

## **FORBEARANCE AGREEMENT**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, between THE BREWERY BLOCKS I, LLC, an Oregon limited liability company (“BBI”), BREWERY BLOCKS INVESTORS, an Oregon limited liability company (“Investors”), PEARL GATEWAY CONDOMINIUMS, LLC, an Oregon limited liability company (“Pearl Gateway”), and RIGGS & COMPANY, a division of Riggs Bank N.A., as Trustee of the Multi-Employer Property Trust, a trust organized under 12 C.F.R. Section 9.18 (“MEPT”) (collectively, the “Customers”), PORTLAND ENERGY SOLUTIONS COMPANY, LLC, an Oregon limited liability company (“PES”), and the CITY OF PORTLAND (“the City”).

### **RECITALS**

A. On or about June 27, 2001, the Portland City Council approved Ordinance No. 175730 granting a temporary, revocable permit to Portland Energy Solutions Company, LLC (“PES”) to build, operate and maintain a pipeline system to provide chilled water within a 5-block district bounded by W Burnside Street, NW 13th Avenue, NW Davis Street, and NW 10th Avenue (the “District”). On or about June 5, 2002, the Council approved Ordinance No. 176542, amending Ordinance No. 175730 to extend the term of the revocable permit to June 25, 2003. The permit contains certain restrictions upon assignment or transfer of the permit without the City Council’s consent as expressed by ordinance, which restrictions are identical to those contained in the Franchise described below.

B. PES has built its water cooling plant on a building within the District and is providing chilled water services to buildings within the District pursuant to six (6) District Cooling Service Agreements dated July 3, 2000, as amended, each between PES and a Customer (the “Cooling Agreements”). Each of the six Cooling Agreements covers one of the whole or partial city blocks described in Exhibit “A” attached hereto (each of which is referred to herein as a “Property”; collectively referred to as the “Properties”). For purposes of this Agreement, the Properties are referred to as “Block 82,” “Block 81,” “Block 69 North,” “Block 69 South,” “Block 80” and “Block 83,” as set forth in Exhibit “A” attached hereto.

C. On January 8, 2003, the Council passed Ordinance No. 177186, granting authority to PES to use the City’s streets for building, operating and maintaining a pipeline system to provide chilled water (the “Franchise”) within the District. A copy of the Franchise is attached hereto as Exhibit “B.” As provided under City Charter procedures for adopting franchises, the Franchise will become effective on or after March 11, 2003. By its terms, when the Franchise becomes effective, the Franchise will supersede the permit described in Paragraph A above. The Franchise will establish certain terms and conditions for PES’s delivery of chilled water services, including restrictions upon assignment or transfer of the Franchise without the City Council’s consent as expressed by ordinance. The chilled water services that PES will provide to the Customers, using the facilities authorized by the Franchise, are essential to the operation of the

buildings, and the functioning of the businesses and tenants of those buildings. Interruption of the provision of these services could possibly require the closure of the buildings as uninhabitable until services could be resumed, creating an economic hardship for the Customers and the surrounding business area. Due to the nature of the centralized chilled water system, the Customers may require additional time in which to arrange for an alternative provider. This Agreement is intended to provide sufficient time for an orderly transition of service providers, without interruption of chilled water services.

D. To allow the Customers and PES a period of time to provide for the orderly transition of services and transfer of the Franchise in the event of PES's default under the Franchise, PES desires for the City to give certain additional notice of default under the Franchise to temporarily forbear enforcement of certain remedies in the event of default. PES also desires to grant to the Customers a limited security interest in the Franchise, which the Customers may assign to their secured lenders for security purposes, such that, in the event PES is in default of the Franchise or certain obligations to the Customers and fails to cure such defaults as required by the Customers, the Customers may, at their option, request that the Franchise be transferred or assigned to the Customers or their designee(s), subject to all City requirements and obligations for such transfer. The Customers desire that the City agree to give certain notices of default under the Franchise and temporarily forbear enforcement of certain remedies as described above. The Customers also desire to obtain a limited security interest as described above.

E. To allow the Customers and PES a period of time to provide for the orderly transition of services and transfer of the Franchise in the event of PES's default under the Franchise or certain other circumstances, the City is willing to agree to give certain notices and temporarily forbear some of its rights under the Franchise, as set forth below.

## **AGREEMENT**

### **Section 1. Notice and Forbearance of Exercise of Remedies.**

1. For purposes of this Agreement, the term "Default" shall mean any act or omission by PES or other event that would give the City the right to exercise any of its remedies pursuant to Section 16 of the Franchise.

