



IMPROVING OUR COMMUNITY

**COLUMBIA GATEWAY URBAN RENEWAL AGENCY**

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**CITY OF THE DALLES**

**AGENDA**

**COLUMBIA GATEWAY**

**URBAN RENEWAL ADVISORY COMMITTEE**

Conducted in a Handicap Accessible Meeting Room

**Tuesday, April 16, 2013**

5:30 pm

City Hall Council Chambers

313 Court St.

The Dalles, OR

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. APPROVAL OF MINUTES
  - A. March 19, 2013
6. PUBLIC COMMENT (for items not on the agenda)
7. ACTION ITEMS – Recommendation concerning the Granada Block Disposition and Development Agreement
8. ONGOING URBAN RENEWAL PROJECTS UPDATE
9. NEXT REGULARLY SCHEDULED URBAN RENEWAL ADVISORY COMMITTEE MEETING – May 21, 2013
10. ADJOURNMENT

**Columbia Gateway Urban Renewal Agency Advisory Committee  
Meeting Minutes**

**Tuesday, March 19, 2013  
5:30 PM**

City Hall Council Chambers  
313 Court Street  
The Dalles, OR 97058

*Conducted in a handicap accessible room.*

**CALL TO ORDER**

Chair Zukin called the meeting to order at 5:30 PM.

**ROLL CALL**

Members Present: Chris Zukin, Gary Grossman, Jennifer Botts, Steve Kramer, Dick Elkins, Greg Weast, Mike Zingg, Linda Miller

Members Absent: Robin Miles

Staff Present: City Manager Nolan Young, City Attorney Gene Parker, Administrative Fellow Garrett Chrostek, Administrative Secretary Carole Trautman

Also Present: Economic Development Specialist Dan Durow, MCEDD Loan Fund Manager Eric Nerdin

**PLEDGE OF ALLEGIANCE**

Chair Zukin led the group in the Pledge of Allegiance.

Note: Robin Miles joined the meeting at 5:32 PM.

**APPROVAL OF AGENDA**

It was moved by Zingg and seconded by Weast to approve the agenda as submitted. The motion carried unanimously.

**APPROVAL OF MINUTES**

- A. November 20, 2012 – It was moved by Grossman and seconded by Zingg to approve the minutes as submitted. Zukin, Grossman, Botts, Elkins, Weast, Zingg and Miller approved, Kramer abstained. The motion carried.

- B. February 26, 2013 – It was moved by Grossman and seconded by Elkins to approve the minutes as submitted. The motion carried unanimously.

PUBLIC COMMENT

None.

ACTION ITEM – Grant Applications

City Attorney Parker stated that, according to Oregon State Law, if committee members previously served on the board of any of the organizations that submitted a grant application, it would not be considered a conflict of interest to vote on the applications.

Economic Development Specialist Dan Durow presented opening comments to the grant application reviews. Durow stated that the total amount of funds requested for all four applications was approximately \$110,000. The total of three of the applications (The Art Center, St. Peter's and the Mural Society) was approximately \$50,538. Durow also stated that there was currently \$48,423 in the Urban Renewal Agency (URA) "Property Rehabilitation" budget line item. The Civic Auditorium Historic Preservation Committee (CAHPC) requested \$60,000 as outlined in the Staff Report. Staff researched the possibilities of accommodating all of the requests, including considering another URA budget line item entitled "Opportunity Driven Projects" that had a current balance of approximately \$42,000.

It was Staff's overall recommendation to take \$2,015 from the "Opportunity Driven" URA line item and move it to the "Property Rehabilitation" URA line item in order to fully fund the three smaller grant requests this fiscal year. For the CAHPC, staff's recommendation was to grant \$27,200 for engineering out of the "Opportunity Driven" line item this fiscal year and authorize \$30,000 for the architectural design work to be scheduled for the URA budget for next fiscal year 2013-14. Staff also recommended that the \$2,800 rendering be paid by the CAHPC, Durow reported.

MCEDD Loan Fund Manager Eric Nerdin gave an overview of the Staff Report for The Dalles Art Association and highlighted staff's recommendation to recommend to the URA an approval of the Art Association's request for \$14,313. Nerdin stated that the Art Association had already received approval from the Historic Landmarks Commission for the project.

Weast asked Steve Lawrence, Managing Board Member for the CAHPC, if the CAHPC would be satisfied with staff's suggested recommendation. Lawrence stated that the CAHPC was satisfied with staff's recommendation. It was the consensus of the URAC members to hear all four staff reports then follow up with discussion and motions.

Regarding The Dalles Art Association application, Weast asked what would take place if the attached contractors' quotes expired. Durow explained that he asked both the Art Association Board and St. Peter's Board to prioritize their project items in case the URA grant monies did not fully meet their projected costs. City Attorney Parker stated that, with any grant application approved by the Agency, grant agreement documents would be drawn up that would clearly indicate costs and grant amounts, and applicants were required to submit cost documents at that time. If there was a major discrepancy in money figures, it would be addressed at that time.

MCEDD Loan Fund Manager Nerdin gave an overview of the Staff Report for St. Peter's Landmark. Nerdin also highlighted staff's recommendation to recommend to the URA an approval of the St. Peter's Landmark request for \$18,225 to restore 11 stained glass windows.

Miles asked if these were the last remaining windows to be repaired at St. Peter's Landmark. Doug Leash, St. Peter's representative, stated that approximately 40% of the windows still needed to be repaired, but this application request would take care of immediate needs.

Nerdin gave an overview of the Staff Report for The Dalles Mural Society. Nerdin highlighted staff's recommendation to recommend to the URA an approval of the Mural Society's request for \$18,000 to pay for lighting, protection and enhancements to four outdoor murals and to include the condition of approval listed in staff's recommendation.

Weast asked who would pay electrical bills. Gary Honald, The Dalles Mural Society representative, stated the Mural Society would ask building owners to share the electrical costs.

Nerdin presented an overview of the Staff Report for the CAHPC. Nerdin reported that the CAHPC received a donation for the \$2,800 rendering. Staff recommended a motion to recommend the Agency approve the CAHPC grant request for \$60,000 for the theatre rendering, engineering design, and architectural design, as outlined in the Staff Report, including Staff's budget recommendations from Agency budget line items "Projects by Urban Renewal" and "Opportunity Driven Projects" for fiscal years 2012-13 and 2013-14.

It was moved by Weast and seconded by Grossman to recommend that the Columbia Gateway Urban Renewal Agency approve the four grant applications, based upon related Staff Report recommendations, and to include staff's recommended conditions of approval and budget strategies as outlined in the four Staff Reports. The motion carried unanimously.

#### ONGOING URBAN RENEWAL PROJECTS

City Manager Young gave the following urban renewal project updates:

- Granada Block – Rapoza Developers have signed the 45-day extension for the signing of the Disposition and Development Agreement, and they paid over \$20,000 for The Recreation Building back property taxes.
- The archaeological investigation at the Recreation Building will be taking place within the month to determine whether or not there are significant archaeological findings underneath the building. The developers are looking at "building up," and they are researching an engineering design on a foundation system that would not require them to dig at all into the asphalt and disturb the archaeological deposits underneath the building. Two letters regarding the archaeological impact of the development were received by the Agency. The Agency considered the comments but chose to approve the Advisory Committee's recommendation.

Zingg commented that, in some past projects, his design firm had been allowed to leave concrete slabs in place. Durow stated that the engineering is not that far along, and this information would be helpful.

Botts asked if there were any plans for recycling materials. City Manager Young reported that the City looked into that issue and decided it was not cost effective to tear out and salvage wood and other structural materials. Some loose items would be salvaged such as bowling balls, shoes, trophies, etc. Durow clarified that the demolition contractor would have the option to salvage materials for their use,

so the City would not require that all of the materials go to the landfill. Durow stated that the environmental materials would be removed from the Recreation prior to the removal of the loose items City Manager Young previously mentioned.

City Manager Young continued his project update as follows:

- Additional items regarding the Granada Block will go before the Advisory Committee, including the plan for the final development, the financing plan, and the overall schedule.
- The City has been working with a firm to develop the Request for Proposal on the design build for the Granada Block Redevelopment. The original timeline plan of awarding a contractor bid in May of 2013 and the start of construction in August of 2013 would probably not be feasible at this point. The City made a commitment to hold off on awarding a bid until the Granada Block property was purchased by the developers. The Memorandum of Understanding (MOU) allowed for a 120-day extension on the entire project, and the developers indicated they wanted the time extension.
- The City has been working with the private utility companies on the relocation of utilities located in the portion of the alley to be vacated behind the Granada Theater. The current plan was to create a common trench with the Washington Street Crossing development that would also require utility relocations. Overhead utilities close to the parking structure property between Federal and Washington streets would also be placed underground.

It was the consensus of Staff and the Advisory Committee that URAC meetings would be scheduled whenever Staff had agenda items that required committee feedback. Written updates would be posted on the City's website, and URAC members would receive update emails if committee feedback was not necessary. City Manager Young encouraged committee members to read staff reports and meeting minutes to remain updated on information if they were unable to attend a meeting.

Chair Zukin adjourned the meeting at 6:23 PM.

Respectfully submitted by Administrative Secretary Carole Trautman.

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Chris Zukin, Chairman



**Urban Renewal Expenses  
For  
Granada Block Development**

<b>Activity</b>	<b>To Date</b>	<b>Est. Total</b>
<b>A. Project Development</b>		
Granada HVAC and Fire Sprinklers	\$ -	\$ 200,000.00
Redesign	\$ 3,750.00	\$ 7,500.00
Recreation Demolition	\$ 22,401.00	\$ 102,240.00
Relocation of tenants	\$ 14,469.00	\$ 14,500.00
Enviromental Study	\$ 24,870.00	\$ 25,000.00
Archaeological Study	\$ 107,953.00	\$ 158,000.00
50% Delinquent Taxes	\$ -	\$ 12,000.00
Alley: Sanitary Sewer Relocation	\$ -	\$ 200,000.00
Alley: Private Utilities relocation	\$ -	\$ 215,760.00
Heating Oil Tank Removal	\$ 10,725.00	\$ 15,000.00
<b>TOTAL</b>	<b>\$ 184,168.00</b>	<b>\$ 950,000.00</b>
<b>B. Property Purchase (to be paid back)</b>		
Granada (due June 2025; 1% ann. Interest	\$ 365,406.00	\$ -
Recreation (sale August 30, 2103)	\$ 356,250.00	\$ -
Blue Building (sale August 30, 2013)	\$ 380,000.00	\$ -
<b>TOTAL</b>	<b>\$ 1,101,656.00</b>	<b>\$ -</b>
<b>C. Cost of Holding Property Until Sold</b>		
Utilities	\$ 10,069.00	\$ 16,000.00
Maintenance	\$ 150.00	\$ 500.00
<b>TOTAL</b>	<b>\$ 10,219.00</b>	<b>\$ 16,500.00</b>
<b>D. Legal Costs</b>	<b>\$ 17,575.00</b>	<b>\$ 22,000.00</b>

4/10/2013



## CITY OF THE DALLES

313 COURT STREET  
THE DALLES, OREGON 97058

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# AGENDA STAFF REPORT

## COLUMBIA GATEWAY URBAN RENEWAL AGENCY ADVISORY COMMITTEE

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
April 16, 2013		

**TO:** Advisory Committee Members

**FROM:** Gene E. Parker, City Attorney

**THRU:** Nolan K. Young, City Manager

**DATE:** April 11, 2013

**ISSUE:** Recommendation concerning Agreement for Disposition of Property for  
Redevelopment of Downtown Blocks and Granada Theater

**PREVIOUS AGENDA REPORT NUMBERS:** None.

**BACKGROUND:** On August 28, 2012, the Agency and Rapoza Development LLC, entered into a Memorandum of Understanding ("MOU") for redevelopment of a block of property adjacent to West 2<sup>nd</sup>, Court, West 1<sup>st</sup>, and Washington Streets, which includes the Granada Theater. The MOU outlined the anticipated redevelopment project for this block, in the detail available at that time, and created a schedule and process to move the project forward. The next major step in the redevelopment process is the approval of a Disposition and Development Agreement ("DDA") for the project.

Following the Advisory Committee's review of the proposed DDA, staff will provide the Agency Board with a copy of the minutes from the Advisory Committee's meeting, and information concerning the Advisory's Committee's recommendation concerning the Proposed DDA. The DDA represents the legally binding agreement between the Agency and the Developer for the proposed project. The DDA is a very detailed document, and in this staff

report, staff will summarize the significant provisions of the document to assist the Advisory Committee members in their review of the document.

1. Page 1, Recitals. These paragraphs recite the background for the project, and the rationale for the Agency proceeding with the project.
2. Page 2, General Terms of Conveyance. This section sets out the basic terms for the purchase of the various properties by the Developer. The DDA identifies The Granada Theater, the Recreation Building and Recreation Building Parking Lot, and the Blue Building as the "Phase 1 Parcels". The Recreation Building and the Recreation Parking Lot are identified as the "Hotel Site". The Phase 1 Parcels and the Commodore II Parking Lot are identified together as the "Agency Parcels"
  - A. Page 2, Section 2.2 sets forth the provisions for an Option for the Developer to purchase the Phase 1 Parcels. The Option Period will be effective upon the execution of the DDA, and expire on August 31, 2013. The Developer can choose to exercise the option to purchase all of the Phase 1 Parcels, or choose to exercise the option separately with respect to the Granada Theater in order to facilitate the renovation contemplated under the DDA. If the Developer exercises the option to purchase either all of the Phase 1 Parcels, or separately with respect to the Granada Theater, all of the conditions precedent set forth in Section 2.9.1 will have to occur before the purchase is actually finalized at the closing for the transaction.
  - B. The DDA contains different provisions for the scheduled closing date for the purchase of the properties. For the Hotel Site and the Blue Building, the closing date is the earlier of the date the Developer commences construction of the Hotel, or August 31, 2013. For the Granada Theater, the closing date is scheduled for not later than the Closing Date for the Hotel Site and the Blue Building. Each of these closing dates can be extended by the Agency at the request of the Developer for a period of up to 120 days, provided the Developer shows to the Agency's satisfaction that sufficient progress is being made to ensure that the properties will be purchased within the additional time extension.
  - C. Section 2.2.3 on page 3 sets forth provisions concerning what happens if a closing for any property does not occur by the scheduled closing date, and also provides for extension of the closing date under certain circumstances.
3. Page 3, Section 2.3 sets forth the provisions for an option for the Developer to purchase the property identified as the Commodore II Parking Lot. This option will become effective upon the date that the Agency issues a Certificate of Completion under Section 4.9 of the DDA for all of the Phase 1 Projects, and will expire on the date that is four years and ten months after the Agency conveys the Granada Theater to the Developer. If the Developer exercises this option, the Developer is required to purchase the Commodore II Parking Lot by a date that is no later than five years after the Agency has conveyed the Granada to the Developer. Section 2.3 also provides for a termination of the right to purchase the property if the closing has not occurred by the scheduled closing date, and also provides for an extension of the closing date under certain circumstances.



