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Clark County, WA 10/11/2011 10:08



WHEN RECORDED RETURN TO
City of Vancouver – City Clerk's Office
PO Box 1995
Vancouver WA 98668 1995

Document Title(s)

First Amendment to the Downtown Waterfront Development Agreement

Reference Number(s) of Related Documents

AF #4636752

Additional Reference #s on Page _____

Grantor(s)

City of Vancouver

Additional Grantors on Page _____

Grantee(s)

Columbia Waterfront LLC

Additional Grantees on Page _____

Legal Description (abbreviated form i.e. lot block plat or section township range quarter/quarter)

Additional Legal on Page _____

Assessor's Property Tax Parcel/Account Number

Additional Parcel #s on Page _____

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

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120-251

**FIRST AMENDMENT TO THE
DOWNTOWN WATERFRONT
DEVELOPMENT AGREEMENT**

DATED June 6, 2011

BETWEEN THE CITY OF VANCOUVER,
a Washington municipal corporation (the "City")

AND COLUMBIA WATERFRONT LLC,
a Washington limited liability company
c/o 19767 SW 72nd Avenue
Tualatin, OR 97062 (the "Developer")

WHEREAS, the City of Vancouver entered into a Development Agreement with Columbia Waterfront, LLC on October 19, 2009, and

WHEREAS, the Development Agreement provided for certain street vacations and conveyance to the Developer, and

WHEREAS, since the execution of the Development Agreement, the parties have learned that some of those vacations should be to the Port of Vancouver and not the Developer, and

WHEREAS, the parties desire flexibility in making the conveyance to the appropriate party, and

WHEREAS, since the execution of the Development Agreement, delays have occurred in the City's Waterfront Access Project beyond the control of the parties, and

WHEREAS, economic conditions have caused a delay in development of the site, and

WHEREAS, the parties agree to a one year delay in payment of the Developer contribution for public infrastructure and a one year delay in the substantial completion date as currently provided in the Development Agreement

WHEREFORE, the parties agree to the following amendments to the Development Agreement executed on October 19, 2009

Paragraph 3.23 is amended to read as follows

Within sixty days of the date that the Development Approvals are Final, the City agrees to commence the process of vacating the street rights of way described on attached Exhibit G and to thereafter expeditiously process the street vacation of these rights of way so as to declare these rights of way as surplus within six (6) months of the Final approval of the Development Approvals. Developer acknowledges that the vacation of a right of way is an exercise of the City's police power and, accordingly, the City cannot and is not committing to the vacation of these rights of way. Upon the final action of the City necessary for the vacation of these streets rights of way, the City agrees to convey these vacated street rights of way to Developer or the Port of Vancouver. Any consideration that may be owed to the City by the Developer or the Port under the applicable provisions of RCW 35.79.030, shall be paid to the City by the Developer or the Port within thirty (30) days of the effective date of the street vacation.

Paragraph 7.1.1 is amended to read as follows

The City and Developer agree that in order to achieve the densities and uses called for in the VCCV and the Master Development Plan and to adequately mitigate the transportation impacts associated with the VCCV and the Project, off site transportation infrastructure improvements must be completed. The City agrees to cause the following described off site transportation improvements to be substantially completed no later than December 31, 2013 ~~2011~~, subject to the conditions in Section 7.1.2. The City agrees to

pay the cost of completing the off-site transportation improvements, subject to Developer's obligation to make a contribution to the cost of these improvements pursuant to Section 7.3.1. The City's obligations under this Section 7.1 and 7.2 shall survive and supersede the termination provisions of Section 6, if Developer has timely made all of its required payments and provided security to the City as provided for under Section 7.3.

Paragraph 7.2 is amended to read as follows:

The following are the off-site transportation improvement projects that need to be completed pursuant to the terms of this Agreement. These off-site transportation improvements are described on attached Exhibit J. The City agrees to cause the following described off-site transportation improvements to be substantially completed no later than December 31, 2013 ~~2011~~ (unless an earlier date is specified below), subject to the conditions in Section 7.1.2.