2. In order to allow the Customers and PES a period of time to provide for the orderly transition of services and transfer of the Franchise in the event of PES's Default under the Franchise, the City agrees to modify its rights set out in Section 16 of the Franchise by extending PES's cure period specified in Section 16.D of the Franchise from thirty (30) days to one hundred twenty (120) days. In addition, the City agrees that, concurrently with providing written notice of such Default to PES under Section 16.D of the Franchise, it will give notice of such Default to the Customers as provided in Section 5 of this Agreement.

**Section 2. City's Consent to Grant of Security Interest.** The City acknowledges that PES has granted the Customers an option to purchase a portion of its chilled water plant and certain related equipment, including the distribution system necessary to serve the Properties, in the event of certain conditions that would or might affect PES's ability to furnish continued, uninterrupted chilled water service and that PES has granted the Customers a security interest in such property to secure and provide notice of the Customers' option. The City consents to PES's granting of a security interest to the Customers in the tangible assets of Grantee's Pipeline System located in the Streets and in the Franchise, but any such security interest shall be subject to the City's other rights contained in the Franchise. Unless and until the Customers or their designee(s) acquire PES's interest in the Franchise, the Customers or their designee(s) shall have no obligations under the Franchise.

**Section 3. Authority to Perform for PES.** PES authorizes and grants full authority to the Customers, at their option, upon the occurrence of any event that gives a Customer the right to exercise its Option to Secure Performance, as such term is defined in the Cooling Agreements or any subsequent agreement between the Customers and PES: (a) to transfer the Franchise to a transferee in conformity with the City's requirements, standards, conditions, and consent as specified in the Franchise, and (b) to do any acts or things necessary to carry out PES's duties under the Franchise. In such event, if the Customers or any of them desire to have the Franchise transferred to themselves or their designee(s), subject to the City's requirements, standards, conditions, and consent as specified in the Franchise, or to obtain a new franchise from the City, then PES will use its best efforts to facilitate such transfer or new franchise. This Agreement shall not obligate any Customer to take any action whatsoever in connection with the Franchise.

**Section 4. City's Consent to Transfer of Franchise.** Any transfer of the Franchise by PES is subject to the City's prior written consent in accordance with Section 14 of the Franchise. Such consent shall be required, regardless of whether any Default has occurred under the Franchise or whether PES is in breach of any agreement with any of the Customers. The parties agree and acknowledge that the Customers do not wish to assume responsibility for performance of PES's duties and obligations under the Franchise at this time.

**Section 5. Notice.**

1. For each Property, the Customer under the Cooling Agreement for the Property shall appoint one person or entity to serve as its agent for the purposes of receiving any notices to be provided under this Agreement ("Notice Agent") and shall notify the City of the appointment of such Notice Agent. The initial Notice Agent appointed for each Property, and the address of each Notice Agent, is listed below. The Customer for each Property may change the Notice Agent for the Property by furnishing written notice of the name and address of the new Notice Agent to the City in the manner provided in this Section 5 for giving notices. The Customer or the Notice Agent shall promptly furnish the City with written notice of any change of address of the Notice Agent. Only one Notice Agent may be appointed for each Property, regardless of whether any Property is divided into multiple parts or is owned by multiple owners.

2. Other than notice to the Notice Agents as provided under this Agreement, and notice to PES as provided under Section 16.D of the Franchise, the City shall not be obligated to any Customer, or to the owners of all or any part of the Properties, to provide notice pursuant to this Agreement.

3. Any notice provided for under this Agreement shall be sufficient if in writing and (i) delivered to the addressee by depositing said notice in United States registered or certified mail, postage prepaid; (ii) sent by commercial overnight courier, or (iii) delivered personally or by private courier, addressed as follows, or to such other address as the party entitled to notice hereafter shall specify in writing:

If to the City: Office of Cable Communications and  
Franchise Management  
1120 SW Fifth Avenue, Room 1305  
Portland, OR 97204  
Telephone: (503) 823-5385  
Fax: (503) 823-5370 or (503) 827-5971  
Attn: Director

If to PES: Portland Energy Solutions Company, LLC  
121 SW Salmon Street  
Portland, OR 97204  
Telephone: (503) 464-7699  
Fax: (503) 464-7162  
Attn: General Manager

If to the Customers: For Block 82:  
Brewery Blocks Investors  
1120 NW Couch Street, Suite 600  
Portland, OR 97209  
Fax: (503) 299-6703  
Attn: Manager