4. Page 4, Section 2.4. This section describes the form of the deeds that will be used to convey the properties to the Developer. All of the deeds will include a provision that in the event a default by the Developer (which essentially means that the Developer has not totally completed the purchase transaction), the Agency will have the option to give the Developer 60 day's notice to cure the default, and if the default is not cured, the Developer will be required to re-convey the property back to the Agency, and the Agency can resell the property. In the case of the deed for the Granada, the Agency will have the additional option to keep the property in the event of a default.
5. Page 4. Section 2.5 Purchase Price. This section sets forth the purchase price of the various parcels. The purchase price for the Hotel Site includes a credit of \$10,004.48 to the Developer for their share of the delinquent property taxes which were paid on March 15, 2013. The terms of the purchase for the Granada Theater are set forth in Exhibit F, on page 46. The Developer will pay the purchase price of \$365,406.00 in one balloon payment due June 30, 2025, together with simple interest at the annual rate of 1% accruing on the principal. The Developer shall make the annual payments of the interest due in advance, beginning of the Closing Date for the purchase and on each anniversary date of the Closing Date thereafter until the final payment of interest and principal which is due on June 30, 2025. There is also a provision allowing the Developer to apply for a loan interest subsidy with the Agency if the Developer borrows funds to complete remodeling of the Granada Theater, subject to the Agency's approval of the financing.
6. Page 5, Section 2.8, Special Covenants During the Phase 1 Option Period. This section sets forth the process for the Developer to submit a comprehensive Redevelopment Plan for the Phase 1 Parcels, which will include a final scope of development for the overall project site, including the Granada Theater, which will show how the project will be expected to enhance the Downtown, cure blighted conditions, and increase taxable value of real property and contribute to job creation on the project site. The Redevelopment Plan must also include a viable business plan for the Developer to complete the development of the Phase 1 Parcels by December 31, 2015, subject to provisions for extension set forth in Exhibit C.
7. Pages 6 to 9, Section 2.9, Conditions Precedent to Conveyance. These sections set forth a variety of events that must occur before the various properties are required to be conveyed from the Agency to the Purchaser. These conditions include such items as the Developer providing evidence (including supporting documentation) of commitments of the private equity and private financing sources to provide construction and permanent financing in an amount sufficient to purchase the Phase 1 Parcels and develop the Phase 1 Parcels according to the scope of development, to the Agency for the Agency's approval; the Developer and the Agency approving the cost estimate for the Scope of Work for demolition of the Recreation Building; Developer approving the scope of, and methods and estimated costs for resolution of any archeological conditions existing on the Phase 1 Parcels; and Developer providing Agency with a signed hotel franchise or management agreement with a national chain for management of a hotel with banquet, catering facilities, meeting and conference rooms, meeting the goals of the Redevelopment Plan for Phase 1, to be completed by December 31, 2015.
8. Pages 9 to 10, Section 2.9.4, Final Termination Date. This section provides for a final termination date of either December 31, 2013 or the Phase 1 Option Termination Date, whichever is later, if all of the conditions precedent for the conveyance has not been

satisfied, unless the parties agree to extend the final termination date, of the failure of the satisfaction of the conditions is due to unavoidable delay. The section also provides for a final termination date for the Phase 2 Option to purchase the Commodore II Parking Lot, subject to the same provisions for an extension of the termination date or excuse of failure to satisfy the conditions due to unavoidable delay.

9. Pages 12 to 13, Section 3.3 Parking. The DDA provides the Agency will construct a public garage on a portion of the surface parking lot between Washington Street and the Transportation Center. The Developer will be responsible to construct at its sole cost, or to pay the Agency to construct in the public garage, the amount of parking required for the Hotel by the City's Land Use and Development Ordinance. The Developer is to use commercially reasonable efforts to include some required parking on the Hotel Site. For the amount of the required parking which the Developer cannot reasonably accommodate on the Hotel Site, the Developer will need to provide certain information to the Agency so that the Agency can design the parking garage to include this amount of parking. The Developer is also required to provide the Agency with information including any "special equipment" (such as gates, meters, ticket booths) which is necessary to provide the parking spaces needed for the Hotel, and which is not required for the use by the general public. Section 3.3 sets forth a methodology to determine the estimated cost per parking space to provide this parking for the Developer in the public garage, and reimbursement for the Developer's pro-rata share of these costs, once they have been determined to be final, by the Developer to the Agency. The Developer will reimburse the Agency for the full cost of installing special equipment associated with their parking spaces in the public garage.
10. Page 14, Section 4.1, Project Financing. This section contains provisions concerning the method for financing the project, including the Developer's efforts to obtain tax credits available for the Project, repayment of conceptual redesign costs by the Agency in an amount up to \$7,500; system development charge credits available to the Developer; the potential for grant funding assistance if the Developer chooses to proceed with demolition of all or a part of the Blue Building; and the Agency's agreement to provide \$200,000 to be used towards the costs for installation of a new HVAC system, a fire marshal approved sprinkler system, and exterior fire doors for the Granada Theater.
11. Pages 14 to 15, Section 4.2, Security for Project Completion. Under this section, the Developer has agreed to use its best efforts to include provisions in the financing agreements with its construction lender, which will provide protection to the Agency in the event of a default by the Developer. These provisions would allow the Agency to proceed with curing the Developer's defaults, or to pursue finding another developer who would be allowed to continue with the project under the construction loan which Rapoza had obtained.
12. Pages 15 to 17, Section 4.3, Plans, Drawings and Agency Review. These provisions set forth the process for the Developer to submit design plans for the project to the Agency. Section 4.3.5 sets forth the specific criteria which the design plans must satisfy.

13. Pages 17 to 18, Section 4.4, Phase 1 Pre-Closing Obligations of the Parties. Under this section, the Agency has agreed to complete and pay for the costs of studies to identify the archeological issues, and the methods required to resolve those issues, for the Recreation Building Parking Lot and the portion of the alley right-of-way which is proposed to be vacated, which is described in Section 4.4.4. Section 4.4.2 sets forth the provisions for the demolition of the Recreation Building. The Agency has agreed to pay up to \$100,000 for the costs of the demolition of the Recreation Building, and the Developer will pay for the balance of the demolition costs.
14. Pages 23 to 26, Section 8, Default and Remedies. This section provides what occurs in the event of a default by either the Agency or the Developer. For the Agency it describes potential remedies in the event of a default which occurs either before or after the properties are conveyed to the Developer, including the potential for a resale of the property by the Agency, and the new purchaser would assume responsibility for completing the project.

**BUDGET IMPLICATIONS:** Enclosed with this staff report is a summary of the expenses for the Granada Block Project, including a list of the expenses incurred to date, and a list of the projected expenses to be incurred. The Agency is anticipating to expend the sum of approximately \$3 million to construct the public garage described in the DDA.

**ALTERNATIVES:**

- A. Staff Recommendation *Staff is recommending that the Advisory Committee adopt a Motion recommending approval of the Agreement for Disposition of Property for Redevelopment of Downtown Blocks and the Granada Theater, as presented, to the Urban Renewal Agency Board.*
- B. *Advise staff of any recommended amendments to the proposed Agreement , and move to recommend approval the Agreement for Disposition of Property for Redevelopment of Downtown Blocks and the Granada Theater, as amended, to the Urban Renewal Agency Board.*

**AGREEMENT FOR DISPOSITION OF PROPERTY  
FOR REDEVELOPMENT  
DOWNTOWN BLOCKS AND GRANADA THEATER**

This **AGREEMENT FOR DISPOSITION OF PROPERTY FOR REDEVELOPMENT** (this "Agreement") is made as of \_\_\_\_\_, 2013, by the **COLUMBIA GATEWAY URBAN RENEWAL AGENCY**, the duly authorized and acting urban renewal agency of the City of The Dalles, Oregon ("City"), a political subdivision of the State of Oregon ("Agency") and Rapoza Development Group, LLC, an Oregon limited liability company ("Developer"). Agency and Developer are referred to jointly in this Agreement as "Parties" and individually as a "Party."

**RECITALS**

1. Agency and Developer are the owners of certain real property located in the City, and on the downtown block bounded by East 1st Street, Washington Street, East 2<sup>nd</sup> Street and Court Street (the "Project Site"). The Project Site is more particularly described in Exhibit A, and depicted in the drawing attached as Exhibit A-1. The Project Site consists of six parcels, described below.
2. Agency has acquired certain Parcels of the Project Site in order to facilitate private redevelopment in support of the public objectives of the Columbia Gateway Urban Renewal Plan ("UR Plan").
3. Developer is interested in developing a mixed use and integrated development on the Project Site that will include a hotel, conference and activity space, event space and supportive parking, and potentially, a mixed-use project in a second phase, all as more particularly described in the Scope of Development, Exhibit B (each a "Project", one or more, the "Projects").
4. The parties entered into a Memorandum of Understanding, dated August 28, 2012 (as it may be amended from time to time the "MOU") which outlined the anticipated Developer's Projects in then available detail and created a schedule and process for moving the Project forward to implementation.
5. The Parties are now prepared to enter into a definitive agreement for Developer to undertake acquisition of the Agency-owned Parcels, and development and operation of the Projects to be renovated or built thereon.
6. The completion of the Projects according to the terms of this Agreement, including the Scope of Development and Schedule of Performance, Exhibit C, (as each may be amended pursuant to this Agreement) -is a material inducement to Agency's sale of the Agency Parcels (defined below) to Developer.
7. Agency finds that Developer's use of the Project Site, pursuant to this Agreement, will help achieve the community and Agency goals for, among others, enhancing the Downtown, curing blighted conditions, increasing taxable value of real property and reasonably anticipating additional job creation.

## AGREEMENT

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

### 1. DEFINITIONS

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

### 2. GENERAL TERMS OF CONVEYANCE

2.1 **Identification of Parcels.** The Project Site consists of six parcels, popularly known as, and referred to in this Agreement, as follows in this Section 2.1 (each a "Parcel" and collectively, the "Parcels"). The Granada Theater, the Recreation Building, the Recreation Building Parking and the Blue Building are the "Phase 1 Parcels". The Recreation Building and the Recreation Building Parking comprise the "Hotel Site". The Phase 1 Parcels and the Commodore II Parking Lot are, together, the "Agency Parcels". The Agency shall convey all of Agency Parcels as provided in this Agreement. The Parcels are:

2.1.1 The Granada Theater, shown on Exhibit A-1 as Parcel 2;

2.1.2 The Recreation Building, shown on Exhibit A-1 as Parcel 1;

2.1.3 The Parking Area serving the Recreation Building ("Recreation Building Parking") shown on Exhibit A-1 as Parcel 3b;

2.1.4 The Blue Building, shown on Exhibit A-1 as Parcel 3a;

2.1.5 The Commodore II Parking Lot, shown on Exhibit A-1 as Parcel 4; and

2.1.6 The Bank Hotel Property.

#### 2.2 **Option to Purchase Phase 1 Parcels; Conveyance of Phase 1 Parcels**

**Generally.** Agency hereby grants to Developer the option to purchase all of the Phase 1 Parcels ("Phase 1 Option") during an option period which commences on the Effective Date and expires on August 31, 2013 ("Phase 1 Option Period"). The Developer may exercise the Phase 1 Option to purchase all of the Phase 1 Parcels by giving the Agency written notice of its exercise during the Phase 1 Option Period ("Notice to Exercise Phase 1 Option"). The Option may be exercised only as to all Phase 1 Parcels except that Developer may exercise the Phase 1 Option with respect to the Granada Theater separately in order to facilitate the renovation contemplated under

this Agreement. If Developer exercises the Phase 1 Option, Developer shall purchase and Agency shall convey all the Phase 1 Parcels (or if the Option is exercised separately with respect to the Granada Theater, the Granada Theater) subject to the satisfaction of the Conditions Precedent to Conveyance set out in Section 2.9.1 below and otherwise pursuant to the terms and conditions of this Agreement (each a "Closing") not later than the following Scheduled Closing Dates:

2.2.1 For the Hotel Site and the Blue Building together: the earlier of the date the Developer commences construction of the Hotel, or August 31, 2013. The Agency may extend the Scheduled Closing Date for the Hotel Site and the Blue Building for a period of up to one hundred and twenty (120) days at the request of the Developer, provided Developer shows to the satisfaction of the Agency that sufficient progress is being made to ensure the purchase will be Closed within the additional time extension;

2.2.2 For the Granada Theater, not later than the Closing for the Hotel Site and the Blue Building. The Agency may extend the Scheduled Closing Date for the Granada Theater for a period of up to one hundred and twenty (120) days at the request of the Developer, provided Developer shows to the satisfaction of the Agency that sufficient progress is being made to ensure the purchase will be Closed within the additional time extension;

2.2.3 If a Closing does not occur on or before the Scheduled Closing Date for a Parcel, then the Developer's right to acquire the affected Parcel(s) under the Phase 1 Option shall automatically terminate one day after the Scheduled Closing Date ("Phase 1 Option Termination Date") unless the date for Closing is extended by agreement of the Parties prior to the Phase 1 Option Final Termination Date or unless the date for Closing is extended by operation of any other provision of this Agreement, including without limitation Sections 2.9.3 and 8.10 below, in which case the Phase 1 Option Period shall be extended to such extended date for Closing.

### **2.3 Option to Purchase Commodore II Parking Lot; Conveyance of Commodore II Parking Lot Generally.**

Agency hereby grants to Developer the option to purchase the Commodore II Parking Lot ("Phase 2 Option") during an option period which commences on the date that the Agency has issued its Certificate of Completion under Section 4.9 of this Agreement for all Phase 1 Projects and expires on the date that is four years and ten months after the Agency conveys the Granada Theater to the Developer ("Phase 2 Option Period"). The Developer may exercise the Phase 2 Option by giving the Agency written notice of its exercise during the Phase 2 Option Period ("Notice to Exercise Phase 2 Option"). If Developer exercises the Phase 2 Option, Developer shall purchase and Agency shall convey the Commodore II Parking Lot subject to the satisfaction of the Conditions Precedent to Conveyance set out in Section 2.9.2 below and otherwise pursuant to the terms and conditions of this Agreement ("Phase 2 Closing") not later than the date that is five years after the Agency conveys the Granada Theater to the Developer ("Phase 2 Scheduled Closing Date"). If the Phase 2 Closing does not occur on or before the Phase 2 Scheduled Closing Date, then the Developer's right to acquire the Commodore II Parking Lot under the Phase 2 Option shall automatically terminate one day after the Phase 2 Scheduled Closing Date ("Phase 2 Option Termination Date") unless the date for Phase 2 Closing is extended by agreement of the Parties prior to the Phase 2 Option Termination Date or unless the date for the Phase 2 Closing is extended by operation of any other provision of this Agreement, including



without limitation Sections 2.9.3 and 8.10 below, in which case the Phase 2 Option Period shall be extended to such extended date for the Phase 2 Closing.

#### **2.4 Form of Deeds; Escrow.**

2.4.1 After Developer's Notice to Exercise Phase 1 Option as to all the Phase 1 Parcels, or as to only the Granada Theater, upon satisfaction of the Conditions Precedent to Conveyance in Section 2.9.1 hereof, the Agency will convey each of the Phase 1 Parcels to Developer pursuant to Bargain and Sale Deeds in substantially the form attached hereto as Exhibit E, but as to the Granada Theater, Exhibit E-1.

2.4.2 After Developer's Notice to Exercise Phase 2 Option, upon satisfaction of the Conditions Precedent to Conveyance in Section 2.9.2 hereof, the Agency will convey the Commodore II Parking Lot to Developer pursuant to a Bargain and Sale Deed in substantially the form attached hereto as Exhibit E.

