

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

RESOLUTION NO. 6777

**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE
THE NINTH AMENDMENT TO THE SOUTH WATERFRONT
CENTRAL DISTRICT PROJECT DEVELOPMENT AGREEMENT
IN THE NORTH MACADAM URBAN RENEWAL AREA**

WHEREAS, on behalf of the City of Portland, the Portland Development Commission (“PDC”) negotiated the South Waterfront Central District Project Development Agreement dated August 23, 2003 (as amended, the “Development Agreement”), with Oregon Health and Science University (“OHSU”), North Macadam Investors, LLC, an Oregon limited liability company, River Campus Investors, LLC, an Oregon limited liability company, and Block 39, LLC, an Oregon limited liability company (collectively, the “DA Parties”), to facilitate development of a certain project area within the North Macadam Urban Renewal Area as a mixed-use neighborhood, including commercial, retail, institutional, and housing uses;

WHEREAS, OHSU and PDC have decided not to build the Phase 1 Parking Garage or Phase 1 Affordable Apartments on Block 33 at this time and have agreed to terminate the Parking Agreement defined in Section 6.8.3.6 of the Development Agreement; and

WHEREAS, the DA Parties also desire to broaden the definition of “Parking Sites” to provide OHSU with more flexibility regarding the ultimate location of the Phase 1 Parking Garage.

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to execute the Ninth Amendment to the South Waterfront Central District Project Development Agreement, substantially in the form attached hereto as Exhibit A, and all related documents necessary for the transactions contemplated thereunder; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its adoption.

NINTH AMENDMENT
TO
SOUTH WATERFRONT CENTRAL DISTRICT PROJECT
DEVELOPMENT AGREEMENT

Dated: _____, 2009

- AMONG: PORTLAND DEVELOPMENT COMMISSION,
in its capacity as the urban renewal agency and as
agent for: Portland Office of Transportation,
Bureau of Environmental Services,
Office of Management and Finance,
and Portland Parks and Recreation (“PDC”)
- AND: OREGON HEALTH AND SCIENCE UNIVERSITY,
a public corporation of the State of Oregon (“OHSU”)
- AND: RIVER CAMPUS INVESTORS, LLC,
an Oregon limited liability company (“RCI”)
- AND: NORTH MACADAM INVESTORS, LLC,
an Oregon limited liability company (“NMI”)
- AND: BLOCK 39, LLC,
an Oregon limited liability company (“Block 39”)

RECITALS

A. On behalf of the City of Portland, PDC negotiated the South Waterfront Central District Project Development Agreement (“Original DA”) with OHSU, RCI, NMI and Block 39. The DA (defined below) provides, among other things, for the development of improvements in a certain project area subject to the South Waterfront Plan of the City of Portland. The DA has facilitated and will continue to facilitate development of the Project Area described in the DA as a mixed-use neighborhood, including commercial, retail, institutional and housing uses.

B. The Original DA was authorized by PDC on August 14, 2003, accepted by the Portland City Council on August 15, 2003, and signed by all Parties on August 22, 2003. The Original DA has been amended by the First Amendment to the South Waterfront Central District Project Development Agreement dated February 18, 2004, the Second Amendment to the South Waterfront Central District Project Development Agreement dated April 1, 2004, the Third Amendment to South Waterfront Central District Project Development Agreement dated June 25, 2004, the Fourth Amendment to South Waterfront Central District Project Development Agreement dated October 29, 2004, the Fifth Amendment to South Waterfront Central District Project Development Agreement dated November 24, 2004, the Sixth Amendment to South Waterfront District Project Development Agreement dated December 17, 2004, the Seventh

Amendment to South Waterfront Central District Project Development Agreement dated June 8, 2005, and the Eighth Amendment to South Waterfront Central District Project Development Agreement dated November 9, 2006 (the "Eighth Amendment"). The Original DA, as amended by the first, second, third, fourth, fifth, sixth, seventh, and eighth amendments, is referred to in this Amendment as the "DA."