Paragraph 7.3.1.2 is amended to read as follows:

On or before June 30, 2010 (Initial Payment Date), Developer shall pay to the City \$350,000. ~~For the next three years on the anniversary date of the Initial Payment Date,~~ On June 30, 2012, June 30, 2013, and June 30, 2014, the Developer shall make an additional \$350,000 payment to the City. On June 30, 2015, ~~the fourth anniversary date of the Initial Payment Date,~~ the Developer shall make a final payment in the amount of \$5,800,000, subject to the early payment provisions set forth below. These funds shall be used by the City to pay a portion of the cost of the off-site transportation improvements. Payment of the first payment under this subsection prior to June 30, 2010 shall not cause the Initial Payment Date to be other than June 30, 2010. All amounts referred to in this Section 7.3.1.2 shall be accelerated and be due and payable within thirty (30) days after Developer (or an assignee, grantee or transferee of a portion of the Project Site) is issued the first building permit for the construction of a vertical structure intended for

occupancy on the Project Site. In the event that the Developer fails to make any payment when and as required under this Section 7.3.1.2, then thirty (30) days written notice to Developer and the guarantors referred to in Section 7.3.1.3, the City may accelerate the required payment of all unpaid amounts due under this Section 7.3.1.2 plus interest thereon at the rate of the City's cost of capital for financing the off site transportation improvements.

Paragraph 9.5 is amended to read as follows:

The Developer agrees to make available to the City approximately two (2) acres of land west of the Grant Street Bridge, south of the railroad berm all within blocks 10, 13 and 14 as depicted on Exhibit P, for construction staging secured by temporary fencing. This property should be approximately square in shape and will be used for the staging of construction materials, equipment and other purposes associated with construction of the City's waterfront infrastructure improvements. The City reserves the right to supply temporary electrical power to the site for the purposes of installing security lighting and power to a construction trailer across the Developer's land at a location mutually agreed to by the City and the Developer. The City will hold the Developer harmless for liability associated with the use of this land and, at completion of the improvements, will return the property to its original condition or better. In the event of contamination caused by the above construction activity, the City will clean up and properly restore the property at no expense to the Developer. The Developer agrees to permit access to this site across the Developer Parcel. The duration of this use is limited up to the earlier of (i) the completion of the above construction activities, or (ii) December 31, 2013 ~~2014~~.

The Development Agreement executed on October 19, 2009 remains in full force and effect in all other respects

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective as of the date set forth above

CITY

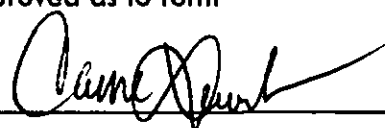
CITY OF VANCOUVER, a Washington
municipal corporation

By


Eric Holmes, City Manager

Approved as to form

By


R Lloyd Tyler, City Clerk
By Carrie Lewellen, Deputy City
Clerk

Approved as to form

By


Ted H. Gathe, City Attorney

DEVELOPER

COLUMBIA WATERFRONT LLC, a
Washington limited liability company

By Gramor Columbia Waterfront LLC

By Gramor Investments, Inc

By  Barry A. Cain
Its President

FIRST AMENDED GUARANTY AGREEMENT

Effective Date June 6, 2011

From Steven Hansen ("Guarantor")

In Favor of The City of Vancouver (the City")
a Washington municipal corporation

Columbia Waterfront LLC, a Washington limited liability company, entered into the Downtown Waterfront Development Agreement in 2009 with the City (the 2009 Development Agreement") Pursuant to the 2009 Agreement Columbia Waterfront LLC is obligated to pay to the City the sum of \$8,000 000 when and as set forth in Section 7 3 1 of the 2009 Development Agreement As of the date of this First Amended Guaranty Agreement, the amount of \$1 150,000 has been paid to the City leaving a balance of \$6,850,000 to be paid

The 2009 Agreement was amended as provided for in the First Amended Development Agreement and approved by the City Council on June 6, 2011 This Amendment provided for changes to the payment and construction schedules as well as made changes to planned street vacations

