

**LETTER OF INTENT AND INDEMNIFICATION AND  
COMPENSATION AGREEMENT**

between

CITY OF PORTLAND, OREGON  
Acting By and Through Its City Council  
and the Portland Development Commission

and

GERDING/EDLEN DEVELOPMENT COMPANY

THIS LETTER OF INTENT AND INDEMNIFICATION AND COMPENSATION AGREEMENT (the "Letter and Agreement") is between the CITY OF PORTLAND, OREGON (the "City"), acting by and through its City Council and the Portland Development Commission (the "Commission"), the agency charged with the administration of the economic development and housing revenue bond programs of the City, and GERDING/EDLEN DEVELOPMENT COMPANY, an Oregon corporation, or its assigns (the "Company")

1     Preliminary Statement     Among the matters of mutual inducement, which have resulted in the execution of this Letter and Agreement are the following

a         The City is a municipal corporation, authorized and empowered by ORS Chapter 280 410 to 280 485 (the "Act") and Chapter 5 72 of the City Code (the "Code") to issue revenue bonds for the purposes specified therein, which constitute an "economic development project" and "eligible project," under the Act and the Code, upon such terms and conditions as the City and the Commission may deem advisable

b         The City proposes to issue revenue bonds pursuant to the Act to provide funds for the rehabilitation, improvement, equipping and construction of the housing aspects of a project which constitutes an "economic development project" and "eligible project" within the meaning of the Act and the Code (the "Project") and to loan the proceeds of such revenue bonds to the Company. Revenue bonds for the new facilities are referred to herein as the "revenue bonds "

c         The City deems it necessary and advisable that it take such action as may be required under the Act to authorize and issue one or more series of revenue bonds to finance the cost of the Project in a total amount not to exceed \$9,500,000

d The City finds that the issuance of revenue bonds to finance the cost of the Project, and the loaning of the proceeds thereof to the Company constitutes a valid public purpose

e The Company wishes to proceed with the preparation of necessary plans and specifications, and to incur expenses in connection with the Project. The Company does not wish to incur the costs and expenses and proceed with its plans for the Project without assurances from the City, satisfactory to the Company, that proceeds of the sale of revenue bonds of the City will be made available to finance the Project. The parties consider it appropriate that the action contemplated hereunder be the subject of this Letter and Agreement.

f All references in this Letter and Agreement to the City or the Commission shall be deemed to include when appropriate their elected and appointed officials, employees and agents.

2 Undertakings on the Part of the City Subject to the conditions stated herein and subject to approval by the City Council, the preparation and approval of the various financing documents and review and approval by bond counsel, the City agrees and represents as follows:

a The City will, upon satisfaction by the Company of all conditions stated herein and all other reasonable conditions imposed on the Company by the City relating to the issuance of revenue bonds and prior to issuance of the revenue bonds, authorize and cause the issuance of its revenue bonds to be payable solely out of the loan payments paid by the Company to the City pursuant to a loan agreement or other financing agreement between the Company and the City, which revenue bonds will be in an aggregate principal amount not to exceed \$9,500,000.

b The City will adopt such proceedings and authorize the execution of such documents as may be necessary and advisable for the authorization, issuance, sale and delivery of the revenue bonds, and the loan of the proceeds of the revenue bonds to the Company to finance the Project, all as authorized by law and as mutually satisfactory to the Company and the City.

c The amounts payable to the City under the loan agreement or other financing agreement will be sufficient to pay the principal of and the interest on, and redemption premium, if any, of the revenue bonds as and when the same become due and payable.

d The City has appointed Ater Wynne Hewitt Dodson & Skerritt, LLP, as the City's housing and conduit bond counsel ("Bond Counsel") to supervise the proceedings and to approve the legality of the actions of the City, the Commission, the revenue bonds, and to assist in the preparation and review of the preliminary and final official statements for the revenue bonds.

e Neither the revenue bonds nor the interest thereon shall be an obligation of the City of Portland, the Commission, or the State of Oregon, or the personal obligations of the elected

or appointed officials, employees or agents of the City or the Commission within the meaning of any constitutional or statutory provisions whatsoever, but shall be payable solely from amounts received by the City or the Commission from the loan agreement and other monies pledged therefor. The revenue bonds shall not be a general obligation of the City or the Commission or their elected or appointed officials, employees or agents nor a pledge of the faith and credit of the City or the Commission or their elected or appointed officials, employees or agents nor a debt or pledge of the faith and credit of the City of Portland, the Commission, or the State of Oregon.

f No presently existing assets of the City or the Commission shall be given to secure the revenue bonds and the revenue bonds shall be repayable out of and, only out of, the Company's assets and income or other credit enhancement to be provided by the Company at its expense.