#### **2.5 Purchase Price.** The Purchase Price for each Parcel is as follows:

2.5.1 For the Hotel Site (Recreation Building and Recreation Building Parking), \$356,250.00. Upon the closing of the transaction for the purchase of the Hotel Site, Developer shall receive a credit of \$10,004.48 towards the purchase price of \$356,250.00, which is fifty percent (50%) of a payment Developer made for property taxes due and past due, including interest or penalties, as of March 15, 2013, and all other special assessments due on the Hotel Site, payable in cash at Closing;

2.5.2 For the Blue Building, \$380,000.00, plus fifty percent (50%) of all property taxes due and past due, including interest or penalties, and all other special assessments due on the Blue Building, payable in cash at Closing;

2.5.3 For the Commodore II Parking Lot, \$102,000 payable in cash at the Phase 2 Closing; and

2.5.4 For the Granada Theater, \$365,406.00, (allocated to real property \$198,000.00 and personal property \$167,406.00=\$365,406.00) payable according to the Terms of the Granada Purchase Price Loan, attached hereto as Exhibit F.

#### **2.6 Title Review.**

The following title review process will apply to the purchase of each of the Agency Parcels.

2.6.1 Not later than ten (10) days after Developer gives a Notice to Exercise Phase 1 Option as to all the Phase 1 Parcels or as to only the Granada Theater, or Notice to Exercise Phase 2 Option, Agency shall deliver to Developer a preliminary title report for the Phase 1 Parcels, the Granada Theater or the Commodore II Parking Lot, whichever is the subject of the Notice, and copies of all exception documents (the "Title Report"). Developer shall notify Agency within ten (10) business days of any objection to the Title Report. Within five (5) business days after Developer's written notice to Agency described in the preceding sentence, Agency shall notify Developer in writing of its intention to remove or not remove the objectionable exceptions to title prior to Closing. If Agency refuses to remove any such objected to exceptions, Developer may terminate this Agreement or proceed to Close subject to same.

Any exceptions to which Developer does not timely object in writing or otherwise accepts at Closing are the "Final Permitted Exceptions."

2.6.2 Agency covenants and agrees that it shall not further encumber after the date hereof any Parcel (other than those exceptions appearing on the Title Report on the date provided to Developer) without the written consent of Developer, which consent shall not be unreasonably withheld, conditioned or delayed.

## **2.7 Title Insurance, Survey, Property Taxes and Closing Costs.**

The following provisions will apply to the purchase of each of the Agency Parcels.

2.7.1 The Agency, at its expense, shall provide Developer with a standard coverage ALTA Owner's Policy of Title Insurance, issued by Escrow Agent, covering the Parcel(s) to be purchased insuring Developer in the amount of the Purchase Price, all free and clear of encumbrances except the standard exceptions and the Final Permitted Exceptions. Developer, at its option and its expense, may elect to obtain extended coverage under such policies of title insurance, and the Agency agrees to execute any affidavits or other documents required by the Escrow Agent to enable Developer to obtain such coverage.

2.7.2 The costs for recording a Memorandum of this Agreement, the Deed for each Parcel and any other documents required by Developer to be recorded will be paid by Developer.

2.7.3 The Developer and the Agency shall each pay one-half (1/2) of any escrow fees charged by Escrow Agent. Developer shall be obligated to pay all property taxes payable from and after the Closing Date, including any property taxes due on the conveyed Parcels as a result of its transfer to a taxable entity and the subsequent loss of the public ownership tax exemption, if any. Fifty percent (50%) of the due and past due property taxes on the Hotel Site and the Blue Building, including interest and penalties will be paid by the Agency and the conveyed Parcels shall be conveyed free and clear of property taxes except taxes not yet due and payable. Agency acknowledges that Developer will receive a credit of \$10,004.08 for past due property taxes, including interest or penalties as of March 15, 2013, and all other special assessments due on the Hotel Site, as set forth in Section 2.5.1. Any assessments on the conveyed Parcels shall be paid in full by the Developer as of the Closing Date. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Wasco County.

## **2.8 Special Covenants During Phase 1 Option Period**

2.8.1 During the Phase 1 Option Period, prior to the Scheduled Closing Date for the purchase of the Phase 1 parcels as set forth in Sections 2.2.1 and 2.2.2, and prior to submission of any Drawings for design approval by the Agency pursuant to Section 4.3 below for Phase 1, Developer will present to the Agency, for Agency approval, a comprehensive redevelopment plan for the Phase 1 Parcels ("Redevelopment Plan"), which includes a final Scope of Development for the Project Site including the Granada Theater that is expected to enhance the Downtown, cure blighted conditions, and increase taxable value of real property and reasonably anticipates additional job creation on the Project Site. Other key requirements of the Redevelopment Plan include anticipated uses, size, design, and public elements of the Project. The Redevelopment Plan must also include a viable business plan for the Developer to complete the development of the Phase 1 Parcels by December 31, 2015, subject to the provisions for

extension set forth in Exhibit C. The Agency agrees to consult with Developer at its request prior to submission to clarify any other standards or requirements relevant to its consideration of the Redevelopment Plan. The Agency shall review and may approve the Redevelopment Plan within forty-five (45) days after submission by the Developer. If the Agency does not approve the Redevelopment Plan within the forty-five (45) day period, it shall supply Developer with the basis for its disapproval and the Redevelopment Plan shall be deemed disapproved. If the Redevelopment Plan is not approved, the Developer may terminate this Agreement, or may resubmit the Redevelopment Plan throughout the Phase 1 Option Period including any extension of the scheduled closing dates as provided for in Sections 2.2.1 and 2.2.2. Upon approval of the Redevelopment Plan, Developer shall submit to the Agency a revised Scope of Development consistent with the Redevelopment Plan, which, upon acceptance by the Agency will be substituted for Exhibit B, without a requirement for formal amendment of this Agreement.

2.8.2 During the Phase 1 Option Period, if Agency seeks to lease any of the Agency Parcels or utilize them for operation, other than the Recreation Building, Developer shall have a first right to offer a lease to the Agency, which offer, in order to be acceptable to the Agency must include a lease payment that would pay any property taxes, insurance, operating costs and minor repairs needed to operate the subject parcel. At the Developer's request, and if deemed reasonable by the Agency, the Agency will institute a challenge to the assessed value of the leased parcel(s) in order to fairly determine the property tax amounts to be included in the lease payment. Agency's determination that a challenge is not reasonable shall be final. Other terms customarily included in a short term commercial lease will apply. Any such lease will be terminable by the Agency on or before the relevant Closing Date as set forth in this Agreement.

## **2.9 Conditions Precedent to Conveyance.**

### **2.9.1 Conditions Precedent to Conveyance of Phase 1 Parcels.**

Developer and the Agency are not obligated to Close the transfer of the Phase 1 Parcels unless the following conditions are satisfied to the reasonable satisfaction of, or waived by, the benefited Party. The Party benefited by a particular condition shall not unreasonably withhold 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.

(a) Except as provided below for a separate closing of the Granada Theater, Developer is not obligated to purchase the Phase 1 Parcels until, to Developer's satisfaction:

(1) Agency shall have given Developer satisfactory proof of marketable title and the issuance of a preliminary title insurance commitment evidencing the willingness of a title insurance company to insure the Phase 1 Parcels, subject only to the standard exceptions and the Final Permitted Exceptions;

(2) Developer has provided to the Agency evidence (including supporting documentation) of commitments of the private equity and of private financing sources to provide construction and permanent financing in an amount sufficient to allow Developer to purchase the Phase 1 Parcels and develop the Phase 1 Parcels according to the Scope of Development, which commitment has been approved by the Agency in its reasonable discretion;

(3) Agency has approved the Redevelopment Plan for Phase 1 described in Section 2.8.1 above;

(4) Agency has approved any easements with third parties that are necessary to development of the Phase 1 Parcels;

(5) Developer and the Agency have approved the cost estimate for the Demolition Scope of Work as described in Section 4.4.2 below;

(6) Agency and Developer have agreed to the estimated cost per space for the Required Parking in the Public Garage, and the Special Equipment Premium, if any, all pursuant to Section 3.3.3 below;

(7) The City has given all land use approvals for the Phase 1 Projects as described in Exhibit B, the appeal period for such approvals has passed without an appeal being filed; or, if an appeal has been filed, it has been satisfactorily resolved;

(8) The City is prepared to sign building permits for the Phase 1 Projects and Developer is satisfied that public and private utilities are available to the Project Site with sufficient capacity to serve the Phase 1 Projects;

(9) Developer has approved the environmental condition of the Project Site;

(10) Developer has approved the scope of, and the methods and estimated costs for resolution of any archeological conditions existing on the Phase 1 Parcels;

(11) Agency maintains the financial and human resources to complete work tasks that are the responsibility of Agency generally in accordance with the Schedule of Performance; and

(12) No litigation is pending which prevents the Agency or Developer from performing their respective obligations under this Agreement.

(b) Except as provided below for a separate closing of the Granada Theater, Agency is not obligated to sell any of the Phase 1 Parcels until, to Agency's satisfaction:

(1) Developer has provided to the Agency evidence (including supporting documentation) of commitments of the private equity and of private financing sources to provide construction and permanent financing in an amount sufficient to allow Developer to purchase the Phase 1 Parcels and develop the Phase 1 Parcels according to the Scope of Development, which commitment has been approved by the Agency in its reasonable discretion;

(2) Developer presents to the Agency a signed hotel franchise or management agreement with a national hotel chain for management of a hotel with banquet, catering facilities, meeting and conference rooms, meeting the public goals of the approved Redevelopment Plan, with Phase 1, as described in Exhibit B, to be completed by December 31, 2015, subject to the provisions for extension set forth in Exhibit C.

(3) Agency has approved the Redevelopment Plan for Phase 1 described in Section 2.8.1 above;

(4) Developer and the Agency have approved the cost estimate for the Demolition Scope of Work as described in Section 4.4.2 below;

(5) Agency and Developer have agreed to the estimated cost per space for the Required Parking in the Public Garage, and the amount of Special Equipment Premium, if any, all pursuant to Section 3.3.3 below;

(6) Developer has presented to the Agency for approval any agreements with third parties, such as easements, licenses or other documents that are necessary to complete the Project or the portion of the Project to be constructed on the Phase 1 Parcels, which agreements are approved by the Agency in its reasonable discretion;

(7) The City has given all land use approvals for the Project as shown in Exhibit B, the appeal period for such approvals has passed without an appeal being filed; or, if an appeal has been filed, it has been satisfactorily resolved;

(8) All civil engineering plans including, but not limited to, water, sanitary sewer, storm sewer, storm drainage system, traffic and access, and survey for the Project to be constructed on the Project Site have been reviewed and approved by Agency;

(9) The City is prepared to sign building permits for the Project;

(10) Developer is a duly organized, existing limited liability company and has full authority to enter into and perform the obligations of this Agreement, and Developer is the same for all Phase 1 Parcels, including the Granada Theater;

(11) Developer has approved the scope of, and the methods and estimated costs for resolution of any archeological conditions existing on the Phase 1 Parcels;

(12) Developer maintains the financial and human resources to complete work tasks that are the responsibility of Developer generally in accordance with the Project Schedule; and

(13) No litigation is pending which prevents Agency or Developer from performing their respective obligations under this Agreement.

c. If the Developer exercises the Phase 1 Option as to the Granada Theater before exercising the Phase 1 Option as to the Hotel Site and the Blue Building, and if the Developer thereafter intends to Close the conveyance of the Granada Theater before the Closing of the Hotel Site and the Blue Building:

(1) The Developer is not obligated to purchase the Granada Theater until, to Developer's satisfaction, and as applied to the Granada Theater, conditions in Sections 2.9.1(a) (1)-(4), (7), (8), (11) and (12) are satisfied; and

(2) The Agency is not obligated to sell the Granada Theater until, to Agency's satisfaction, and as applied to the Granada Theater, conditions in Sections 2.9.1(b) (3), (7) – (10), (12) and (13) are satisfied.

#### **2.9.2 Conditions Precedent to Conveyance of Commodore II Parking Lot**

Developer and the Agency are not obligated to Close the transfer of the Commodore II Parking Lot unless, in addition to the conditions set forth in Section 2.9.1 as applied to the Commodore II Parking Lot where appropriate, the following conditions are satisfied to the

reasonable satisfaction of, or waived by, each Party. The Party benefited by a particular condition shall not unreasonably withhold 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.

(a) Agency has issued its Certificate of Completion for all Projects in Phase 1;

(b) Developer has presented to the Agency, and Agency has approved, Developer's commitment to construct a mixed use project which may include retail, commercial, and/or residential development with underground parking, or up to 35 additional rooms to the Hotel, of the same quality as the original Hotel if it is determined there is sufficient room demand, with construction of the selected Project to begin no later than one year after purchase of the Commodore II Parking Lot;

(c) If requested by the Developer, the City has initiated and processed at its expense the creation of a "vertical housing development zone" established pursuant to ORS 307.841 – 307.990 (or its replacement legislation) to encourage a residential component on the Commodore II Parking Lot; and

(d) The Agency has satisfied any requirements for replacement of parking spaces in the Commodore II Parking Lot which would be lost in the event of its redevelopment, or Agency has presented to the Developer a plan to satisfy such requirements, which the Developer has accepted,

**2.9.3 Elections upon Non-Occurrence of Conditions.** Except as provided below, if any condition in Section 2.9.1 or 2.9.2 is not fulfilled to the satisfaction of the benefited Party or Parties on the earlier of (i) the date designated for satisfaction of the condition, or (ii) on the date scheduled for Closing as to a Parcel, subject to any extension that may be granted pursuant to this Section 2.9.3 or elsewhere in this Agreement, 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 ("Termination Date") unless, before the sixty (60) day period ends, the other Party fulfills such condition or conditions to the reasonable satisfaction of the benefited Party or Parties; or

(b) Waive in writing the benefit of that condition precedent to its obligation to perform under this Agreement, and proceed in accordance with the terms hereof; or

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

#### **2.9.4 Final Termination Date.**

(a) If all of the conditions precedent under Section 2.9.1. have not been satisfied, waived or otherwise resolved pursuant to this Agreement on or before the Phase 1 Option Termination Date or December 31, 2013, whichever is later, then this written Agreement shall automatically terminate on December 31, 2013 ("Phase 1 Final Termination Date") unless the date for satisfying the unsatisfied condition(s) is extended by agreement of the Parties prior to the Phase 1 Final Termination Date, or unless the failure of satisfaction of the



conditions precedent is the result of an unavoidable delay, as described in Section 8.10 below (Unavoidable Delay).

(b) If all of the conditions precedent under Section 2.9.2. have not been satisfied, waived or otherwise resolved pursuant to this Agreement on or before the Phase 2 Option Termination date, or the date that is five years and two months after the date the Agency conveys the Hotel Site to the Developer, whichever is later, then this Agreement shall automatically terminate two months later ("Phase 2 Final Termination Date") unless the date for satisfying the unsatisfied condition(s) is extended by agreement of the Parties prior to the Phase 2 Final Termination Date, or unless the failure of satisfaction of the conditions precedent is the result of an unavoidable delay, as described in Section 8.10 below (Unavoidable Delay).

(c) If the Final Termination Date for Phase 1 or Phase 2 is extended for a period of Unavoidable Delay, the maximum period of unavoidable delay shall be no longer than 365 days.

(d) If the Agreement is terminated for failure of satisfaction of the conditions precedent as to a Phase, then the obligations of the Parties to each other under this Agreement shall terminate as to that Phase as the exclusive remedy for such termination.