C. OHSU and PDC have decided not to build the Phase 1 Parking Garage on Block 33 at this time and have agreed to terminate the Parking Agreement defined in Section 6.8.3.6 of the DA. Accordingly, OHSU has revoked its notice selecting Block 33 as the site for the Phase 1 Parking Garage. The Parties also desire to broaden the definition of "Parking Sites" to provide the Parties with more flexibility regarding the ultimate location of the Phase 1 Parking Garage. The Parties desire to amend the DA consistent with the foregoing decisions, as provided in this Ninth Amendment to South Waterfront Central District Project Development Agreement (the "Amendment"). Capitalized terms used but not defined in this Amendment shall have the meanings set forth in the DA.

AGREEMENT

Now, therefore, in consideration of the mutual benefits to be realized by the Parties following this Amendment, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. Phase 1 Parking Garage.

1.1 The Project Contingencies to OHSU's obligation to build the Phase 1 Parking Garage have not been satisfied as of the date of this Amendment. Specifically, financing for the Phase 1 Parking Garage, a Project Contingency beyond the control of OHSU, is not currently available. The Parties acknowledge and agree that this Section 1.1. constitutes valid and sufficient notice by OHSU to the other Parties under Section 16.3.2 of the DA that one or more Project Contingencies to OHSU's obligation to build the Phase 1 Parking Garage has not been fulfilled and is not likely to be fulfilled prior to the Late Construction Start Date for the Phase 1 Parking Garage.

1.2 The Parties acknowledge and agree that OHSU has revoked its notice selecting Block 33 as the site for the Phase 1 Parking Garage, and such notice is no longer effective.

1.3 Notwithstanding any language in the DA and the Block 33 Purchase Agreement to the contrary, including, without limitation, the terms and provisions of Sections 6.11.2 and 6.11.4 of the DA, (i) OHSU is not required and has no obligation to provide or cause to be provided parking stalls for Affordable Apartments or for any other purpose on Block 33, and (ii) PDC is not required and has no obligation to construct or cause to be constructed the Phase 1 Affordable Apartments above the Block 33 Parking Garage.

1.4 The second sentence of Section 6.11.1 is hereby deleted from the DA in its entirety.

1.5 The first and second sentences of Section 9.2.1 of the DA are hereby deleted in their entirety and replaced with the following: “The Parties agree that the following are appropriate alternative sites for building structured parking to serve OHSU buildings within the Project Area: underground on Blocks 32 and 36; below and/or above grade on Block 33; below and/or above grade on Block 26; and any other site in the Project Area owned or controlled by OHSU (each, a ‘Parking Site’).”

1.6 Section 10.7.1 of the DA is hereby deleted in its entirety.

1.7 The first sentence of Section 10.7.2 is hereby deleted in its entirety and replaced with the following: “OHSU may petition for the formation of a LID to provide financing for the Phase 1 Parking Garage, which petition PDC will support.”

2. OHSU Taxable Projects.

2.1 Section 6.8.3.1 is hereby deleted from the DA in its entirety.

2.2 Section 6.8.3.2 is hereby deleted from the DA in its entirety and replaced with the following:

6.8.3.2 PDC shall invest additional public funds in any parking structure developed by OHSU in the South Waterfront Plan Area, including the Phase 1 Parking Garage (an “OHSU Parking Structure”), if taxable projects in the UR Area are (x) developed on (i) OHSU Blocks, whether owned and developed by OHSU or by a third party transferee or (ii) other land in the UR Area owned by OHSU on the date of the Eighth Amendment, whether developed by OHSU or by a third party transferee and (y) developed consistent with (1) any covenants and restrictions applicable to the OHSU Blocks or other land and (2) the OHSU policy and mission as described in Oregon Revised Statutes Section 353.030 (each, an “OHSU Taxable Project”).