3 Undertakings on the Part of the Company Subject to the conditions above stated, the Company agrees as follows:

a If the revenue bond financing herein contemplated is available, it is the intent of the Company to cause the Project to be developed, constructed and equipped at the site indicated in the Company's revenue bond application.

b The Company will cooperate with the City for the approval of all of the terms and conditions of the issuance of the revenue bonds, and in the sale of the revenue bonds in an aggregate principal amount not to exceed \$9,500,000, to be used to finance the Project.

c If the revenue bond proceeds are not sufficient to complete the Project, the Company agrees to pay, or cause to be paid, the deficiency.

d At the time of closing of the revenue bond sale, the Company will cause to be delivered an executed loan agreement or other financing agreement with the City, under which terms the Company will agree to pay the City loan payments sufficient in the aggregate to pay the principal of and interest on, and redemption premium, if any, of the revenue bonds as and when the same shall become due and payable and shall contain such other provisions as the City, the Commission or bond counsel shall reasonably require. The loan agreement or financing agreement shall be secured by an appropriate trust deed or mortgage.

e The loan agreement or other financing agreement shall contain a provision that the Company shall indemnify and hold the City and its elected or appointed officials, employees and agent harmless from all liabilities incurred in connection with the Project or the revenue bonds.



f The Company will cause its counsel to provide the City with legal opinions satisfactory to the City and bond counsel, and shall engage a rebate analyst for the bonds and shall pay, or cause to be paid, any fees and expenses of such rebate analyst

g The loan agreement shall also contain such other provisions as may be required or permitted by law and as are mutually acceptable to the parties

h The Company agrees that the City's Office of Finance and Administration shall appoint a placement agent or underwriter and bond trustee for the revenue bonds. The pricing of the revenue bond shall be subject to the approval of the City's Office of Finance and Administration

i The Company agrees to comply with the requirements of the Act and the Code

j The Company understands and agrees that preliminary and final approval, if any, of revenue bond financing does not imply or otherwise constitute approval of other City funds or subsidies

k The Company will take such further action and adopt such further proceedings as may be required to implement these understandings

#### 4 General Provisions

a Except as provided in Section 4(b) and Section 5(a) hereof or as otherwise provided herein, all obligations arising under this Letter and Agreement are conditioned upon the parties agreeing to mutually acceptable terms for the sale of the revenue bonds and mutually acceptable terms and conditions for the contracts and agreements contemplated herein, provided, however, and subject to Section 3(h) hereof, that the City shall not participate in or be responsible for the marketing of the revenue bonds

b The Company will pay, or cause to be paid, to the City and the Commission as applicable, whether the revenue bonds are actually issued or not, any and all direct or indirect costs incurred by the City or the Commission in connection with financing the Project or the revenue bonds including without limitation, any and all fees and expenses incurred in connection with the issuance, sale and on-going administration of the revenue bonds, including without limitation, the reasonable fees and expenses of Bond Counsel, the City's external financial advisor, if any, the trustee, registrar, remarketing agent, paying agent, tender agent and securities depository. The Company will also pay the cost of staff time of the City and Commission incurred in connection with the issuance, sale or on-going administration of the revenue bonds. In addition, the Company shall pay the out-of-pocket costs of Bond Counsel, the City's external financial advisor, if any, legal counsel and staff in connection

with financing the Project or the revenue bonds. The Company will also pay the costs and fees of its counsel, letter of credit or credit enhancement fees, the placement agent and any other costs incurred in connection with the Project or the revenue bonds.

c. The Company shall obtain, at its expense, all necessary governmental approvals and opinions of Bond Counsel necessary to ensure the legality of the revenue bonds.

5. Miscellaneous Provisions. The Company shall and hereby agrees to indemnify and save the City and the Commission, their appointed or elected officials, employees or agents (collectively, the "Indemnified Parties") harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the execution of this Letter and Agreement and the adoption of the Commission's Resolution on October 23, 1997 and any actions to be taken by the City or the Commission relating to the Project or the issuance of the revenue bonds for so long as the revenue bonds remain outstanding, including, without limitation, (i) any condition related to the Project, (ii) any breach or default on the part of the Company in the performance of any of its obligations under this Letter and Agreement, (iii) any act or negligence of the Company or of any of its agents, contractors, servants, employees or licensees (iv) any violation of the federal or state securities laws in connection with the revenue bonds, or (v) any act or negligence of any assignee or lessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Company. The Company shall indemnify and save the Indemnified Parties harmless from any such claim arising as aforesaid, or in connection with any action or proceeding and for any costs or fees incurred in any action or proceedings brought thereon whether at trial, on appeal, in bankruptcy proceedings or otherwise, and upon notice from the Indemnified Parties, the Company shall defend them or either of them in any such action or proceeding at the Company's expense.

