate this Agreement by written notice to PDC given not later than ten (10) days after Developer's receipt of PDC's notice that PDC will not satisfy all of Developer's survey objections. If Developer does not terminate the Agreement pursuant to this section 1.5.3(c), the survey shall be deemed acceptable to the Developer;

(d) Within 120 days after the Effective Date, Developer shall be completely satisfied with the environmental, soils, physical and engineering condition of Lot 2 and its suitability for the Project. PDC shall deliver all documents in PDC's possession or control related to the condition or physical or engineering characteristics of Lot 2 to Developer for review and Developer may conduct independent due diligence at its own expense, *provided however*, that Developer's entry upon Lot 2 for physical testing shall be conducted in compliance with a Permit of Entry, as described in Section 5.5.1;

(e) Within 120 days after the Effective Date, Developer shall have determined that public and private utilities are available to Lot 2 with sufficient capacity to serve the Project and that any utilities located within Lot 2 are acceptable to Developer or shall be removed or relocated after Closing by Developer;

(f) The Final Construction Plans and Specifications shall have been approved by all required governmental entities and/or agencies, including PDC's design review pursuant to Section 4.1 below. PDC and City Design Review shall be completed not later than September 8, 2006;

(g) Developer shall have (or may unconditionally obtain immediately upon Closing) all land-use approvals, other governmental approvals and building and construction permits required to begin construction, no appeal of any required approval or permit shall have been filed (unless such have been dismissed or withdrawn), and the time for any such appeal shall have expired;

(h) Developer shall have secured financing for the Project on terms and conditions reasonably acceptable to Developer. Before August 1, 2006, the Developer shall be reasonably satisfied that the Project will be financially feasible, taking into account the Project costs and the availability of public and private financing; and

(i) PDC shall have recorded a Notice of Termination, evidencing the release of Lot 2 from the Original DDA, in the Records of Multnomah County, Oregon.

#### **1.5.4 To PDC's Satisfaction.**



(a) Reasonable proof that Developer is a limited liability company existing in the state of Oregon and that Developer has full authority to enter into and perform this Agreement;

(b) Execution and delivery by Developer to PDC of all commitments and other documentation necessary for all construction financing for the completion of the Project. All lenders and equity investors for the Project whose participation is required for the commencement and completion of the construction of the Project shall be prepared to close their financial participation at Closing, subject to the terms of their respective financing agreements

(c) The Final Construction Plans and Specifications shall have been approved by all required governmental entities and/or agencies, including PDC's design review pursuant to Section 4.1 below. PDC and City Design Review shall be completed not later than September 8, 2006;

(d) Developer shall have (or may unconditionally obtain immediately upon Closing) all land-use approvals, other governmental approvals and building and construction permits required to begin construction, no appeal of any required approval or permit shall have been filed, and the time for any such appeal shall have expired.

**1.5.5 Elections upon Nonoccurrence of Conditions.** If any condition in Sections 1.5.2 through 1.5.4 is not fulfilled to the satisfaction of the benefited Party or Parties (i) at the time designated in the Schedule of Performance or designated in the text of the condition for satisfaction of the same, or (ii) if no deadline is specified for satisfaction of such condition, on the date scheduled for Closing, (the applicable date being hereinafter referred to as the "Termination Date"), then such benefited Party or Parties may elect to:

(a) Terminate this Agreement, which termination shall become effective sixty (60) days after the notice of termination is sent unless, before the sixty (60) day period ends, the other Party waives the 60-day period and agrees to immediate termination, or fulfills such condition or conditions to the complete satisfaction of the benefited Party or Parties; or

(b) Waive in writing the benefit of that condition precedent to its obligation to perform under this Agreement; or

(c) Extend the Termination Date by which the other Party must satisfy the applicable condition, if the condition can be satisfied by the other Party and the other Party agrees in writing to the extension.

If the Agreement is terminated for failure of a condition precedent to Closing, and the termination occurs within 120 days after the Effective Date, PDC shall return the Initial Deposit to Developer. If the Agreement is terminated for failure of a condition precedent to Closing, and the termination occurs during the period between 120 days after the Effective Date and September 15, 2006, PDC shall retain the Initial Deposit, and return the Additional Deposit to Developer.

**1.5.6 Final Termination Date.** If all of the conditions precedent have not been satisfied, waived or otherwise resolved pursuant to this Agreement by September 15, 2006, then this Agreement shall automatically terminate on September 15, 2006 ("**Final Termination Date**") unless a party is proceeding to cure any default of this Agreement and the allowed cure period after notice has not expired, in which event such Final Termination Date shall be extended by such remaining period or the Final Termination Date is extended by agreement of the Parties prior to the Final Termination Date, or unless the failure of satisfaction of the conditions precedent is the result of an Unavoidable Delay, as described in Section 10.8 below. If the Final Termination Date is extended by a party for a period of Unavoidable Delay, the maximum cumulative period of extending the Final Termination Date based on Unavoidable Delay(s) applicable to such party shall be (A) twelve (12) months for any delay(s) based on either (but not both) (i) Extreme Economic Downturn delay, or (ii) categories of Unavoidable Delays other than Extreme Economic Downturn, and (B) eighteen (18) months in the aggregate for any cumulative period of Unavoidable Delay that includes both (i) Extreme Economic Downturn delay (not to exceed 12 months), or (ii) categories of Unavoidable Delays other than Extreme Economic Downturn (not to exceed 12 months). If the Agreement is terminated for failure of satisfaction of the conditions precedent, and such failure is not the result of a breach of this Agreement by either Party, then, except for PDC's retention of the Initial Deposit in the circumstances described in Section 1.5.5 above, the obligations of the Parties to each other under this Agreement shall terminate.

## **1.6 Earnest Money Deposit.**

**1.6.1** Upon execution of this Agreement, Developer has paid Twenty-five Thousand and No/100 (\$25,000.00) to PDC as earnest money ("**Initial Deposit**"). If PDC terminates the Agreement within 120 days after the Effective Date for breach of the Agreement by the Developer (but not for a failure of the conditions precedent to closing), PDC shall retain the Initial Deposit upon termination. If the Developer terminates the Agreement at any time for breach of the Agreement by PDC, or if PDC terminates the Agreement at any time other than for Developer's default, or if Developer terminates this Agreement within 120 days after the Effective Date for a failure of the conditions precedent to closing, PDC shall return the Initial Deposit to the Developer upon termination. However, if neither PDC nor the Developer terminates the Agreement within 120 days after the Effective Date, the Initial Deposit shall become non-refundable (subject to Developer's rights to terminate and receive back the entire Deposit in the event of condemnation), and Developer shall add an additional Twenty-five thousand and no/100 (\$25,000) to the Initial Deposit within ten (10) days after the end of the 120-day period ("**Additional Deposit**"). The Initial Deposit and the Additional Deposit are referred to jointly as the "**Deposit**."

**1.6.2** If the Developer terminates the Agreement in the period between 120 days after the Effective Date and September 15, 2006 for breach of the Agreement by PDC, then PDC shall return the Additional Deposit to Developer, but retain the Initial Deposit. If PDC terminates this Agreement in the period between 120 days after the Effective Date and September 15, 2006, for breach of the Agreement by the Developer, PDC shall retain the Deposit upon termination.

1.6.3 If neither PDC nor Developer terminates the Agreement before September 15, 2006, the Deposit will be a credit to the Purchase Price at Closing (subject to Developer's rights to terminate and receive back the entire Deposit in the event of condemnation of casualty loss), subject to the terms and conditions of this Agreement.

1.6.4 PDC represents and warrants to Developer as follows:

(a) PDC is the sole current holder of fee simple absolute title to the Property subject to the Permitted Exceptions, and has the authority and power to enter and complete this Agreement and convey the Property to Developer free and clear of the claims of any third party except the Permitted Exceptions, without further authorization or signature of any other person; and

(b) To the best of PDC's knowledge, there are no pending or threatened disputes over the title to the Property, including any boundary disputes of claims of adverse possession, prescriptive easements or other rights of possession or use; and

(c) The utilities and services available to the Property are as shown on the survey of the Property, dated May 4, 2005, prepared by KPFF Consulting Engineers and provided to Developer on September 19, 2005; and

(d) The Property is a legally created lot;

(e) To PDC's knowledge, no portion of the Property is identified as having any archaeological or historic significance, or lies within any riparian corridor, wetland or other environmentally sensitive area which prohibits or restricts development, lies within the one hundred (100) year flood plain established by the federal government; and

(f) No commitments have been made by PDC (or to the best of PDC's knowledge, by any third party) to any governmental authority, or other entity, group or individual which would impose an obligation upon the Property or any portion thereof or upon Developer or its successors or assigns to make any contribution or dedication of money or land, or to construct, install or maintain any improvements of a public or private nature on or off the Property; and

(g) Except as heretofore disclosed to Developer by PDC in writing, the Property is free from poorly or improperly filled ground or other geological or engineering conditions actually known to or caused by PDC that may preclude, significantly interfere with or significantly increase the cost of the development and/or use of the Property; and

(h) To the best of PDC's knowledge, there is no impending condemnation, utility moratorium, special assessment, annexation or proposed governmental use or development restriction or dedication requirement, except PDC has been informed that the Planning Bureau may request that Developer dedicate an easement for a pedestrian overpass on the Property for the Pedestrian Connection as provided in this Agreement; and

(i) Except as revealed in the Title Report, the Property is not specially assessed or subject to any real property tax recapture because of any existing or prior use or classification; and

(j) There are no contracts, rights of first refusal, options or other obligations for the sale, transfer or exchange to any third party or parties, improvement, alteration, repair or encumbrance of the Property or any portion thereof; and

(k) There are no leases, contracts, management, service brokerage or other agreements which relate to the Property which will survive the Closing Date; and

(l) There is no litigation pending or, to the best of PDC's knowledge, threatened in writing against PDC or any basis therefor that arises out of the ownership of or otherwise relates to the Property and will be binding on the Developer or the Property or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property or adversely affect the ability of PDC to perform its obligations under this Agreement.

(m) "PDC's knowledge" shall mean the actual knowledge of the managerial and supervisory personnel of PDC having responsibility for the supervision of the Property.