In 2009, Guarantor executed a Guaranty Agreement (attached hereto as Exhibit ' A and hereinafter "2009 Guaranty Agreement) with the City guaranteeing payment to the City as provided for in the 2009 Development Agreement

NOW THEREFORE for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows

**SECTION 1 GUARANTY OF DOWNTOWN WATERFRONT DEVELOPMENT
AGREEMENT AS AMENDED**

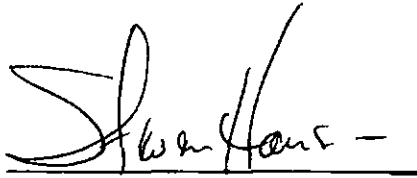
The guaranty made in the 2009 Guaranty Agreement shall apply to the Columbia Waterfront, LLC payment obligations under the Downtown Waterfront Development Agreement as amended in the First Amendment thereof

SECTION 2 VOLUNTARY GUARANTY

Guarantor represents and acknowledges that it is executing this Guaranty voluntarily and for its own benefit

IN WITNESS WHEREOF this Guaranty has been duly executed by Guarantor as of the date and year first above written

Guarantor

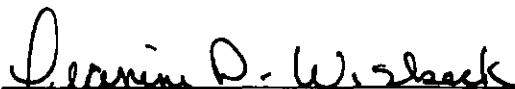

Steven Hansen

STATE OF WASHINGTON)
)ss
COUNTY OF CLARK)

I hereby certify that I know or have satisfactory evidence that Steven Hansen is the person who appeared before me, and that said person acknowledged that he (he/she) is authorized to execute the foregoing document and acknowledges it to be the free and voluntary act of such party for the uses and purposes therein mentioned



Dated this 30th day of August 2011


Notary Public for the State of Washington
Residing at Vancouver
My commission expires 02/15/2012

FIRST AMENDED GUARANTY AGREEMENT

Effective Date June 6, 2011

From Allan Kirkwood ("Guarantor ")

In Favor of The City of Vancouver,
a Washington municipal corporation (the ' City)

Columbia Waterfront LLC, a Washington limited liability company entered into the Downtown Waterfront Development Agreement in 2009 with the City (the 2009 Development Agreement) Pursuant to the 2009 Agreement, Columbia Waterfront LLC is obligated to pay to the City the sum of \$8 000,000, when and as set forth in Section 7 3 1 of the 2009 Development Agreement As of the date of this First Amended Guaranty Agreement, the amount of \$1 150,000 has been paid to the City leaving a balance of \$6,850 000 to be paid

The 2009 Agreement was amended as provided for in the First Amended Development Agreement and approved by the City Council on June 6 2011 This Amendment provided for changes to the payment and construction schedules as well as made changes to planned street vacations

In 2009 Guarantor executed a Guaranty Agreement (attached hereto as Exhibit A and hereinafter "2009 Guaranty Agreement) with the City guaranteeing payment to the City as provided for in the 2009 Development Agreement

NOW THEREFORE for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows

**SECTION 1 GUARANTY OF DOWNTOWN WATERFRONT DEVELOPMENT
AGREEMENT AS AMENDED**

The guaranty made in the 2009 Guaranty Agreement shall apply to the Columbia Waterfront, LLC payment obligations under the Downtown Waterfront Development Agreement as amended in the First Amendment thereof

SECTION 2 VOLUNTARY GUARANTY

Guarantor represents and acknowledges that it is executing this Guaranty voluntarily and for its own benefit

IN WITNESS WHEREOF this Guaranty has been duly executed by Guarantor as of the date and year first above written

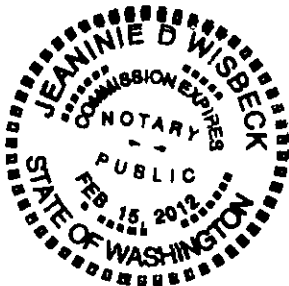
Guarantor

Allan Kirkwood
Allan Kirkwood

STATE OF WASHINGTON)
)ss
COUNTY OF CLARK)

