

AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF

THE MORRISON BRIDGEHEAD PROPERTY

BETWEEN

MULTNOMAH COUNTY

AND

MELVIN MARK DEVELOPMENT COMPANY

DATED

DISPOSITION AND DEVELOPMENT AGREEMENT

This DISPOSITION AND DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered this ___ day of _____, 2012 (the “Effective Date”) by and between Multnomah County, a political subdivision of the State of Oregon (“County”) and Melvin Mark Development Company, an Oregon Corporation (“Developer”). County and Developer may be referred to jointly in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

- A. County acquired the Morrison Bridgehead Properties, Blocks 1, 2, 16, and 39, CITY OF PORTLAND, through a series of acquisitions for staging and construction of the Morrison Bridge and access ramps. The portion of the property not devoted to bridge use (further described below as the “Property”) has subsequently been operated as a surface parking lot and a Multnomah County Motor Pool facility;
- B. By Resolution 04-167, adopted on November 18, 2004, County’s Board of Commissioners declared the Property surplus;
- C. By Resolution 07-174, adopted on November 1, 2007, County’s Board of Commissioners approved an Intergovernmental Agreement with the Portland Development Commission (“PDC”) which provided for County and PDC to cooperate in the sale and private redevelopment of the Property. The agreement further provided for a solicitation and selection processes for selection of a developer and for negotiation of a Disposition and Development Agreement (“DDA”);
- D. On November 10, 2010 County and PDC issued a Request for Proposals for disposition and development of the Property. After review of the submissions, County’s Board of Commissioners authorized staff to enter into exclusive negotiations with Developer for an agreement for sale and development of the Property. Developer’s intended use of Blocks 1, 2, and 39 (the “Project”) is the development of the James Beard Public Market with the Historic Portland Public Market Foundation (the “Market Foundation”);
- E. By Resolution 2011-059, adopted May 26, 2011, County authorized exclusive negotiations with the Melvin Mark Development Company for a Disposition and Development Agreement for the Property;
- F. The Parties have completed their negotiations and now desire to enter into this Agreement setting forth the terms and conditions under which County will convey the Property to Developer for redevelopment;
- G. County finds that the fulfillment of this Agreement, and the intentions set forth herein, are in the vital and best interest of County and the health, safety, and welfare of its residents.

AGREEMENT

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

1. **DEFINED TERMS**

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

2. **GENERAL TERMS OF CONVEYANCE**

2.1 **Agreement for Disposition and Development.** County agrees to sell and convey to Developer, and Developer agrees to purchase from County and develop the Property upon the terms and subject to the conditions set forth in this Agreement.

2.2 **Description of the Property.** The Property which is subject to this Agreement consists of the property described in Exhibit B (the "Land"), together with (i) all rights, privileges and easements appurtenant to the Land owned by County, including, without limitation, all minerals, oil, gas, and other hydrocarbon substances on and under the Land, as well as development rights, air rights, water rights related to the Land, and any other easements, rights-of-way, or appurtenances used in connection with the beneficial use and enjoyment of the Land; and (ii) all improvements and fixtures located on the Land, including, without limitation all buildings and structures presently located on the Land (except for the Motor Pool Facilities, as described in Section 6.1), all apparatus, equipment and appliances used in connection with the operation or occupancy of the improvements and fixtures (which Land, together with the elements described above in (i) and (ii), is collectively referred to herein as the "Property"), subject however to the easements and other rights reserved by the County for the purpose of operating and maintaining the bridge improvements located thereon as specified in Exhibit B (the "County Retained Rights").

2.3 **Purchase Price.** The Purchase Price for the Property is **TEN MILLION FOUR HUNDRED AND THIRTY THOUSAND DOLLARS** (\$10,430,000), payable in cash at the Closing as defined in Section 5.2.1.

2.4 **Zoning and Entitlements.** The parties agree that between the Effective Date and Closing there may be changes to zoning or development entitlements which may increase the value of the Property. The parties agree that the Purchase Price takes into consideration the possible increase in value that may result from such changes.

2.5 **Escrow Deposit.**

2.5.1 Within ten (10) days after the Effective Date, Developer shall deposit with the Escrow Agent earnest money in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000) in the form of a promissory note (the "Earnest Money Note"). Within five (5) business days after Developer gives written notice to County that the conditions in Section 2.7.3 to Developer's obligation to purchase the Property are waived or satisfied by Developer, Developer shall redeem the Earnest Money Note for cash and deliver it, in escrow, to the Title Company. Such cash, and all interest earned thereon, is referred to as the "Escrow Deposit"

in this Agreement. The Escrow Deposit shall apply to the Purchase Price at Closing.

2.5.2 The Escrow Deposit shall be non-refundable to Developer, except as provided below. The Escrow Agent will invest the Escrow Deposit in a federally insured, interest-bearing account. The accrued interest will be treated as part of the Escrow Deposit and shall be disbursed pursuant to the terms of this Agreement and the Escrow Instructions.

2.6 Title Review.

2.6.1 Within ten (10) business days after the Effective Date, County will deliver to Developer a preliminary title report on the Property and legible copies of all exception documents (the "Title Report"). County will also obtain a current ALTA/ACSM survey of the Property meeting the current minimum standard detail requirements and Table A specifications issued by the American Land Title Association and the American Congress on Surveying and Mapping (the "Survey"). The Survey will show in detail the County Retained Rights including any restrictions on air rights. The Survey will be completed and delivered to Developer not more than ninety (90) days after the Effective Date. Developer will have twenty (20) days after receiving the Title Report, the Survey and the documents evidencing the County Retained Rights to notify County in writing if Developer objects to any item in the Title Report or on the Survey (the "Title Review Period"). Those items to which Developer does not object are "Permitted Exceptions". If Developer objects to any item, then County shall have twenty (20) days after receiving Developer's written objection to notify Developer whether it agrees or does not agree to remove the objected to exceptions to title prior to Closing. If County does not respond to Developer's objections within the twenty (20) day time period or if County refuses to remove any such objected to exceptions, Developer shall have twenty (20) days to terminate this Agreement by written notice to County. If Developer terminates this Agreement under this section, no remedies shall accrue to either Party and all rights and obligations of the Parties under this Agreement shall terminate other than the obligation to cooperate in preparing, executing and recording such documents as may be necessary or desirable to reflect the termination of this Agreement in the real property records of Multnomah County and the Earnest Money Note shall be returned to Developer. If this Agreement is not so terminated, the Permitted Exceptions shall also include those exceptions, if any, that Developer originally objected to and that County refused to remove or to which County failed to respond.

2.6.2 Developer may, at its expense, obtain an update to the Title Report or the Survey at any time prior to Closing. Developer shall promptly give to County a copy of any updated Title Report or Survey. Within twenty (20) days after receiving an updated Title Report, Developer shall give County notice, in writing, of any objections to the exceptions (that are not Permitted Exceptions) to title that appear on the updated Title Report. Within twenty (20) days after Developer's written notice to County described in the preceding sentence, County shall notify Developer in writing whether it agrees or does not agree to remove the objected to exceptions to title prior to Closing. If County does not give its response to Developer's objections within the twenty (20) day time period or if County

refuses to remove any such objected to exceptions, Developer shall have twenty (20) days to terminate this Agreement by written notice to County, in which event the Earnest Money Note and the Escrow Deposit, if any, shall be returned to Developer. If this Agreement is not so terminated, the exceptions that Developer objected to and that County refused to remove or failed to respond to will be included as Final Permitted Exceptions.

2.6.3 County agrees that it shall not cause or permit any encumbrance, lien or other title exception to be recorded against the Property after the Effective Date, without Developer's prior, written consent, which shall not be unreasonably withheld, conditioned or delayed.

2.7 Access, Inspection, and Due Diligence Materials.

2.7.1 Access and Inspection. County agrees that Developer and its authorized agents or representatives shall be entitled to enter upon the Property to make such investigations, studies and tests as Developer deems necessary or advisable, as more specifically set forth in the form of Permit of Entry attached hereto as Exhibit C (the "Permit of Entry").

2.7.2 Due Diligence Materials. County agrees to provide Developer within ten (10) days after the Effective Date copies of the documents listed in Exhibit D (collectively, the "Due Diligence Materials").

2.7.3 Feasibility Period. Developer's obligation to purchase the Property is conditioned on Developer's approval of the condition of the Property and the condition of title to the Property as provided in Section 2.6.1. Developer shall notify County no later than 90 days after Developer's receipt of the Survey, the documents evidencing the County Retained Rights, and the Title Report (the "Feasibility Period") of the results of its due diligence and whether all such conditions are waived or satisfied by Developer. In the event that Developer does not waive or satisfy all such conditions on or before the expiration of the Feasibility Period, Developer may elect, by written notice to County, on or before 5:00 p.m. on the expiration of the Feasibility Period, not to proceed with the transaction contemplated herein, in which event this Agreement shall be null and void without recourse to either Party hereto and the Earnest Money Note shall be returned to Developer.

3. REPRESENTATIONS AND WARRANTIES

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

3.1.1 County has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein; and all requisite action has been taken by County in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein.

- 3.1.2** To County's knowledge, except as has been disclosed to Developer in the Environmental Due Diligence Reports listed on Exhibit E, County has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, Released or produced Hazardous Substances on the Property except in compliance with Environmental Laws currently in effect, and County has not received notice of the Release of any Hazardous Substances on the Property.
- 3.1.3** County is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.
- 3.1.4** To County's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property, or County's ability to perform its obligations under this Agreement.
- 3.1.5** To County's knowledge, County has not received any notice stating that the Property is in violation of any applicable laws, rules, regulations, ordinances or other governmental requirements.
- 3.1.6** The term "To County's knowledge" as used in this Section 3.1 means the actual current knowledge of the County Attorney, the Property Manager for the Property, the Facilities Compliance Section Lead, and the Bridge Services Manager for the County without any duty of inquiry or investigation.
- 3.1.7** There are no agreements, leases, contracts or other documents affecting the Property which will bind the Property or Developer after Closing except for those shown on the Title Report.
- 3.1.8** This Agreement and all documents required to be executed by County are and shall be valid, legally binding obligations of and enforceable against County in accordance with their terms.
- 3.1.9** Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which County is a party.
- 3.1.10** No representation, warranty or statement of County in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.
- 3.1.11** County enters into this Agreement without reliance on verbal representations by Developer, its employees, agents or consultants, regarding any aspect of the Property, the Project, its feasibility, financing, or compliance with any governmental regulation.

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

3.2 Developer Representations and Warranties. Developer's representations and warranties under this Agreement are limited to those set forth in this Section 3.2. Developer hereby warrants and represents to County as of the Effective Date and as of the Closing Date the following:

3.2.1 Developer is a corporation in good standing in the State of Oregon.

3.2.2 Developer has full power and authority to enter into and perform this Agreement in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Developer in connection with entering into this Agreement, the instruments referred to herein, and the consummation of the transactions contemplated herein.