For Block 81:  
Riggs & Company, Trustee of the Multi-Employer  
Property Trust  
c/o Riggs Trust Real Estate Group  
808 17<sup>th</sup> Street N.W.  
Washington, D.C. 20006  
Fax: (202) 835-6887  
Attn: Patrick O. Mayberry

For Block 69 North:  
The Brewery Blocks I, LLC  
1120 NW Couch Street, Suite 600  
Portland, OR 97209  
Fax: (503) 299-6703  
Attn: Manager

For Block 69 South:  
Pearl Gateway Condominiums, LLC  
1120 NW Couch Street, Suite 600  
Portland, OR 97209  
Fax: (503) 299-6703  
Attn: Manager

For Block 80:  
Brewery Blocks Investors  
1120 NW Couch Street, Suite 600  
Portland, OR 97209  
Fax: (503) 299-6703  
Attn: Manager

For Block 83:  
Brewery Blocks Investors  
1120 NW Couch Street, Suite 600  
Portland, OR 97209  
Fax: (503) 299-6703  
Attn: Manager

Any such notice, communication or delivery shall be deemed given upon: (i) three (3) business days after mailing when sent by registered or certified mail; (ii) one business day after sending by commercial overnight courier as aforesaid; or (iii) the day delivered when delivered personally or by private courier (or the first business day thereafter if on a Saturday, Sunday or legal holiday).

**Section 6. Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the Customers identified in the first paragraph of this Agreement and the successors and assigns of such Customers under their respective Cooling Agreements, which shall also be considered “Customers” for purposes of this Agreement.

**Section 7. Counterparts.** This Agreement may be executed in two or more counterparts, all of which, together, shall be deemed one and the same instrument.

**Section 8. Capitalized Terms.** Except as otherwise defined in this Agreement, any capitalized term used in this Agreement shall have the meaning ascribed to it in the Franchise Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Forbearance Agreement on the day and year first written above.

**THE CUSTOMERS:**

PEARL GATEWAY CONDOMINIUMS,  
LLC  
an Oregon limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Manager

BREWERY BLOCKS INVESTORS, LLC,  
an Oregon limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Manager

RIGGS & COMPANY, a division of Riggs  
Bank N.A., as Trustee of the Multi-Employer  
Property Trust, a trust organized under  
12 C.F.R. Section 9.18

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE BREWERY BLOCKS I, LLC,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Manager

**THE CITY:**

CITY OF PORTLAND

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PES:**

PORTLAND ENERGY SOLUTIONS  
COMPANY, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT “A”**

**Properties in the District**

<b>Reference Names</b>	<b>Legal Description</b>
Block 82	Block 82, Couch’s Addition to the City of Portland, in the City of Portland, County of Multnomah, State of Oregon
Block 81	Block 81, Couch’s Addition to the City of Portland, in the City of Portland, County of Multnomah, State of Oregon
Block 69 North	All of Lots 5, 6, 7 and 8, Block 69, Couch’s Addition to the City of Portland, in the City of Portland, County of Multnomah and State of Oregon. TOGETHER WITH those portions of Lots 3 and 4, Block 69, Couch’s Addition to the City of Portland, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows: <b>Beginning</b> at the Northwest corner of said Lot 3; thence South 89°56’46” East 200.00 feet along the North line of said Lot 3 and the North line of said Lot 4 to the Northeast corner of said Lot 4; thence South 00°03’14” West 1.97 feet along the East line of said Lot 4; thence leaving said East line North 89°56’46” West 200.00 feet to the West line of said Lot 3; thence North 00°03’14” East 1.97 feet along said West line to the <b>point of beginning</b> .
Block 69 South	All of Lots 1, 2, 3 & 4, Block 69, Couch’s Addition to the City of Portland, in the City of Portland, County of Multnomah and State of Oregon. EXCEPTING THEREFROM those portions of said Lots 3 & 4 more particularly described as follows: <b>Beginning</b> at the northwest corner of said Lot 3 thence South 89°56’46” East 200.00 feet along the north line of said Lot 3 and the north line of said Lot 4 to the northeast corner of said Lot 4; thence South 00°03’14” West 1.97 feet along the east line of said Lot 4; thence leaving said east line North 89°56’46” West 200.00 feet to the west line of said Lot 3; thence North 00°03’14” East 1.97 feet along said west line to the <b>Point of Beginning</b> .

Block 80	Block 80, Couch's Addition to the City of Portland, in the City of Portland, County of Multnomah, State of Oregon
Block 83	Block 83, Couch's Addition to the City of Portland, in the City of Portland, County of Multnomah, State of Oregon

**EXHIBIT “B”**

**Copy of Franchise**

(see attached)