**1.6.5** Developer represents and warrants to PDC as follows: Developer has full power and authority to enter into and perform this Agreement in accordance with its terms, and Developer has taken all requisite entity action in connection with, and obtained all requisite entity approvals for, the execution of this Agreement and the transactions contemplated hereby.

**1.6.6** Each party represents and warrants to the other as follows:

(a) Such party has full power and authority to enter into and perform this Agreement in accordance with its terms, and has taken all requisite governmental, agency and entity action in connection with, and obtained all requisite entity approvals for, the execution of this Agreement and the transactions contemplated hereby; and

(b) No representation, warranty or statement of such party in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

## 2 INFRASTRUCTURE DESIGN AND DEVELOPMENT

**2.1 Utility Service.** PDC makes no representation as to the availability or suitability of utility connections to Lot 2. Developer shall pay any costs of installation, connection, or upgrade of utilities to serve the Project. Developer shall pay all costs of new utilities to serve the Project. Developer shall determine that public and private utilities are available to Lot 2 with sufficient capacity to serve the Project and that any utilities located within Lot 2 are acceptable or shall be removed by Developer.

## 3 ENVIRONMENTAL CONDITIONS AND RESPONSIBILITIES.

**3.1 Responsible Party.** PDC will assume all financial responsibility for all costs associated with the environmental condition of Lot 2, except as otherwise described below. PDC has completed the Remedial Action Plan (“**RAP**”) and the Oregon Department of Environmental Quality (“**DEQ**”) has approved the RAP. The RAP describes the necessary Environmental Abatement that will lead to the issuance of a No Further Action Letter by DEQ. PDC will reimburse Developer the incremental costs (as described more fully in paragraph 3.2 below) associated with implementing the RAP.

### 3.2 Incremental Costs

**3.2.1** PDC will reimburse Developer for all incremental costs associated with the environmental conditions of Lot 2, subject to the below stated provisions:

(a) “**Incremental costs**” shall include all hard and soft costs that would not otherwise be incurred but for the environmental condition of Lot 2. For purposes of defining “incremental costs,” PDC will reimburse for actual invoiced costs for: soil off-haul and disposal (less normal costs of same otherwise required in connection with the Project in the absence of such environmental conditions); environmental testing of materials (including soil and groundwater); environmentally required materials and equipment such as demarcation fabric; Phase II or higher environmental survey(s); worker training; other environmental costs that would otherwise *not* be part of normal construction such as washing or changing facilities. Incremental costs will *not* include: clothing or cleaning of worker clothing; labor inefficiencies; construction staging materials (e.g. rocking all or a portion of Lot 2, whether serving as an environmental cap or not); on-site management of soils piles; on-site dust control; track-out control; and general overhead.

(b) Developer shall remove the minimum amount of excavated materials from Lot 2 consistent with good construction practices and applicable law, and no unnecessary excavation for development will be allowed. All improvements (except for utilities and foundations or pilings or the like) must be built above current grade and adjacent street level, unless Developer agrees to pay any and all additional costs of off-site soils disposal at a qualified landfill or other DEQ-approved site to the extent required in connection with additional soil removal and disposal off-site beyond that consistent with the foregoing. PDC may approve variations to this requirement to the extent that alternative designs are approved by the City of Portland Design Commission or by other government agencies having jurisdiction.



(c) Subsurface parking, below-grade basements, and similar underground structures will not be permitted, unless Developer agrees to pay any and all additional costs of off-site soils disposal at a qualified landfill or other DEQ-approved site to the extent caused by the additional excavation for construction of the improvements described in this subparagraph.

(d) Developer and PDC agree to cooperate fully with each other, DEQ, OSHA and others regarding all environmental issues related to Lot 2; provided that such shall not require any party to divulge or disclose to the other any privileged or confidential information or materials or, in any dispute between or involving the parties, any information beyond what may be compelled through discovery or the public records laws. PDC and Developer will agree to the terms of a deed restriction on the property, addressing maintenance of the cap, land use changes, and other necessary engineering or institutional controls, as such controls are required as part of the RAP. PDC shall make available all environmental reports related to Lot 2 to the Developer. The Developer will be fully responsible for inspection and maintenance of any required cap of soils following completion of the Project.

(e) Developer and its contractors and subcontractors may implement a series of worker protocols relating to health and safety practices consistent with this paragraph. A sample of protocols used for the development of the Station Place Tower are found in the *Lovejoy Station Site Safety and Health Plan, May 2003*, prepared by Andersen Construction Co. Inc., a copy of which PDC has delivered to Developer. Developer and its contractors and subcontractors may use these protocols at their discretion, or may develop their own protocols based on their assessment of the environmental condition of Lot 2.

**3.3 No Further Action Letter.** Upon completion of the final building to be built on the Station Place Development Parcel, PDC shall use its best efforts to cause a further No Further Action letter to be issued by the DEQ certifying compliance with the RAP. A deed restriction in form and content agreed to in writing by Developer and PDC and, if applicable, DEQ, during the initial 120-day contingency period may be placed on Lot 2 providing for future notifications, and long-term maintenance of the cap pursuant to the terms of said restriction.

**3.4 Developer Environmental Maintenance Responsibilities.** Upon completion of the Project, Developer shall undertake all activities required for continuing compliance with the RAP, including, but not limited to, annual reporting relating to cap inspection and any required cap maintenance.

## **4 DESIGN OF THE PROJECT**

### **4.1 Plans, Drawings and Related Documents.**

**4.1.1 General Cooperation.** PDC and Developer will work closely throughout the design and programming process to achieve a Project that is high quality, functional, and financially feasible.

**4.1.2 Drawings.** The Project design has received City design review approval. After City design review approval, Developer shall submit Final Construction Plans and Specifications for PDC staff approval.

**4.1.3 Changes in Approved Drawings.** The Parties acknowledge that the Developer will apply for modifications to the City approved design, which among other things, will allow for raising the roof of the Building by approximately four feet, which modification will not materially change the exterior appearance of the Building. Developer's proposed changes to the Project design shall be submitted to PDC for staff approval prior to submission for City design review to ensure consistency with overall Station Place project design. Developer acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals shall be sought after PDC has approved the changes.

**4.1.4 Renderings.** Developer will provide PDC with a color rendering of the final design of the Project once all final design approvals have been received.

**4.2 PDC Design Review Assistance.** PDC will assist Developer in obtaining required City approvals of the Project, including, but not limited to, design review, and signing documentation in the capacity of owner, but PDC shall, in no way, be responsible for securing these approvals, nor shall it be liable, in any way, for failure in securing any approvals.

**4.3 Project Name.** The Parties will agree on a name of the Project before closing.

## **5 DEVELOPMENT OF THE PROJECT**

**5.1 Diligent Completion.** Subject to the terms and conditions of this Agreement, including the conditions, elements and PDC approvals enumerated in this Agreement, Developer covenants to complete the development of the Project, in substantial conformance with the Final Construction Plans and Specifications and to comply with the Schedule of Performance, subject to Unavoidable Delay as provided in Section 10.8. Developer agrees to keep PDC informed of its progress with respect to development of the Project during construction, such periodic reports to be issued no less frequently than once a month until PDC issues a Certificate of Completion. Developer may satisfy the monthly reporting requirement of this Section 5.1 by providing to PDC's Project Manager a copy of the complete and signed construction loan payment request and percentage completion documentation on standard AIA forms.

Project development shall include:

**5.1.1** Entering into all necessary architectural and construction contracts;

**5.1.2** Securing all necessary public entitlements and building permits; and

**5.1.3** Securing all financing necessary to complete the Project.

### **5.2 Public Contracting Matters.**

**5.2.1** Prior to Closing or as such other time as the Parties may agree, PDC representatives have met or will meet with Developer and explained to Developer all of the obligations and requirements applicable to Developer under PDC's Workforce Training and

Hiring Requirements, provided all appropriate documentation to Developer, and advised Developer about methods for complying with the requirements.

**5.2.2** Developer shall also encourage the utilization of minority, women, and emerging small businesses as contractors, subcontractors and suppliers, and will implement PDC's Good Faith Effort Program toward that purpose. Prior to executing the DDA, or at another mutually agreed time during the 120-day period, PDC representatives have met with Developer to explain in full PDC's Good Faith Efforts Program.

**5.3 Scope of Development.** Developer shall design and construct a commercial building sized to relate to the neighborhood, and shall be approximately 40,000 - 60,000 gross square feet in enclosed area. Developer agrees that it will not lease space in the Project for uses that are prohibited by the CC&R's. Loading functions should be at the rear of the building, near the bridge ramps.

**5.3.1 Pedestrian Connection.**

(a) Except as provided in Section 5.3.1(c) below, Developer shall construct the Pedestrian Connection according to the Final Plans and Specifications. PDC shall secure the necessary rights of entry to the Station Place Tower for construction of the Pedestrian Connection.

(b) As part of the pricing of the Project, Developer will obtain from its contractor a separate alternative price for the Pedestrian Connection. If Developer constructs the Pedestrian Connection, Developer's architect and contractor will keep separate records for the Pedestrian Connection costs. Upon Developer's completion of the Pedestrian Connection, as certified by PDC, Developer shall provide an accounting of the Pedestrian Connection hard and soft costs to PDC with sufficient detail (i.e. a contractor's schedule of values) to ascertain the costs of all subcomponents of the Pedestrian Connection with back up invoices supporting those costs. PDC may reasonably reject any costs that are not reasonably attributable to the Pedestrian Connection, but if PDC does not object to the costs, the costs shall be deemed acceptable to PDC on the tenth day after receipt. Within thirty (30) days of PDC's acceptance of the Pedestrian Connection costs, PDC shall pay to Developer all hard and soft costs of the Pedestrian Connection, as certified by the Project Architect.

(c) Not later than ninety (90) days prior to the commencement of construction of the Project, Developer will notify PDC of the separate alternative price for the Pedestrian Connection. PDC shall inform Developer within sixty (60) days after receiving the price for the Pedestrian Connection whether Developer shall construct the Pedestrian Connection. If PDC notifies Developer that Developer shall not construct the Pedestrian Connection, then Developer will provide to PDC all plans and specifications for the Pedestrian Connection, and thereafter, Developer has neither the right nor the obligation to construct the Pedestrian Connection.