#### **2.10 Agency Representations and Warranties.**

Agency represents that:

2.10.1 Except as has been disclosed to Developer in writing, to Agency's knowledge, there has been no generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, release or production of Hazardous Substances, or other dangerous or toxic substances or solid wastes on the Agency Parcels, or underground storage tanks existing on the Agency Parcels, except in compliance with Environmental Laws currently in effect, and Agency has not received notice of the release of any Hazardous Substances on the Agency Parcels;

2.10.2 The Agency is not a "foreign person" within the meaning of Section 1445(f) (3) of the Internal Revenue Code of 1986, as amended;

2.10.3 To the best of Agency's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Agency Parcels or Agency's ability to perform its obligations under this Agreement;

2.10.4 The Agency has not received any notice stating that the Agency Parcels are in violation of any applicable laws, rules, regulations, ordinances and other governmental requirements ("Laws");

2.10.5 No representation, warranty or statement of the Agency in this Agreement or any of the exhibits attached contains any untrue statement of a material fact;

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

2.10.7 Agency has obtained approvals required by Law in order to enter into this Agreement.

2.10.8 "Agency's knowledge" shall mean the actual knowledge of Nolan Young, City Manager.

**2.11 Developer Representations and Warranties.**

Developer represents that:

2.11.1 Developer has full power and authority to enter into and perform this Agreement in accordance with its terms, and Developer has taken all requisite entity action in connection with the execution of this Agreement and the transactions contemplated hereby.

2.11.2 No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached contains any untrue statement of a material fact.

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

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

**3. PUBLIC IMPROVEMENTS AND INFRASTRUCTURE**

3.1 **Utility Service Representations.** Developer will determine for its own benefit that, public and private utilities are available to the Project Site with sufficient capacity to serve the Project, and that any utilities located within the Project Site are acceptable or shall be removed by Developer.

3.2 **Subsurface, Surface and Building Conditions.** Except for Agency's specific representations and warranties set forth in this Agreement, the Agency Parcels shall be conveyed to Developer "AS IS". Except as otherwise specifically provided in this Agreement, Agency makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Agency Parcels or structures thereon for any improvements to be constructed by the Developer, and except for representations and warranties otherwise provided by Agency in this Agreement, Developer warrants that it has not relied on any representations or warranties made by Agency or the Agency as to the environmental condition of the Agency Parcels, the suitability of the soil conditions or any of the conditions of the Agency Parcels for any improvements to be constructed by the Developer. Except for breach of Agency representations and warranties expressly set forth in this Agreement Developer agrees that the Agency will not be liable for any loss, cost or damage which may be caused or incurred by Developer by reason of any such soil or physical conditions on the Agency Parcels. Agency has allowed Developer

free access to Agency's records with respect to conditions of the soils and will assist in obtaining the cooperation of other public and private agencies having such information.

### **3.3     Parking.**

3.3.1     The Project Site includes the Commodore II Parking Lot which is owned by the Agency. The Developer's obligation to develop any portion of the Commodore II Parking Lot is contingent on the Agency having delivered the Commodore II Parking Lot to the Developer free of any obligations to provide replacement parking to the former owner of the Commodore II Parking Lot.

3.3.2     The Agency will construct a parking structure on a portion of the surface parking lot between Washington Street and the Transportation Center ("Public Garage") with sufficient parking spaces to meet the need for downtown public parking and the public parking needs of the Projects, including the Hotel and the use of the Blue Building and the Granada Theater, and as determined by the Agency and the City. The goal is to have the construction of the Public Garage completed no later than the opening of the Hotel but at no time will any delay in constructing the Public Garage prevent opening and operating of the Hotel by Developer. Developer may choose, however, to delay the Hotel opening until the Public Garage is completed. If Agency becomes aware of a circumstance that will prevent the completion of the Public Garage by the scheduled opening of the Hotel, Agency will immediately inform the Developer of that circumstance and thereafter the Parties will undertake good faith discussions to procure Required Parking for the Hotel at an alternative location until the Parking Garage is completed. The Developer's use of the temporary Required Parking will be at no cost to the Developer. Subject to the Developer's contribution described in Section 3.3.3(b) below, if any, Agency will fund the design and construction of the Public Garage using Local, State and Federal funds.

3.3.3     Developer will be responsible to construct at its sole cost, or pay the Agency to construct in the Public Garage as described in this Section 3.3.3, the parking required for the Hotel by the City's Land Use and Development Ordinance ("Required Parking").

(a)       The Developer will make commercially reasonable efforts to include some Required Parking on the Hotel Site.

(b)       For Required Parking that the Developer cannot reasonably accommodate on the Hotel Site, the Agency will include the needed parking in the design and construction of the Public Garage identified in Section 3.3.2 above, with the Developer paying for the incremental cost of the added Required Parking on a pro-rated basis, with the following methodology for calculating the Developer's pro rata share.

i.         Before the Agency undertakes the preliminary design of the Public Garage, Developer will notify the Agency of the number of Required Parking spaces the Developer cannot accommodate on the Hotel Site, and of the equipment necessary to operate the Required Parking in the Public Garage as more specifically described in Section 3.3.3(b)iii below ("Special Equipment"). Subject to the parties' agreement to a per space estimate, and the Special Equipment Premium, if any, Agency will add that number of Required Parking spaces to the number of spaces otherwise planned for the Public Garage, and will provide for installation of the Special Equipment.

ii. By no later than May 15, 2013, Agency will provide the Developer with an estimated range for the cost per parking space for the entire Public Garage that includes the Required Parking. By no later than September 15, 2013, Agency will notify the Developer of the estimated cost per parking space for the entire Public Garage that includes the Required Parking. That estimated cost per parking space will include all hard and soft costs, including design, construction (including, but not limited to, reasonable contingencies and contractor general conditions), construction management, and other Agency costs allocable to the Public Garage, all of which shall be fully disclosed to Developer, but will exclude the cost of Special Equipment.

iii. If Developer's use of the Required Parking in the Parking Garage requires the installation of equipment not required for use by the general public (gates, meters, ticket booths, for example) the Agency will notify the Developer of the estimated full cost of that equipment and its installation ("Special Equipment Premium"). The estimated Special Equipment Premium will be provided at the same time as the estimate given under subsection (ii) of this Section 3.3.3(b).

iv. Developer shall have 20 days to object in writing to the per space estimate, with such objection including a specific recalculation of the estimate based on Developer's preferred calculation. If within 30 days after a written objection, the Agency and the Developer cannot agree to a per space estimate, and the Special Equipment Premium, if any, the Agency or the Developer may terminate this Agreement. Upon termination under this subsection, Developer will reimburse the Agency for fifty percent (50%) of the Agency costs incurred to the date of termination for the Public Garage design and pre-construction work.

v. Agency agrees to keep Developer informed of its progress with respect to the Parking Garage after the exercise of the Phase 1 Option as to the Hotel Site, by issuing periodic reports on the Parking Garage no less frequently than once a month until Agency obtains a certificate of occupancy for the Parking Garage (or equivalent). Such information may include, but not be limited to: information describing or illustrating the Parking Garage project schedule; report on the status of Parking Garage financing and other information as may be reasonably requested from time to time by Developer. Developer shall be entitled to depend on the accuracy and completeness of any such information provided to it by Agency, except third-party reports or work products.

(c) If the Public Garage includes Required Parking, upon substantial completion of the Public Garage, the Agency will provide Developer with an accounting of the actual cost per space, and the Special Equipment Premium, if any, all based on the same formula for calculation used in the estimate of costs ("Actual Cost Notice"). Within sixty (60) days after Agency's issuance of the Actual Cost Notice, and as a condition to Agency issuance of the Certificate of Completion for the Hotel Site, Developer shall pay to the Agency, in cash, the actual cost per space multiplied by the total spaces of Required Parking in the Public Garage, and the Special Equipment Premium, if any.

#### **4. DEVELOPMENT**

##### **4.1 Project Financing.**

4.1.1 In addition to the public investments described in Section 4.1.3 to 4.1.6 below, Developer will obtain all private equity and private construction and permanent financing

necessary to acquire the Agency Parcels and to complete construction and operation of the Projects. Developer will arrange all financing at its sole cost and expense.

4.1.2 Agency will cooperate with Developer in securing equity and financing sufficient to develop and operate the Project so long as such arrangements are not detrimental to the Agency's interest, and any cost of cooperation is acceptable to the Agency, each in the Agency's sole discretion. Specifically, Agency will provide any assistance in sourcing and supporting tax credits available for the Project, which would enhance and speed up the development and therefore benefit the City's collection of tax dollars, but the Agency will not initiate application for such credits.

4.1.3 Agency will pay for fifty percent (50%) of the expenses for the initial conceptual redesign of the Hotel including its on-site parking garage, up to the sum of \$7,500. Agency will pay the Developer the amount described under this Section 4.1.3 in cash upon receipt of third party invoices detailing the total cost of the conceptual redesign of the Hotel incurred after June 15, 2012.

4.1.4 Agency and Developer understand and agree Developer is entitled to receive a credit toward system development charges (SDC's) for water and sewer at the rate of 1% (one percent) for each new permanent full time equivalent position created by the development, and any other system development charge credits available because the Hotel is located in the downtown district, with such other credits as allowed for similar developments by City ordinance or resolution at the time the SDC's are due.

4.1.5 In the event Developer determines to proceed with demolition of a portion or all of the Blue Building as part of the Projects, Developer shall have the option to apply for funding assistance of up to \$50,000 under the Agency's Property Rehabilitation Grant and Loan Fund Program. Agency's funding determination will be based on the standards and requirements of the Property Rehabilitation Grant and Loan Fund Program

4.1.6 Subject to the Agency's approval of Developer's plans for the following Granada Theater improvements, the Agency will make \$200,000.00 in cash available to the Developer for installation of: a new HVAC system, a fire marshal approved sprinkler system, and exterior fire doors in the Granada Theater ("Minimum Granada Improvements"). Agency will pay the Developer the actual costs of the Minimum Granada Improvements, in cash, said amount of cash not to exceed \$200,000, within ten (10) business days after receipt of third party invoices detailing the costs of the Minimum Granada Improvements, as they are incurred.

#### **4.2 Security for Project Completion.**

4.2.1 Pursuant to Section 7.1 below, the Agency agrees that any revesting of the Property upon Developer default is subject to any Mortgage approved by the Agency. The Developer will use its best efforts to secure Mortgage conditions that include the following provisions. For purposes of this Section, "best efforts" includes facilitating and supporting the Agency in direct negotiation with the Developer's construction lender to secure the stated provisions.

(a) The Agency would have the right, but no obligation, to cure Developer defaults under the construction loan during construction. The Agency would have an a sixty (60) day period to cure Developer's monetary defaults and a one hundred eighty (180) day

period to cure any non-monetary defaults, so long as the Agency is diligently pursuing its remedies against Developer under the DDA, including Agency's authority to retake the Property and to secure an alternative developer for the Project.

(b) So long as the Agency is undertaking and reasonably pursuing its remedies, and the Agency has elected to cure Developer's defaults under section 4.2.1(a) above, the Mortgagee would delay foreclosure of the Property for Developer's default.

(c) The Mortgagee would exercise its remedies other than foreclosure to cure Developer default prior to instituting foreclosure proceedings.

(d) Upon the request of the Agency, the Mortgagee would consent to the Agency completing the Project, and the Mortgagee would make the balance of the Developer construction loan funds available to the Agency on terms reasonably acceptable to the parties, but essentially similar to the Developer terms. The Agency would be required to pay any Developer delinquencies as a term of the new financing.

(e) If the Agency identifies an alternate developer and if the developer otherwise qualifies under Mortgagee underwriting standards, the new developer would be allowed to assume the Developer construction loan. Any assumption would require the curing of Developer default.

4.2.2 Agency shall have received a personal or entity guaranty from person(s) or entities reasonably acceptable to Agency ("Guaranty"), which Guaranty shall require the guarantor(s) to reimburse the Agency for costs reasonably incurred by the Agency in curing a Developer default under the construction loan for the Project. The persons(s) or entity which provides a guaranty to Developer's lender for the construction loan shall be deemed an acceptable persons or entity to Agency. In no event shall the Guaranty exceed the amount of the construction loan. The Agency will accept a subordination of the Guaranty to the guaranty to Developer's lender for the construction loan.

4.2.3 Developer shall conditionally assign the equity in the Project to Agency, with the assignment conditioned upon Agency's choice under Section 4.2.1.d above.

#### **4.3 Plans, Drawings and Agency Review.**

4.3.1 Developer will diligently pursue the design work necessary to construct the Projects. Agency and Developer will work closely throughout the design and programming process to achieve a Project that is high quality, functional, financially feasible and supported by market conditions. Agency and Developer will jointly address issues and concerns to achieve the most successful Project. Developer and Agency will cooperate to complete the design review process described in Sections 4.3.4 to 4.3.7 below in the spirit of an open and collaborative effort.

4.3.2 Developer shall submit plans for the Minimum Granada Improvements and for any other remodeling of the Granada Theater to Agency for approval not later than sixty (60) days before the Developer submits the plans for Development Site Review to the City. Agency, through its Contract Manager, shall review and approve or disapprove the plans within



fifteen (15) days of their receipt by the Agency. Developer may not submit the plans for the Granada Theater for Development Site Review unless and until the Agency has approved the plans. In developing its design for the restoration/ remodeling of the Granada Theater, the Developer agrees to preserve the historic landmark status of the Granada Theater and to maintain its historic character and architectural features. Any proposed alteration to the historic significance or historic features of the Granada Theater will require compliance with the applicable provisions of the City's Historic Landmarks Ordinance (General Ordinance No. 94-1194) as the ordinance currently exists, or as it may be amended in the future, and the prior written consent of the City Council. This Developer covenant shall survive the Closing and the issuance of a Certificate of Completion pursuant to Section 4.9 below.

4.3.3 If the Developer includes a concept to build a grand entrance over East 1<sup>st</sup> Street as part of the Design Development Drawings, the Agency agrees to request the City consider Developer's concept to build a grand entrance over East 1<sup>st</sup> Street with the understanding that approval of such a concept is within the sole discretion of the City, taking into account such factors as the quality, appearance, and feel of the streetscape which the City is proposing for East 1<sup>st</sup> Street, and whether the proposed concept would have a detrimental impact upon the functionality of East 1<sup>st</sup> Street. Any canopy or other structure, which may be approved under the proposed concept, will be required to be cantilevered with no connection to the right-of-way for East 1<sup>st</sup> Street.

4.3.4 Developer has provided to the Agency, and the Agency has agreed to the Conceptual Plans attached hereto as Exhibit B-1 that are the basis for entering into this Agreement. Developer shall prepare Design Development Drawings and Final Construction Plans and Specifications and submit them to Agency for review and approval in accordance with the Schedule of Performance. Design Development Drawings will be approved, if approved, by the Agency Board prior to Developer submitting its application to the City for City Design Review and City Site Plan approval. The Final Construction Plans and Specifications will be approved by the Agency Contract Manager, if approved, prior to their submittal to the City for building permit approval. All plans and specifications referred to in this Section 4.3 are referred to herein as the "Drawings." Except as otherwise provided in Section 4.3.2 for the Minimum Granada Improvements, Agency will respond to request for review or approval within ten business days of a request. Agency's failure to timely respond will be deemed approval or acceptance.

4.3.5 Agency will not unreasonably withhold, delay or condition its approval of any Drawings for the Project which, in Agency's opinion, adequately address the following design and use objectives:

(a) To create a high-quality, upscale, pedestrian friendly building, which responds to the Downtown National District in scale and texture. As used in this subsection, "high quality" is represented by the following comparables: remodeled areas of the Wasco County Courthouse and The Dalles City Hall; the Commodore II Building at 312 Court Street, The Dalles; the Columbia State Bank Building at 316 East 3<sup>rd</sup> Street, The Dalles; and the building located at 310 Oak Street, Hood River, OR;

(b) To conform to all City design and development standards and related ordinances;

- (c) To complement adjacent buildings in design and materials;
- (d) To use Green Building design and techniques as much as commercially reasonable; and
- (e) To set a high standard for design in the Downtown area.