I hereby certify that I know or have satisfactory evidence that Allan Kirkwood is the person who appeared before me, and that said person acknowledged that he (he/she) is authorized to execute the foregoing document and acknowledges it to be the free and voluntary act of such party for the uses and purposes therein mentioned

Dated this 22 day of August 2011



Jeanine D. Wisbeck
Notary Public for the State of Washington
Residing at Vancouver
My commission expires 02/15/2012

FIRST AMENDED GUARANTY AGREEMENT

Effective Date June 6, 2011

From George N Diamond ("Guarantor")

In Favor of The City of Vancouver,
a Washington municipal corporation (the City')

Columbia Waterfront LLC a Washington limited liability company, entered into the Downtown Waterfront Development Agreement in 2009 with the City (the "2009 Development Agreement") Pursuant to the 2009 Agreement, Columbia Waterfront LLC is obligated to pay to the City the sum of \$8,000,000, when and as set forth in Section 7 3 1 of the 2009 Development Agreement As of the date of this First Amended Guaranty Agreement, the amount of \$1,150 000 has been paid to the City leaving a balance of \$6,850 000 to be paid

The 2009 Agreement was amended as provided for in the First Amended Development Agreement and approved by the City Council on June 6, 2011 This Amendment provided for changes to the payment and construction schedules as well as made changes to planned street vacations

In 2009, Guarantor executed a Guaranty Agreement (attached hereto as Exhibit "A" and hereinafter "2009 Guaranty Agreement) with the City guaranteeing payment to the City as provided for in the 2009 Development Agreement

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows

**SECTION 1 GUARANTY OF DOWNTOWN WATERFRONT DEVELOPMENT
AGREEMENT AS AMENDED**

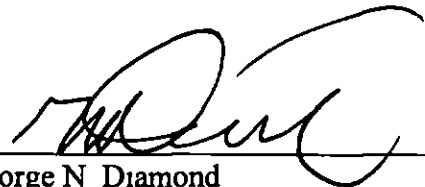
The guaranty made in the 2009 Guaranty Agreement shall apply to the Columbia Waterfront, LLC payment obligations under the Downtown Waterfront Development Agreement as amended in the First Amendment thereof

SECTION 2 VOLUNTARY GUARANTY

Guarantor represents and acknowledges that it is executing this Guaranty voluntarily and for its own benefit

IN WITNESS WHEREOF, this Guaranty has been duly executed by Guarantor as of the date and year first above written

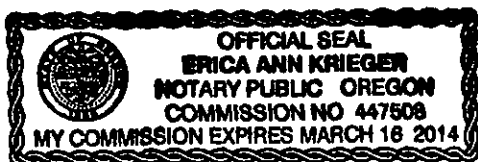
Guarantor



George N Diamond

Oregon
STATE OF ~~WASHINGTON~~)
Multnomah)ss
COUNTY OF ~~CLARK~~)

I hereby certify that I know or have satisfactory evidence that George N Diamond is the person who appeared before me and that said person acknowledged that he (he/she) is authorized to execute the foregoing document and acknowledges it to be the free and voluntary act of such party for the uses and purposes therein mentioned

Dated this 23 day of August 2011




Notary Public for the State of ~~Washington~~ *Oregon*
Residing at 2039 SW 72nd Avenue, Portland
My commission expires March 16, 2014

FIRST AMENDED GUARANTY AGREEMENT

Effective Date June 6, 2011

From Steven J Oliva (' Guarantor)

In Favor of The City of Vancouver,
a Washington municipal corporation (the 'City')

Columbia Waterfront LLC a Washington limited liability company entered into the Downtown Waterfront Development Agreement in 2009 with the City (the 2009 Development Agreement") Pursuant to the 2009 Agreement Columbia Waterfront LLC is obligated to pay to the City the sum of \$8,000 000, when and as set forth in Section 7 3 1 of the 2009 Development Agreement As of the date of this First Amended Guaranty Agreement, the amount of \$1 150,000 has been paid to the City leaving a balance of \$6 850,000 to be paid

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In 2009, Guarantor executed a Guaranty Agreement (attached hereto as Exhibit A and hereinafter "2009 Guaranty Agreement) with the City guaranteeing payment to the City as provided for in the 2009 Development Agreement

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged Guarantor agrees as follows

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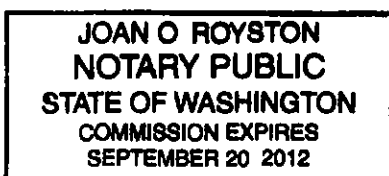
Guarantor

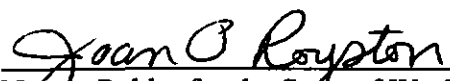

Steven J Oliva

STATE OF WASHINGTON)
)ss
COUNTY OF CLARK)

I hereby certify that I know or have satisfactory evidence that Steven J Oliva is the person who appeared before me and that said person acknowledged that he (he/she) is authorized to execute the foregoing document and acknowledges it to be the free and voluntary act of such party for the uses and purposes therein mentioned

Dated this 18th day of August 2011




Notary Public for the State of Washington
Residing at Vancouver
My commission expires Sept 20, 2012

FIRST AMENDED GUARANTY AGREEMENT

Effective Date June 6, 2011

From Gramor Columbia Waterfront, LLC ("Guarantor ")

In Favor of The City of Vancouver (the City)
a Washington municipal corporation

Columbia Waterfront LLC a Washington limited liability company, entered into the Downtown Waterfront Development Agreement in 2009 with the City (the "2009 Development Agreement") Pursuant to the 2009 Agreement Columbia Waterfront LLC is obligated to pay to the City the sum of \$8 000,000, when and as set forth in Section 7 3 1 of the 2009 Development Agreement As of the date of this First Amended Guaranty Agreement the amount of \$1 150 000 has been paid to the City leaving a balance of \$6 850,000 to be paid

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Guarantor

Gramor Columbia Waterfront, LLC
a Washington limited liability company

By Gramor Investments, Inc ,
an Oregon corporation, Manager

By 
Barry A. Cain, President

STATE OF ~~WASHINGTON~~)
Oregon)ss
COUNTY OF ~~CLARK~~)
Washington

I hereby certify that I know or have satisfactory evidence that Barry A. Cain is the person who appeared before me, and that said person acknowledged that he (he/she) is authorized to execute the foregoing document and acknowledges it to be the free and voluntary act of such party for the uses and purposes therein mentioned

Dated this 2nd day of September 2011





Notary Public for the State of ~~Washington~~
Residing at Portland Oregon
My commission expires May 19, 2014

FIRST AMENDED GUARANTY AGREEMENT

Effective Date June 6, 2011
From Barry A Cain (Guarantor)
In Favor of The City of Vancouver, (the "City")
a Washington municipal corporation

Columbia Waterfront LLC, a Washington limited liability company, entered into the Downtown Waterfront Development Agreement in 2009 with the City (the "2009 Development Agreement") Pursuant to the 2009 Agreement, Columbia Waterfront LLC is obligated to pay to the City the sum of \$8,000 000, when and as set forth in Section 7 3 1 of the 2009 Development Agreement As of the date of this First Amended Guaranty Agreement, the amount of \$1 150,000 has been paid to the City leaving a balance of \$6,850 000 to be paid

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Guarantor

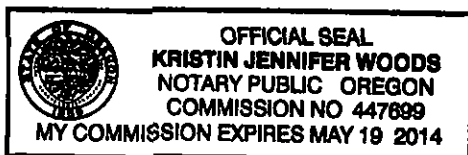


Barry A. Cain

STATE OF ~~WASHINGTON~~ Oregon)
COUNTY OF ~~CLARK~~ Washington)ss

I hereby certify that I know or have satisfactory evidence that Barry A. Cain is the person who appeared before me and that said person acknowledged that he (he/she) is authorized to execute the foregoing document and acknowledges it to be the free and voluntary act of such party for the uses and purposes therein mentioned

Dated this 2nd day of September 2011



Kristin Jennifer Woods
Notary Public for the State of Washington
Residing at Portland, OR
My commission expires May 19, 2014