(d) If Developer does not have the right or obligation to build the Pedestrian Connection, Developer shall grant to PDC or its assignee, and its contractors, the

right to enter Lot 2 for the purpose of building the Pedestrian Connection; provided that (i) such shall require coordination and cooperation with Developer to avoid unreasonable interference with or delay in Developer's work as provided herein; (ii) such shall require that the Pedestrian Connection be constructed during the construction of the Building; (iii) such shall be constructed according to the Final Plans and Specifications as approved by Developer; and (iv) any delay in the construction or completion of the Project related to the construction of the Pedestrian Connection shall be added, on a day-for-day basis, to the period(s) allowed under this Agreement for Developer to construct and complete the Project. The Developer shall grant the right to enter without compensation to Developer, but with terms and conditions that are reasonably required to protect the condition of the Project and its accessibility, development, occupancy and use, and the interests of the Developer, its lenders, tenants and Project occupants, as may hereafter be agreed to in writing by Developer and PDC and so as not to unreasonably interfere with or delay the development, use or occupancy of Lot 2 or the Project. As soon as reasonably possible after PDC's notice that Developer will not construct the Pedestrian Connection, but not later than thirty (30) days after the date of such notice, Developer will provide to PDC a draft of a permit to allow PDC entry upon Lot 2 for the purpose of building the Pedestrian Connection. If the Parties do not agree to the terms and conditions of such permit within ninety (90) days of PDC's receipt of the first draft from Developer, either Party may submit the matter to arbitration pursuant to Section 10.9 below, the sole question for the arbitrator being the reasonableness of the terms and conditions of the proposed permit in light of the provisions of this Section 5.3.2(d) and subsection (e),. below.

(e) Unless Developer expressly agrees otherwise in writing, the Pedestrian Connection shall (i) be fully enclosed and not have access to or from the Building or Project; (ii) be self-contained and secure; (iii) have all utilities and services provided from off-site; and (iv) use no part or area of Lot 2 or the Project outside the limits of the exterior roofing walls of the Pedestrian Connection for any utility service amenity or appurtenance. PDC and/or the owner of the Station Place Tower shall be solely responsible for all maintenance, security, repair, replacement monitoring and use of the Pedestrian Connection; provided that, if either or both the Building or Pedestrian Connection is damaged or destroyed or if alterations are required, the parties shall reasonably cooperate and coordinate to avoid unreasonable interference with the other's use or work.

**5.4 Schedule.** A Schedule of Performance for the design and development of the Project is attached hereto as Exhibit C. The Parties expressly understand that Exhibit C is the anticipated Schedule of Performance and may be amended by the Parties. The Schedule of Performance is subject to Unavoidable Delay, Section 10.8

## **5.5 Inspection and Lot 2 Access**

**5.5.1 Before Conveyance.** Before conveying Lot 2, or any portion thereof, to the Developer, and pursuant to a written permit of entry, PDC will allow Developer and Developer' employees, agents and consultants to enter upon Lot 2, at all reasonable times whenever and to the extent necessary to carry out the purposes of this Agreement.

**5.5.2 After Conveyance of Lot 2 and During Construction.** After Conveyance, and until construction of the Project is complete, Developer's work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of PDC and the City. PDC agrees not to interfere with the work occurring on Lot 2. Unless Developer agrees otherwise, each such inspection shall be coordinated with Developer and accompanied by a representative of Developer.

**5.6 Safety Matters; Indemnification.** Developer shall:

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

**5.6.2 Liability Claims.** Indemnify and hold PDC harmless from all claims, costs, expenses and liabilities arising from the death of, or accident, injury, loss or damage whatsoever caused to, any person or to the property of any person as occurs in the process of the construction work, except for those caused by the negligence of PDC.

**5.6.3 Indemnity from Liens.** Indemnify, defend and hold PDC harmless from and against all mechanics', materialmen's and laborers' liens and all costs, expenses and liabilities arising from Developer's construction, provided that such indemnification does not apply to any work identified as the sole responsibility of PDC.

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

**5.8 Certificates of Completion.**

**5.8.1 When Developer Entitled to Certificate(s) of Completion.** Upon Substantial Completion (as defined below) of the Project, PDC will furnish the Developer with a Certificate of Completion for the Project, substantially in the form attached hereto as Exhibit G. The Project will be deemed to be substantially complete when (i) the Project is completed according to the Final Construction Plans and Specifications, except for punchlist items which do not materially affect the use of the Project for the purposes intended under this Agreement, and (ii) the City has issued its Certificate of Occupancy.

**5.8.2 Meaning and Effect of the Developer's Certificate of Completion.** A Certificate of Completion shall mean and provide that any party acquiring or leasing any portion of the Project shall (because of such purchase or lease) have no obligation under this Agreement with respect to the construction of the Project and that PDC shall have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under this Agreement with respect to the construction of the Project, including but not limited to a right of re-entry to the Project and termination of this Agreement and each of the parties other rights and obligations under this Agreement shall expire to the extent they are not then accrued. PDC's failure or refusal to issue a Certificate of Completion shall not prevent a Developer from occupying and operating the Project pursuant to the terms of the City's Certificate of Occupancy.

**5.8.3 Form of Certificate of Completion; Procedure Where PDC Refuses to Issue.** A Certificate of Completion shall be in a form that can be recorded in the real property records of Multnomah County. At Developer's request, the Certificate of Completion shall state that the terms and conditions of this Agreement are of no further force and effect. If PDC refuses or fails to provide a Certificate of Completion in accordance with this section, then PDC, within fifteen (15) days after written request for such Certificate of Completion, shall provide to the Developer within such 15-day period a written statement indicating in detail in what respects the 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 the Developer must take or perform to obtain such Certificate of Completion. Upon receipt of such detailed statement, the Developer shall either (a) complete the improvements and/or cure the alleged default in a manner responsive to the stated reasons for disapproval or (b) submit to arbitration, pursuant to Section 10.9, the issue of whether PDC has unreasonably refused to issue the requested Certificate of Completion. Failure to furnish Developer such detailed written statement within such fifteen (15) day period shall be deemed approval of the request for the Certificate of Completion.

## **6 FINANCIAL PARTICIPATION AND ASSISTANCE BY PDC**

**6.1 Quality Jobs Program and Economic Opportunity Grant.** PDC shall provide to Developer funds from the PDC Quality Jobs Program and the Economic Opportunity Fund Grant Program to the extent Developer qualifies for such funds. Upon qualification for Quality Jobs Program and Economic Opportunity Fund Grant program assistance, Developer will be entitled to funding in the amounts and upon such terms as determined by applying Program rules and guidelines to the Project. Quality Jobs Program funds will be made available to Developer at the Closing, provided that the Developer is prepared to and does close the Project construction loan contemporaneously with the Closing. If the Developer does not close the Project construction loan contemporaneously with the Closing, then PDC will disburse the Quality Jobs

Program Conditional Loan and Economic Opportunity Grant at the time Developer closes the Project construction loan.

**6.2 PDC Contribution to Design and Engineering Costs.** At Closing, PDC will allow a credit to the Purchase Price of \$175,000, which represents PDC's contribution of \$203,644 to the extraordinary costs of design and engineering for the Project, reduced by the Developer's reimbursement to PDC in the amount of \$28,644 for the cost of PDC's pre-Agreement public road improvements to NW 9<sup>th</sup> Avenue and geotechnical work on Lot 2.

## **7 ASSIGNMENT PROVISIONS**

**7.1 No Assignment.** This Agreement is personal to the Developer until a Certificate of Completion is issued, and, except as provided in Section 7.2 below, this Agreement and Developer's rights under this Agreement, may not be assigned by Developer in whole or in part until a Certificate of Completion is issued without PDC's approval, which approval shall not be unreasonably withheld or conditioned.

### **7.2 Permitted Assignments.**

**7.2.1** Developer may assign its rights and obligations under this Agreement to a bonafide commercial tenant/purchaser of the Project before a Certificate of Completion is issued for purposes of said purchaser completing the tenant improvements subject to approval by PDC, which approval shall not be unreasonably withheld. If PDC is otherwise reasonably satisfied with the identity and financial capability of the proposed assignee, PDC shall approve an assignment under this subsection if:

(a) The assignment takes effect later than the date that PDC is satisfied that Developer has completed the "shell" improvements to the building, including, but not limited to all exterior elements, doors, windows, loading docks, exterior finishes, rough plumbing and electrical;

(b) The assignment does not release Developer from its obligations under this Agreement, provided that PDC may approve alternative security for completion of the Project in its sole discretion; and

(c) If the terms of the assignment before a Certificate of Completion is issued provide consideration for the conveyance of Lot 2 which is greater than 105% of the sum of (i) the Purchase Price Developer paid to PDC at Closing, (ii) the total development cost of the building constructed on Lot 2, including Developer's developer fee, and (iii) Developer's actual holding costs prior to assignment ("**Lot 2 Costs**"), then Developer and PDC shall share equally the amount by which the consideration for the conveyance of Lot 2 is greater than 105% of Lot 2 Costs. PDC may require Developer to provide reasonable evidence that this condition is satisfied.

**7.2.2 Affiliate Transfer/1031 Transaction/Foreclosure.** Developer may assign this Agreement to an Affiliate that acquires Lot 2 from Developer; provided that the assignment shall not release Developer from its obligations under this Agreement and further provided that PDC may approve alternative security for completion of the Project in its sole discretion. In connection with any transfer approved by PDC pursuant to this Agreement to any



third party, if Developer elects to effect such transfer in a 1031 exchange, any transfer or assignment to an exchange accommodator or intermediary to effect such transaction shall not require additional approval from PDC. The restrictions on transfer shall not apply to any transferee acquiring Lot 2 and/or the Project through any foreclosure or deed in lieu of foreclosure or as security to any lender(s) or other providing financing for the Project approved by PDC pursuant to this Agreement.

**7.3 Other Permitted Developer Transfers, Effect.** PDC shall give its prompt written consent to transfers or encumbrances of a Developer's interest under this Agreement for purposes of financing. Nothing in PDC's consent to such transfers shall be construed as a waiver or subordination of the restrictive covenants in this Agreement regarding use of Lot 2. No consent shall be required for any transfers or other dispositions or conveyances after a Certificate of Completion is issued.

**7.4** If PDC notifies Developer that Developer shall not construct the Pedestrian Connection pursuant to Section 5.3.1(c) above, PDC may assign its right to construct the Pedestrian Connection to the owner of Lot 1, Station Place. In the event of such assignment, PDC's assignee shall construct the Pedestrian Connection in compliance with all provisions of Section 5.3.1 above.