Notwithstanding the fact that it is the intention of the parties hereto that the Indemnified Parties shall not incur any pecuniary liability by reason of the terms of this Letter and Agreement or the undertakings required of the Indemnified Parties hereunder, by reason of the issuance of the revenue bonds or by reason of the execution of any financing documents relating thereto, or by reason of the performance of any reasonable act requested by the Indemnified Parties or by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulation pertaining to the foregoing, nevertheless, if the Indemnified Parties should reasonably incur any such pecuniary liability, then in such event the Company shall indemnify and hold the Indemnified Parties harmless against all claims, demands or causes of action whatsoever, by or on behalf of any person, firm or corporation or other legal entity arising out of the same or out of any Offering Statement.

or lack of Offering Statement in connection with the sale or resale of the revenue bonds and all costs, fees and expenses, including without limitation, legal fees and expenses whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Indemnified Parties, the Company shall defend the Indemnified Parties in any such action or proceeding

Notwithstanding anything to the contrary contained herein, the Company shall have no liability to indemnify the Indemnified Parties, against claims or damages resulting from the Indemnified Parties own gross negligence or willful misconduct

In the event any claim is made against the Indemnified Parties for which indemnification may be sought from the Company under the foregoing provisions, the Indemnified Parties shall promptly give written notice thereof to the Company, *provided that* any failure to give or delay in giving such written notice shall not relieve the Company's indemnification obligations as set forth above except to the extent such failure or delay prejudices the Company's ability to defend or settle such claim Upon receipt of such notice, the Company shall assume the defense thereof in all respects and may settle such claim in such manner as it deems appropriate so long as there is no liability, cost or expense to the Indemnified Party The Company shall select legal counsel to represent each Indemnified Party and shall not be responsible for the legal fees and expenses of any legal counsel retained by any Indemnified Party without the written consent of the Company, unless the City or the Commission shall have reasonably concluded that there may be a material and resolvable conflict of interest between the City or the Commission and the Company in the conduct of the defense of such action (in which case the Company shall not have the right to direct the defense of such act on behalf of the City or the Commission and shall be responsible for the legal fees and expenses of the counsel retained by the Indemnified Party whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise) Company agrees to pay, or cause to be paid, the deficiency

The City and the Company have caused this Letter and Agreement to be authorized by their respective governing bodies and executed by their duly authorized officers as of the \_\_\_\_ day of \_\_\_\_\_, 1997

CITY OF PORTLAND, OREGON

GERDING/EDLEN DEVELOPMENT  
COMPANY, an Oregon corporation

By \_\_\_\_\_  
Kenneth L. Rust, Acting Director  
Bureau of Financial Planning

By \_\_\_\_\_  
Its

APPROVED AS TO FORM

By \_\_\_\_\_  
Linda Meng, City Attorney

PORTLAND DEVELOPMENT COMMISSION

By \_\_\_\_\_  
Felicia L. Trader, Executive Director

APPROVED AS TO FORM

By \_\_\_\_\_  
Karen Williams,  
Portland Development Commission Attorney



RESOLUTION No

35660

Give Preliminary Approval for Revenue Bonds in an Amount Not to Exceed \$9,500,000  
(Resolution)

WHEREAS, the City of Portland has the authority under ORS 280 410 to 280 485 (the "Act") to issue revenue bonds to finance economic development projects, including multifamily housing projects, and

WHEREAS, the City of Portland has adopted in Chapter 5 72 of the Code of the City of Portland (the "Code") procedures and standards for the application for an issuance of revenue bonds to finance economic development projects, and

WHEREAS, the Portland Development Commission (the "Commission") has received an application (the "Application") from Gerding/Edlen Development Company, an Oregon corporation (the "Applicant") for housing revenue bonds in the amount of not to exceed \$9,500,000 for the development and construction of approximately 125 units of multifamily rental housing, of which approximately 50 units will be affordable housing units and 75 market rate units, to be known as the Collins Circle Project, located at Southwest 17th Avenue and Jefferson Street, Portland, Oregon (the "Project"), and

WHEREAS, the Commission has reviewed the Application and has prepared its Report recommending the approval of the Application, and