**4.3.6 Scope of Agency Design Review.** Agency's review and approval of Drawings will be limited to the following elements of the Drawings submitted:

(a) Design Development Drawings. Elements depicted in the Design Development Drawings which were not included in the Conceptual Plans, or which are at a level of detail which was not approved as part of the Conceptual Plans, or which do not conform to the Conceptual Plans;

(b) Final Construction Plans and Specifications. Elements depicted in the Final Construction Plans and Specifications which were not included in the Design Development Drawings, or which are at a level of detail which was not approved as part of the Design Development Drawings, or which do not conform to the Design Development Drawings.

**4.3.7 Changes in Approved Drawings.** If Developer wants to substantially change any Drawings or plans after approval by Agency, Developer shall submit the proposed changes to Agency for approval. A substantial change shall mean any change that would have a material impact on the function or appearance of the Project. Developer acknowledges that it may be required to secure separate City approval of such changes. Agency shall assist Developer throughout City design review and any land use process of the appropriate agencies, but Agency does not represent or warrant that its assistance will guarantee approval.

#### **4.4 Phase 1 Pre-Closing Obligations of the Parties**

**4.4.1** Before Closing of the Hotel Site and the Blue Building, the Agency will undertake, complete and pay for the costs of studies to identify the archeological issues, and the methods required to resolve said issues, for the Recreation Building Parking Lot (Parcels 1, 2, and 3), and the portion of the alley right-of-way to be vacated, which are necessary to prepare the Hotel Site for construction of the Hotel.

**4.4.2 (a)** Before Closing of the Hotel Site and the Blue Building, pursuant to the terms of a written Permit of Entry substantially in the form attached hereto as Exhibit J, the Developer will undertake and effect the demolition of the Recreation Building. Developer shall be responsible for contracting for performance of all services outlined in the scope of work that is prepared by the Developer and approved by the Agency pursuant to subsection (b) below ("Demolition Scope of Work").

(b) Not later than May 15, 2013, the Agency and Developer shall agree upon the Demolition Scope of Work and cost estimate for the completion of the Demolition Scope of Work. The Demolition Scope of Work is anticipated to be designed using a phased approach.

(i) Phase 1 shall include the removal of certain property associated with the former bowling alley (e.g., bowling pins, balls, and shoes) and other identified property, and loose debris and junk. Phase 1 shall commence upon execution of this Agreement.

(ii) Phase 2 shall include environmental remediation services involving removal of asbestos containing material and lead based paint. Phase 2 shall commence upon execution of this Agreement.

(iii) Phase 3 will include removal and salvage of scrap material.

(iv) Phase 4 shall include physical demolition of the Recreation Building.

(c) To ensure completion of the Demolition Scope of Work, Developer shall either: (i) procure a completion bond payable to Agency in case of Developer's failure to complete all phases of the Demolition Scope of Work in conformance with the Schedule of Performance, or require its contractor to procure such a completion bond, in the amount of the cost estimate for the Demolition Scope of Work, less \$100,000; or (ii) deposit into an escrow account the amount of the difference between the cost estimate for the Demolition Scope of Work and \$100,000, with instructions that the escrow balance be paid to Agency upon Agency's notification to the escrow holder that the Developer has failed to complete the Demolition Scope of Work in conformance with the Schedule.

(d) Agency will pay up to \$100,000 of the costs of the Demolition Scope of Work. Agency will pay each third party invoice for the Demolition Scope of Work that has been approved by the Developer and is consistent with the cost estimate, up to a maximum of \$100,000. Developer will pay the balance of any costs of the Demolition Scope of Work in excess of \$100,000.

4.4.3 Before Closing of the Hotel Site and the Blue Building the Agency will provide Developer and members of the Developer's architectural design team all existing conditions reports for the Hotel Site in the custody or control of the Agency as of the effective date of this Agreement and after the completion of the Studies described in Sections 4.4.1 and 5.1, including, but not limited to: archeological studies, topographical studies, utility drawings, soil and other environmental reports and surveys.

4.4.4 Before Closing of the Hotel Site and the Blue Building, in order to maximize space and logistics, the Agency agrees to support the Developer in requesting the City to consider a request for a vacation of a portion of the alley right of way in the Granada Block between East 1st and East 2nd Streets, beginning at the eastern portion of the property line of the property owned by Eric Gleason, described as Assessor's Map No. 1N 13 #BD Tax Lot 900 ("Gleason Property"), and continuing in an easterly direction to Washington Street, which would not restrict necessary public access through the alley, and with such conditions as are reasonably necessary, including preservation or relocation of utilities located in the alley.

#### 4.5 Diligent Completion.

4.5.1 In accordance with the terms and conditions of this Agreement, Developer will complete the Projects through the construction of improvements on the Project Site in substantial conformance with the Final Construction Plans and Specifications, and in compliance with the Schedule of Performance, subject to Unavoidable Delay as provided in Section 8.10. Developer will serve as developer for all the Projects. In this role, Developer will be responsible for providing, or providing through a joint venture with its equity partner, the overall project management for all aspects of the development of the Projects, including management of third-party consultants responsible for architecture and engineering, project and contract administration, securing of public entitlements and building permits, arrangement of equity and financing for the Project and construction of the entire Project.

##### 4.5.2 Construction and Staging

(a) For Phase 1, construction and staging will be allowed within the right-of-way on E. 1<sup>st</sup> Street between the east side of Court Street to the east end of the Hotel Site; and Washington Street between E. 1<sup>st</sup> Street and the alley between E. 1<sup>st</sup> Street and E. 2<sup>nd</sup> Street.

(b) Construction staging for the E. 1<sup>st</sup> Street/Washington Street Plaza/RR underpass project will be coordinated with the Phase 1 staging, if necessary.

4.5.3 Developer agrees to keep Agency informed of its progress with respect to the Projects after the Effective Date, by issuing periodic reports on the Project no less frequently than once a month until Agency issues a Certificate of Completion for the final Parcel to be developed in the Projects. Such information may include, but not be limited to: design information describing or illustrating the Project; cost estimates; Project schedule; report on the status of Project financing and other information as may be reasonably requested from time to time by Agency. Agency shall be entitled to depend on the accuracy and completeness of any such information provided to it by Developer, except third-party reports or work products.

4.5.4 Developer's update reports described in Section 4.5.3 may be made via email correspondence to the Agency Contract Manager or his successor. The Developer will notify the Agency Contract Manager of its regular schedule for construction meetings and will allow the Agency's designated representative(s) to participate and represent the Agency's interests in such meetings.

#### 4.6 Development Team:

4.6.1 Principal-in-Charge: Michael Leash will be the principal-in-charge for the Project but he shall have no personal liability under this Agreement.

4.6.2 Developer Team Members: The Developer will notify the Agency of the Development Team members prior to exercising the Phase 1 Option.

The identity of final Development Team members and any changes in the Development Team members are subject to Agency review and comment.

#### **4.7 Agency Role in Construction Approval Process.**

4.7.1 Agency will upon Developer's request, assist Developer in obtaining the City approvals necessary to commence construction and complete the Project as proposed in this Agreement. The Parties understand and agree that Agency cannot guarantee such approvals, but Agency shall use its best efforts in working with the City and any other parties necessary to accomplish the Project.

4.7.2 Agreements with third parties, such as financing agreements and easements, will be subject to review by Agency solely for consistency with this Agreement. The Agency will review on a timely basis so as to not delay Developer's securing of financing and commencement of construction of the Project.

#### **4.8 Inspection and Project Site Access.**

4.8.1 **Before Conveyance of Project Site.** Before conveying a Parcel to Developer, and pursuant to a written Permit of Entry including those terms stated in the attached Exhibit J, the Agency shall allow Developer and Developer's employees, agents and consultants to enter upon the Parcel, at all reasonable times whenever and to the extent necessary to carry out the purposes of this Agreement.

4.8.2 **After Conveyance of Project Site.** After conveying a Parcel to Developer, during construction and until a Certificate of Completion is issued, Developer's work shall, upon reasonable notice, be accessible at all reasonable times for inspection by representatives of the Agency. Agency agrees not to interfere with the work occurring on the Parcel. In the event that Agency or its representatives enter the Parcel pursuant to this Section 4.8.2, they shall do so at their own risk and shall comply with all construction site rules established by Developer and Developer's contractors. In addition, Agency shall not be entitled to indemnification for any losses, liability or injury arising in connection with entry to the Parcel pursuant to this Section 4.8.2, except to the extent the same arises out of the gross negligence or willful misconduct of Developer.

#### **4.9 Certificate of Completion.**

4.9.1 **When Developer is Entitled to Certificate of Completion.** Upon substantial completion (as defined below) of the portion of the Project on a Parcel, and upon satisfaction of the other conditions of this Section 4.9.1, Agency will furnish Developer with a Certificate of Completion, substantially in the form attached hereto as Exhibit G. If the Escrow Agent, or another licensed title insurer in Wasco County chosen by Developer, finds that the Certificate of Completion is insufficient to terminate Agency's right to re-enter and take back possession of the Parcel and remove such right from title to the Parcel, then Agency shall also provide to Developer, in recordable form, such instrument(s) as may be necessary to release the condition subsequent contained in the Deed, and to terminate Agency's right to re-enter and take back possession of the Parcel and remove such right from title to the Parcel. The portion of the Project on a Parcel will be deemed to be substantially complete when (i) that portion of 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, (ii) the City has issued a Letter of Completion with respect to the Parcel, (iii) any other improvements required by the terms of this Agreement to have been completed at

the time the said portion of the Project is complete are complete in all material respects, and (iv) as to the Hotel Site, Developer has paid the Actual Cost of the Required Parking to the Agency.

**4.9.2 Meaning and Effect of the Certificate of Completion.** The Certificate of Completion shall provide for termination of the construction obligations established under this Agreement and limitation of remedies of the Agency as expressly provided for therein.

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

## **5. ENVIRONMENTAL MATTERS**

**5.1 Environmental Studies.** The Agency will cause the City to complete a Level 1 Environmental Survey and an asbestos lead survey for the Recreation Building. The Agency will cause the City to complete a Phase 1 Environmental Site Assessment for the Hotel Site, and if necessary a Phase 2 Environmental Site Assessment. Developer's obligation to proceed with Phase 1 is conditional on Developer's reasonable approval of the environmental site assessments.

**5.2 Indemnification.** Developer shall comply with all Environmental Laws with respect to its business and the construction and operation of the Project from and after the Closing Date, except for matters caused solely by the act or failure to act of the Agency, its employees, agents, contractors, or invitees. Developer shall defend, indemnify and hold harmless the Agency, its successors and assigns, against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by the Agency or asserted against the Agency, and its successors or assigns, by any other party or parties, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws by Developer. The indemnity set forth in this Section 5.2 shall survive the issuance of the Certificate(s) of Completion.

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

## **6. ASSIGNMENT PROVISIONS**

**6.1 No Assignment.** Unless approved by the express written consent of Agency, Developer may not assign its interest in this Agreement, or transfer a Parcel until after Agency's



issuance of a Certificate of Completion for said Parcel. Agency may condition its approval of a transfer or assignment as Agency finds necessary in its sole discretion. Any attempt to assign or transfer an interest in this Agreement, or the Project Site, or any portion thereof shall result in immediate termination of this Agreement, and shall trigger the remedies of Section 8.2 or 8.4, as the case may be.

**6.2 Permitted Assignment or Transfer.** Notwithstanding Section 6.1, "assignment or transfer" shall not include:

6.2.1 Any Mortgage(s) which Developer may cause to attach to the Project Site for purposes of the Project development; or

6.2.2 The use of a third party accommodator to effect a tax deferred exchange in connection with acquisition of the Project Site pursuant to IRC §1031; or

6.2.3 The assignment of this Agreement to an entity owned solely by, or controlled by Rapoza Development Group, LLC.

*Provided that*, any assignment or transfer permitted by this Section 6.2 shall not operate to relieve the Developer of the Developer's obligations under this Agreement.

## **7. PERMITTED MORTGAGES**

### **7.1 Mortgagee Protection Provisions.**

7.1.1 **Effect of Revesting on Mortgages.** Any reversion and revesting of the Phase 1 Parcels, the Commodore II Parking Lot or any portion thereof in the Agency 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 Agency and authorized by this Agreement.

7.1.2 **Mortgagee Not Obligated To Construct.** Notwithstanding any of the provisions of the Agreement, except those which are covenants running with the land, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements in the Project Site 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 the Project Site 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.

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

7.1.4 **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 permitted by its loan documents, to add the cost thereof 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 Agency 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 Agency following the procedures set forth in Section 4.8 above.

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

## **8. DEFAULT; REMEDIES**

### **8.1 Default and Cure.**

**8.1.1 Default by Developer.** A default shall occur if Developer breaches any material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after Developer receives written notice from Agency specifying the breach. Failure of Developer to act diligently and in good faith to satisfy conditions over which it has control or influence is a breach. Specifically, Developer's failure to Close the purchase of the Granada Theater, or any of the other Phase 1 Parcels after exercise of the Phase 1 Option, or Developer's failure to Close the purchase of the Commodore II Parking Lot after exercise of the Phase 2 Option, and after all conditions to conveyance have been satisfied or waived as to the subject conveyance, is a breach. In the case of a breach which cannot with due diligence be cured within a period of sixty (60) days, a default shall occur if Developer does not commence the cure of the breach within sixty (60) days after Developer receives written notice from Agency and thereafter diligently prosecute to completion such cure. A default also shall occur if Developer makes any assignment for the benefit of creditors, or is adjudicated a bankrupt, or has a receiver, trustee or creditor's committee appointed over it that is not removed within one hundred eighty (180) days after appointment. A default shall occur, and Agency shall be irreparably harmed by such default, if Developer or its assignee constructs any portion of the Project in a manner materially inconsistent with Agency-approved plans. Developer shall not be in default hereunder for failure to pay any tax, assessment, lien or other charge if Developer in good faith is contesting the same and, if necessary to avoid foreclosure, has furnished an appropriate bond or other undertaking to assure payment in the event Developer's contest is unsuccessful.

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

days, if Agency shall not within such sixty (60) day period commence the cure of the breach and thereafter diligently prosecute to completion such cure.

**8.2 Agency's Pre-Conveyance Remedies.** If Developer defaults in any material term of this Agreement before a Parcel is conveyed to Developer, Agency may, at its option: (i) terminate this Agreement by written notice to Developer as to that Parcel and other Parcels that would otherwise have been conveyed after that Parcel, without waiving any cause of action Agency may have against Developer and seek monetary damages against Developer; or (ii) specifically enforce the obligations of Developer under this Agreement. If Agency terminates this Agreement as provided in this Section 8.2, then Developer shall deliver to Agency within thirty (30) days after such termination, copies of all Project market research, design documents, engineering documents, proformas and financial projections prepared for Developer by third parties, and which Developer is authorized to release; and design and construction contracts which Agency may use in any manner that Agency deems appropriate with the consent of any party having approval rights thereunder.

**8.3 Restoration.** If, prior to acquiring the Phase 1 Parcels, Developer performs any activities on the Phase 1 Parcels and Developer does not acquire those Parcels for any reason other than a breach by the Agency, Developer agrees, upon Agency request, to restore the Phase 1 Parcels to substantially the condition that existed prior to the time that Developer performed any activities thereon. Agency may elect to require that any improvements Developer has installed on the Phase 1 Parcels remain on the Parcel.