## **8 PERMITTED MORTGAGES**

### **8.1 Mortgage Protection Provisions.**

**8.1.1 Effect of Revesting on Mortgages.** Any reversion and revesting of Lot 2 or any portion thereof in PDC pursuant to this Agreement shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way any lien, Mortgage, or security interest approved by PDC and authorized by this Agreement.

**8.1.2 Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of the Agreement, except those which are covenants running with Lot 2, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements in Lot 2 or to guarantee such construction or completion, provided, however that nothing in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote Lot 2 or any part thereof to any uses, or to construct any improvements thereon other than those uses or improvements provided or permitted in this Agreement.

**8.1.3 Copy of Notice of Default to Mortgagee.** If PDC delivers any notice or demand to Developer with respect to any breach of or default by Developer in its obligations or covenants under this Agreement, PDC shall at the same time send a copy of such notice or demand to each Mortgagee approved by PDC at the last address of such holder shown in the records of PDC.

**8.1.4 Mortgagee's Options to Cure Defaults.** After any default in or breach of this Agreement by Developer where Developer fails to cure or remedy said default or breach, then each Mortgagee may, at its option, cure or remedy such breach or default within thirty (30)

days after passage of the latest date for Developer's cure of the default, and if and when permitted by its loan documents or applicable law, such mortgagee may add the cost thereof and related charges to the Mortgage debt and the lien of its Mortgage. If the breach or default is with respect to construction of the improvements, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements, provided that the Mortgagee notifies PDC in writing of its intention to complete the Project according to the approved Final Construction Plans and Specifications. Any Mortgagee who properly completes the Project shall be entitled to issuance of a Certificate of Completion, upon written request made to PDC following the procedures set forth in Section 3.7 above.

**8.2 Amendments Requested by Mortgagee.** PDC shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to Developer secured by a lien or security interest in all or any part of Lot 2 and/or the Project, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of PDC or its interest in Lot 2 under this Agreement.

**9 PARKING GARAGE AGREEMENT.** PDC shall allocate seventy (70) parking spaces in the Parking Garage for use by occupants of the Project. The Parties shall negotiate in good faith to agree upon a Parking Agreement during the 120-day period. The rates for each parking space will initially be \$85.00 per month for a minimum initial term of three (3) years. These rates will be adjusted over time to not more than seventy-five percent (75%) of the advertised rate. Increases shall be capped between each adjustment, which will occur not more frequently than every three (3) years. Decreases may occur at any time.

## **10 DEFAULT; REMEDIES**

### **10.1 Default and Cure.**

**10.1.1 Default by Developer.** A default shall occur if, after all conditions precedent to Closing have been met or waived, Developer breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after the Developer receives written notice from PDC specifying the breach provided, however, that if Developer uses commercially reasonable efforts to act according to the Schedule of Performance and acts in good faith to satisfy Section 1.5, "Conditions Precedent to Conveyance", failure of conditions precedent shall not constitute a default but any such failure shall be subject to Sections 1.5.5 and 1.6 above. In the case of a breach which cannot with reasonable due diligence be cured within a period of thirty (30) days, a default shall occur if Developer does not commence the cure of the breach within thirty (30) days after Developer receives written notice from PDC and thereafter diligently prosecute to completion such cure. A default also shall occur if Developer makes any assignment for the benefit of creditors, or is adjudicated as bankrupt, or has a receiver, trustee or creditor's committee appointed over it who is not removed before September 1, 2006. No Party shall be in breach or default of this Agreement as a result of any action or inaction of a different Party.

**10.1.2 Default by PDC.** A default shall occur if PDC breaches any material provision of this Agreement including, without limitation, PDC's failure to adhere to the

Schedule of Performance whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after PDC receives written notice from Developer specifying the breach or, in the case of a breach which cannot with due diligence be cured within a period of thirty (30) days, if PDC shall not within such thirty (30) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure.

**10.2 PDC's Pre-Conveyance Remedies.** If Developer defaults in any material term of this Agreement before Lot 2 is conveyed to Developer, PDC may terminate this Agreement and any rights of Developer in this Agreement or arising from this Agreement with respect to PDC or Lot 2 shall end.

**10.2.2** The right to terminate this Agreement and retain any portion of the Deposit pursuant to Section 1.6 above shall be PDC's sole remedy as to Developer. SUCH AMOUNT HAS BEEN AGREED BY THE PARTIES TO BE REASONABLE COMPENSATION AND THE EXCLUSIVE REMEDY FOR DEVELOPER'S DEFAULT, SINCE THE PRECISE AMOUNT OF SUCH COMPENSATION WOULD BE DIFFICULT TO DETERMINE.

**10.2.3** If PDC terminates this Agreement, then, upon PDC's payment to Developer of the direct costs to Developer associated with any work to be delivered, Developer shall deliver to PDC within thirty (30) days after such termination, copies of all Lot 2 market research, design documents, engineering documents, proformas and financial projections prepared for said Developer by unrelated third parties, and which Developer is authorized to release; and design and construction contracts may be used by PDC in any manner that PDC deems appropriate with the consent of any party having approval rights thereunder; provided that Developer is not warranting (express, by implication or otherwise) and will not be liable or responsible for the accuracy, completeness, methodology, fitness, usefulness or use of such materials or any recommendations or conclusions stated therein, and PDC assumes all risk of its use of or reliance on any such reports, studies or other information. No statement made or information provided by Developer or any agent or representative of Developer shall be construed or relied upon as advice or a recommendation as to the kind or extent of any studies, tests or evaluations that PDC should obtain or rely upon.

**10.3 Restoration.** During construction of the Project, Developer shall not disturb or remove soil except to the extent reasonably necessary to complete the Project. If, prior to acquiring Lot 2, Developer performs any construction activities on Lot 2 and Developer fails to acquire Lot 2, Developer agrees to restore Lot 2 to substantially the condition that existed prior to the time that Developer performed any activities thereon (except that Developer shall not be responsible for any conditions caused by PDC or third parties not under the direction or control of Developer). No Party shall be in breach or default of this Subsection 10.3 as a result of any action or inaction of a different Party.

#### **10.4 PDC's Post-Conveyance Remedies**

**10.4.1 Failure to Commence or to Complete Construction.** If, after Closing, Developer fails to obtain all required Certificates of Completion in accordance with Section 5.8 hereof then PDC may demand in writing that said Developer cure such default within sixty (60)

days. If Developer does not cure the default within the periods for notice and cure set out in Section 10.1.1, then, such action or inaction shall create in PDC the following remedies as to such defaulting Developer, which remedies shall be exclusive of any other granted:

(a) Subject to the rights of Mortgagees, the right to re-enter and take possession of the Project, and to terminate (and revest in PDC) the estate conveyed by the Deed, terminate Developer's right to develop the Project, and to resell Lot 2 pursuant to Section 10.5 hereof. It is the intent of this provision together with other provisions of this Agreement, that the conveyance of any portion of Lot 2 to a Developer shall be made upon, and that the Deed shall provide for, a condition subsequent to the effect that, in the event of default by the Developer to remedy, end or abrogate such default, within the period and in the manner stated, then PDC, at its option, may upon 60 days' prior written notice (hereinafter "**Notice of Termination**") to Developer and the Escrow Agent declare a termination in favor of PDC of the title, and of all the rights and interest in Lot 2, and all the title and rights and interest in Lot 2 conveyed to Developer and any assigns or successors in interest shall be reconveyed to PDC by quitclaim deed in the form attached hereto as Exhibit H-1, pursuant to the Escrow Instructions in Exhibit H-2 unless Developer completes such cure within such 60-day period.

(b) PDC shall not have the right of re-entry described in this Section or any other right under this Agreement after a Certificate of Completion has been issued.

(c) Upon payment by PDC of Developer's out-of-pocket costs for such materials and work product, Developer shall provide PDC with any work product produced by any third parties for Developer, if allowed pursuant to Developer's contracts with such third parties (but excluding any attorney-client privileged or other privileged materials), for PDC's use; provided that Developer is not warranting (express, by implication or otherwise) and will not be liable or responsible for the accuracy, completeness, methodology, fitness, usefulness or use of such work product, materials or any recommendations or conclusions stated therein, and PDC assumes all risk of its use of or reliance on any such reports, studies or other information. No statement made or information provided by Developer or any agent or representative of Developer shall be construed or relied upon as advice or a recommendation as to the kind or extent of any studies, tests or evaluations that PDC should obtain or rely upon.

**10.5 PDC Resale.** PDC shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of Section 10.4, including the right to execute and record or file with the County Recording Office a written declaration of the termination of all rights and title of Developer, its successors in interest and assigns, in Lot 2, and the revesting of title thereto in PDC; provided that, until PDC has obtained a judgment from a court of competent jurisdiction that PDC is entitled thereto, PDC shall have no right to declare termination and revest Lot 2 in PDC. Any delay by PDC in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 10.5 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that PDC should not be constrained because of concepts of waiver, laches or estoppel so as to avoid the risk of being deprived of or limited in the exercise of the remedy

provided in this section or otherwise to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by PDC with respect to any specific default by Developer be considered or treated as a waiver of the rights of PDC with respect to any other defaults by Developer or with respect to any particular default except to the extent specifically waived; provided that, if at the time of PDC's intended filing of a declaration of termination, the Project has been substantially completed, PDC shall have no further right to terminate any interest under Section 10.4 or this Section 10.5.

**10.5.1** In the event that the title to Lot 2 shall revest in PDC, PDC may, at its option and subject to rights of Mortgagees, bring the improvements to a state of completion deemed necessary by PDC, and shall, pursuant to its responsibilities under Oregon Revised Statutes, Chapter 457, and Chapter XV of the Charter of the City, use its best efforts to resell at a reasonable price Lot 2 and such improvements (subject to Mortgage(s) permitted by this Agreement) as soon and in such manner as PDC shall find feasible and consistent with the objectives of such law and of the Urban Renewal Plan to a qualified and responsible party or parties (as determined by PDC in its sole discretion) who will assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to PDC and in accordance with the uses specified in the Urban Renewal Plan.