2.3 Section 6.8.3.3 is hereby deleted from the DA in its entirety and replaced with the following:

6.8.3.3 If OHSU develops an OHSU Taxable Project prior to the expiration date of the UR Plan, as such expiration date may be extended from time to time, then PDC will invest in an OHSU Parking Structure an amount equal to fifty percent (50%) of the projected amount of tax increment financing (bonded debt proceeds) that can be obtained by PDC based on the applicable Tax Increment Revenue generated by such OHSU Taxable Project (the “Investment Amount”). The Investment Amount shall be used by PDC to partially defray OHSU’s costs of constructing the OHSU Parking Structure. Notwithstanding the foregoing, in no event will the Investment Amount exceed the lesser of (a) one half of OHSU’s Garage Costs or (b) \$25 million; *provided, however,*

that such fixed amount shall be increased annually to capture inflation in construction costs from the date of the Eighth Amendment. The inflation adjustment shall be calculated based on the McGraw Hill monthly publication "Engineering News Report" ("ENR") cost index for Portland, Oregon for the time period commencing on November 9, 2006 and ending on September 19, 2010. If the ENR cost index is discontinued, the Parties shall mutually agree on a substitute monthly construction cost index that most closely approximates the ENR cost index for Portland, Oregon. For purposes of this Section 6.8.3.3, "OHSU's Garage Costs" means the actual hard and soft costs incurred by OHSU to construct an OHSU Parking Structure, which costs shall include the cost of the land but exclude financing costs and costs funded by: (i) sums (excluding loans) received by OHSU from the City or PDC for the construction of such OHSU Parking Structure; and (ii) monies received by OHSU for construction of such OHSU Parking Structure that are attributable to lobbying efforts funded by the City or PDC, but only to the extent and based on the percentage of the applicable lobbying effort actually funded by the City or PDC.

2.4 The last sentence of Section 6.8.3.6 is hereby deleted from the DA in its entirety.

2.5 The last sentence of Section 6.8.3.7.2 is hereby deleted from the DA in its entirety.

3. Definitions.

3.1 The term "Affordable Housing Parking Agreement" is hereby deleted in its entirety from Exhibit C to the DA.

3.2 The definition of "Block 33 Parking Garage" is hereby deleted in its entirety and replaced with the following: "Block 33 Parking Garage" means a Parking Garage if such Parking Garage is constructed on Block 33."

3.3 The term "OHSU Parking Structure" is hereby added to Exhibit C of the DA and has the meaning set forth in Section 6.8.3.2.

3.4 The term "Parking Agreement" is hereby deleted in its entirety from Exhibit C to the DA.

4. No Third Party Beneficiaries. Nothing in this Amendment, express or implied, is intended to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies under or by reason of this Amendment.

5. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original and when taken together shall constitute one and the same

instrument, which instrument will become effective only upon execution of one or more counterparts by each of the Parties hereto. Such execution may be evidenced by original or facsimile signatures.

6. Effect of Amendment. The DA is amended as set forth in this Amendment. Except as expressly amended, the DA remains unmodified and in full force and effect.

IN WITNESS WHEREOF, the Parties have entered into this Amendment as of the date first set forth above.

PDC: PORTLAND DEVELOPMENT COMMISSION

By: _____
Print Name: _____
Title: _____

Approved as to form:

Office of General Counsel

By: _____
Print Name: _____
Title: _____

OHSU: OREGON HEALTH AND SCIENCE
UNIVERSITY, a public corporation of the State of
Oregon

By: _____
Print Name: _____
Title: _____

RCI: RIVER CAMPUS INVESTORS, LLC, an Oregon
limited liability company

By: Williams & Dame Development, Inc., an
Oregon corporation, Manager

By: _____
Print Name: _____
Title: _____

NMI: NORTH MACADAM INVESTORS, LLC, an
Oregon limited liability company

By: Williams & Dame Development, Inc., an
Oregon corporation, Manager

By: _____
Print Name: _____
Title: _____

BLOCK 39: BLOCK 39, LLC, an Oregon limited liability company

By: Williams & Dame Development, Inc., an
Oregon corporation, Manager

By: _____
Print Name: _____
Title: _____