**8.4 Agency's Post-Conveyance Remedies.**

If, (i) after Closing the Hotel Site and the Blue Building, Developer fails to acquire the Granada Theater, or (ii) after Closing on the Granada Theater Developer fails to acquire the Hotel Site and the Blue Building, or (iii) after Closing of any Parcel, Developer fails to obtain the required Certificate of Completion for that Parcel according to the Schedule of Performance, then Agency may demand in writing that Developer cure such default within sixty (60) days. If Developer does not cure the default within the sixty (60) day period (or in the case that such default is not curable within said sixty (60) day period, if Developer shall have not commenced and be diligently pursuing such cure to completion), then, such action or inaction shall create in Agency and the Agency the following remedies:

**8.4.1** Subject to the rights of Mortgagees and other parties holding interests in the Project, the Agency's right to re-enter and take possession of any Phase 1 Parcels that have been conveyed to the Developer by the Agency, and to terminate (and revert in the Agency) the estate conveyed by the respective Deed(s), to resell the Parcel pursuant to Section 8.5 hereof, it being the intent of this provision together with other provisions of this Agreement, that the conveyance of the Phase 1 Parcels and the Commodore II Parking Lot to Developer shall be made upon, and that the Deed(s) shall provide for, a condition subsequent to the effect that in the event of default by Developer and failure of Developer to remedy, end or abrogate such default, within the period and in the manner stated, then the Agency, at its option, may upon 60 days written notice (hereinafter, "Notice of Termination") to Developer and the Escrow Agent declare a termination in favor of the Agency of the title, and of all the rights and interest in the Phase 1 Parcels and the Commodore II Parking Lot and all the title and rights and interest in the Phase 1 Parcels and the Commodore II Parking Lot conveyed to Developer and any assigns or successors in interest shall be reconveyed to the Agency by Quitclaim Deed, pursuant to the Escrow Instructions in Exhibit G.

8.4.2 Developer shall provide Agency with any work product produced by any third parties for Developer, including copies of all Project Site market research, design documents, engineering documents, proformas and financial projections prepared for Developer, and which Developer is authorized to release; and design and construction contracts which Agency may use in any manner that Agency deems appropriate with the consent of any party having approval rights thereunder.

8.5 **Agency Resale.** If title to any of the Agency Parcels, shall revert in the Agency in accordance with the provisions of Section 8.4 of this Agreement, the Agency, may, at its option, bring the improvements to a state of completion deemed by the Agency as reasonably necessary to protect it from the elements or other dangers, and may choose to use its best efforts consistent with prudent business practices and generally in accordance with the terms of this Agreement to resell the Phase 1 Parcels and the Commodore II Parking Lot at a reasonable price, (subject to such mortgage liens and leasehold interests as hereinbefore set forth) as soon and in such a manner as the Agency shall find feasible and consistent with the objectives of such laws, to a qualified and responsible party or parties (as determined by Agency 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 the Agency, provided however, that the Agency may choose to retain the Granada Theater after reverting and operate the Granada Theater as a public facility in which event the Granada Purchase Price Loan shall be deemed fully paid.

8.6 **Application of Proceeds General.** Upon resale of any of the Phase 1 Parcels, and the Commodore II Parking Lot the proceeds thereof shall be applied as follows:

8.6.1 Agency Reimbursement. First, proceeds will be paid to the Agency, to reimburse itself for all costs and expenses reasonably incurred by it including, but not limited to: all costs paid by the Agency or the city for any improvements made to the Parcels that have reverted in the Agency, salaries of personnel in connection with the recapture, management and resale of the Project; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Project at the time of reverting of title thereto in the Agency or to discharge or prevent from attaching or being made; any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of Developer's improvements or any portion thereof on the Project; any amounts owed to the Agency as lease or license fees, and any amounts otherwise owing the Agency by Developer and its successor or transferee.

8.6.2 Developer Reimbursement. Second, proceeds will be applied to reimburse Developer, its successor or transferee, up to the amount equal to, the sum of (a) the Purchase Price for the resold Property Developer has paid prior to reverting in the Agency (except the Granada Theater Purchase Price), and (b) development costs incurred by it in making any of the improvements on the Project or part thereof, less any contributions to such development costs paid by the City or the Agency and any gains or income withdrawn or made as to the Project. Notwithstanding the immediately preceding sentence, Developer shall not be reimbursed for any costs of improvements to the Granada Theater.

8.6.3 Balance to Agency. Third, any balance remaining after any reimbursements shall be retained by Agency.

8.7 **Developer's Pre-Conveyance Remedies.** If Agency defaults as to any material term of this Agreement prior to Closing, Developer may, as its sole remedy, but at its option: (i) terminate this Agreement by written notice to Agency; or (ii) specifically enforce the obligations of the Agency under this Agreement.

8.8 **Developer's Post-Conveyance Remedies.** In the event of Agency's material default after the Agency conveys the Project Site to Developer, Developer may, as its sole remedy, specifically enforce the obligations of the Agency under this Agreement.

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

#### 8.10 **Unavoidable Delay**

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

8.10.2 It is the purpose and intent of this provision that, in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of the Agency or Developer as the case may be, shall be extended for the period of the Unavoidable Delay; provided, however, that the Party seeking the benefit of this Section shall, within thirty (30) days after the Party becomes aware of the causes of any such Unavoidable Delay, notify the other Party in writing of the cause or causes of the delay and the estimated time of correction. Notwithstanding any other provision of this Agreement, the time for Parties' performance shall not be extended by one or more events of Unavoidable Delay for a cumulative period greater than 365 days.

### 9. **MISCELLANEOUS PROVISIONS**

9.1 **Agency Contract Manager.** For the purposes of making determinations relating to provisions of this Agreement on behalf of Agency, granting approvals and approving Minor Modifications, Agency has designated Nolan Young as the Agency Contract Manager.

## 9.2 Authorization and Confidentiality

9.2.1 Except for published information or information ascertainable from public records, any confidential information furnished or disclosed by Agency in connection with the Project, will be held by Developer in confidence and will not be divulged to any third party, except for a Party's advisors and consultants or as may be necessary to further the development of the Project.

9.2.2 Except for published information or information ascertainable from public records, if the Agency concludes that information furnished or disclosed to the Agency by Developer in connection with the Project is exempt from disclosure under state law, then, to the extent allowed by state law, and until ordered to disclose pursuant to a valid order of the district attorney, Agency will hold in confidence such information, and will not divulge such information to any third party, except for Agency's advisors and consultants.

9.2.3 If for any reason this Agreement is terminated, then each Party will return all such confidential information to the party from whom it was obtained.

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

## 9.4 Notice.

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

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

The Rapoza Development Group, LLC  
c/o Michael Leash  
306 Court Street  
The Dalles, OR 97058

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

Nolan Young, City Manager  
City of The Dalles  
313 Court Street  
The Dalles, OR 97057  
E-Mail: [nyoung@ci.the-dalles.or.us](mailto:nyoung@ci.the-dalles.or.us)

With a copy to:



Gene Parker, City Attorney  
City of The Dalles  
313 Court Street  
The Dalles, OR 97057  
E-Mail: [gparker@ci.the-dalles.or.us](mailto:gparker@ci.the-dalles.or.us)

or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing dispatched as provided in this Section. Notice given in any other manner shall be effective upon receipt by the Party for whom the same is intended.

9.5 **Merger.** None of the provisions of this Agreement are intended to or shall be merged by reason of any Deed transferring title to the Project Site or a portion thereof from the Agency to Developer or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

9.6 **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.

9.7 **Waivers.** Except as otherwise expressly provided in this Agreement, no waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by Agency or Developer of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

9.8 **Attorneys' Fees.** If a suit, action, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law, provided however, that the hourly rate of compensation for any attorney used by the Parties, including in house counsel, shall be equal to the reasonable hourly rate for counsel practicing regularly in Wasco County, Oregon with expertise and experience comparable to the attorney who has performed work for the prevailing party. 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.

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

9.10 **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.



9.11 **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.

9.12 **Legal Purpose.** Developer agrees that it shall use the Project Site solely for lawful purposes.

9.13 **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.

9.14 **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 are no oral or written representations made by a Party, implied or express, other than those contained in this Agreement.

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

9.15.1 Changes in the Schedule of Performance when deemed warranted by the Agency Contract Manager which do not exceed ninety (90) days, excluding a change in the Final Termination Date; and

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

9.15.3 All other modifications to the Agreement must be approved by the Agency Board.

9.16 **Successors and Assigns.** Subject to the provisions of Section 7, 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.

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

9.18 **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.

9.19 **Non-waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement and delivery of the deeds, Agency is specifically not obligating itself, or any other agency with respect to any discretionary action relating to development or operation of the improvements to be constructed on the Project Site, 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.

9.20 **Approvals.** Except as otherwise provided in this Agreement, where approvals of Agency are required, Agency will approve or disapprove within ten (10) business days after receipt of the material to be approved, except where a longer or shorter time period is specifically provided to the contrary. Failure by Agency to approve or disapprove within said period of time shall be deemed approval. Any disapproval shall state in writing the reasons for such disapproval. Approvals will not be unreasonably withheld, conditioned or delayed except where rights of approval are expressly reserved to Agency's sole discretion in this Agreement. Developer, upon receipt of such disapproval, shall revise such disapproved portions in a manner responsive to the stated reasons for disapproval and resubmit the same to Agency within forty-five (45) days after receipt of the notice of disapproval.

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

9.22 **Brokers.** Each Party warrants and represents to the other that it has employed no brokers or finders in connection with this transaction. Each Party agrees to pay any other commission or finder's fees that may be due on account of this transaction to any broker or finder employed by it and to indemnify the other Party against any claims for such commissions or fees.

9.23 **Recording of Memorandum of Agreement.** Agency shall provide for recording a Memorandum of this Agreement within thirty (30) days of the Effective Date. The form of the Memorandum of Agreement is attached as Exhibit I to this Agreement. When Agency issues to Developer a Certificate of Completion or if the Agreement is terminated, the Parties shall cooperate to promptly record an Amended Memorandum of Agreement to reflect the surviving covenants of this Agreement.

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

**COLUMBIA GATEWAY URBAN  
RENEWAL AGENCY**

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Agency Legal Counsel

\_\_\_\_\_,  
*[Developer]*

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Developer Legal Counsel

## EXHIBITS

- Exhibit A - Legal Description of the Project Site
  - Exhibit A-1 Sketch of the Project Site
- Exhibit B - Scope of Development
  - Exhibit B-1 Conceptual Plans
- Exhibit C - Schedule of Performance
- Exhibit D - Glossary of Terms
- Exhibit E - Form of Bargain and Sale Deed
- Exhibit F - Terms of the Granada Purchase Price Loan
- Exhibit G - Form of Certificate of Completion
- Exhibit H - Quitclaim Deed and Escrow Instructions
- Exhibit I - Form of Memorandum of Agreement
- Exhibit J - Permit of Entry Form

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF PROJECT SITE**

#### **Commodore II Parking Lot**

Lots 4, 5, and the West 6 feet of Lot 3, Block 3 Original Dalles City

#### **Recreation Buildings and Parking Lot**

Assessor's Map 1N 13 3BA Tax Lot 800: The West 19 feet of the East 21.5 feet of Lot 3, Block 3, Dalles City

Assessor's Map 1N 13 3BD Tax Lot 400: The West 25 feet of Lot 2; and the East 2 ½ feet of Lot 3, Block 3, Dalles City

Assessor's Map 1N 13 3BD Tax Lot 500: The West 18 feet of Lot 1, and the East 33 feet of Lot 2, Block 3, ORIGINAL DALLES CITY, in the City of The Dalles, Wasco County, State of Oregon

Assessor's Map 1N 13 3BD Tax Lot 3400: The East 27 feet of Lot 7, Block 3, ORIGINAL DALLES CITY, in the City of The Dalles, Wasco County, State of Oregon

Assessor's Map 1N 13 3BD Tax Lot 3500: The West 31 feet of Lot 7, Block 3, ORIGINAL DALLES CITY, in the City of The Dalles, Wasco County, State of Oregon

Assessor's Map 1N 13 3BD Tax Lot 3600: Lot 8, Block 3, ORIGINAL DALLES CITY, in the City of The Dalles, Wasco County, State of Oregon

A parcel described as Parcel No. 4 in the Preliminary Title Report prepared by Amerititle:

Beginning at a point on the North line of Lot 3, Block 3, ORIGINAL DALLES CITY, Wasco County, State of Oregon, which point is 147.8 feet Easterly from the Northwest corner of said Block 3; thence Easterly along the North line, of the said Block 3, a distance of 46.5 feet; thence Southerly, parallel with the East line of said Lot 3, a distance of 120 feet, more or less to the South line of Lot 2; thence Westerly along the South line of Lots 2 and 3, a distance of 45.5 feet; thence Northerly to the place of beginning; EXCEPTING therefrom any portion lying within the East 30.5 feet to the West 36.5 feet of Lot 3, Block 3 of said plat.

#### **Granada Theater**

Lot 6, Block 3, DALLES CITY PROPER, in the City of The Dalles, County of Wasco, and State of Oregon

Subject to:

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

### **Blue Building**

The Easterly 40 feet of even width of Lot 1, Block 3, Original Dalles City, in the City of The Dalles, Wasco County, Oregon:

Subject to:

1. Any facts, rights, interest, or claims which are not shown by the public record but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
2. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a survey would disclose, and which are not shown by public records.
3. Agreement, including the terms and provisions thereof:  

Between:	Dalles City, a municipal corporation of the State of Oregon
And:	Raymond P. Matthew and Irma H, Matthew, husband and wife
Recorded:	November 2, 1961
Book:	144
Page:	512 Deed Records of Wasco County, Oregon
4. Existing leases and/or tenancies.

# EXHIBIT A-1 SKETCH OF PROJECT SITE



## LEGEND

- Tax Lots
- Redevelopment Properties - Phase I
- Redevelopment Properties - Phase II

0 15 30 60 90 120 Feet





## **EXHIBIT B**

### **SCOPE OF DEVELOPMENT**

The Projects are based on the following text description of Developer's scope of development, and the Conceptual Drawings attached hereto as Exhibit B-1:

#### **Phase 1**

**Hotel:** The hotel will have 115 - 150 rooms, be a mid-priced, high quality facility, and will be located on the Hotel Site and potentially in the Bank Hotel Property.

**Conference and Activity Space:** The conference facilities will a minimum of 3,500 sq. ft. and be of mid-priced, high quality, executive conference and catering type of construction. The conference and activity space may include the Blue Building, or a new building constructed by Developer on the Parcel occupied by the Blue Building.

**Event Space:** The event space will include the Granada Theater, and the Bank Hotel Property, and be of high quality construction (subject to the preservation of the historical nature of the Granada Theater).

**Parking Element:** Developer will be responsible for parking required for the Hotel by the City's Land Use and Development Ordinance. Upon Developer's request, the Agency will include the needed parking in the design and construction of the Public Garage, subject to Developer paying the cost of such parking in the Public Garage as provided elsewhere in this Agreement.

#### **Phase 2**

A mixed use project which may include retail, commercial, and/or residential development with underground parking, or up to 35 additional rooms to the Hotel, of the same quality as the original Hotel if it is determined there is sufficient room demand, with construction to begin no later than one year after purchase of the Commodore II Parking Lot.