**10.5.2** Upon such resale, and subject to the rights of any Mortgagee(s), the proceeds thereof shall be applied as follows:

(a) **PDC Reimbursement.** First, to PDC on its own behalf to reimburse PDC for all costs and expenses reasonably incurred by it in connection with the recapture, management and resale of the Project following Developer's default, including, but not limited to, salaries of personnel; any payments made or necessary to be made to discharge any encumbrances or liens that are the responsibility of Developer hereunder existing on Lot 2 at the time of revesting of title thereto in PDC or to discharge or prevent from attaching or being made; any subsequent encumbrances or liens due to obligations, defaults, or acts of the defaulting Developer, its successors or transferees (other than PDC or its designee); any expenditures made or obligations incurred with respect to the making or completion of Developer's Project improvements or any portion thereof on Lot 2 consistent with this Agreement; any amounts owed to the City as lease or license fees with respect to the Project, and any amounts otherwise owing PDC by Developer and its successor or transferee pursuant to this Agreement;

(b) **Developer's Reimbursement.** Second, to reimburse Developer, its successor or transferee, as applicable, up to the amount equal to, the sum of (a) the Purchase Price, and (b) the hard and soft development costs incurred in making any of the improvements on the Project or part thereof, less any reimbursement of any of such costs actually received by such Developer, successor or assignee, as applicable, as to the Project applicable to such costs; and

(c) **Balance to PDC.** Third, any balance remaining after payment of the reimbursements in subsections (a) and (b) of this Section 10.5.2 shall be retained by PDC.

**10.6 Developer's Remedies.** If PDC fails to perform any obligation under this Agreement, Developer may (i) specifically enforce the obligations of PDC under this Agreement, or (ii) seek monetary damages against PDC.

**10.7 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 otherwise available at law or in equity. The exercise by a Party of one or more of such available remedies shall not preclude the exercise by it, at the same or different times, of any other such available remedies for the same default or of any of its remedies for any other default by another Party, including, without limitation, where available, the right to compel specific performance. Any limitation of remedies set forth herein should not limit or affect the obligations of a Party under any contractual indemnities set forth herein.

**10.8 Unavoidable Delay.** Neither a Party nor Party's successor in interest shall be considered in breach of or in default with respect to any obligation created hereunder or progress in respect thereto to the extent the delay in performance of such obligations (the "**Unavoidable Delay**") is due to causes that are beyond its reasonable control, including but not limited to acts of God, acts of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquake, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, delay in the issuance of necessary permits for the Project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar events and/or occurrences beyond the reasonable control of such Party, and, for Developer, any Severe Economic Downturn (as defined below).

As used above, "**Severe Economic Downturn**" means over any period of three consecutive months, either or both of the following occur: (i) a 15% drop in gross company billings of Developer's sales, and/or (ii) the layoff of 10% or more of Developer's staff, both compared to the billing levels and staff levels at the beginning of such three-month period. The period of any Severe Economic Downturn will be deemed to end on the earlier to occur of (A) restoration of Developer's billing and/or staff levels to those in effect at the beginning of the three-month period that triggered the Severe Economic Downturn, or (B) Developer's notice that it waives further Unavoidable Delay related to such Severe Economic Downturn.

It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of PDC or Developer experiencing the Unavoidable Delay, as the case may be, shall be extended for the period of the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section shall, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and the

estimated time of correction, and further provided that, the maximum period shall be (A) twelve months for any delay(s) based on either (but not both) (i) Extreme Economic Downturn delay, or (ii) categories of Unavoidable Delays other than Extreme Economic Downturn; and (B) eighteen (18) months in the aggregate for any cumulative period of Unavoidable Delay that includes both (i) Extreme Economic Downturn delay (not to exceed 12 months), and (ii) categories of Unavoidable Delays other than Extreme Economic Downturn (not to exceed 12 months).

If Developer declares an Unavoidable Delay due to a Severe Economic Downturn, Developer's notice to PDC shall include a certification from Developer's Managing Director regarding the circumstances constituting the declaration of Severe Economic Downturn and providing reasonable documentation of such circumstances, and Developer shall provide PDC with updates to such status upon request from PDC during the period of such Severe Economic Downturn, but not more frequently than monthly. Further, if any delay due to a Severe Economic Downturn extends for more than twelve (12) months, then (1) regarding any pre-conveyance matters, either party may terminate this Agreement as to rights and obligations not then accrued upon ten (10) days written notice to the other with the effect described in Section 10.2 of this Agreement; provided that Developer may override any such termination by PDC by written notice to PDC within 10-days after such notice from PDC that Developer waives any further Unavoidable Delay related to such Severe Economic Downturn, and (2) regarding post-conveyance matters that would trigger PDC's remedies under Section 10.4 of this Agreement, PDC may proceed with such remedies as provided in Section 10.4.

#### **10.9 Arbitration.**

**10.9.1** Except for those disputes listed in this section, all disputes arising pursuant to this Agreement or any additional documents contemplated by this Agreement shall be settled by arbitration in the City of Portland, Oregon, in accordance with the then current commercial arbitration rules of the Arbitration Service of Portland, or its successor, by one (1) neutral arbitrator appointed in the manner provided for in said rules. The arbitrator shall have experience in the development and operation of mixed-use projects. The arbitrator shall not have the power to amend this Agreement or to substitute his/her judgment for the judgment of a Party, but may determine whether a Party is acting reasonably if a Party is bound to act reasonably by this Agreement. The arbitrator shall be directed to complete the arbitration within thirty (30) days after the request for arbitration.

Should the Parties resort to arbitration pursuant to this provision, the prevailing Party shall be entitled to recover its actual attorneys' fees, legal costs and expert witness fees required to pursue the arbitration. The arbitrator's decision shall be binding and may be entered as a final judgment in any court having jurisdiction over the Parties. The Party entering a judgment shall also be reimbursed all of its legal fees and costs, including attorneys' fees expended to collect on said judgment. Either Party shall have the option of joining into an arbitration proceeding any other entity with whom it has contracted who may be liable for damages or performance claimed by the other party. Notwithstanding the other provisions of this Agreement related to submitting disputes to arbitration, in the event and to the extent a matter submitted to arbitration involves a third party whose joinder as a party is reasonably

necessary for the resolution of the arbitration but who is not otherwise contractually bound by the arbitration and who does not agree to be bound by the arbitration, either Party may elect by notice to the other to have the arbitration dismissed without prejudice and to have the dispute resolved by suit or action or other appropriate proceeding under the other provisions of this Agreement whereby jurisdiction over such third party is obtained.

**10.9.2** The Parties agree that any matter that is expressly within PDC's sole discretion pursuant to this Agreement will not be settled by arbitration unless the Parties agree in writing to arbitration when the dispute arises.

## **11 MISCELLANEOUS PROVISIONS**

**11.1 Contract Manager.** For the purposes of implementing this Agreement on behalf of PDC, the Executive Director of the Portland Development Commission shall designate a Contract Manager. Upon the initial execution of this Agreement, the Contract Manager shall be S. Bruce Allen.

**11.2 Discrimination.** Developer each, 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.

### **11.3 Notice.**

**11.3.1** Any notice or communication under this Agreement by a Party to another shall be deemed given or delivered forty-eight (48) hours after being dispatched by private messenger service, or registered or certified U.S. mail; postage prepaid, return receipt requested, and:

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

Sia Vossoughi  
c/o Ziba Design  
334 N.W. Eleventh Avenue  
Portland, OR 97209  
PH: 503-223-9606  
FAX: 503 -223-9785  
e-mail: sia\_vossoughi@ziba.com

With a copy to:

Mr. Gregory V. Close  
President  
Wyse Investment Services Company  
111 S.W. Fifth Avenue, Suite 1100  
Portland, OR 97204  
PH: 503-294-0400  
FAX: 503-227-2507



e-mail: [gclose@wyseinvestment.com](mailto:gclose@wyseinvestment.com)

And to:

Eugene A. Frassetto  
Stoel Rives LLP  
900 SW 5<sup>th</sup> Avenue, Suite 2600  
Portland, OR 97204  
PH: 503-294-9668  
FAX: 503-294-9876  
e-mail: [eafrassetto@stoel.com](mailto:eafrassetto@stoel.com)

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

S. Bruce Allen  
Senior Development Manager  
Portland Development Commission  
222 N.W. Fifth Avenue  
Portland, OR 97209  
PH: 503-823-3357  
FAX: 503-865-3604  
e-mail: [allenb@pdc.us](mailto:allenb@pdc.us)

With a copy to:

Portland Development Commission  
Attn. David Davies  
222 N.W. Fifth Avenue  
Portland, OR 97209  
PH: 503-823-0409  
FAX: 503-865-3639  
e-mail: [daviesd@pdc.us](mailto:daviesd@pdc.us)

And to:

Portland Development Commission  
Attn. General Counsel  
222 N.W. Fifth Avenue  
Portland, OR 97209  
PH: 503-823-3221  
FAX: 503-823-3368  
e-mail: [bainesm@pdc.us](mailto:bainesm@pdc.us)

or addressed in such other way in respect to a 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.

**11.4 Merger.** None of the provisions of this Agreement are intended to or shall be merged by reason of any Deed transferring title to Lot 2 from PDC to a 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.

**11.5 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.

**11.6 Waivers.** No waiver made by a Party with respect to the performance, or manner or time thereof, of any obligation of another 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 a Party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

**11.7 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 or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorney fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

**11.8 Broker Commission.** At Closing, PDC shall pay to Wyse Investment Services Company, an Oregon real estate broker, a brokerage commission equal to \$37,500.00.

**11.9 Choice of Law.** This Agreement shall be governed by Oregon law.

**11.10 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.

**11.11 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.

**11.12 Legal Purpose.** Developer agrees to use Lot 2 solely for lawful purposes.

**11.13 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.

**11.14 Entire Agreement.** This Agreement and the attachments hereto are the entire agreement between the Parties. There is no other oral or written agreement between the Parties

with regard to this subject matter. There is no oral or written representations made by a Party, implied or express, other than those contained in this Agreement.

**11.15 Amendments and Modifications.** Any modifications to this Agreement shall be made in writing and executed by all Parties, and approved by the PDC Commission. Notwithstanding this general requirement, the PDC Executive Director may approve minor modifications to this Agreement without Commission approval. "Minor modifications" include:

**11.15.1** Modifications to the Scope of Development that do not increase or decrease the proposed amount of square footage for the Project by more than twenty percent (20%);

**11.15.2** Changes in the Schedule of Performance when deemed warranted by the Executive Director and which do not exceed sixty (60) days; and

**11.15.3** Corrections of errors, clarifications, or minor modifications that do not change the substantive content of the Agreement.

**11.16 Execution of Other Agreements.** The PDC Executive Director may execute such agreements, easements, and leases as may be necessary to carry out PDC's obligations in connection with the development of the Project.

**11.17 Successors and Assigns.** Subject to the provisions of Section 7 (Assignments), the benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and assigns of the Parties.

**11.18 Place of Enforcement.** Any action or suit to enforce or construe any provision of this Agreement by any Party not resolved through arbitration under Section 10.9 shall be brought in the Circuit Court of the State of Oregon for Multnomah County, or the United States District Court for the District of Oregon in Portland, Oregon.

**11.19 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.

**11.20 Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the deeds, PDC is specifically not obligating itself, the City, or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on Lot 2, 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.

**11.21 Waiver of Surety Defenses.** The Developer each, for itself and its successors and assigns, and all persons, who are or shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, whether real, personal, or otherwise, or whether by agreement or operation

of law, including, without limitation on the generality of the foregoing, all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

**11.22 Approvals.** Where approvals of PDC are required, PDC will approve or disapprove within ten (10) business days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary in this Agreement. Failure by PDC to approve or disapprove within said period of time shall be deemed PDC's approval of the matter before it. Any disapproval shall state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are reserved to PDC's sole discretion. Developer, upon receipt of such disapproval, shall revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to PDC within forty-five (45) days after receipt of the notice of disapproval or, unless such disapproval is within the sole discretion of PDC, submit the matter to arbitration pursuant to Section 10.9.

**11.23 Approval by PDC Executive Director.** Whenever consent or approval by PDC is required under the terms of this Agreement, all such consents or approvals shall be given in writing from the Executive Director of PDC.

**11.24 Recording of Memorandum of Agreement.** PDC shall provide for recording of a Memorandum of this Agreement substantially in the form attached hereto as Exhibit F within ten (10) days of the Effective Date. When PDC issues to the Certificate of Completion, or if the Agreement is terminated, the Parties shall cooperate to remove the Memorandum as an encumbrance of record on Lot 2.

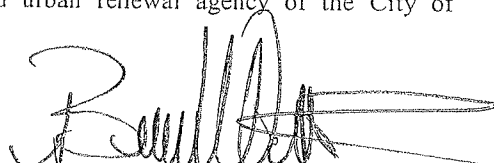
**11.25 No Third Party Beneficiaries.** PDC, and Developer, and their successors or assigns as approved pursuant to this Agreement, are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

**11.26 PDC to Record Termination of Original DDA as to Lot 2.** Promptly upon full execution of this Agreement, PDC shall record a Notice of Termination, evidencing the release of Lot 2 from the Original DDA, in the Records of Multnomah County, Oregon.


THIS DISPOSITION AND DEVELOPMENT AGREEMENT FOR LOT 2 – STATION PLACE REDEVELOPMENT is hereby executed in multiple counterparts as of the day and year first above written.

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

By:

  
Bruce A. Warner, Executive Director

APPROVED AS TO FORM:


  
Portland Development Commission  
General Counsel

SONEED, LLC, a Delaware limited liability company

By:

Name:

Its:

  
Sia Vossoughi  
Manager

## **EXHIBITS**

- A – Site Plan**
- B – Scope of Development**
- C – Schedule of Performance**
- D – Legal Description of Lot 2**
- E – Deed Form**
- E -1 Permitted Exceptions**
- F – Form of Memorandum of Agreement**
- G -- Certificate of Completion**
- H -1 Quitclaim Deed**
- H -2 Escrow Instructions**
- I – Conditions, Covenants and Restrictions for Station Place Development Property**

**EXHIBIT A  
SITE PLAN**

**SEE ATTACHED**





**EXHIBIT B**  
**SCOPE OF DEVELOPMENT**

This project includes the following as provided in and subject to the Agreement:

1. Design and Development of a Commercial building of between 40,000 and 60,000 enclosed square feet on Lot 2 of the Station Place Development at NW 9<sup>th</sup> Avenue and NW Marshall Street in Portland, Oregon.
2. Design and installation of tenant improvements.
3. Construction of related site improvements as required by the City of Portland including sidewalks, landscape materials, lighting, etc.
4. Construction of a pedestrian walkway over a portion of the roof of the building allowing for pedestrian access to and from the adjacent parking garage by tenants of the adjacent housing tower, if required under Section 5.3.1.
5. Remediation of contaminated soil conditions through limited soil removal and installation of a “cap” over the entire site per a DEQ-approved remedial action plan.

**EXHIBIT C**  
**SCHEDULE OF PERFORMANCE**

Close Escrow of Sale and Convey Lot 2 to Developer	NLT September 15, 2006
Developer Commences Construction of Improvements on Lot 2	NLT October 15, 2006
Developer Completes Construction on Lot 2	NLT October 15, 2007

**EXHIBIT D**  
**LEGAL DESCRIPTION OF LOT 2**

Lot 2, STATION PLACE subdivision, recorded in Plat Book 1257, Pages 84-86, County Deed  
Records in the City of Portland, County of Multnomah, State of Oregon

**EXHIBIT E**  
**FORM OF DEED**

**AFTER RECORDING RETURN TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**UNTIL A CHANGE IS REQUESTED, ALL  
TAX STATEMENTS TO BE SENT TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SPECIAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that the CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, as its duly designated Urban Renewal Agency of the City of Portland (which, together with any successor public agency designated by or pursuant to law, is herein called the "Agency"), does hereby grant, convey and specially warrant unto **SONEED, LLC**, an Oregon limited liability company (the "Developer") and unto its successors and assigns, all the following described real property, with the tenements, hereditaments and appurtenances (herein called the "Lot 2"), situated in the County of Multnomah and State of Oregon, free and clear of encumbrances created or suffered by the Agency except as specifically set forth herein:

Lot 2, STATION PLACE subdivision, recorded in Plat Book 1257, Pages 84-86,  
County Deed Records in the City of Portland, County of Multnomah, State of  
Oregon

The conveyance is made pursuant to that certain Disposition and Development Agreement for Lot 2 - Station Place Redevelopment between Developer and Agency, dated \_\_\_\_\_, 2006, a Memorandum of which was recorded on \_\_\_\_\_, 2006 as Document No. \_\_\_\_\_, Records of Multnomah County, Oregon (the "DDA"). Any capitalized terms

in this Deed shall have the meanings set out in the DDA, unless otherwise defined herein. The Developer has given other value for this conveyance.

The conveyance is subject to the following:

1. Those certain easements, covenants, restrictions, conditions and encumbrances of record specifically listed in Exhibit "1" attached hereto and incorporated herein; and
2. Pursuant to the DDA, the Agency reserved the option, in the event of a material default by Developer before Agency issues a Certificate of Completion, and upon 60 days written notice (hereinafter "Notice of Termination") to said Developer and the Escrow Agent, and in the event of the failure by the Developer to remedy, end or abrogate such default within the 60-day period in the manner stated in the Notice of Termination, to then declare a termination in favor of Agency of the title, and of all the rights and interests of the Developer in Lot 2. Developer shall reconvey Lot 2 to the Agency by quitclaim deed, pursuant to the Escrow Instructions in Exhibit H to the DDA. Nothing in the foregoing provisions of this Item 2 shall expand or change the provisions of the DDA related to the above-described right of entry and reversion and the applicable provisions of the DDA shall control over this Item 2 in all events
3. The DDA provides that, after the Certificate of Completion is recorded, the Agency shall thereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the DDA with respect to the construction of the Project, including but not limited to any right of re-entry to Lot 2 and/or reversion in the Agency described above or otherwise. Nothing in the foregoing provisions of this Item 3 shall expand or change the provisions of the DDA related to the above-described right of entry and reversion and the applicable provisions of the DDA shall control over this Item 3 in all events

This Deed is made by the Agency pursuant to powers exercised by it under Oregon Revised Statutes Chapter 457, and Chapter XV of the Charter of the City of Portland, and for the purpose of carrying out an urban renewal plan for the River District Urban Renewal District approved by the City Council of the City on October 21, 1998.

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

TO HAVE AND TO HOLD the same unto the said Developer and unto its successors and assigns forever.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)). THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS

INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING AND FOREST PRACTICES AS DEFINED IN ORS 30.390 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)).

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

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

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

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

STATE OF OREGON            )  
                                      ) ss.  
County of Multnomah        )

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

\_\_\_\_\_  
Notary Public for Oregon:  
My Commission Expires: \_\_\_\_\_

**EXHIBIT E-1**  
**Permitted Exceptions**

**(To be attached to Deed prior to Closing)**

**EXHIBIT F**  
**FORM OF MEMORANDUM OF AGREEMENT**

After recording return to:  
Portland Development Commission  
Real Estate Services  
222 N.W. Fifth Avenue, Suite 100  
Portland, Oregon 97209

**Memorandum of Disposition And Development Agreement**

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (“Memorandum”) shall serve as notice to all persons that the CITY OF PORTLAND (the “City”), a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland (“PDC”), and SONEED, LLC, an Oregon limited liability company (“Developer”), entered into a Disposition And Development Agreement for Lot 2 – Station Place Redevelopment dated as of \_\_\_\_\_, 2006 (“Agreement”) relating to the real property conveyed by PDC (the “Property”) located in Multnomah County, Oregon. The Agreement is hereby incorporated in its entirety in this Memorandum. The Property is more particularly described as: Lot 2, STATION PLACE subdivision, recorded in Plat Book 1257, Pages 84-86, County Deed Records in the City of Portland, County of Multnomah, State of Oregon

The parties are:           Portland Development Commission  
                                  222 N.W. Fifth Avenue, Suite 100  
                                  Portland, Oregon 97209

                                  Soneed, LLC  
                                  334 N.W. Eleventh Avenue  
                                  Portland, OR 97209

Among other things, the Agreement requires PDC to convey the Property to Developer upon the satisfaction of certain conditions precedent, and requires Developer to construct and complete certain project improvements on the Property all as more particularly set forth in the Agreement (the “Project”).