WHEREAS, the Commission has by Resolution No 8 adopted on November 20, 1997 recommended that the City Council give preliminary approval for the issuance of revenue bonds in an amount not to exceed \$9,500,000 to finance the Project, that preliminary bond approval may be granted to the Applicant to develop and own the Project, subject to the availability of a State of Oregon 1998 private activity bond volume cap allocation or a 1997 carryforward volume cap allocation, that the City's Office of Finance and Administration declare the City of Portland's official intent to issue the revenue bonds pursuant to Treasury Regulations § 1 150-2, and that the City's Office of Finance and Administration determine the bond trustee and which commercial bank or investment bank shall act as the underwriter(s) or private placement agent(s) for the revenue bonds,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Portland as follows

1 The City Council finds that the Project constitutes an "economic development project" within the meaning of Chapter 5 72 020(1) and (2) of the Code and that the financing of the Project will serve the purposes of the Act and the Code and therefore the Council approves the Application

2 In furtherance of the approval of the Application, and in particular, in order to induce the Applicant to proceed with the Project, the City hereby expresses its intent to issue revenue bonds in accordance with the Act and the Code in an amount not to exceed \$9,500,000 (the "Bonds") for the purpose of providing funds to finance the Project to be owned and managed by the Applicant, or its assigns, subject to further review and final approval by the Commission of such entity and the final terms and conditions of the financing



3 The Commission is authorized to proceed with the processing of the Application, to execute a Letter of Intent and Indemnification and Compensation Agreement with the Applicant, and to review the proposed terms and conditions of the financing of the Project and the Bonds

4 The Council hereby authorizes the Office of Finance and Administration of the City to appoint the Underwriter or Placement Agent and the Trustee for the Bonds

5 The City's Office of Finance and Administration is authorized to declare the City of Portland's official intent as required by Treasury Regulations § 1 150-2

6 The City's Office of Finance and Administration is authorized to execute a Letter of Intent and Indemnification and Compensation Agreement with the Applicant

7 The City's conduit and housing bond counsel, Ater Wynne Hewitt Dodson & Skerritt, LLP, is designated as Bond Counsel for the Bonds. The Commission and its staff are authorized and directed to consult with Bond Counsel in connection with the processing of the Application and review of the proposed terms and conditions of the financing and the Bonds to ensure that all procedural and substantive requirements of the Act, the Code and federal law are satisfied in connection with the issuance of the Bonds

DEC 10 1997

Adopted by the Council  
Prepared by Bond Counsel, K Rust  
Commissioner Mayor Vera Katz  
Bureau Office of Finance and Administration  
Date prepared December 2, 1997

CWC/cwc/7650 res

**BARBARA CLARK**  
Auditor of the City of Portland  
By *Barbara Olson*  
Deputy

**1858**

Agenda No

**RESOLUTION NO.**

**35660**

Title

Give Preliminary Approval for Revenue Bonds in an Amount Not to Exceed  
\$9,500,00. (Resolution)

<p align="center"><b>INTRODUCED BY</b></p> <p align="center"><b>MAYOR VERA KATZ</b></p> <p align="center"><b>NOTED BY COMMISSIONER</b></p> <p>Affairs</p> <p>Finance and Administration <i>VR</i></p> <p>Safety</p> <p>Utilities</p> <p>Works</p> <p align="center"><b>BUREAU APPROVAL</b></p> <p>Bureau Finance and Administration</p> <p>Prepared by      Date</p> <p>Bond Counsel      December 2, 1997</p> <p>Budget Impact Review</p> <p><input checked="" type="checkbox"/> Completed    <input type="checkbox"/> Not Required</p> <p>Bureau Head <i>Tim Grewe</i> Tim Grewe</p>	<p><b>FILED</b>    <b>DEC 04 1997</b></p> <p align="right">Barbara Clark Auditor of the City of Portland</p> <p>By <u><i>Gay Kershner</i></u> Deputy</p> <p>For Meeting of _____</p> <p><b>ACTION TAKEN</b></p>
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AGENDA	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS		
			YEAS	NAYS
Consent <input checked="" type="checkbox"/> Regular	Francesconi	Francesconi	<input checked="" type="checkbox"/>	
NOTED BY	Hales	Hales	<input checked="" type="checkbox"/>	
City Attorney	Kafoury	Kafoury	<input checked="" type="checkbox"/>	
City Auditor	Sten	Sten	<input checked="" type="checkbox"/>	
City Engineer	Katz	Katz	<input checked="" type="checkbox"/>	