# The Dalles – Proposed Hotel Development

CSHQA – Preliminary Renderings as of 7/20/12

EXHIBIT B-1, page 1



# The Dalles – Proposed Hotel Development

CSHQA – Preliminary Renderings as of 7/20/12

EXHIBIT B-1, page 2

**OPTION 2**  
2ND STREET PRESPECTIVE



**CSHQA**  
Construction Services, Inc.

## EXHIBIT C

### SCHEDULE OF PERFORMANCE

#### Construction & Pre-Opening of the Hotel.

- A. *Construction of Hotel.* Developer will plan, design, construct, furnish and equip the Hotel at its own cost and in accordance with scope as described in Exhibit B. Specifically,

1. Developer will obtain the final building permit and begin construction by pouring concrete for the Hotel's foundation (the "Start of Construction") by [June 1, 2014], with outside date of December 01, 2014.

2. Developer will complete the superstructure of the Hotel by [January 1, 2015], with outside date of July 01, 2015.

3. Developer will complete the Hotel facade by [June 01, 2015], with outside date of December 01, 2015.

4. Developer will complete the construction, furnishing and equipping of the Hotel by December 31, 2015 with a provision for extension of this date due to causes creating unavoidable delay as set forth in Section 8.10, or an extension for a period of time equivalent to any extension of the closing dates for the purchase of the Phase 1 Parcels.

## EXHIBIT D

### GLOSSARY

1. **“Actual Cost Notice”** has the meaning set forth in Section 3.3.3(c).
2. **“Agency”** means the Columbia Gateway Urban Renewal Agency.
3. **“Agency Parcels”** has the meaning set forth in Section 2.1
4. **“Agreement”** means this Agreement for Disposition of Property for Redevelopment and all attached Exhibits.
5. **“Certificate of Completion”** means a certificate to be issued by Agency to Developer pursuant to Section 4.9.1 of this Agreement indicating Agency’s material acceptance of the portion of the Project on a Parcel that will be issued by Agency to Developer subsequent to issuance of the architect’s certificate of substantial completion and the City’s issuance of a Letter of Completion for the building.
6. **“City”** means the City of The Dalles, Oregon.
7. **“Close”** or **“Closing”** means the conveyance of a Parcel to Developer by the Agency by Deed and the simultaneous payment of the Purchase Price by Developer to the Agency, all as more specifically described in Section 2 of this Agreement.
8. **“Closing Date”** means the date on which Agency conveys a Parcel to Developer.
9. **“Conceptual Plans”** mean the preliminary plans, general Project Site use description, and site drawings for the Project submitted by Developer to Agency and accepted by Agency on or about August 31, 2013, with outside date of December 31, 2013.
10. **“Deed”** means the form of Bargain and Sale Deed conveying fee simple title to one or more Parcels in the Project Site to Developer subject to Agency’s right of re-entry to the Parcel or parcel(s) conveyed, substantially in the form attached to this Agreement as Exhibit E.
11. **“Design Development Drawings”** would include such items as:
  - Detailed engineering and architectural site plans for the Project showing the relationship of the buildings to projected final topography of the land, with all proposed connections to existing or proposed utilities and services together with a landscape plan;
  - Plans, elevations, typical cross-sections and typical wall sections of all building areas;
  - Elevations of the buildings to determine the site lines and the specific configuration and relationship of design elements of the building exteriors, which describe the aesthetic and technical aspects, including materials, of the building exteriors;
  - A calculation of gross building areas, floor areas, height ratios and open spaces;
  - A preliminary Exterior Finish Schedule;
  - Proposed layouts for exterior signage and graphics;

- Outline of the exterior lighting plan; and
  - A description of servicing requirements, trash collection locations, loading docks and related functional areas;
12. **“Developer”** means Rapoza Development Group, LLC, an Oregon limited liability company.
  13. **“Drawings”** has the meaning set forth in Section 4.3.4.
  14. **“Effective Date”** means the date that both Parties have executed this Agreement.
  15. **“Environmental Laws”** means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Federal Water Pollution Control Act, U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1471 *et seq.*; Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; Refuse Act, 33 U.S.C. §§ 407 *et seq.*; Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001 *et seq.*; Occupational Safety and Health Act, 29 U.S.C. §§ 65 *et seq.*, to the extent it includes the emission of any Hazardous Material; Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. §§ 136 *et seq.*; Federal Safe Drinking Water Act, 42 U.S.C. §§ 300(f) *et seq.*; or any similar or analogous state or local statute or ordinance, or any regulation, order, rule, or requirement adopted thereunder which regulates Hazardous Substances.
  16. **“Escrow Agent”** means Amerititle with \_\_\_\_\_ as Escrow Officer.
  17. **“Final Construction Plans and Specifications”** means all plans and specifications required to complete the Project pursuant to the terms of this Agreement as approved by Agency and the appropriate City agencies.
  18. **“Final Permitted Exceptions”** has the meaning set forth in Section 2.6.1.
  19. **“Final Termination Date”** has the meaning set forth in Section 2.9.4.
  20. **“Gleason Property”** has the meaning set forth in Section 4.4.4.
  21. **“Guaranty”** has the meaning set forth in Section 4.2.2.
  22. **Hazardous Substances** means any substance, chemical, waste or other material which is listed, defined or otherwise identified as “hazardous” or “toxic” under any federal, state local or administrative agency law or ordinance (collectively “Environmental Laws”) including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Federal Water Pollution Control Act, U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1471 *et seq.*; Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; Refuse Act, 33 U.S.C. §§ 407 *et seq.*; Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001 *et seq.*; Occupational Safety and Health Act, 29 U.S.C. §§ 65 *et seq.*, to the extent it includes the emission of any Hazardous Material and includes any Hazardous Material for which hazard communication standards have been established; Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. §§ 136 *et seq.*; Federal Safe Drinking Water Act, 42 U.S.C. §§ 300(f) *et seq.*; or any similar or analogous state or local statute or ordinance, or any regulation, order, rule, or requirement adopted thereunder, as well as any formaldehyde, urea, polychlorinated

biphenyls, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 *et seq.*

23. **"Hotel Site"** has the meaning set forth in Section 2.1.
24. **"Laws"** has the meaning set forth in Section 2.10.4.
25. **"Memorandum of Understanding"** or **"MOU"** has the meaning set forth in Recital 4.
26. **"Minimum Granada Improvements"** has the meaning set forth in Section 4.1.6.
27. **"Minor Modifications"** has the meaning set forth in Section 9.15.
28. **"Mortgage"** means a mortgage or deed of trust against the Project Site, or any portion thereof, recorded in the real property records of Wasco County, Oregon.
29. **"Mortgagee"** means the holder of any Mortgage affecting or encumbering the Project Site or any portion thereof, together with any successor or assignee of such holder. The term "Mortgagee" shall include any Mortgagee as owner of the Project Site or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a mortgage but shall not include (a) any other party who thereafter obtains title to the Project Site or such part from or through a Mortgagee or (b) any other purchaser at foreclosure sale other than a Mortgagee.
30. **"Notice"** means any summons, citation, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, issued by the Oregon Department of Environmental Quality ("DEQ"), the United States Environmental Protection Agency, and other federal, state or local authority or any other government having jurisdiction with respect to the Project Site.
31. **"Notice to Exercise Phase 1 Option"** has the meaning set forth in Section 2.2.
32. **"Notice to Exercise Phase 2 Option"** has the meaning set forth in Section 2.3.
33. **"Option"** has the meaning set forth in Section 2.2.
34. **"Option Period"** has the meaning set forth in Section 2.2.
35. **"Parcel"** or **"Parcels"** has the meaning set forth in Section 2.1.
- ~~36. Intentionally deleted.~~
37. **"Party"** means each of the Agency and the Developer. **"Parties"** are the Agency and the Developer together.
38. **"Permit Period"** has the meaning set forth in Exhibit J.
39. **"Phase 1 Final Termination Date"** has the meaning set forth in Section 2.9.3(a).
40. **"Phase 1 Option"** has the meaning set forth in Section 2.2.
41. **"Phase 1 Option Period"** has the meaning set forth in Section 2.2.
42. **"Phase 1 Parcels"** has the meaning set forth in Section 2.1.
43. **"Phase 1 Termination Date"** has the meaning set forth in Section 2.2.3.
44. **"Phase 2 Closing"** has the meaning set forth in Section 2.3.



- 45. **"Phase 2 Final Termination Date"** has the meaning set forth in Section 2.9.3 (a)
- 46. **"Phase 2 Option"** has the meaning set forth in Section 2.3.
- 47. **"Phase 2 Option Period"** has the meaning set forth in Section 2.3.
- 48. **"Phase 2 Option Termination Date"** has the meaning set forth in Section 2.3.
- 49. **"Phase 2 Scheduled Closing Date"** has the meaning set forth in Section 2.3.
- 50. **"Project"** generally means the Project Site, fixtures and the buildings, and other improvements to be newly renovated or constructed by Developer on the Project Site as initially described in the Scope of Development and refined through the Agency approved Drawings
- 51. **"Project Site"** means the land and improvements described in Recital 1, legally described in Exhibit A, a sketch of which is attached to this Agreement as Exhibit A-1.
- 52. **"Public Garage"** has the meaning set forth in Section 3.3.2.
- 53. **"Purchase Price"** means the price Developer shall pay to the Agency for the Parcel(s) as they are conveyed by the Agency to Developer pursuant to Section 2.2 and Section 2.3.
- 54. **"Redevelopment Plan"** has the meaning set forth in Section 2.8.1.
- 55. **"Release"** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
- 56. **"Required Parking"** has the meaning set forth in Section 3.3.3.
- 57. **"Schedule of Performance"** means the document describing the schedule by which the Parties' obligations under this Agreement will be completed, attached hereto as Exhibit C, as the Schedule may thereafter be amended.
- 58. **"Scheduled Closing Date"** has the meaning set forth in Section 2.2 and Section 2.3.
- 59. **"Scope of Development"** means the detailed description of the rehabilitation improvements and the new improvements to be built comprising the Project, attached hereto and incorporated herein as Exhibit B.
- 60. **"Special Equipment"** has the meaning set forth in Section 3.3.3(b)(i).
- 61. **"Special Equipment Premium"** has the meaning set forth in Section 3.3.3.
- ~~62.~~ **"Termination Date"** has the meaning set forth in Section 2.9.3(a)
- 63. **"Title Report"** has the meaning set forth in Section 2.6.1.
- ~~63-64.~~ **"Unavoidable Delay"** has the meaning set forth in Section 8.10.1.
- ~~64-65.~~ **"UR Plan"** has the meaning set forth in Recital 2.

**EXHIBIT E**

**BARGAIN AND SALE DEED**

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

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

**BARGAIN AND SALE DEED**

KNOW ALL PEOPLE, that the **COLUMBIA GATEWAY URBAN RENEWAL AGENCY**, the duly authorized and acting urban renewal agency of the City of The Dalles, Oregon ("City"), a political subdivision of the State of Oregon ("Agency"), does hereby grant, bargain, sell and convey to \_\_\_\_\_, a \_\_\_\_\_ (the "Developer"), and unto its successors and assigns, all the following described real property, with the tenements, hereditaments and appurtenances (herein called the "Property"), situated in the County of Wasco and State of Oregon:

*[Insert legal description here]*

The conveyance is made pursuant to that certain Agreement for Disposition of Property for Redevelopment located in Wasco County, between Developer and the Agency, dated \_\_\_\_\_, \_\_, 2013, a Memorandum of which was recorded on \_\_\_\_\_, 2013 as Document No. \_\_\_\_\_, Records of Wasco 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 \$ \_\_\_\_\_ and other value for this conveyance.

The conveyance is subject to the following:

1. All easements, covenants, restrictions, conditions and encumbrances of record;  
and
2. A condition subsequent to this conveyance, that the Agency shall have the option,

in the event of a 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 the Agency of the title, and of all the rights and interests of the Developer in the Project Site, or a portion thereof. Developer shall reconvey the Property, or the portion thereof identified in the Notice of Termination, to the Agency by quitclaim deed, pursuant to the Escrow Instructions in Exhibit H to the DDA. Agency may thereafter resell the Property.

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

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

IN WITNESS WHEREOF, the COLUMBIA GATEWAY URBAN RENEWAL AGENCY, the duly authorized and acting urban renewal agency of the City of The Dalles, Oregon, has caused this Deed to be executed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

*[Insert signature block and notary for Agency here.]*

**EXHIBIT E-1**

**BARGAIN AND SALE DEED (GRANADA)**

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

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

**BARGAIN AND SALE DEED**

KNOW ALL PEOPLE, that the **COLUMBIA GATEWAY URBAN RENEWAL AGENCY**, the duly authorized and acting urban renewal agency of the City of The Dalles, Oregon ("City"), a political subdivision of the State of Oregon ("Agency"), does hereby grant, bargain, sell and convey to \_\_\_\_\_, a \_\_\_\_\_ (the "Developer"), and unto its successors and assigns, all the following described real property, with the tenements, hereditaments and appurtenances (herein called the "Property"), situated in the County of Wasco and State of Oregon:

*[Insert legal description here]*

The conveyance is made pursuant to that certain Agreement for Disposition of Property for Redevelopment located in Wasco County, between Developer and the Agency, dated \_\_\_\_\_, \_\_, 2013, a Memorandum of which was recorded on \_\_\_\_\_, 2013 as Document No. \_\_\_\_\_, Records of Wasco 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 \$\_\_\_\_\_ and other value for this conveyance.

The conveyance is subject to the following:

1. All easements, covenants, restrictions, conditions and encumbrances of record; and

2. A condition subsequent to this conveyance, that the Agency shall have the option, in the event of:

- a. Developer's failure to close the purchase of all of the Phase 1 Parcels by the Phase 1 Final Termination Date; or
- b. 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 the Agency of the title, and of all the rights and interests of the Developer in the Project Site, or a portion thereof. Developer shall reconvey the Property, or the portion thereof identified in the Notice of Termination, to the Agency by quitclaim deed, pursuant to the Escrow Instructions in Exhibit H to the DDA. Agency may thereafter resell the Property, or retain the Property for public use.

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

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

IN WITNESS WHEREOF, the COLUMBIA GATEWAY URBAN RENEWAL AGENCY, the duly authorized and acting urban renewal agency of the City of The Dalles, Oregon, has caused this Deed to be executed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

*[Insert signature block and notary for Agency here.]*

**EXHIBIT F**  
**TERMS OF PURCHASE PRICE LOAN**  
**GRANADA THEATER PARCEL**

- A. The Developer will pay the purchase price for the Granada Theater in one balloon payment due June 30, 2025, together with simple interest at the annual rate of 1% accruing on the principal. Developer shall make annual payments of the interest due in advance, beginning on the Closing Date and on each anniversary of the Closing Date thereafter until the final payment of interest and principal on June 30, 2025.
- B. If the Developer borrows funds to complete remodeling of the Granada Theater, the Agency will provide a loan interest subsidy for fifteen (15) years or the life of the Agency whichever is shorter, to achieve an effective interest rate on the borrowed funds of not more than five and three-quarters percent (5.75%). The value of the interest subsidy shall not exceed \$132,000.00. Agency will have a right to review and approve the terms of such financing in its reasonable discretion.