Among other things, the Agreement reserves to PDC certain rights and remedies in the event of a default by Developer, including the right to terminate the Agreement and be re-vested



to all right, title and interest in the Property conveyed to Developer if Developer does not develop or cause development of the Property as and when required by the Agreement on certain terms and conditions more particularly specified in the Agreement, to which reference is hereby made.

PDC and Developer execute this Memorandum solely to acknowledge being bound by the Agreement and to give notice of the Agreement to third parties and not to amend or supplement the Agreement in any way. Nothing in this Memorandum shall be deemed to add to, modify or limit any of the terms or conditions of the Agreement, and the actual provisions of the Agreement shall govern in all events.

**CITY OF PORTLAND**, a municipal corporation  
of the State of Oregon, acting by and through the  
**PORTLAND DEVELOPMENT COMMISSION**,  
the duly designated urban renewal agency of the  
City of Portland:

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

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

**DEVELOPER:**

**SONEED, LLC**

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

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

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

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

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

STATE OF OREGON )  
 ) ss.  
County of Multnomah )

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

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

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

**AFTER RECORDING RETURN TO:**

Soneed, LLC  
334 N.W. Eleventh Avenue  
Portland, OR 97209

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**CERTIFICATE OF COMPLETION**

CITY OF PORTLAND (the "City"), a municipal corporation of the State of Oregon, acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated urban renewal agency of the City of Portland ("PDC") hereby certifies that SONEED, LLC, an Oregon limited liability company ("Developer") has satisfactorily completed construction of the Project on Lot 2, as described in the Disposition and Development Agreement for Lot 2 - Station Place Redevelopment, dated \_\_\_\_\_, 2006 (herein called the "DDA"), a Memorandum of which was recorded in the Records of Multnomah County, Oregon as Document No. \_\_\_\_\_, on \_\_\_\_\_, 2006. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 5.8 of the DDA, PDC hereby certifies that:

- (i) the Project is completed according to the Final Construction Plans and Specifications, except for punchlist items which do not substantially prevent the use of the Project for the purposes intended under the DDA, and
- (ii) the City of Portland has issued its Certificate of Occupancy with respect to the Project,

This Certificate of Completion is and shall be a conclusive determination of the satisfaction of all of the agreements, covenants and conditions contained in the DDA with respect to the obligations of Developer, its successors and assigns, as to the construction of the Project, and the same shall automatically cease and become of no further effect. This Certificate

represents and certifies the completion of Developer's construction obligations described herein as to PDC only.

Further, any party acquiring or leasing any portion of the Project shall not (because of such purchase or lease) have any obligation under the DDA with respect to the construction of the Project.

PDC shall hereafter have, or be entitled to exercise, no rights or remedies or controls that it may otherwise have been entitled to exercise under the DDA with respect to the construction of the Project, or as a result of a default in or breach of any provisions of the DDA relating to construction by the Developer, or by any successors in interest or assigns of Developer. Without limitation, PDC confirms that PDC has not exercised and no longer has any right of re-entry to or re-vesting of the Project or said Lot 2 or any portion thereof or any right of termination of the DDA.

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

PORTLAND DEVELOPMENT COMMISSION

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

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

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

\_\_\_\_\_  
Notary Public for Oregon:  
My Commission Expires: \_\_\_\_\_

**EXHIBIT H-1**  
**QUITCLAIM DEED**

**AFTER RECORDING RETURN TO  
AND SEND TAX STATEMENTS TO:**

Portland Development Commission  
222 N.W. Fifth Avenue  
Portland, OR 97209  
Attn: General Counsel

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**QUITCLAIM DEED**

For a valuable consideration, receipt of which is hereby acknowledged, SONEED, LLC, an Oregon limited liability company, does hereby DEMISE, RELEASE AND QUITCLAIM to CITY OF PORTLAND acting by and through the PORTLAND DEVELOPMENT COMMISSION, the duly designated Urban Renewal Agency of the City of Portland, all right, title and interest in and to the following described real property, with the tenements, hereditaments and appurtenances, situated in the County of Multnomah and State of Oregon, to wit:

Lot 2, STATION PLACE subdivision, recorded in Plat Book 1257, Pages 84-86, County Deed Records in the City of Portland, County of Multnomah, State of Oregon

To Have and To Hold the same unto the said grantee and grantee's successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$—0—. However, the actual consideration consists of or includes other property or value given or promised which is 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 Lot 2 - Station Place Redevelopment, dated \_\_\_\_\_, 2006, a Memorandum of which was recorded on \_\_\_\_\_, 2006 as Document No. \_\_\_\_\_, Records of Multnomah County, Oregon ("DDA"), including, without limitation, Section 10.5 of the DDA, that are intended to continue after delivery of this Deed.



**EXHIBIT H-2**

**ESCROW INSTRUCTIONS FOR QUITCLAIM DEED**

[INSERT NAME, ADDRESS  
OF TITLE COMPANY]

Attention: [INSERT TITLE OFFICER]

Re: Escrow No. \_\_\_\_\_

SONEED, LLC, an Oregon limited liability company ("Developer") has entered into that certain Disposition and Development Agreement for Lot 2 - Station Place Redevelopment ("DDA") with the City of Portland, Oregon acting by and through the Portland Development Commission ("Agency") dated as of \_\_\_\_\_, 2006, a Memorandum of which was recorded \_\_\_\_\_, 2006 as Document No. \_\_\_\_\_, Records of Multnomah County, Oregon, whereby the Agency will convey to the Developer or its assignees certain real property ( "Lot 2") in the River District Urban Renewal District. Lot 2 is the subject of this escrow and is described in the accompanying quitclaim deed ("Quitclaim Deed").

Section 10.4.1 of the DDA provides that, under certain circumstances, the Agency is entitled to reconveyance of Lot 2 pursuant to the Quitclaim Deeds and Escrow Instructions. This document constitutes those escrow instructions and is for the purpose of irrevocably instructing you as to the disposition of the accompanying Quitclaim Deed.

In the event that you receive from Agency a notice signed by the Agency's Executive Director certifying that a copy of said notice has been delivered concurrently to Developer and certifying that the DDA has been terminated according to its terms and the rights to Lot 2 described in the Quitclaim Deed have reverted in the Agency pursuant to the DDA ("Notice of Termination"), you shall at the end of sixty (60) days after receipt of said instructions record the Quitclaim Deed unless you are within said sixty (60) day period, notified by the Agency that the Agency has

withdrawn the Notice of Termination, or unless you are prohibited from recording the Quitclaim Deed by temporary restraining order, preliminary injunction, or other court order.

In the event that you receive a copy of a Certificate of Completion issued by Agency with respect to Lot 2 (either an original or one certified by Developer as being a duplicate of the original), you will forthwith 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 Agency 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,

SONEED, LLC, an Oregon limited liability company

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

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

Its: \_\_\_\_\_

Very truly yours,

CITY OF PORTLAND, acting by and through the PORTLAND DEVELOPMENT COMMISSION

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

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

Its: \_\_\_\_\_

Accepted and agreed to this

\_\_\_\_ day of \_\_\_\_\_, 200\_\_

By \_\_\_\_\_ (TITLE COMPANY)

Disposition And Development Agreement  
9<sup>th</sup> & Lovejoy

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**EXHIBIT I**  
**FORM OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**STATION PLACE DEVELOPMENT PROPERTY**

**DECLARATION OF RESTRICTIVE COVENANTS**

AFTER RECORDING, RETURN TO:

SP Tower Limited Partnership  
C/O Reach Community Development  
1135 SE Salmon Street  
Portland, Oregon 97214  
Attn: Mr. Kevin Kraus

**DECLARATION OF RECIPROCAL COVENANTS  
AND RESTRICTIONS**

This DECLARATION OF RECIPROCAL COVENANTS AND RESTRICTIONS (the "**Declaration**") is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by **CITY OF PORTLAND**, acting by and through the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland ("**PDC**"), whose address is \_\_\_\_\_, Portland, Oregon 97\_\_\_\_, **SP TOWER LIMITED PARTNERSHIP**, an Oregon limited partnership ("**SP**"), whose address is 1135 SE Salmon Street, Portland, Oregon 97214 and **SONEED LLC**, a Delaware limited liability company ("**Soneed**"), whose address is \_\_\_\_\_, Portland, Oregon 97\_\_\_\_.

SP is the fee owner of that certain parcel of real property described on the attached Exhibit 1 as Lot 1--Station Place ("**Parcel 1**"). Soneed is the fee owner of that certain parcel of real property described on the attached Exhibit 1 as Lot 2--Station Place ("**Parcel 2**"). PDC is the fee owner of that certain parcel of real property described on the attached Exhibit 1 as Lot 3--Station Place ("**Parcel 3**"). Each of Parcel 1, Parcel 2 and Parcel 3 is sometimes referred to herein as a "**Parcel**" and any two or more as "**Parcels**." Each of SP as to Parcel 1, Soneed as to Parcel 2 and PDC as to Parcel 3 are sometimes referred to herein as "**Owner**" and any two or more as "**Owners**" as to their respective Parcels. Owners have agreed to develop and use their respective Parcels subject to the covenants and restrictions stated below.

NOW, THEREFORE, in order to better assure the orderly and beneficial development of the Parcels, each Owner hereby declares that its respective Parcel shall be held, sold and conveyed subject to the provisions of this Declaration, which shall run with the land and shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the respective Parcels, as applicable, or any part thereof, and all heirs, successors and assigns of such parties, on the following terms:

1. **Restrictions on Use/Covenants.** No Parcel shall in any event be leased, subleased, operated or otherwise used for: (i) the display, distribution or sale of any "adult" books, "adult" films, "adult" periodicals or "adult" entertainment; (ii) the establishment or maintenance of a massage parlor, tattoo or body piercing parlor or shop, fortune telling, palm reading or other business related to the occult, sale of drug paraphernalia, gambling operation (including, without limitation, any lottery or video poker, bingo or card parlor or operation), amusement center or arcade, "adult" theater, "adult" bookstore, "sex" shop, "peep show", strip club, or bawdy house or brothel, or any use in violation of applicable zoning and other governmental laws and regulations; (iii) any continuing use which emits an obnoxious odor, noise or sound discernable at the boundary of the Parcel, or which is a public or private nuisance (except that this provision shall not prohibit temporary odor, noise and sound during periods of otherwise lawful construction and reconstruction); (iv) any distilling, refining, smelting or mining operation; (v) any junkyard or stockyard; (vi) any dumping, disposing, incineration or reduction of garbage (exclusive of any garbage compactor or dumpster located near the rear or sides of the building on the Parcel that are appropriately screened and regularly serviced by an appropriate refuse service), or (vii) any drilling for or removal of subsurface minerals, aggregate or other natural resources, except to the extent required for the excavation and construction of one or more buildings on the Parcel consistent with this Declaration..

Each building on a Parcel shall be of first quality construction and architecturally designed so that its exterior elevations and appearance (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings on the Parcels. All service facilities shall be attractively screened. Every building shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such manner as not to adversely affect the fire rating of any building built upon any other Parcel. The purpose of the preceding sentence is to allow buildings built on each Parcel to be fire rated as separate and distinct units without deficiency charge. No building shall be built in such a manner as to adversely affect the structural integrity of any other building on any other Parcel. Parcel 1 has been developed into a multi-story, multi-unit affordable housing project. Any mechanical or other equipment installed on the roof of any building on a Parcel shall be screened in compliance with applicable screening requirements for such installations, if any, under the City of Portland code and shall be designed, constructed or buffered in compliance with applicable noise standards under the City of Portland code.

If all or any portion of any building on a Parcel is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All areas on which buildings

formerly stood, but on which buildings are not being reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the adjoining Parcel(s) or any portion thereof, shall be covered by a one-inch asphalt dust cap, sodded or landscaped and shall be kept weed free and clean at such Owner's sole cost and expense until buildings are reconstructed thereon.

Each Owner (and its tenants and subtenants of the Parcel) will maintain (or cause to be maintained) at all times the Owner's Parcel (including, without limitation, the general cleanliness, appearance and preservation of such Parcel and/or improvements thereon) and the landscaping and exterior of any building located on such Owner's Parcel free of rubbish and debris and in a slightly condition in accordance with the standard of operation of first class developments of comparable size and nature in Portland, Oregon. The obligation to maintain the Parcel shall include, but not be limited to: (a) maintaining, painting/coating and repairing, when necessary, all exterior surfaces of surface improvements on the Parcel; (b) removing all snow, papers, debris, filth and refuse from the sidewalks and walkways on or abutting the Parcel to the extent reasonably necessary to keep the area in a reasonably clean, safe and orderly condition; and (c) maintaining all landscaped areas of the Parcel (including, without limitation, those on the perimeter of the Parcel), and maintaining, repairing and replacing, when necessary, irrigation systems and water lines, and replacing shrubs and other landscaping as necessary. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building or other improvements located on a Parcel shall be performed and completed by such Owner in an expeditious, good and workmanlike manner.

2. **Acceptance of Restrictions.** Each Owner acknowledges that the restrictions set forth in this Declaration are fair and reasonable to assure the Owner its expected benefits and orderly and beneficial development and use of its Parcel and the other Parcels, but not to control competition.

3. **Default.** If an Owner fails to perform or observe any of its obligations under this Declaration and fails to cure such default within thirty (30) days after receipt of written notice of such default from any other Owner, then such shall be an event of default under this Declaration. The non-defaulting Owner(s) shall be entitled to all remedies available under this Declaration or at law or in equity, including the right to specific performance and injunctive relief. If the non-defaulting Owner(s) incur costs or expenses in curing or responding to an event of default by another Owner, the non-defaulting Owner(s) incurring such costs or expenses shall be entitled to collect such costs and expenses from the defaulting Owner, together with interest on such costs at the rate of twelve percent (12%) per annum from the date the costs were paid until such non-defaulting Owner(s) receive full reimbursement. This sum shall be in addition to attorneys' fees otherwise allowed under this Declaration.

4. **Term.** The term of this Declaration shall be perpetual (except as provided below) and shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors or assigns. This Declaration may only be terminated or modified by written agreement specifically referring to this Declaration and signed by all Owners and shall be effective only when such written agreement is recorded in the records of Multnomah County, Oregon.

5. **General Provisions.**

5.1 **Status of Title.** Each Owner warrants that it will defend title to its Parcel and the other Owner's interest under this Declaration against any claim, encumbrance, mortgage, tax lien or construction lien claim: (i) which affects such Owner's Parcel, and (ii) which asserts priority over the interest of any other Owner in enforcing this Declaration or which otherwise affects any rights of any Owner under this Declaration. No Owner shall permit this Declaration to be subordinated or rendered inferior to any financing, lien or claim by, through or under such Owner.

5.2 **Protection of Rights of Mortgagees** . No breach of the provisions in this Declaration shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects an Owner's interests pursuant to this Declaration; provided, however, that upon any sale under foreclosure of any mortgage(s) or under the provisions of any deed(s) of trust, any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so purchased subject to all of the provisions of this Declaration.

5.3 **Waiver.** Failure at any time to require performance of any provision of this Declaration shall not limit any Owner's right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach or a waiver of any provision of this Declaration.

5.4 **Attorneys' Fees.** If suit or action is instituted to interpret or enforce the terms of this Declaration, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on appeal of such suit or action and on any petition for review or other proceeding (including, without limitation, any bankruptcy proceeding), in addition to all other sums provided by law.

5.5 **Indemnity.** Each Owner shall defend, indemnify, reimburse and hold the other Owners harmless for, from and against any claim, loss, liability, damage, cost or expense (including reasonable attorneys' fees) that arises out of or in connection with the failure to perform or comply with the terms, restrictions and provisions of this Declaration by such Owner or in connection with the act or omission of such Owner or the lessee, employee, representative, permittee, invitee, agent or independent contractor of the Owner.

5.6 **Entire Agreement.** This Declaration supersedes and replaces all written and oral agreements previously made or existing with respect to the matters set forth above. This instrument may be executed in one or more counterparts, each of which will be considered one and the same agreement.

5.7 **Governing Law.** This Declaration will be governed and construed in accordance with the laws of the State of Oregon.

5.8 **Appurtenant Rights.** This Declaration shall be binding upon the parties hereto, their respective successors and assigns, and appurtenant to the respective Parcels, and any further legal subdivisions thereof.

5.9 **Dominant and Servient Estates.** Each right granted pursuant to the provisions of this Declaration are expressly for the benefit of the property described above. The property so benefited shall be the dominant estate and the property burdened by the obligations shall be the servient estate.

5.10 **Notices.** Notices given under this Declaration shall be in writing and will be deemed given and effective when delivered in person to the addressee (or when delivery is attempted by the postal authority but not accepted) after being deposited in the U.S. Mails, postage prepaid, and sent by registered or certified mail to the Owner's address for notices, which shall initially be the respective addresses first set forth above in this Declaration. Either party may change its address for notices by written notice to the other party. In the absence of such notice of an Owner's address for notice purposes, any notice under this Declaration may be given to the address to which property tax statements for the applicable Parcel are delivered by the taxing authority.

5.11 **Amendments.** Except as otherwise set forth herein, this Declaration may not be modified, amended or terminated except by the written agreement of the Owners. A party may waive one or more of its rights under this Declaration only expressly in a writing signed by the party and delivered to the other party, and such waiver need not be recorded to be effective, subject to Section 3, above regarding termination or amendment of this Declaration.

5.12 **Effect of Declaration.** Nothing in this Declaration, express or implied, shall confer upon any person, other than the Owners and their respective successors and assigns with respect to their respective Parcels, any right or remedies under or by reason of this Declaration. The rights and remedies of tenants and other persons are limited to those contained in the lease agreements or other agreements the respective parties may have with such tenants or other persons and to those rights and remedies otherwise explicitly conferred by such party on such persons. Nothing in this Declaration shall prevent an Owner from imposing on such Owner's tenants or other persons being granted by Owner rights of use of such Owner's Parcel, either expressly or by implication, such other rules, regulations and restrictions as the Owner may determine to be necessary or appropriate consistent with this Declaration.

5.13 **Successors and Assigns.** Every obligation under this Declaration shall run with the land and shall be binding upon each Owner and upon the heirs, personal representatives, successors and assigns of the respective Owner with respect to its Parcel for the benefit of the other Owners and their

respective successors and assigns with respect to the ownership of their respective Parcels. Any reference in this Declaration to an Owner shall apply to a party only so long as the party has a fee ownership interest in a Parcel, and thereafter such reference shall be intended to apply to such party's successor or assign with respect to such fee ownership of such Parcel. Any transferee of fee ownership of a Parcel shall automatically be deemed, by acceptance of title to such property, to have assumed all of the obligations set forth in this Declaration relating to such Parcel thereafter accruing, and to have taken such interest subject to all obligations of this Declaration. The transferring Owner conveying its entire fee ownership interest in a Parcel shall, when such transfer is consummated, be relieved of all liability with respect to such Parcel that arises thereafter under this Declaration, but such Owner shall not thereby be relieved of liability that arose during such Owner's ownership period before such time and which remains unsatisfied. Each Owner has the right to delegate to any tenant(s) of such Owner's Parcel all or any part of such Owner's obligations under this Declaration throughout the term of the lease(s) to such tenant(s) or for a shorter time as such Owner may agree, but this shall not release the Owner from its obligations or liabilities under this Declaration.

**5.14 Effect of Invalidation.** If any provision of this Declaration is held to be invalid or unenforceable for any reason, the validity of the remaining provisions of this Declaration shall not be affected thereby.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed as of the day and year first written above.

**PDC:**            **CITY OF PORTLAND**, acting by and through the **PORTLAND DEVELOPMENT COMMISSION**, the duly designated urban renewal agency of the City of Portland

By:

Name:

Title:

**SONEED:**       **SONEED, LLC**, a Delaware limited liability company

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

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

Its: \_\_\_\_\_

SP: **SP TOWER LIMITED PARTNERSHIP**, an Oregon limited partnership, by  
**STATION PLACE LLC**, an Oregon limited liability company, its general  
partner, by **REACH COMMUNITY DEVELOPMENT**, its sole member

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

Name: Dee Walsh

Its: Executive Director

[ADD NOTARY BLOCKS FOR EACH]

**EXHIBIT A**  
**TO**  
**DECLARATION OF RECIPROCAL COVENANTS**  
**AND RESTRICTIONS**  
  
**DESCRIPTION OF PARCELS 1, 2 AND 3**

[INSERT]