3.2.3 This Agreement and all documents required to be executed by Developer are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms.

3.2.4 Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Developer is a party.

3.2.5 No representation, warranty or statement of Developer in this Agreement or any of the exhibits attached hereto contains any untrue statement of a material fact or omits a material fact necessary to make the representation, warranty or statement not misleading.

3.2.6 Developer enters into this Agreement without reliance on verbal representations by County, its employees, agents or consultants, regarding any aspect of the Property, the Project, its feasibility, financing, or compliance with any governmental regulation.

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

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

4. INTENTIONALLY DELETED

5. CLOSING

5.1 Manner of Closing.

- 5.1.1** The Closing of the purchase and sale of the Property will occur in an escrow to be administered by the Escrow Agent.
- 5.1.2** The Parties agree to provide the Escrow Agent with escrow instructions (the “Escrow Instructions”) consistent with the terms of this Agreement.
- 5.1.3** On the Closing Date, the Escrow Agent shall deliver or cause to be delivered the sums and documents pursuant to the Escrow Instructions. In the event that the Escrow Agent cannot, or refuses to, handle this transaction, the Parties shall appoint an escrow company mutually satisfactory to the Parties, which is licensed in the State of Oregon.

5.2 Timing of Closing.

- 5.2.1** The Closing shall occur on or before _____, 2015 [**INSERT A DATE THAT IS 37 MONTHS AFTER THE EFFECTIVE DATE**] (the “Closing Date”).
- 5.2.2** The Closing Date may not be extended without the consent of both Parties, unless otherwise provided in this Agreement. If the Parties agree to extend the date for Closing six months or more beyond the date set forth above in paragraph 5.2.1, then, absent contrary agreement at the time of agreement, the Purchase Price shall be increased by the percentage increase in the Consumer Price Index between the scheduled Closing Date and the adjusted Closing Date. In no event shall the Purchase Price be lower than the amount set forth above in Section 2.3.

5.3 Payment of Purchase Price. Subject to satisfaction of the conditions precedent to Closing set forth above, and subject to a credit for the Escrow Deposit and the adjustments specified herein, at the Closing, Developer shall pay the Purchase Price to County in the manner set forth herein. Developer shall pay the Purchase Price in immediately available funds.

5.4 Conveyance by Deed. Subject to satisfaction of the Conditions Precedent to Closing set forth above and upon Developer’s payment to County of the Purchase Price at the Closing, County will convey the Property to Developer by a statutory special warranty deed, substantially in the form of Exhibit F (“Deed”).

5.5 Documents to Be Deposited Into Escrow by County. On or before the Closing Date, County shall deposit into Escrow all of the following:

- 5.5.1** A duly executed and acknowledged Deed.
- 5.5.2** An original certificate of non-foreign person duly executed by County and notarized.
- 5.5.3** Such documents as the Escrow Agent may require to establish the authority of County to complete the sale of the Property as contemplated by this Agreement.

5.5.4 An original assignment of all permits, plans, approvals, development agreements, warranties and other intangible rights and intangible property related to the Property, executed and acknowledged by County.

5.6 Documents and Sums to Be Deposited Into Escrow by Developer. On or before the Closing Date, Developer shall deposit into Escrow such funds (by wire transfer) as are necessary to complete payment of the Purchase Price and to pay Developer's portion of the Closing costs. Developer shall also deposit into Escrow such documents as the Escrow Agent may require to complete the sale of the Property as contemplated by this Agreement.

5.7 Prorations and Costs.

5.7.1 Closing Costs. The costs for recording the Deed and any other documents required by Developer to be recorded will be paid by Developer. Each Party shall pay one-half (1/2) of any escrow fees charged by Escrow Agent. All other Closing costs, if any, shall be allocated in accordance with the customary practice in Multnomah County.

5.7.2 Title Insurance. County shall pay the costs of the ALTA extended coverage Owner's Policy of Title Insurance. Developer, at its option and its expense, may elect to obtain endorsements to such policy of title insurance and County agrees to execute any affidavits or other documents reasonably required by the Title Company to deliver extended coverage to Developer and to enable Developer to obtain such endorsements.

5.7.3 Real Property Taxes. The Property is exempt from all property taxes and will continue to be exempt through the Closing Date. Therefore, there shall be no proration of property taxes, nor shall Developer owe any amounts for property taxes at Closing.

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

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

6. CONDITION OF PROPERTY

6.1 Site Preparation. County shall, at its own cost (a) remove the fuel tanks, the trailer, fuel pumps, and related equipment and facilities (collectively, the “Motor Pool Facilities”) from the Property within ninety (90) days after the Closing Date; (b) decommission the underground storage tank (“UST”) system and perform any required remediation in compliance with Oregon Department of Environmental Quality (“DEQ”) standards, sufficient to (c) obtain a No Further Action letter for Block 16 (and any other property affected by a Release related to the Motor Pool Facilities or the UST) from DEQ, premised on either an “urban residential” standard, as defined in OAR 340.122-0010 – 0015, or such lesser standard as conforms with Developer’s actual, planned development of the Property, as anticipated by Developer as of the Closing date (collectively, “County’s Tasks”).

6.2 AS IS Sale. Developer, before Closing, shall examine the Property to its own satisfaction and form its own opinion as to the condition (including environmental condition) and value thereof. Except as provided in this Agreement, Developer has not relied on any statements or representations from County or any person acting on behalf of County concerning any of the following: the size or area of the Property; the location of corners or boundaries of the Property; the location of County improvements including bridge ramp improvements, the condition of the Property, including but not limited to, environmental condition above or below the surface of the Property (including, without limitation, releases or threatened releases of hazardous substances) or compliance with environmental laws and other governmental requirements; the availability of services to the Property; or the ability of Developer to use the Property or any portion thereof for any intended purpose. Developer is acquiring the Property, in the condition existing at the time of Closing, AS IS, with all defects, if any. However, County will not be released from its obligations to perform County’s Tasks, as defined in Section 6.1, and to comply with County’s Environmental Commitment, as defined in Section 8.2 of this Agreement. Except as otherwise provided in the previous sentence, Developer hereby releases County from any further claim or liability related to any Environmental Conditions on the Property existing at Closing.

7. DEVELOPMENT

7.1 Financing. Developer will be responsible for obtaining from third parties all funds and financing necessary to acquire the Property. County has no obligation to provide any financing for the Project.

7.2 Safety Matters and Indemnification.

7.2.1 Safety. Developer shall comply with all safety laws and take all safety measures necessary to protect its agents, contractors, subcontractors, licensees and invitees, their personal property, and improvements of each, from injury or damage caused by or resulting from the performance of its construction. Developer is not responsible for County’s employees, agents, contractors, licensees or invitees, their personal property or their improvements, except that Developer’s construction of the Project shall not damage or undermine the Morrison Bridge ramps, supports, roadway, sidewalks, curbs, gutters, downspouts, railings, street lights, and other improvements accessory to the bridge ramps on or adjacent to the Property. County shall comply with all safety laws and take all safety

measures necessary to protect its agents, contractors, subcontractors, licensees and invitees, their personal property, and improvements of each, from injury or damage caused by or resulting from the performance of its activities on the Property.

7.2.2 Indemnity from Liability Claims. Developer shall indemnify, defend (at County's request) and hold harmless County, and its successors and assigns, from and against all claims, costs, expenses (including attorney fees), losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the property of any person (a) as occurs in the process of the construction work or the performance of Developer's other obligations under this DDA, except to the extent caused by County or its employees, agents, contractors, subcontractors, licensees, or invitees, or (b) arising from Environmental Conditions on the Property after Closing. Subject to the conditions and limitations of Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, as applicable to local public bodies under ORS 30.272 and public bodies under ORS 30.273, County shall indemnify, defend (at Developer's request) and hold harmless Developer, and its successors and assigns, from and against all claims, costs, expenses (including attorney fees), losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the property of any person as occurs in the process of the performance of County's obligations under this DDA, except to the extent caused by Developer or its employees, agents, contractors, subcontractors, licensees, or invitees. The indemnification obligations set forth in this Section shall survive the termination of this Agreement.

7.2.3 Indemnity from Liens. Developer shall indemnify, defend (at County's request) and hold harmless County, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics', materialmen's, laborers' or other construction or statutory liens filed against any portion of the Property or the Project, for services performed by or at the request of Developer or Developer's contractors or agents, or arising from or related to Developer's activities on the Property or the Project. Subject to the conditions and limitations of Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, as applicable to local public bodies under ORS 30.272 and public bodies under ORS 30.273, County shall indemnify, defend (at Developer's request) and hold harmless Developer, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with any mechanics', materialmen's, laborers' or other construction or statutory liens filed against any portion of the Property or the Project, for services performed by or at the request of County or County's contractors or agents, or arising from or related to County's activities on the Property or the Project. The indemnification obligations set forth in this Section shall survive the termination of this Agreement.

7.3 Liens. If any statutory lien shall be filed against any portion of the Project by reason of labor, services or materials supplied to or at the request of Developer or Developer's

contractors or agents or in connection with any Developer activity on the Property, Developer shall, within thirty (30) days after the filing thereof, take whatever action is necessary and proper (including posting a bond or a cash deposit and taking such further action as may be required by the Oregon construction lien law), so that the Property shall thereafter be entirely free of the lien. Alternatively, Developer may elect to leave the lien of record and to contest its validity, amount or applicability by appropriate legal proceedings, but only if Developer shall, within the 30-day period following the filing of the lien, furnish an indemnity against such lien in an amount and form satisfactory to induce the title insurance company which insured title to the Property to insure over such lien or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such lien; provided, further, that in such event, (i) Developer shall indemnify and hold harmless County from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such lien, and (ii) in the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Developer, Developer shall within fifteen (15) days thereafter cause the lien to be discharged of record.

7.4 Project Reporting. During the period of time commencing on the Effective Date and continuing until the earlier of (a) the Closing Date, or (b) the termination of this Agreement, Developer shall ensure that the Market Foundation provides regular reports to County (on at least a semi-annual basis), on the status of the Market Foundation's work on the Project including a report on its progress on fundraising and progress on development of the Project and the Sky Bridge.

8. ENVIRONMENTAL CONDITION OF THE PROPERTY AND PARTIES' RESPONSIBILITIES

8.1 Environmental Due Diligence Reports. Developer acknowledges receipt of copies of the Environmental Due Diligence Reports, as set forth in Exhibit E. The Environmental Due Diligence Reports accurately represent, to County's knowledge (as defined in Section 3.1.6 hereof), the historical uses and current Environmental Conditions on the Property.

8.2 Environmental Cleanup. The parties acknowledge that Environmental Conditions may exist on the Property as described in the Environmental Due Diligence Reports. In addition to its performance of the County Tasks as provided in Section 6.1, County shall, effective with Closing, authorize the Escrow Agent to retain Three Hundred Fifty Thousand Dollars (\$350,000) from the Purchase Price (the "Escrow Holdback"), to contribute toward the premium of an environmental liability insurance policy on the Property, which shall be purchased by Developer using the Escrow Holdback effective with Closing, insuring against third party personal injury, third party property damage, remediation costs, and the incremental costs of development and construction caused by the Environmental Conditions (the "Environmental Policy"). The Environmental Policy shall designate Developer as the named insured and County as an additional named insured. County shall be entitled to review and approve the terms and conditions of the Environmental Policy prior to its purchase (which approval shall not be unreasonably withheld or delayed), and, if the Environmental Policy can be purchased and maintained on commercially reasonable terms, with commercially reasonable deductible amounts as reasonably determined by Developer, Developer agrees to keep the Environmental Policy in full force and effect until development of the Property is complete. (For purposes of

this Section 8.2, development of the Property shall be deemed complete when excavation of the Property is completed and construction of the foundations, utilities and work in the public right of way related to the development of the Property is completed.) Any portion of the Escrow Holdback not used to pay the Environmental Policy premium, may be used, at Developer's election, to pay any uninsured retention required by the Environmental Policy, to pay costs of remediating any Environmental Conditions discovered on the Property, or to pay the incremental costs of development of and construction on the Property attributable to the Environmental Conditions on the Property, such as the costs to dispose of contaminated soil or manage and pump contaminated ground water (collectively, "County's Environmental Commitment"). The Escrow Agent shall be further instructed that, if any part of the Escrow Holdback remains unused by Developer for the purposes described above after development of the Property is complete, such unused part of the Escrow Holdback shall be reimbursed to County. Subject to the conditions and limitations of Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, as applicable to local public bodies under ORS 30.272 and public bodies under ORS 30.273, County shall defend (at Developer's request), indemnify and hold harmless Developer, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by Developer, its successors or assigns, or asserted against Developer, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with County's failure to perform County's Tasks, as provided in Section 6.1, or satisfy County's Environmental Commitment described in this Section 8.2.

8.3 Indemnification. Except for County's Tasks and County's Environmental Commitment, Developer shall be responsible for compliance with all Environmental Laws with respect to Releases on the Property which occur or are discovered after Closing (the "Post-Closing Environmental Issues"). Developer shall defend (at County's request), indemnify and hold harmless County, its successors and assigns, from and against all claims, costs, expenses, losses, damages, and liabilities, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed on or incurred by County, its successors or assigns, or asserted against County, its successors or assigns, by any other person or entity, including, without limitation, a governmental entity, arising out of or in connection with any violation of Environmental Laws related to the Post-Closing Environmental Issues by Developer, Developer's failure to comply with a restriction, limitation, condition or obligation imposed by a governmental entity, or Developer's failure to complete any environmental remediation or abatement of Releases on the Property required of Developer by this Section 8.3.

8.4 Contribution. The foregoing indemnities do not limit any rights of contribution that the Parties may have against others under applicable law or agreement. The indemnities are intended only as an allocation of responsibility between the Parties.

9. SKY BRIDGE; COOPERATION

County shall cooperate in all reasonable respects with Developer's efforts (but shall not be obligated to incur any application costs or expend any funds for Project development) to obtain all land use approvals, building permits, easements, and other designations of the Property as are required by Developer for the Project (collectively, "Approvals"). Such cooperation shall include, by way of example, prompt execution of applications and similar documents. In the event of any delay by County in responding

properly within five business days to a request by Developer pursuant to this Section 9, the period of any such delay shall be added to each of the dates for performance by Developer pursuant to this Agreement. County shall also use diligent efforts to assist Developer in obtaining all Approvals for the sky bridge connecting Block 16 with the James Beard Public Market (the “Sky Bridge”) and in locating funding sources for construction and maintenance of the Sky Bridge and the pedestrian and bicycle pathways on the Sky Bridge.

10. SUSTAINABILITY AND DIVERSITY GOALS

10.1 Business and Workforce Equity. Developer will strive for a project goal of 20% M/W/ESB by dollar volume on contracting work related to the Public Market. Some of the methods that may be used to achieve that goal include:

10.1.1 Contractor Notification/Outreach

- Advertise in the *Daily Journal of Commerce*, local minority newspapers, other trade publications and at plan centers.
- Announce subcontracting opportunities to minority, women and emerging small business organizations such as the Oregon Association of Minority Entrepreneurs (OAME) and National Association of Minority Contractors (NAMCO).
- Email/mail/fax a bid solicitation letter including information on subcontracting opportunities to at least five M/W/ESB subcontractors (if available) in each trade to be subcontracted.
- Contact non-M/W/ESB firms for the ability to joint venture with an M/W/ESB firm.
- Encourage first-tier subcontractors to actively solicit and include second-tier subcontractors and suppliers. During bidding, first-tier subcontractors should identify minority subcontractors and suppliers and the value included in their bid.

10.1.2 Plan Availability

- Make plans available via a web-based plan room for online viewing by potential subcontractors.

10.1.3 Technical Assistance

- Designate a direct contact person to facilitate communication with all M/W/ESB subcontractors on the project. Provide technical and generic pre-bid support for individual subcontractor needs.
- Clarify bonding and cash flow/payment options. Refer subcontractors to appropriate bonding company, if needed.

10.1.4 Scope Definition

- Divide work to allow more than one trade subcontractor to work on the project. Managing the sizing of bid packages can attract more minority subcontractors.

10.1.5 Follow-up/Post Selection Requirements

- Provide scope review meeting with all apparent low-bid M/W/ESB subcontractors.

10.2 EEO Certification. Developer certifies that, as an Equal Opportunity Employer, Developer does not discriminate against employees or applicants based on race, color, religion, sex, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, or source of income; solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics; coerce the political activity of any person; deceive or willfully obstruct anyone from competing for employment; influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person; give improper preference or advantage to anyone so as to improve or injure the employment prospects of that person or any other employee or applicant.

10.3 LEED Certification. Developer intends either to obtain LEED Gold certification for the Project from the United States Green Building Council or to achieve sustainability goals consistent with a LEED Gold designation. The Market Foundation intends to design the operations of the James Beard Public Market with the goals of reducing fossil fuel energy use, reducing waste, and promoting pedestrian-oriented transit.

11. BLOCK 16

If Developer acquires the Property, Developer currently intends to develop a high-rise structure on Block 16. Developer has not yet decided whether to build the tower, what the use of the tower will be or when it will be constructed. Those decisions depend on market forces, available tenants, and other matters outside of Developer’s control. This Agreement does not impose any obligation on Developer to develop Block 16 or to build any particular improvements. Article 10 does not apply to Block 16. As requested by County, Developer has attached to this Agreement, as Exhibit G, Developer’s current design concept for development of Block 16.

12. ASSIGNMENT AND TRANSFER PROVISIONS

12.1 Restrictions. Developer shall not transfer or assign its rights in this Agreement prior to the Closing Date without County’s prior written consent which shall not be unreasonably withheld, conditioned, or delayed.

13. CONTINUING COVENANTS SURVIVING TERMINATION

13.1 Surviving Sections. The following Sections of this Agreement shall survive and remain in effect after Closing: Sections 3.1, 3.2, all of Article 6, all of Article 7, 8.2, 8.3, 8.4, and all of Articles 9 and 10.

14. [INTENTIONALLY OMITTED]

15. DEFAULT AND REMEDIES

15.1 Default and Cure.

15.1.1 Default by Developer.

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

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

15.2 County's Pre-Conveyance Remedies. If a Developer default (as described in Section 15.1.1) occurs before the Property is conveyed to Developer, County may terminate this Agreement by written notice to Developer and retain the Escrow Deposit. If County terminates this Agreement as provided in this Section 15.2, then Developer shall return to County the documents delivered to Developer as listed on Exhibit D.

15.3 County's Post-Conveyance Remedies. If a Developer default (as described in Section 15.1.1) occurs after the Property is conveyed to Developer, County may specifically enforce the obligations of Developer under this Agreement or pursue any other rights or remedies available at law or in equity.

15.4 Developer's Pre-Conveyance Remedies. If a County default (as described in Section 15.1.2) occurs before County conveys the Property to Developer, Developer may, at its option: (i) terminate this Agreement by written notice to County without waiving any cause of action Developer may have against County, or (ii) specifically enforce the obligations of County under this Agreement, or (iii) pursue any other rights or remedies available at law or in equity.

15.5 Developer's Post-Conveyance Remedies. If a County default (as described in Section 15.1.2) occurs after County conveys the Property to Developer, Developer may specifically enforce the obligations of County under this Agreement or pursue any other rights or remedies available at law or in equity.

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

15.7 Unavoidable Delay.

15.7.1 Neither a Party nor a Party's successor in interest shall be considered in breach of or in default with respect to any obligation under this Agreement if the delay in performance of such obligation ("Unavoidable Delay") is a result of natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemic, quarantine, blockage, embargo, labor dispute, strike, malicious mischief, explosion, or other similar causes, other than financial, outside of the reasonable control of the Party.

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

15.7.3 Unavoidable Delay will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delay. In no event will the time or times for performance of an obligation be extended for more than 180 days in the aggregate.

16. MISCELLANEOUS PROVISIONS

16.1 County Project Manager. For the purposes of managing the implementation of the provisions of this Agreement on behalf of County, County shall designate a Project Manager. At the Effective Date, the Project Manager is Michael Sublett.

16.2 Discrimination. Developer, for itself and its successor and assigns, agrees that, during the construction of the Project, Developer will not discriminate against any employee or applicant for employment or any contractor because of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income.

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

received if personally delivered, or (c) if sent by e-mail or other form of electronic transmission, with receipt of confirmation that such transmission has been received, and:

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

Melvin Mark Development Company
Attn: Daniel J. Petrusich
Melvin Mark Development Company
111 SW Columbia, Suite 1380
Portland, OR 97201-6873
DPetrusi@melvinmark.com

with a copy to:

Melvin Mark Development Company
Attn: Craig Lewis
111 SW Columbia, Suite 1380
Portland, OR 97201-6873
clewis@melvinmark.com

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

Multnomah County
Attn: Michael Sublett
Multnomah County Facilities & Property Management
Robt. W. Blanchard Education Service Center
401 North Dixon Street
Portland, OR 97227
michael.a.sublett@multco.us

with a copy to:

Multnomah County Attorney
501 SE Hawthorne, Suite 500
Portland, OR 97214

ken.elliott@multco.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.

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

16.4 Merger. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Property from County to Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

- 16.5 Headings.** Titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- 16.6 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
- 16.7 Waivers.** No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by County 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.
- 16.8 Governing Law, Venue, Consent to Jurisdiction.** This Agreement shall be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the in personam jurisdiction of said courts.
- 16.9 Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday.
- 16.10 Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.
- 16.11 Legal Purpose.** Developer agrees to use the Project solely for lawful purposes.
- 16.12 Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.
- 16.13 Entire Agreement.** This Agreement and its exhibits, which are incorporated herein and made a part hereof, are the entire agreement between the Parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Agreement.
- 16.14 Amendments and Modifications.** Any modifications to this Agreement must be made in writing and executed by all Parties, with the approval of the County Board of Commissioners, if required. Notwithstanding this general requirement, the County Chair may approve minor modifications to this Agreement without Board of Commissioners approval. Any modifications to this Agreement made without the approval of the County Board of Commissioners must include an acknowledgement by the County Attorney that such approval is not necessary.

- 16.15 Successors and Assigns.** The benefits conferred by this Agreement, and the obligations assumed thereunder, shall inure to the benefit of and bind the successors and permitted assigns of the Parties.
- 16.16 No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties other than that of independent contracting parties.
- 16.17 Approvals.** Where this Agreement requires the approval of County, County will approve or disapprove in writing within fifteen (15) 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 County to approve or disapprove within said period of time shall be deemed an approval. Any disapproval shall state the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to County'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 County within forty-five (45) days after receipt of the notice of disapproval.
- 16.18 Approval by County.** Except as provided for elsewhere in this Agreement, whenever consent or approval by County is required under the terms of this Agreement, all such consents or approvals shall be given in writing from the Chair or his or her designee.
- 16.19 Time of Essence.** Time is of the essence of this Agreement.
- 16.20 No Third-Party Beneficiary Rights.** No person not a party to this Agreement is an intended beneficiary of this Agreement, and no person not a party to this Agreement shall have any right to enforce any term of this Agreement.
- 16.21 Incorporation.** The exhibits attached to this Agreement are incorporated into and made a part of this Agreement.
- 16.22 STATUTORY WARNING.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR

STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

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

MULTNOMAH COUNTY, a political subdivision of the State of Oregon

By: _____
Jeff Cogen, Chair

Reviewed:

JENNY M. MORF, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By: _____
Kenneth M. Elliott
Assistant County Attorney

MELVIN MARK DEVELOPMENT COMPANY

By: _____
Name: _____
Title: _____

EXHIBITS

Exhibit A. Definitions

Exhibit B. Description of Property & County's Retained Rights

Exhibit C. Permit of Entry

Exhibit D. Due Diligence Materials

Exhibit E. Environmental Due Diligence Reports

Exhibit F. Form of Deed

Exhibit G. Current Design Concept for Block 16

EXHIBIT A

DEFINITIONS

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

1. **“Agreement”** means this Agreement for the Disposition and Development of Property and all attached Exhibits.
2. **“City”** means the municipal corporation of the City of Portland, Oregon and its constituent bureaus and agencies, except County.
3. **“Closing”** means the transfer of the Property to Developer by County by recording of the Deed and handling of all other necessary documentation by the Escrow Agent.
4. **“Closing Date”** means the date for Closing set forth in Section 5.2.1.
5. **“Conveyance”** means the transfer of fee simple title to the Property by County to Developer.
6. **“Deed”** means a Statutory Special Warranty Deed which will be used to convey fee simple title to the Property, substantially in the form of Exhibit F.
7. **“Due Diligence Materials”** has the meaning set forth in Section 2.7.2
8. **“Effective Date”** means the date stated in the first paragraph of this Agreement.
9. **“Environmental Conditions”** means the presence or likely presence of a Hazardous Substance on the Property under conditions that indicate an existing Release, a past Release, or a material threat of a Release of a Hazardous Substance into structures on the Property or into the ground, ground water, or surface water of the Property, whether or not the Release is in compliance with applicable law. Environmental Conditions do not include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.
10. **“Environmental Laws”** means all federal, state and local laws, ordinances, rules and regulations relating to the protection or regulation of the environment that apply to the Property or the Project, including without limitation, Chapter 466 of the Oregon Revised Statutes, Chapter 341 of the Oregon Administrative Rules, RCRA (as defined in the definition of Hazardous Substances, below), CERCLA (defined in the definition of Hazardous Substances, below), the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act.
11. **“Environmental Due Diligence Reports”** means reports of investigations performed as part of environmental due diligence, which may include Phase I, Phase 2 and Hazardous Building Site Assessments and reports, documents or documentation that County has completed or County has in its possession, completed by others. A complete list of the Environmental Due Diligence Reports is attached as Exhibit E and incorporated herein by reference.
12. **“Escrow Agent”** means Chicago Title Company of Oregon, with offices at 1211 SW Fifth Avenue, Suite 2130, Portland, OR 97204.
13. **“Escrow Deposit”** has the meaning set forth in Section 2.5.1.

14. **“Escrow Instructions”** has the meaning set forth in Section 5.1.2.
15. **“Feasibility Period”** has the meaning set forth in Section 2.7.3.
16. **“Final Permitted Exceptions”** has the meaning set forth in Section 2.6.2.
17. **“Hazardous Substances”** means any pollutant, dangerous substance, toxic substance, asbestos, petroleum, petroleum product, hazardous waste, hazardous materials or hazardous substance as defined in or regulated by Chapter 466 of the Oregon Revised Statutes, the Resource Conservation Recovery Act, as amended, 42 USC Section 6901, et seq. (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC Section 9601, et seq. (“CERCLA”), or any other Environmental Law.
18. **“Land”** has the meaning set forth in Section 2.2.
19. **“LEED”** means Leadership in Energy and Environmental Design, a green building certification system developed by the U.S. Green Building Council, providing third-party verification that a building or community was designed and built using strategies aimed at improving performance across metrics of overall Project sustainability, including energy savings, water efficiency, CO2 emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.
20. **“Party” or “Parties”** means County and Developer, jointly or individually.
21. **“Permitted Exceptions”** has the meaning set forth in Section 2.6.1.
22. **“Project”** means the James Beard Public Market.
23. **“Project Manager”** has the meaning set forth in Section 16.1.
24. **“Property”** has the meaning set forth in Section 2.2.
25. **“Purchase Price”** means the price Developer shall pay to County for the Property to be conveyed by County to Developer. The Purchase Price is set forth in Section 2.3.
26. **“Release”** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.
27. **“Title Company”** means Chicago Title Company of Oregon with offices located at 1211 SW Fifth Avenue, Suite 2130, Portland, OR 97204.
28. **“Title Report”** means title report number [____], dated [____], issued by Title Company.
29. **“Unavoidable Delay”** has the meaning set forth in Section 15.7.1.

EXHIBIT B

DESCRIPTION OF PROPERTY & COUNTY RETAINED RIGHTS

The Property is described in Exhibit 1 attached hereto, is subject to encumbrances of record; and further

PROVIDED THAT Grantor reserves and retains the area identified as “the Right of Way,” as more particularly described in Exhibit A and depicted in Exhibit B a map, for road purposes including but not limited to its statutory obligations under ORS 382.305 through ORS 382.425 or as those provisions may be amended, which shall include the right, without notice, at any time to enter and occupy the entire or any part of the Right of Way for the purposes of inspecting, maintaining, repairing, renewing, replacing or reconstructing the Morrison Bridge, its approaches, ramps, adjacent streets or any replacement facility thereto as Grantor in its sole discretion shall deem necessary and appropriate. Grantee’s use of the Right of Way shall be limited to continued vehicle parking use or installation of temporary or portable tents or structures, with sufficient mobility to accommodate Grantor’s Right of Way uses, activities and functions, and shall be governed by the Right-of-Way Permit, including the terms and conditions thereof (which may be modified by County from time-to-time), a sample of which is attached hereto as Exhibit C; and

PROVIDED FURTHER THAT Grantor reserves and retains exclusive occupation, possession, use, maintenance, refueling, repair and replacement of (1) that certain cyclone fence enclosure of approximately ten by eighteen feet in area (10’x18’±), in its present location entirely within the Right of Way, beneath the bridge ramp on the west side of SW Naito Parkway, and (2) a diesel-fired generator sited on a concrete slab within said enclosure, used to power the Bridge (the “Generator Site”). Grantee shall have no right to use the Generator Site at any time.

Exhibit 1

PARCEL I:

Blocks 1, 2 and 39, CITY OF PORTLAND, TOGETHER WITH vacated SW Alder and SW Washington Streets which inured thereto by reason of vacation thereof under Ordinance No. 107324, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM the following described tract deeded to Tri-County Metropolitan Transportation District of Oregon, a municipal corporation by Deed recorded April 29, 1985 in Book 1819, Page 1780, Deed Records:

A tract of land located in the Northwest one-quarter of Section 3, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, and being more particularly described as follows:

Beginning at a point that bears South 22°22'09" West 7.09 feet from the Northwesterly corner of Lot 7, Block 1 of the Plat of PORTLAND; thence from the point of beginning South 67°37'51" East 11.09 feet; thence South 22°42'51" East 17.96 feet; thence South 22°26'33" West 61.03 feet; thence South 67°22'52" West 17.86 feet; thence North 66°40'37" West 11.10 feet to a point on the Westerly line of Lot 6, said Block 1, and also the Easterly line of SW 1st Avenue; thence along the Easterly line of said SW 1st Avenue and the Westerly line of said Block 1, North 22°22'09" East 86.15 feet to the point of beginning.

PARCEL II:

Lot 1 through 8, inclusive, Block 16, CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM the Westerly 5 feet of Lots 5, 6, 7 and 8 taken for the widening of SW 2nd Avenue.

EXHIBIT A

MORRISON BRIDGE
June 5, 2012

Item No. 2012-02

PARCEL 1

A portion of Blocks 1, 2, and 39, "City of Portland", recorded in Plat Book 2, Page 2, Multnomah County Plat Records and portions of SW Washington Street and SW Alder Street as vacated by Ordinance No.107324, recorded February 20, 1958 in Book 1884, Page 534, Multnomah County Deed Records located in the Northeast One Quarter and the Northwest One Quarter of Section 3, Township 1 South, Range 1 East and in the Southwest One Quarter and the Southeast One Quarter of Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon as shown on the attached Exhibit B and being more particularly described as follows:

Beginning at the Southeast corner of Block 2, "City of Portland", also being a point on the northerly right of way line of SW Morrison Street;

Thence N67°35'56"W, along said northerly right of way line, 116.00 feet to the beginning of a 125.00 foot radius non-tangent curve to the right having a central angle of 57°07'54", the radius point of which bears N39°11'42"E;

Thence along the arc of said non-tangent curve to the right (the long chord of which bears N22°14'21"W, 119.54') 124.64 feet to a point on the easterly right of way line of SW 1st Avenue;

Thence N22°24'04"E, along said easterly right of way line, 79.56 feet to the beginning of a 211.00 foot radius non-tangent curve to the right having a central angle of 32°57'52", the radius point of which bears S55°14'34"E;

Thence along the arc of said non-tangent curve to the right (the long chord of which bears N51°14'22"E, 119.73') 121.40 feet to the beginning of a 1944.00 foot radius non-tangent curve to the left having a central angle of 0°41'04", the radius point of which bears S11°05'45"W;

Thence along the arc of said non-tangent curve to the left (the long chord of which bears N79°14'47"W, 23.22') 23.22 feet;

Thence N79°35'19"W, 35.79 feet to a point on the easterly right of way line of SW 1st Avenue;

Thence N22°24'04"E, along said easterly right of way line, 67.47 feet;

Thence S79°35'19"E, 21.77 feet to the beginning of a 2010.00 foot radius curve to the right having a central angle of 2°59'27";

Thence along the arc of said curve to the right (the long chord of which bears S78°05'35"E, 104.91') 104.92 feet;

Thence S76°35'52"E, 62.90 feet;

Thence N22°38'33"E, 2.86 feet;

Thence N58°17'15"W, 75.66 feet to the beginning of a 2010.00 foot radius curve to the right having a central angle of 2°43'04";

Thence along the arc of said curve to the right (the long chord of which bears N56°55'43"W, 95.34') 95.53 feet;

Thence N55°34'11"W, 18.64 feet to a point on the easterly right of way line of SW 1st Avenue;

Thence N22°24'04"E, along said easterly right of way line, 67.52 feet;

Thence S55°26'18"E, 12.50 feet to the beginning of a 358.00 foot radius curve to the left having a central angle of 6°43'13";

Thence along the arc of said curve to the left (the long chord of which bears S58°47'54"E, 41.97') 41.99 feet to the beginning of a 178.75 foot radius non-tangent curve to the right having a central angle of 8°51'11", the radius point of which bears N68°32'07"E;

Thence along the arc of said non-tangent curve to the left (the long chord of which bears N17°02'17"W, 27.59') 27.62 feet to the beginning of a 245.00 foot radius curve to the right having a central angle of 6°59'51";

Thence along the arc of said curve to the right (the long chord of which bears N09°06'47"W, 29.90') 29.92 feet;

Thence N05°36'51"W, 7.00 feet to the beginning of a 185.00 foot radius curve to the right having a central angle of 15°26'49";

Thence along the arc of said curve to the right (the long chord of which bears N02°06'33"E, 49.73') 49.88 feet to a point on the easterly right of way line of SW 1st Avenue;

Thence N22°24'04"E, along said easterly right of way line, 81.55 feet to the beginning of a 125.00 foot radius non-tangent curve to the right having a central of 57°43'55", the radius point of which bears S51°30'32"E;

Thence along the arc of said non-tangent curve to the right (the long chord of which bears N67°21'25"E, 120.69') 125.95 feet to a point on the southerly right of way line of SW Stark Street;

Thence S67°35'56"E, along said southerly right of way line, 114.72 feet to the Northeast corner of Bock 39, "City of Portland", also being a point on the westerly right of way line of SW Naito Parkway;

Thence S22°24'04"W, along said westerly right of way line, 87.12 feet;

Thence S90°00'00"W, 16.42 feet to the beginning of a 70.00 foot radius curve to the left having a central angle of 160°47'16", the radius point of which bears S90°00'00"W;

Thence along the arc of said curve to the left (the long chord of which bears N80°23'38"W, 138.04') 196.44 feet;

Thence S19°12'44"W, 10.00 feet to the beginning of a 130.00 foot radius curve to the left having a central angle of 24°49'35";

Thence along the arc of said curve to the left (the long chord of which bears S06°47'56"W, 55.89') 56.33 feet;

Thence S05°36'51"E, 7.00 feet to the beginning of a 190.00 foot radius curve to the left having a central angle of 6°59'51";

Thence along the arc of said curve to the left (the long chord of which bears S09°06'47"E, 23.19') 23.20 feet;

Thence N77°23'18"E, 3.75 feet to the beginning of a 120.00 foot radius curve to the left having a central angle of 11°08'07", the radius point of which bears N77°23'18"E;

Thence along the arc of said curve to the left (the long chord of which bears S18°10'46"E, 23.29') 23.32 feet to the beginning of a 158.00 foot radius curve to the left having a central angle of 19°10'09";

Thence along the arc of said curve to the left (the long chord of which bears S33°19'54"E, 52.62') 52.86 feet to the beginning of a 313.00 foot radius curve to the left having a central angle of 11°04'46";

Thence along the arc of said curve to the left (the long chord of which bears S48°27'21"E, 60.43') 60.53 feet to a point on the westerly right of way line of SW Naito Parkway;

Thence S22°24'04"W, along said westerly right of way line, 162.94 feet to the beginning of a 310.00 foot radius non-tangent curve to the left having a central angle of 9°32'27", the radius point of which bears S08°41'34"W;

Thence along the arc of said non-tangent curve to the left (the long chord of which bears N86°04'39"W, 51.56') 51.62 feet;

Thence S89°09'08"W, 8.50 feet to the beginning of a 140.00 foot radius curve to the left having a central angle of 12°19'36";

Thence along the arc of said curve to the left (the long chord of which bears S82°59'20"W, 30.06') 30.12 feet to the beginning of a 153.00 foot radius curve to the left having a central angle of 17°31'39";

Thence along the arc of said curve to the left (the long chord of which bears S68°03'42"W, 46.62') 46.80 feet;

Thence N30°42'07"W, 3.00 feet to the beginning of a 156.00 foot radius curve to the left having a central angle of 36°45'54", the radius point of which bears S30°42'07"E;

Thence along the arc of said curve to the left (the long chord of which bears S40°54'56"W, 98.39') 100.10 feet to the beginning of a 70.00 foot radius curve to the left having a central angle of 90°05'44";

Thence along the arc of said curve to the left (the long chord of which bears S22°30'54"E, 99.08') 110.07 feet;

Thence S67°33'46"E, 79.93 feet to a point on the westerly right of way line of SW Naito Parkway;

Thence S22°24'04"W, along said westerly right of way line, 49.62 feet to the Point of Beginning.

EXCEPTING THEREFROM any portion of the above described Parcel lying within that property described in Deed book 1819, Page 1780, recorded April 29, 1985, Multnomah County Deed Records.

Containing 1.73 acres more or less.

As shown on the attached map identified as EXHIBIT B, herein made a part of this document. In the event of a conflict or discrepancy between the map as shown on EXHIBIT B and the written legal description, the written legal description shall prevail.

This legal description along with the basis of bearings thereof was established based on that Survey recorded as Survey Number 59905, Multnomah County Survey Records.

PARCEL 2

A portion of Block 16, "City of Portland", recorded in Plat Book 2, Page 2, Multnomah County Plat Records, located in the Northwest One Quarter of Section 3, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon as shown on the attached Exhibit B and being more particularly described as follows:

Beginning at the Southeast corner of Block 16, "City of Portland", also being a point on the northerly right of way line of SW Alder Street;

Thence N67°35'56"W, along said northerly right of way line, 195.00 feet to a point on the easterly right of way line of SW 2nd Avenue;

Thence N22°24'04"E, along said easterly right of way line, 10.70 feet;

Thence S79°35'19"E, 199.35 feet to a point on the westerly right of way line of SW 1st Avenue;

Thence S22°24'04"W, along said westerly right of way line, 52.11 feet to the Point of Beginning.

Containing 6,124 square feet more or less.

As shown on the attached map identified as EXHIBIT B, herein made a part of this document. In the event of a conflict or discrepancy between the map as shown on EXHIBIT B and the written legal description, the written legal description shall prevail.

This legal description along with the basis of bearings thereof was established based on that Survey recorded as Survey Number 59905, Multnomah County Survey Records.

PARCEL 3

A portion of Block 16, "City of Portland", recorded in Plat Book 2, Page 2, Multnomah County Plat Records, located in the Northwest One Quarter of Section 3, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon as shown on the attached Exhibit B and being more particularly described as follows:

Beginning at the Northeast corner of Block 16, "City of Portland", also being a point on the westerly right of way line of SW 1st Avenue;

Thence S22°24'04"W, along said westerly right of way line, 52.27 feet;

Thence N55°33'54"W, 199.38 feet to a point on the easterly right of way line of SW 2nd Avenue;

Thence N22°24'04"E, along said easterly right of way line, 10.70 feet to a point on the southerly right of way line of SW Washington Street;

Thence S67°35'56"E, along said southerly right of way line, 195.00 feet to the Point of Beginning.

Containing 6,140 square feet more or less.

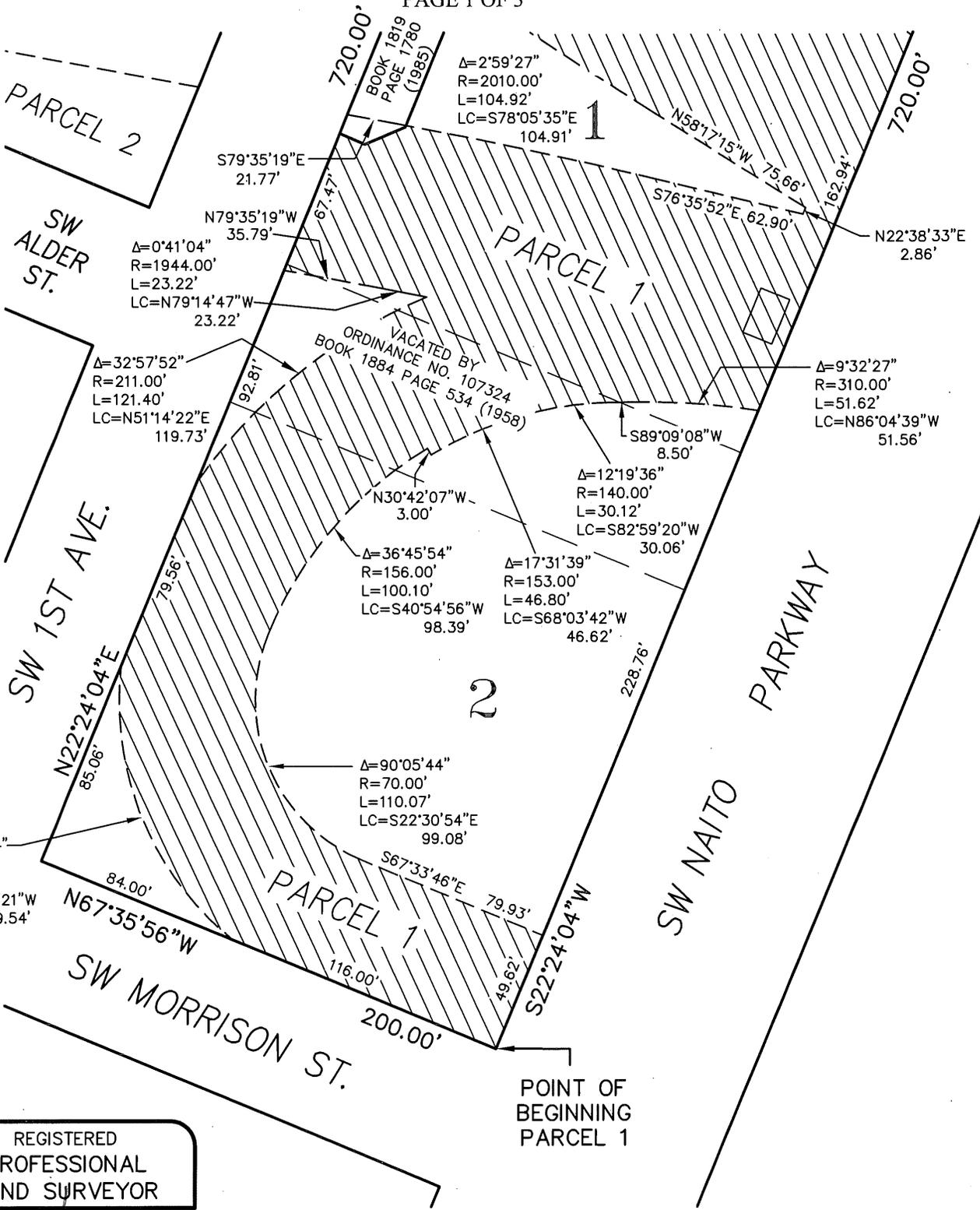
As shown on the attached map identified as EXHIBIT B, herein made a part of this document. In the event of a conflict or discrepancy between the map as shown on EXHIBIT B and the written legal description, the written legal description shall prevail.

This legal description along with the basis of bearings thereof was established based on that Survey recorded as Survey Number 59905, Multnomah County Survey Records.



EXHIBIT B

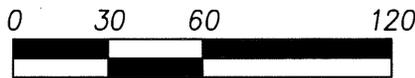
PAGE 1 OF 3



REGISTERED
PROFESSIONAL
LAND SURVEYOR

[Signature] 6/5/12
OREGON
JANUARY 20, 1998
BRIAN K. HENSON
2855

EXPIRES: 6/30/2013



SCALE: 1" = 60'



MULTNOMAH COUNTY

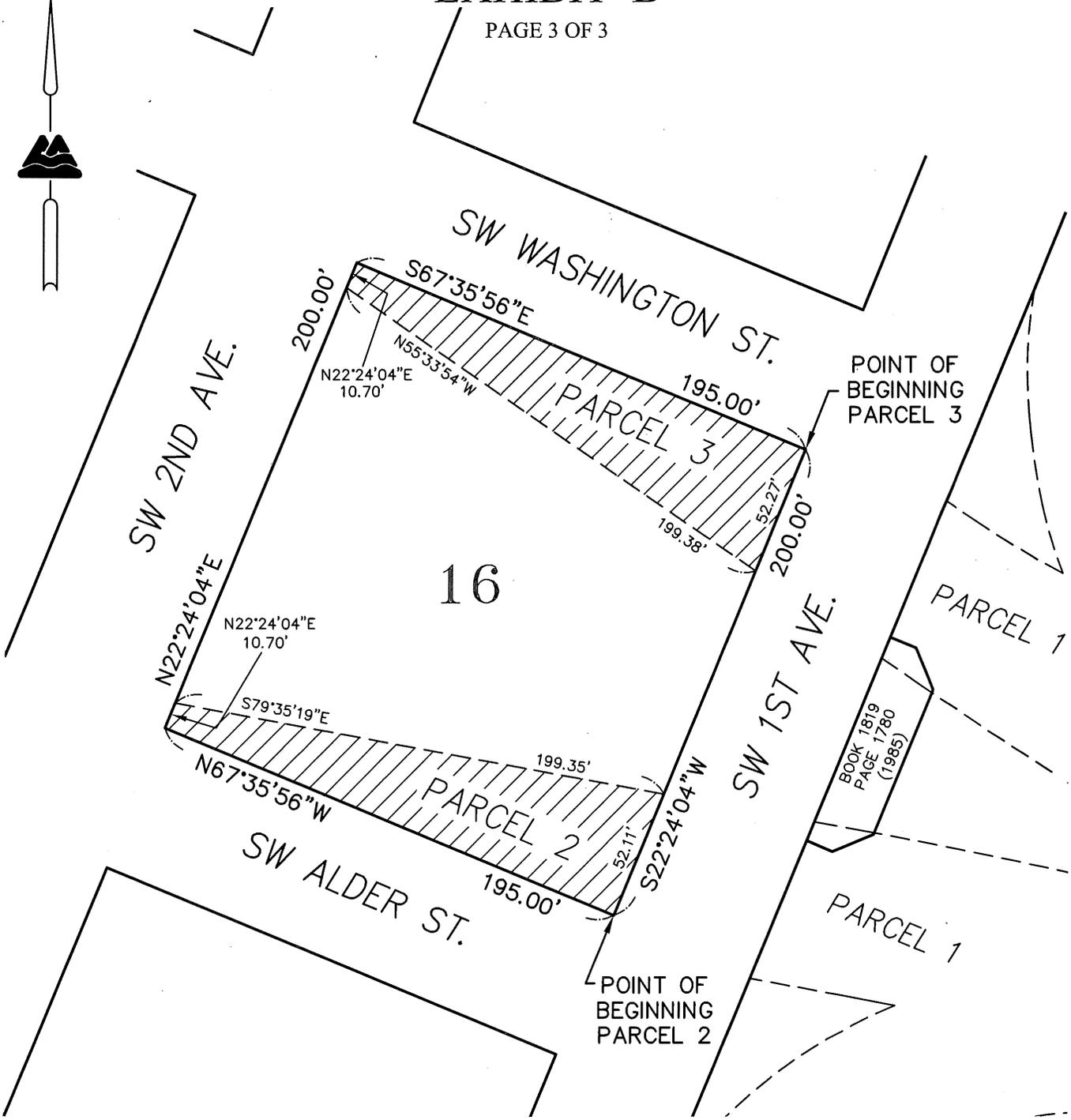
DEPARTMENT OF COMMUNITY SERVICES
COUNTY SURVEYOR'S OFFICE
1600 S.E. 190th AVE. PORTLAND, OR 97233
JAMES S. CLAYTON, P.L.S. COUNTY SURVEYOR

MORRISON BRIDGE PROJECT

ITEM NO. 2012-02

EXHIBIT B

PAGE 3 OF 3

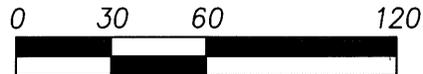


REGISTERED
PROFESSIONAL
LAND SURVEYOR

[Signature] 6/5/12

OREGON
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SCALE: 1" = 60'



MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES
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JAMES S. CLAYTON, P.L.S. COUNTY SURVEYOR

MORRISON BRIDGE PROJECT
ITEM NO. 2012-02



Exhibit
C
pages
1-5

MULTNOMAH COUNTY, OREGON

DEPARTMENT OF COMMUNITY SERVICES LAND USE & TRANSPORTATION PROGRAM RIGHT-OF-WAY PERMIT SECTION 1620 SE 190TH AVENUE PORTLAND, OREGON 97233 503-988-3582 - FAX: 503-988-3389	APPLICATION FOR A PERMIT TO USE PUBLIC ROAD RIGHT OF WAY UNDER THE JURISDICTION OF MULTNOMAH COUNTY	(COUNTY TO FILL OUT THIS SECTION) Permit No. _____ District: _____ County Maintained: _____ Application Fee: _____ Deposit: _____ Check No.: _____ Ins. Req'd: _____
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FOR APPLICANT: (Please print)

Name: _____ E-mail Address: _____
 Address: _____ Phone/Fax: _____
 _____ Contact Person: _____

ROADS AND LOCATIONS COVERED BY THIS PERMIT:

Road	Specific Location	Side of Road	Distance from		Buried Cable or Pipe	
			Center Line	R/W Line	Depth	Size & Kind
Morrison Bridgehead – West, as depicted on Exhibit B-2	Areas beneath & adjoining bridge approaches & ramps on Blocks 1, 2, 16 & 39, CITY OF PORTLAND, bounded by SW Naito Pkwy, SW First Ave, SW Alder St, & SW Morrison St., as further described in Exhibit B-3	Both				

GENERAL APPLICATION/PERMIT TERMS:

- Pending approval of this application by Multnomah County, this page shall become the first page of the Permit and the Applicant shall become the "Permittee."
- The Permittee must notify Multnomah County at 503-988-3582 at least one business day (24 hours) before commencing work under this permit.
- Except as allowed under the Multnomah County Road Rules Section 18, Subsection 18.250, Permittee must complete any authorized demolition, installation, construction, placement, or similar work activities in the road right-of-way not later than 120 days after Permit Effective Date. Any extension of time beyond that period is subject to the sole discretion of Multnomah County.
- Any Permit issued pursuant to this Application shall only be applicable to the specific public road right(s)-of-way under the Jurisdiction of Multnomah County authorized and identified herein. Applicant must obtain an additional permit or consent from Multnomah County for the use of any other public road right(s)-of-way under the County's Jurisdiction.
- Applicant must obtain the consent from the appropriate authority for the use of any roads, highways, and streets that are not under Multnomah County's Jurisdiction.
- This Permit shall not be effective until a construction plan, specifications, or other similar documentation has been reviewed and approved by the County Engineer or designate and incorporated into the Permit.
- This Permit includes the "Permit Provisions" attached hereto and which are incorporated by this reference.
(Authority: ORS 374.305-ORS 374.330; MCC Chapters 27 and 29)

APPLICANT: By the authorized signature below, Applicant (Permittee) accepts and agrees to all the requirements, terms, conditions and provisions of this Permit.

Authorized Signature: _____

Print Name: _____

Title: _____

Date of Application: _____

MULTNOMAH COUNTY

DEPARTMENT OF COMMUNITY SERVICES:

Permit Approved By: _____

Print Name: _____

Title: _____

Permit Effective Date: _____

(6-14-11)

RIGHT-OF-WAY PERMIT PROVISIONS

1. (A) This right-of-way permit is issued by Multnomah County, its successors and assigns with jurisdictional authority over the Right-of-Way described on Page 1 (the "Right-of-Way") (hereinafter "County") to the Historic Portland Public Market Foundation, d/b/a James Beard Public Market (hereinafter "Permittee") (hereinafter collectively referred to as the "Parties") for the Right-of-Way Use(s) set forth on Page 1, subject to (if applicable) Section 14 and to the Construction Plans and Specifications which are attached and collectively identified and referred to as **Exhibit A**, which is hereby incorporated by this reference, or as the Parties agree in writing to amend or revise said **Exhibit A** as provided in Section 1.B (this "Permit"). This Permit does not authorize any activity on privately owned property. Should Permittee's activities encroach beyond the boundaries of the Right-of-Way covered under this Permit or otherwise exceed the jurisdictional authority of the County; Permittee shall obtain written consent from any owners of property abutting the Right-of-Way before beginning any activities or work under this Permit.

(B) **Exhibit A** shall not be changed, altered, or modified without first obtaining the written consent of the County Engineer or the County Engineer's designate.

(C) This Permit is subject to and incorporates the following rules adopted by Multnomah County pursuant to Multnomah County Code Chapter 29: (a) **The Multnomah County Road Rules (MCRR)**, dated March 23, 2004, and (b) **The Multnomah County Design and Construction Manual (DCM)**, dated June 20, 2000; or as either the MCRR or DCM shall be amended.

2. (A) The County contact person to coordinate work activities on the Right-of-Way shall be: Alan Young, Permit Specialist, (503) 988-3582, e-mail: alan.g.young@multco.us.

(B) Permittee contact person shall be: (supply name, address, telephone and email contact information)

3. (A) Prior to beginning any work or activities under this Permit, Permittee shall confirm in writing to County that Permittee and its contractor (if applicable) has/have obtained a commercial general liability insurance policy that provides: (i) for a combined single limit of not less than \$1,000,000 per each incident or occurrence, and with an annual aggregate limit of not less than \$2,000,000; (ii) for extended reporting period coverage for claims made within two years after the activities, work or associated work authorized under this Permit is completed; (iii) for County, its officers, employees and agents to be named as additional named insureds for all activities, work or associated work being authorized under this Permit. This Permit is automatically revoked without further action if the insurance is permitted to lapse, is canceled, or for any other reason becomes inoperative. Insurance policy limits quoted herein are minimums set for 2012 and shall be subject to County review and adjustment annually.

(B) Prior to beginning activities or work, Permittee shall confirm in writing to the County that Permittee's contractor (if applicable) has agreed to defend, indemnify, and hold harmless County, its officers, employees, and agents upon the same terms and conditions as this Permit imposes on Permittee under Section 4 of this Permit.

4. (A) Permittee agrees to defend, indemnify, and hold harmless County, its officers, employees, and agents (the "Indemnitees") from:

(1) All claims, demands, suits, liabilities, damages, losses, costs, or expenses including, but not limited to, attorney's fees that the Indemnitees may sustain or incur on account of any damage to or destruction of any property that the County may own or in which it may have an interest, which arise out of or are in any way connected with the activities conducted or work performed under this Permit by Permittee or its officers, employees, contractors, agents, lessees, or invitees (collectively, the "Permittee Parties");

(2) All claims, demands, suits, liabilities, damages, losses, costs or expenses including, but not limited to, attorney's fees on account of any damage to or destruction of any property belonging to any person, firm or corporation, which arise out of or are in any way connected with the activities conducted or work performed under this Permit by Permittee or the Permittee Parties; and

(3) All claims, demands, suits, liabilities, damages, losses, costs, or expenses including, but not limited to, attorney's fees on account of any damage resulting from injury to or death of any person or persons, which arise out of or are in any way connected with the activities conducted or work performed under this Permit by Permittee or the Permittee Parties.

(B) Permittee agrees to defend, indemnify, and hold harmless the Indemnitees from all claims, demands, suits, liabilities, damages, losses, costs, or expenses which arise out of or are in any way connected with the use, generation, manufacture, storage, discharge, release, disposal, transportation, or possession of Toxic Substances as defined in ORS 465.003(9) (as may be amended), Oils, oil or Hazardous Materials by Permittee or the Permittee Parties at any time during the term of this Permit at the Permit Site. "Oils" or "oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product. (Per ORS 466.605(8), as may be amended). "Hazardous Materials" includes all of the following (Per ORS 466.605(7), as may be amended): (a) A material designated by the Oregon Environmental Quality Commission under ORS 466.630; (b) Hazardous waste as defined in ORS 466.005; (c) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under ORS 469.605 and radioactive substances as defined in ORS 453.005; (d) Communicable disease agents as regulated by the Oregon Health Authority under ORS 431.035 to 431.530, 433.001 to 433.045 and 433.110 to 433.770; and (e) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(C) The Permittee's, its contractor's, and the Permittee Parties' indemnity obligations under Section 3 (B) and Section 4, Subsections (A) and (B), shall survive the termination of this Permit.

5. Traffic control is the responsibility of Permittee and its contractor (if applicable) and shall be performed in accordance with the Manual of Uniform Traffic Control Devices and Oregon Supplements. Permittee shall submit a copy of the traffic control plan for County review and approval not less than five working days prior to the date the activities or work authorized under this Permit are scheduled to begin. Work or activities shall not begin until written approval of the traffic control plan is obtained from the County Engineer or the County Engineer's designate.
6. Permittee shall provide the name and telephone contact number for its Project inspector and a 24-hour emergency telephone number(s) for its contractor prior to beginning activities or work under this Permit.
7. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center (the "Center"). Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the Center. The telephone number for the Center is (503) 232-1987.
8. No modification shall be made to any fixture or installation as shown on Exhibit A and authorized under this Permit without prior approval from County. Failure to comply with any term or condition of this Permit shall be cause for revocation. County reserves the right to stop the activities or work performed under this Permit for failure to comply. All costs associated with activities or work stoppage or revocation as provided herein are the responsibility of Permittee, and all costs shall be borne by Permittee.
9. Permittee or its contractor shall restore the Right of Way to an equal or better condition than existed prior to the activities or work authorized under this Permit. Permittee or its contractor is responsible for quality control of all demolition or new construction made to the Right of Way. County may perform spot inspections to monitor quality control. Permittee shall correct all construction work that does not conform to County standards. County may require additional work to return the Right of Way to "as good" or "better" condition.

10. Permittee and the Permittee Parties shall be in compliance with all federal, interstate, state, regional, and local laws, regulations, rules, and ordinances, pertaining to all the activities or work performed under this Permit including, but not limited to, obtaining all necessary and applicable construction and erosion control permits and approvals prior to beginning the activities or work authorized under this Permit and compliance with all applicable business licenses, OSHA rules and regulations.
11. Permittee's and the Permittee Parties' rights to use the Right of Way shall be, at all times, subject to the paramount right of County to fulfill its statutory obligations under ORS 382.305 through ORS 382.425. County shall have the right, without notice, at any time including during any of Permittee's or the Permittee Parties' activities or work of any kind in the Right of Way, to enter and occupy the entire or any part of the Right of Way for the purpose of inspecting, maintaining, repairing, renewing, replacing or reconstructing the Morrison Bridge, its approaches, ramps, adjacent streets or any replacement facility thereto as County in its sole discretion shall deem necessary and appropriate.
12. County's activities described in Section 11 may require Permittee or the Permittee Parties to remove any fixtures, installations or personal property including, but not limited to, booths, equipment and merchandise from the Right of Way. Upon entry, County shall, without liability to Permittee or the Permittee Parties, have the right to remove any such fixtures, installations or personal property from the Right of Way as may be necessary to accomplish the required work. County shall have no obligation to restore or repair any improvements removed or damaged in the performance of County's work. Permittee and the Permittee Parties agree that County shall have no obligation to restore the Right of Way or Permittee's or the Permittee Parties' improvements and County shall have no liability to Permittee or the Permittee Parties for any disruption of Permittee's or the Permittee Parties' business, for loss of Permittee's or the Permittee Parties' real or personal property, for Permittee's or the Permittee Parties' lost profits or for any other loss incurred by Permittee or the Permittee Parties as a result of such entry or as a result of Permittee or the Permittee Parties being required to vacate the Right of Way pursuant to the terms of this Section 12.
13. County reserves the right to **revoke this Permit at any time** in the event County determines the permitted work or activities, including any fixtures, installations or personal properties in the Right of Way; are in conflict with a County improvement project; public need requires it, or the Permittee or the Permittee Parties fail to comply with the conditions of this Permit. No expenditure of money, lapse of time, or other act or thing shall operate as an estoppel against County or be held to give Permittee or the Permittee Parties any vested or other right. Upon revocation of this Permit, Permittee and the Permittee Parties shall, within 30 days of receiving notification, remove, relocate, or abandon (if consented to by County), all fixtures, installations or personal property in the Right of Way and restore the Right of Way as directed by, and to the satisfaction of, County.

14. (A) Miscellaneous Provisions.

Public Market Program & Site Plan – [to be attached]

(B) Permittee's Initials for Signature: _____

(Add any specific special terms or conditions unique to the Permit Site here. Permittee must initial here to indicate acceptance of the additional special terms and conditions. Add additional sheets as necessary.)

(Rev. 6-16-11)

TEMPORARY PERMIT OF ENTRY FOR PROPERTY INVESTIGATION

This **Temporary Permit of Entry for Property Investigation** (this “Permit”) is entered into this ____ day of _____, 2012, by and between Multnomah County, a political subdivision of the State of Oregon (“County”) and Melvin Mark Development Company (“Developer”).

I. RECITALS

- A. County is the owner of the Morrison Bridgehead Properties, Blocks 1, 2, 16, and 39 in Downtown Portland (the “Bridgehead Property”), which are parcels of land located between SW Morrison and SW Alder Streets, extending from SW Naito Parkway to SW Second Avenue, Portland, Oregon, as shown in Exhibit “A.”
- B. County assembled the Bridgehead Property through a series of acquisitions for staging and construction of the Morrison Bridge and access ramps. The portion of the Bridgehead Property not devoted to bridge use, together with surface areas beneath portions of the bridge and access ramps elevated on support structures, which surface areas are not devoted exclusively to bridge use (collectively, the “Permit Property”) has subsequently been operated as surface parking lots and a Multnomah County Motor Pool facility.
- C. By Resolution 04-167, adopted on November 18, 2004, County’s Board of Commissioners declared the Permit Property surplus. By Resolution 07-174, adopted on November 1, 2007, County’s Board of Commissioners approved an Intergovernmental Agreement with the Portland Development Commission (“PDC”) which provided for County and PDC to cooperate in the sale and private redevelopment of the Permit Property. The agreement further provided for solicitation and selection processes for selection of a developer and for negotiation of a Disposition and Development Agreement (“DDA”).
- D. On November 10, 2010 the County and PDC issued a Request for Proposals for disposition and development of the Property. After review of the submissions, County’s Board of Commissioners adopted Resolution 2011-059, on May 26, 2011, which authorized exclusive negotiations with Developer on the DDA for the Permit Property.
- E. Section 2.7.1 of the DDA entitles Developer and its authorized agents or representatives to enter upon the Permit Property to make such investigations, studies and tests as Developer deems necessary or advisable, as more specifically set forth in this Permit.
- F. The County finds the public interest is best served by granting Developer this Permit to enter upon and investigate the Permit Property on the terms and conditions stated herein.

II. THE PARTIES AGREE AS FOLLOWS:

- A. Recitals are Contractual. The above listed Recitals are contractual and are incorporated herein by this reference.

- B. Grant & Term of Permit. Developer is granted authority to enter upon and investigate the Permit Property and, with notice to and permission from County's Bridge Shops, which shall not be unreasonably withheld, the Morrison Bridge, access ramps, staircases and support structures (the "Bridge Structures"), for the purposes described in this Permit, during the ninety (90) day Feasibility Period, as defined in Section 2.7.3 of the DDA.
- C. AS IS WHERE IS. The parties stipulate that the Permit Property and the Bridge Structures are made available under this Permit "AS IS, WHERE IS," with no representations, warranties, guarantees of any kind by County (except as otherwise provided in the DDA) that the Permit Property or Bridge Structures are useable, suitable or appropriate for any use or specifically for any of Developer's proposed uses described in the DDA.

III. TERMS AND CONDITIONS:

- A. Access. Developer is and/or its employees, assignees, permittees, or contractors and/or their employees or subcontractors (collectively referred to as the "Developer" for purposes of this Section) are hereby granted access to the Permit Property and to the Bridge Structures (in accordance with Section IIB. hereof), during the Permit term (as defined in Section IIB. hereof) to make such investigations, studies and tests as Developer deems necessary or advisable for development of the Permit Property (the "Investigations").
- B. Property Condition. Developer shall cause no unnecessary damage to the Property. Developer shall restore any damage on the Property caused by Developer's Investigations under this Permit to an "as good condition" as existed prior to Developer's performance of the Investigations.
- C. Compliance with Applicable Laws/Safety Standards. Developer shall at all times perform the Investigations of the Permit Property and Bridge Structures in accordance with all applicable statutes, orders, rules and regulations of any public authority with jurisdiction, including all laws pertaining to workers' safety. Specifically, Developer shall at all times be responsible for compliance with any Oregon statutes, or rules of the Oregon Water Resources Department (including, but not limited to, OAR Chapter 690), regarding construction, decommissioning, abandonment, or other activities with respect to any wells or holes placed on the Permit Property or Bridge Structures pursuant to the Investigations, and any obligations or responsibilities associated with such wells or holes shall not be the responsibility of County.
- D. Repair of Property Damage. Developer shall be responsible for any damage done to the Permit Property or Bridge Structures relating to Developer or Developer's contractor's or subcontractors' entry onto the Permit Property or Bridge Structures or performance of the Investigations. County shall, within seven (7) days after termination of this Permit, inspect the Permit Property and Bridge Structures and, if any damage is believed to have been caused by Developer's performance of the Investigations, County shall promptly report such claims in writing to Developer. Within ten (10) days after Developer's receipt of any written notice of damage from County, Developer shall initiate the repair

and restore the impacted portions of the Permit Property or Bridge Structures to conditions substantially similar to or better than the condition of those portions of the Permit Property or Bridge Structures as of the effective date of this Permit. Developer shall complete the repair in a timely and reasonable manner. If Developer receives no written notice from County within seven (7) days after termination of this Permit, Developer shall have no further obligation under this paragraph.

- E. No Liens. Developer and its agents shall not suffer or permit to be enforced against the Permit Property or Bridge Structures, or any part thereof, a mechanic's, materialman's, contractor's, or subcontractor's lien arising from, or any claim for damage or injury growing out of, Developer's or Developer's agents' entry onto the Permit Property or Bridge Structures or the Investigations.

IV. Conditions of Use. Developer's use of the Permit Property and Bridge Structures shall be subject to the following additional conditions:

- A. County Access. Access by County personnel, agents, lessees, sublessees and invitees to the Permit Property and Bridge Structures shall be allowed at any time during the term of this Permit; with no requirement of advance notice to Developer.
- B. Regulations. Developer shall comply with all applicable federal, state and local laws and regulations; and Developer shall obtain any required approvals, licenses or additional permits as may be required by law or regulation to conduct its activities on the Permit Property and Bridge Structures.
- C. Notice & Cooperation. Prior to entering upon the Permit Property or Bridge Structures, Developer shall provide County forty-eight (48) hours' advance, written notice of the scheduled entry date and duration of the Investigations. Developer shall take all commercially reasonable measures to minimize the Investigations' disruption of or interference with County's Motor Pool and parking lot uses of the Permit Property or County's operation of the Bridge Structures. Developer shall not occupy more than three (3) parking stalls on each Parcel at any one time.
- D. Damage to County's Property. Any damage to the Permit Property or Bridge Structures resulting from the Developer's Investigations shall be immediately reported to County in writing and repairs shall be conducted by Developer at Developer's sole expense and to County's sole satisfaction.
- E. Hazardous Materials or Hazardous Substances. No materials or substances shall be stored, used, manufactured or disposed of within the Permit Property or Bridge Structures by Developer, its agents, employees, independent contractors, permittees or invitees except in compliance with all federal, state and local laws applicable thereto. Upon the expiration or termination of this Permit, Developer shall remove immediately all materials brought by Developer onto the Permit Property or Bridge Structures from the Permit Property or Bridge Structures, as the case may be. Except as provided in this Article IV, no "hazardous substance," as defined in Exhibit A, Paragraph 17 of the DDA, shall be stored, used, manufactured, released or disposed of within the Permit Property or Bridge Structures. In addition, except as provided in this Article IV, no "hazardous

material” as defined at ORS 466.605 (7) (2011) shall be stored, used, manufactured, released or disposed of within the Permit Property or Bridge Structures.

V. Indemnity and Insurance.

- A. Developer shall indemnify, defend and hold harmless County, its officers, directors, agents and employees from any and all liability, damages, expenses, attorneys fees, and costs of any nature whatsoever arising from or relating to the use of the Permit Property or Bridge Structures or breach of the terms and conditions of this Permit by Developer and Developer’s agents, employees, independent contractors, permittees and invitees and any other person(s) whether or not such use is permissive. County or its officers, directors, agents and employees shall not be liable for any latent defect at the Permit Property or Bridge Structures, except for any that are related to the Motor Pool Facilities or the UST. In addition to the indemnity provided above, Developer agrees to indemnify, to defend and to hold harmless County, its officers, directors, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, Developer’s handling, storage, discharge, transportation or disposal of any “hazardous substance,” as defined in Exhibit A, Paragraph 17 of the DDA, or “hazardous material” as defined at ORS 466.605 (7) (2011). Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency.
- B. Developer shall provide at its own expense on or before Developer’s return of this signed Permit, and keep in force during the Term of this Permit, naming County as additional named insured, a commercial general liability insurance policy or such successor comparable form of coverage (hereinafter referred to as a “Liability Policy”) written on a “per occurrence basis”, including, without limitation, blanket contractual liability coverage, independent contractor’s coverage, and personal injury coverage, protecting County and Developer against liability occasioned by any covered occurrence arising from or relating to the activities of Developer and Developer’s agents, employees, independent contractors, permittees and invitees on or about the Permit Property or Bridge Structures. Such policy shall be written by a good and solvent insurance company permitted to do business in the State of Oregon and shall provide coverage limits of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily or personal injury (including death) and property damage combined, subject to a commercially reasonable deductible. Prior to the time such insurance is first required to be carried by Developer and thereafter, Developer agrees to deliver to County a certificate evidencing such insurance coverages. Said certificate shall contain an endorsement that such insurance may not be canceled except upon ten (10) days’ prior written notice to County.

- VI. Miscellaneous.** All exhibits referenced in this Permit are incorporated herein. Any amendment or alteration to this Permit shall only be in writing and shall be signed by each party to this Permit. If any term or provision of this Permit or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Permit and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Permit shall be valid and enforceable to the fullest extent permitted by law. This Permit shall not be recorded.

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

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

Melvin Mark Development Company
Attn: Daniel J. Petrusich
Melvin Mark Development Company
111 SW Columbia, Suite 1380
Portland, OR 97201-6873
DPetrusi@melvinmark.com

with a copy to:

Melvin Mark Development Company
Attn: Craig Lewis
111 SW Columbia, Suite 1380
Portland, OR 97201-6873
clewis@melvinmark.com

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

Multnomah County
Attn: Michael Sublett
Multnomah County Facilities & Property Management
Robt. W. Blanchard Education Service Center
401 North Dixon Street
Portland, OR 97227
michael.a.sublett@multco.us

with a copy to:

Multnomah County Attorney
501 SE Hawthorne, Suite 500
Portland, OR 97214
ken.elliott@multco.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.

VIII. Emergency Contact. Emergency contact for Developer is _____, who can be contacted by phone at 503.805.2939 or Amy Lewin at 503.475.3010. County emergency contact representative is County Dispatch, 503.988.3779.

IX. Oregon Law and Forum. The laws of the State of Oregon shall govern this Permit. Any litigation arising under this Permit shall be in Multnomah County Circuit Court. Developer shall conform to all applicable laws and regulations of any public authority

affecting the Permit property and shall correct at Developer's own expense any failure of compliance created by the fault or use of Developer or its agents, employees or invitees.

IN WITNESS WHEREOF, the parties have caused this Permit to be executed on the dates shown below.

**MELVIN MARK DEVELOPMENT COMPANY,
An Oregon corporation**

By: _____ Date: _____
Daniel J. Petrusich
Title: _____

MULTNOMAH COUNTY, OREGON

By: _____ Date: _____
Jeff Cogen, Chair

**Reviewed:
JENNY M. MORF, COUNTY ATTORNEY,
MULTNOMAH COUNTY**

By: _____ Date: _____
Kenneth M. Elliott, Assistant County Attorney

EXHIBIT D

DUE DILIGENCE MATERIALS

Morrison Bridge Ramp Construction Plans

Parking Management Contract between Multnomah County and City Center and Operating Statements

Permit with City of Portland for Parking Sign

Dispatch Log on service requests for past twenty-four (24) months

EXHIBIT E

ENVIRONMENTAL DUE DILIGENCE REPORTS

Kleinfelder Phase 1 Report

Kleinfelder Phase 2 Report

UST Tank Test Reports

2002 Trailer Asbestos Report

2003 Fuel Dispenser Leak Document

EXHIBIT F

FORM OF

STATUTORY SPECIAL WARRANTY DEED

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

STATUTORY SPECIAL WARRANTY DEED

MULTNOMAH COUNTY, a political subdivision of the State of Oregon
("Grantor"), conveys and specially warrants to _____, a _____
("Developer"), the following described real property (the "Property"):

See Exhibit A attached hereto and made a part hereof;

free of encumbrances created or suffered by Grantor except as specifically set forth in Exhibit B attached
hereto and made a part hereof.

The true consideration for this conveyance is Ten Million Four Hundred Thirty Thousand Dollars
(\$10,430,000). However, the actual consideration includes other property or other value given or
promised, which was part of the 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.

Dated this ____ day of _____, 20__.

MULTNOMAH COUNTY, a political subdivision of
the State of Oregon

By: _____
Chair

STATE OF OREGON)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me on _____, 20__, by
_____ as Chair of the Multnomah County Board of County Commissioners, on its behalf.

Notary Public for Oregon
My commission expires: _____

EXHIBIT G