## EXHIBIT G

### FORM OF CERTIFICATE OF COMPLETION

After recording return to:

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

### CERTIFICATE OF COMPLETION

The COLUMBIA GATEWAY URBAN RENEWAL AGENCY, the duly designated urban renewal agency of the City of The Dalles ("Agency") hereby certifies that Developer, \_\_\_\_\_, a \_\_\_\_\_ ("Developer"), has satisfactorily completed construction of the Project on Parcel \_\_\_, as described in the Agreement for Disposition of Property for Redevelopment, dated \_\_\_\_\_, 20\_\_ (herein called the "DDA"), a memorandum of which was recorded in the Records of Wasco County, Oregon as Document No. \_\_\_\_\_ on \_\_\_\_\_, 20\_\_. Capitalized terms used herein without definition shall have the meaning ascribed to them in the DDA.

Pursuant to Section 4.9.1 of the DDA, Agency hereby certifies that:

- (i) the Project on Parcel \_\_\_ has been completed according to the Final Construction Drawings and Technical Specifications, except for punch list items that do not materially affect the use of the Project for the purposes intended under the DDA,
- (ii) the City of The Dalles has issued a Letter of Completion with respect to the Project on Parcel \_\_\_, and
- (iii) any other improvements required by the DDA on Parcel \_\_\_ have been completed in all material respects.

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 on Parcel \_\_\_, and such obligations are hereby terminated. This Certificate represents and certifies the completion of Developer's construction obligations described herein as to Agency only.

Further,

- (1) Any party acquiring or leasing any portion of the Project on Parcel \_\_\_ shall not (because of such purchase or lease) have any obligation under the DDA with respect to the construction of the Project, and

(2) The following Sections of the DDA shall survive and remain in effect for the periods identified in the DDA notwithstanding issuance of this Certificate ("Surviving Sections"):

- i. Section 5.2 – Developer Environmental Indemnity;
- ii. Section 8.9 – Nonexclusive Remedies;
- iii. Section 9.8 – Attorneys Fees;
- iv. Section 9.9 – Choice of Law
- v. Section 9.17 – Place of Enforcement.

Other than its right to enforce the Surviving Sections, Agency 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 on Parcel \_\_\_, or as a result of a breach of any provisions of the DDA relating to construction on Parcel \_\_\_ by the Developer, or by any successors in interest or assigns of Developer. Without limitation, Agency confirms that Agency no longer has any right of entry to Parcel \_\_\_ or power to terminate Developer's title to Parcel \_\_\_ and revest such title in Agency.

IN WITNESS WHEREOF, Agency has caused this instrument to be executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

COLUMBIA GATEWAY URBAN  
RENEWAL AGENCY

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

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

STATE OF OREGON                    )  
  ) ss.  
County of Wasco                    )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the COLUMBIA GATEWAY URBAN RENEWAL AGENCY, the duly designated urban renewal agency of the City of The Dalles, on its behalf.

\_\_\_\_\_  
Notary Public for

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



**EXHIBIT H**  
**FORM OF QUITCLAIM DEED AND ESCROW INSTRUCTIONS**

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

Columbia Gateway Urban Renewal Agency  
313 Court Street  
The Dalles, OR 97057

**QUITCLAIM DEED**

\_\_\_\_\_, a \_\_\_\_\_ (“Grantor”), releases  
and quitclaims to the COLUMBIA GATEWAY URBAN RENEWAL AGENCY, as the duly  
designated Urban Renewal Agency of the City of The Dalles (which, together with any successor  
public agency designated by or pursuant to law, is herein called “Grantee”), all right, title and  
interest in and to the following described real property:

\_\_\_\_\_  
Other property or value was either part or the whole consideration.

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

IN WITNESS WHEREOF, Grantor has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, a \_\_\_\_\_

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

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

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

Accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

COLUMBIA GATEWAY URBAN RENEWAL AGENCY

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

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

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

STATE OF OREGON            )  
  ) ss.  
County of Wasco            )

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

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

STATE OF OREGON            )  
  ) ss.  
County of Wasco            )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the COLUMBIA GATEWAY URBAN RENEWAL AGENCY, the duly designated urban renewal agency of the City of The Dalles, on its behalf.

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

**EXHIBIT H (Continued)**

**ESCROW INSTRUCTIONS FOR QUITCLAIM DEED**

\_\_\_\_\_ Title Insurance Company

\_\_\_\_\_

Attention: [INSERT TITLE OFFICER]

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

\_\_\_\_\_, a \_\_\_\_\_ (“Developer”), has entered into that certain Agreement for Disposition of Property for Redevelopment (“DDA”) with the Columbia Gateway Urban Renewal Agency (“Agency”) dated as of \_\_\_\_\_, 20\_\_\_\_, a Memorandum of which was recorded \_\_\_\_\_, 20\_\_\_\_ as Document No. \_\_\_\_\_, Records of Wasco County, Oregon, whereby Agency will convey to the Developer or its assignees certain real property (the “Property”). The Property is the subject of this escrow and is described in the accompanying quitclaim deed (“Quitclaim Deed”).

Section \_\_\_\_ of the DDA provides that, under certain circumstances, Agency is entitled to reconveyance of the Property pursuant to a Quitclaim Deed 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 Agency’s \_\_\_\_\_ certifying that a copy of said notice has been delivered concurrently to Developer and certifying that a termination in favor of Agency of the title, and of all of the rights and interest of Developer in the Property has occurred, and that rights to the Property described in the Quitclaim Deed have reverted in Agency pursuant to the DDA (“Notice of Termination”), you shall at the end of thirty (30) days after receipt of said instructions record the subject Quitclaim Deed unless within said thirty (30) day period, you are notified by Agency that 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 the Property, or any specified Parcel thereof (either an original or one certified by Agency 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,

\_\_\_\_\_, a \_\_\_\_\_

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

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

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

Very truly yours,

COLUMBIA GATEWAY URBAN RENEWAL AGENCY

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

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

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

Accepted and agreed to this

\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_, Title Insurance Company

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

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

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



## EXHIBIT I

### FORM OF MEMORANDUM OF AGREEMENT

After recording return to:

Mr. Gene Parker  
City Attorney  
City of The Dalles  
313 Court Street  
The Dalles, OR 97057

#### Form of Memorandum of Agreement For Disposition for Development

THIS MEMORANDUM OF AGREEMENT FOR DISPOSITION OF PROPERTY FOR DEVELOPMENT ("Memorandum") shall serve as notice to all persons that the **COLUMBIA GATEWAY URBAN RENEWAL AGENCY**, ("Agency"), and \_\_\_\_\_, an Oregon \_\_\_\_\_ ("Developer"), entered into an **AGREEMENT FOR DISPOSITION OF PROPERTY FOR REDEVELOPMENT**, dated as of \_\_\_\_\_, 2013 ("Agreement") relating to the real property ("Property") to be conveyed by the Agency located in Wasco County, Oregon. The Property is more particularly described in Attachment A to this memorandum.

The parties to the Agreement are:

Columbia Gateway Urban Renewal Agency  
313 Court Street  
The Dalles, OR 97057

and

Rapoza Development Group. LLC  
c/o Michael Leash  
306 Court Street  
The Dalles, OR 97058

Among other things, the Agreement requires the Agency to convey the Property to Developer upon the satisfaction of certain conditions precedent, and requires Developer to complete certain private improvements on the Property all as more particularly set forth in the Agreement (the "Project"). Other property or value was part of the whole consideration given for the Property conveyance referenced herein.

As a condition subsequent to the Property conveyance, in the event of a default by Developer before Agency issues a Certificate of Completion, the Agency shall have the option to declare a termination in favor of the Agency of all the title, rights and interests of Developer in the Property or the portion of the Property identified in the notice. Upon such declaration of termination, Developer's title, right and interest in the Property, or the identified portion of the Property, shall revert to the Agency. Agency may thereafter resell the Property, or in the case of the Granada Theater, retain the Granada Theater for public use.

Agency and Developer execute this Memorandum to acknowledge being bound by the Agreement and to give notice of the Agreement to third parties.

**COLUMBIA GATEWAY URBAN  
RENEWAL AGENCY:**

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

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

**BUYER:**

\_\_\_\_\_

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

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

STATE OF OREGON            )  
  ) ss.  
COUNTY OF WASCO        )

This instrument was acknowledged before me on \_\_\_\_\_, 2013, by  
\_\_\_\_\_, \_\_\_\_\_ of the COLUMBIA GATEWAY URBAN RENEWAL  
AGENCY.

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

STATE OF OREGON            )  
  ) ss.  
COUNTY OF WASCO        )

This instrument was acknowledged before me on \_\_\_\_\_, 2013, by  
\_\_\_\_\_, \_\_\_\_\_, as its duly authorized representative.

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

**EXHIBIT J**  
**FORM OF PERMIT OF ENTRY**

The Columbia Gateway Urban Renewal Agency, hereafter called the "Agency", as owner of the real property described in Section 1 below, hereby authorizes and grants a revocable permit to \_\_\_\_\_, herein referred to as "Developer", to enter the Subject Property to conduct pre-construction environmental, seismic and geotechnical assessment work ("Permitted Activities") during the Permit Period defined herein and the period during which Permitted Activities are being conducted by Developer and its agents (the "Permit Period"). Developer may engage contractors or consultants to perform the work ("Authorized Parties"), but Developer is the responsible party under this permit.

1. Developer shall be allowed to enter that certain real property described as \_\_\_\_\_ ("Subject Property") during the Permit Period for the purposes of completing the Permitted Activities.
2. Developer will, if applicable, at its sole cost and expense, promptly remove any equipment, products or facilities that it installed or caused to be installed on the Subject Property in conducting the Permitted Activities.
3. Developer will promptly repair any damage to the Subject Property that might have been caused in conducting the Permitted Activities, and promptly restore the Subject Property to substantially the same condition it was in prior to the Authorized Parties' initial entry upon the Subject Property to conduct Permitted Activities, except for reasonable wear and tear and except as the parties may otherwise agree. The repair of damage and restoration of the Subject Property will include the required clean-up of any release of hazardous substances (as defined by applicable law) to the extent resulting from the Permitted Activities, provided however, that if Developer does not Close the purchase of the Subject Property, Developer will not be liable for the clean-up of hazardous substances existing on the Subject Property prior to commencement of the Permitted Activities, if any, except to the extent of the degradation of the environmental condition of the Subject Property resulting from the Permitted Activities. In lieu of restoration, Agency in its discretion may require Developer to pay for any damage, including a degradation of the environmental condition of the Subject Property resulting from the Permitted Activities. Agency may give Developer notice to remove the equipment, products or facilities that Developer does not timely remove in accordance with this Section 3, and if Developer does not remove the equipment, products or facilities within 15 days after Developer receives Agency's notice, Agency may remove the same. Developer will reimburse Agency upon demand for the costs Agency incurs for such removal.
4. The Developer's activities upon the Subject Property shall be without expense to the Agency. Should the Agency incur costs as a result of the Developer's use and occupancy of the Subject Property, the Developer agrees to reimburse the Agency promptly upon the presentation to the Developer of a billing and documentation of such expense.

5. Developer shall indemnify, hold harmless and at the Agency's request, defend the Agency and its officials, agents, and employees from and against any and all liability or alleged liability, all suits, legal proceedings, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or in connection with or incidental to any negligent act or performance, or error or omission of Developer or anyone acting on behalf of Developer in connection with or incidental to this Permit; provided however, that nothing herein shall be construed to require indemnification of the Agency for liability attributable to the Agency's sole negligence.
6. Developer shall not cause or permit to occur the generation, release, manufacture, handling, processing, storage, disposal or improper use of any Hazardous Substance, pollutant, or contaminant, on, under, or about the premises. Hazardous Substances are substances regulated under any environmental law or regulation now or hereafter enacted by any governmental authority.
7. In conducting the Permitted Activities, Developer will: (a) provide Agency with reasonable advance notice of when it intends to perform invasive Permitted Activities and permit Agency, at Agency's sole discretion, to have a representative present during all invasive Permitted Activities; (b) take reasonable actions and implement reasonable protections necessary to ensure that the Permitted Activities and the equipment, materials, and substances generated, used or brought onto the Property in connection with the Permitted Activities, pose no unreasonable threat to the safety or health of persons or the environment, and cause no damage to the Property or other Property of Agency or other persons; and (c) not permit the Permitted Activities or any other activities undertaken by Developer or on Developer's behalf to result in any liens, judgments or other encumbrances being filed or recorded against the Property, and Developer will, at its sole cost and expense, immediately discharge any such liens, judgments or encumbrances that are so filed or recorded.
8. Developer agrees to obtain, maintain, and keep during the term of this Permit comprehensive general liability and automobile liability insurance written on an "occurrence" basis. Such insurance shall be in the amount of not less than \$2,000,000 combined single limit for liability insuring bodily and/or personal injury, including death and disease, and property damages. Insurance shall be without prejudice to coverage otherwise existing and shall include coverage for auto, operations, products, completed operations, and negligent acts. Developer agrees, prior to commencement of the performance hereunder, to provide a Certificate of Proof of Insurance naming the Agency and its respective officers, agents, and employees as additional insureds. The certificate shall provide that coverage afforded will not be canceled without prior written notice to the Agency. Developer's contractor(s) or consultant(s) may provide the required insurance so long as the Agency have approved said contractors and received the appropriate certificate.
9. Developer shall, in the use of the Subject Property, observe all rules, regulations, and laws now in effect by any municipality, county, or state authority having jurisdiction over the Subject Property, as they relate to the use of the Subject Property for the

purposes above described. Developer further agrees to indemnify the Agency for any damages caused by the violation thereof.

10. Agency shall not be in any way responsible or liable for damage or theft to any materials or equipment brought onto the Subject Property by Developer, or its contractors(s) or consultant(s) pursuant to this permit. Developer will, if applicable, at its sole cost and expense, remove all equipment or facilities that are caused to be brought upon the Subject Property in conducting the Permitted Activities.
11. This permit of entry will be effective from \_\_\_\_, 20\_\_ through \_\_\_\_, 20\_\_ (which is defined as the "Permit Period") and may be canceled by the Agency upon ten (10) days' written notice to Developer. Ten (10) day's notice of cancellation is acknowledged by the parties to be reasonable, and adequate to fully mitigate any damages which might otherwise accrue due to early termination.
12. This permit shall be personal to Developer, and not transferable or assignable.
13. All notices or other communications required by or relating to this Permit or will be in writing, and sent by first class U.S. Mail, personal delivery, by overnight delivery, or by e-mail with an electronic confirmation of receipt. Notice shall be effective upon receipt by the addressee, or, in the case of delivery by U.S. mail, three days after deposit in the mail.

For Agency:

Nolan Young, City Manager  
City of The Dalles  
313 Court Street  
The Dalles, OR 97057  
E-Mail: [nyoung@ci.the-dalles.or.us](mailto:nyoung@ci.the-dalles.or.us)

For Developer:

Michael Leash  
Rapoza Development Group, LLC  
306 Court The Dalles, OR 97058

14. The Developer will cooperate with the Agency to keep the Subject Property secure from the unauthorized entry of other persons during the Permit Period. Agency may provide keys or other access devices to the Developer and Developer agrees to securely keep such keys or access devices so that no persons other than those authorized by Agency or Developer may use the keys or devices to enter the Subject Property. Developer assumes all liability related to injury to invitees, licensees, or trespassers resulting from Developer's negligence or any action contrary to this Permit.

15. The Developer shall provide to the Agency full copies of reports or other information developed as a result of the work performed under this permit. Developer shall make the reports or information available to the Agency within ten working days of the completion of the work.

**TERMS AND CONDITIONS OF THIS PERMIT ARE HEREBY ACCEPTED:**

**DEVELOPER**

**COLUMBIA GATEWAY URBAN  
RENEWAL AGENCY**

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

Date:

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

Date: