

Testimony May 27, 2009
Report #09-65

Commissioners, Mr. Warner, thank you for this opportunity to speak to you today. My name is Eric Wentland, 1628 N. Columbia Blvd., Portland OR 97217. I am the managing member and one of five members of The Heritage Building, L.L.C. I am here to give a weak and qualified support for this Action.

This is a difficult testimony for me to give. I want to be respectful and honest. To that end, PDC has not been an easy organization to work with, especially for a small business that has a very different structure from yours. Albina Bank has been even worse. Heritage could not have come this far in this project without PDC and for that we are grateful. It is also true that PDC could not have come this far without Heritage and seldom has there been any acknowledgement of that fact. Through much of this project it has seemed that for each time that PDC has been a great help, there has been an offsetting instance of PDC being a huge impediment. We would like to believe that in this instance, when given the opportunity to do something that will truly be of assistance, PDC will respond with the same good faith that Heritage has brought to every aspect of this project. Albina Bank, after costing Heritage in excess of \$200,000 over a technical default, now wants to give that money to PDC.

Collectively, the 5 members of The Heritage Building, LLC have more than 150 years of experience living and working in Inner North and Northeast Portland, almost all of that experience in either construction, planning or community development. This project, started more than 8 years ago, is the most difficult development any of has ever worked on. Unlike the Buddha, we have become very attached to it, perhaps to our own detriment, but to the advantage of PDC, Albina Bank and the community. It has primarily been through our efforts, from the very beginning, that brought this project through monumental challenges.

In spite of any past difficulties, it is our desire to be supportive of the actions being requested today. However, we also want the Commissioners to take action that truly supports Heritage as well as Albina Bank. The action requested by staff today, if executed as requested, only benefits PDC and Albina Bank. We believe that you have options that will benefit all of those who have an investment in this building. Our proposed

modification to your action is specified later in this testimony. PDC is not a typical market rate lender and to that end, has a different vested interest and a broader call to action. Teasing out what PDC is, can also be a daunting task. We do know that your mission, as was stated in the 2001 Weimer Building Redevelopment Project RFP, was...

“PDC’s mission is to bring together community resources to achieve Portland’s vision of a vital economy with healthy neighborhoods and quality jobs for all citizens.”

We supported that mission at the beginning of this project, have supported that mission throughout the last 8 years and believe that we have been an active participant with you in working to achieve this mission, particularly as it relates to The Heritage Building and NE Martin Luther King, Jr. Blvd.

Our long involvement in the daily workings of this project is part of what makes it very difficult for us to agree with much of what is written in Report 09-65. To our eyes and ears, the predominant tone and tenor of this Executive Summary is decidedly unflattering towards Heritage, in some cases it borders on being libelous. Quite frankly, our history of this project and your history do not always agree. At the very least, this summary paints a negative picture of Heritage and our development where we see much more positive.

This Report has painted a decidedly unflattering and negative picture of Heritage and our work, past, present and future. That is truly unfortunate, since we have always acted in good faith, proceeding forward and solving problems, problems that often seemed insurmountable. From a derelict mid-block building, to court cases that had nothing to do with us but changed our whole deal anyway, to disappearing financing, to unrealistic partnership offers, to wildly escalating steel and concrete prices, to tenants who claimed our building was “too far north”, to an economy that has gone into a tailspin, to a bank that chose a path that cost us over \$200,000 while giving nothing to the building, we have persevered and found a way through.

We offer you a different view and a different reason to buy this loan. We offer you a fresh view of The Heritage Building as a performing asset, a plain old mundane borrower, making our payments, leasing space, and providing no drama for either your organization or ours . We see ourselves as being the steward of this high-quality, high-performance green asset that you and the taxpayers of Portland have invested in. We built this building with a budget that was established in late 2004 and early 2005

and have never asked to increase the amount of any of the loans related to this project. All cost overruns, the kind that happen in almost every rehab construction project, have been paid out of our pocket. Even the excessive, painful and very unnecessary cost of filing a Chapter 11 Bankruptcy, an action we were forced into in order to protect your investment and our asset, has been borne by us, the Heritage Team. Over \$200,000 of the loan you are buying is costs directly related to the choices made by Albina Bank, choices that eventually gave us no alternative except to file a Chapter 11 Bankruptcy. At the end of that filing, no one lost any money except The Heritage Building and it's members.

Our LEED Gold building was completed on a budget of just \$175 foot for all hard and soft costs, a number we are proud of and will gladly put side-by-side with any other commercial project of this quality that has been built in Portland over the last 5 years. We are an experienced, successful and viable small business. We opened The Heritage Building in mid-2007 with gross sales (rents) of \$54,000 annually, increasing last year to \$167,000. For 2009 we have projected revenues in excess of \$300,000 and when we are at full capacity in 2010 we will receive \$441,000 in gross rents annually.

PDC's motivation in acquiring the Albina Loan does not seem to include any support for the success of Heritage or for direct assistance to Tenants. There is also the intimation, in this single sentence, that Heritage has had a monetary default on the project that led to a foreclosure action. Although later in the document a small concession is made to the nature of the default, the commitment and ability of Heritage to work through every problem that has occurred on this project, is not mentioned.

PDC's original redevelopment objectives, as stated in January of 2003 in Exhibit D of the DDA between PDC and The Heritage Building, stated that this project sought to be "... a place for neighborhood goods and services to be provided, stimulating commercial revitalization on the property and on MLK Jr. Blvd generally. Locally produced or distributed materials will be a high priority for construction, with a goal of purchasing at least 85% of all materials from local vendors. Finally the project seeks to bring benefits to the local community through employment, ownership, increased safety and wealth building activities." (italics and emphasis are mine)

We maintain that all of these Project Objectives, with the possible exception of wealth building, has been achieved. This is a difficult site, built in troubled economic times. In spite of that, the members of The Heritage Building, LLC have ...

- **Built an exceptional LEED Gold building that provides the opportunity for neighborhood goods and services.**
- **We have helped stimulate over \$30 million dollars of additional work within 1 block of this location, most of it begun within the last 12 months or less.**
- **We achieved a total of 33% MWESB contractors for construction.**
- **We purchased 98% of our construction materials from local vendors.**
- **Every tenant, as well as most of their employees, can easily walk or bike to the building from their homes.**
- **We have already exceeded the projected job creation numbers for the entire project, even though we are only about 2/3 leased.**
- **We have placed ownership of the building in the hands of 5 local residents.**
- **We have helped to decrease the crime rate as well as the perception of crime, in the neighborhood.**

The only remaining Objective from the DDA that has not yet been fully realized is wealth building. This final goal turned out to be the most elusive, however, it can easily be supported through your actions today. All that is required is for PDC to take action that helps 3 new tenants occupy The Heritage Building while at the same time supports the best interests of the taxpayer, the owners of the building, Albina Bank, current and future tenants, and the surrounding neighborhood.

Countering fear is always difficult. The word default is used 17 times in your Executive Summary, while foreclosure is used 13 times, all in just 6 pages! It is hard for us not to be offended by what appears to be a blatant attempt to make Heritage seem to be a fragile and tenuous business, teetering on the brink of insolvency, causing prudent lenders to be fearful. Since it is unimaginable to us that PDC would want to sabotage Heritage in order to take ownership of our building, what are we to make of statements that demean our efforts, undermine our ability to attract new tenants, offer little assistance towards our success in this project and then claim that it is necessary for PDC to buy this loan to protect your interests from our inevitable failure? Stated in your summary is the following:

"Another default of the Heritage loans is possible within the next six to twelve months based on cash flow concerns ... "

This statement is based on subjective opinion but has no basis in facts relating to The Heritage Building, LLC. It does not take into account outside resources that Heritage possesses. It merely helps

to feed the flames of fear and belief in an event that has not occurred and is unlikely to ever occur. Earlier this year, PDC staff conveyed similar sentiments in group emails to citizen committee members. Any prospective tenant or any lender considering refinancing, after reading PDC's description of our business and building in this Report, would understandably look for a different location. While it is possible that Heritage might default within the next six to twelve months, it is also possible that it could snow in August. The real question should be "What is the probability of a default and foreclosure occurring in the next six to twelve months?"

The Heritage Building categorically denies and refutes that there is "Significant risk" that there will be a default on the Albina and PDC loans. This assessment from staff carries with it the intimation that a monetary based default is possible again, which is just plain false since no monetary default has ever occurred.

- The Albina loan no longer carries any reference to debt service coverage, which was the entire nature of the previous default.
- The members of The Heritage Building, LLC have personally guaranteed the Albina loan and are fully prepared to make up any shortfall that might occur, as we have done with every other shortfall that has occurred to date. IF there were such a risk, wouldn't it make more sense to help with attracting new tenants, whereby the risk would be mitigated or eliminated?
- Three new tenants are ready to come to the building, pending funding of Tenant Improvements, dramatically reducing any future risk.
- We continue to maintain that there will not be any default in the future, on any of these loans. In the highly unlikely event of a default and foreclosure action, the subordinate loan balances of PDC would be covered by the value of the property, as has been discussed elsewhere in our response.

We have persevered through 8 years of pushing, pulling, negotiating, challenging, cajoling, fixing, adjusting, solving and resolving every major and minor problem that has been thrown at us. This project has been a marathon race, measured in years, not days, weeks or months. There is no reason to believe that now that we are inches from the finish line, we will throw up our hands and say, "This is too hard, we quit, please take our building!"

The Heritage Building, LLC believes that the simplest manner to completely resolve the perception of the likelihood of a loan default is to make sure that new tenants are occupying the building. The rents shown on page 4 of the Summary are accurate for today,

however, the expenses were estimated last year and when actual expenses were applied, the number is closer to \$5,000 per month, a number that will not increase with new tenants since operation of the building is already being run as if it were 100% occupied. This gives us closer to \$3,000 per month in positive cash flow. Additionally, rent from our new tenants will accrue almost all to positive cash flow, allowing us to pay down the small balances still due from the Chapter 11 much quicker than the 2 years allowed.

Too few Tenants with the capitalization to fund first time build-out in a space has been the only real problem that we have had since the building was completed. All of our difficulties have tumbled forward from that one short-coming. What this project needs at this point in time is for PDC to assist Heritage with Tenant Improvements for 3 tenants who are ready to move in now. This can be accomplished within the framework of PDC purchasing the Albina Loan. With this assistance, the already low likelihood of any default will be reduced to zero. The real timing and method of any default or foreclosure action rests in the hands of The Heritage Building, LLC, not PDC and we have no intention of being anything except a boring Borrower.

Barely mentioned in this report is the crucial fact of the appraised value of the building. If all of us do nothing more than accept the appraised value given by the firm of PGP Valuation, Inc., an appraisal done at the request of Bank of the West in March of 2008, the value today is at least \$4,240,000 and the value as fully leased is \$4,780,000. Even if PDC does not buy the 1st Trust Deed loan from Albina Bank, and even without assisting us in securing the remaining 33% of tenants, PDC is at very little risk. On page 5 of this report to you from Mr. Warner, it clearly states that if the property were sold at its full appraised value (A value Heritage continues to contend as being low and a price that none of the owners would accept today) "If the Property could be sold for this amount, the Albina and PDC loans would be repaid in full." That statement makes it very clear as to who is really at risk in this project, The Heritage Building and it's owners, not PDC or Albina.

In between the amount of money that Heritage is obligated to pay and the PDC purchase price of the Albina loan, there is a difference of \$212,740 dollars. We are asking you to authorize redirecting the amount of this Albina Bank Loan Discount to our tenants. Heritage is obligated to pay the entire \$2,049,116.15, plus interest, regardless of how much the holder of the loan has paid for it. The net effect to PDC by keeping this discount is that your yield is increased to approximately 9%. It is our contention that 9% is not necessary and is not supportive of redevelopment in one of the most difficult neighborhoods PDC operates in. Heritage believes that if this \$212,740 was placed into a fund for Tenant Improvements at The

Heritage Building, thereby directly supporting small business Tenants with job creation and expansion, a far greater community benefit will accrue than if the money is merely reabsorbed into the General Fund. Along with the benefit to the Tenants, Heritage and the taxpayers of Portland will benefit through the mitigation of all financial risk on this project. The entire balance of this loan that you are contemplating purchasing will be repaid to PDC in less than 5 years.

This is not new money but rather money The Heritage Building will be repaying to whomever holds this loan. This \$212,740 most closely represents an amount approximately equal to the Default interest rate charged by Albina plus the amount of attorneys' fees that Heritage became obligated for, just to prevent Albina Bank from foreclosing on the building in 2008. A foreclosure, by the way, instituted by Albina Bank over a technical issue and not over a failure of Heritage to pay any monies due. \$212,740.61 in attorneys fees and interest rather than Tenant Improvements, that could have been avoided if PDC had purchased this loan in January of 2008, when Albina first offered it to PDC, or could have been avoided by Albina giving a 90 day extension on the Debt Service Coverage requirement, or could have been avoided by all parties agreeing to do what was in the best interests of everybody instead of any one particular party.

PDC's last action on this project, in July of 2008, was a formality that PDC staff needed to do to protect any possible action by Albina, not Heritage. The Heritage Building had been in continual contact with PDC from the date of the default, January 4, 2008, right up to the filing of the Chapter 11 Reorganization Plan. Heritage had informed PDC at the time of the July 9, 2008 meeting that Heritage was planning to file the Chapter 11 Reorganization. I am not sure what significance there is in the fact that we filed one day prior to the foreclosure, other than to note another instance of our commitment to be successful with this project.

The urban renewal goals that are being alluded to in this Report, are not specific. As we pointed out earlier in this testimony, the stated goals between PDC and Heritage from the 2003 DDA have been almost entirely met. We are curious about what specific goals have not been achieved? We also are unclear as to how the Purchase of the Albina loan, as it is currently being requested, will "... support job creation or increase pedestrian activity on NE Martin Luther King, Jr. Blvd. Through ground floor activation." How will that support manifest through the PDC purchase of the loan? If, as we are requesting, the Albina loan discount were redirected to the Tenants who are ready to move in, then we could agree with that statement.

Although it is true that to date, a little more than half of the ground floor is leased, Tammie Swinson, an experienced local business owner, has had a letter of interest in our hands for over 6 months. She wants to Lease the remainder of the ground floor, about 3800 square feet. As of this date she has been unable to secure all of the necessary financing to expand her daycare business. She has submitted loan requests to conventional banks as well as PDC and continues to explore every avenue for additional funding. Happy Hearts and Hands, her business, will sign a lease for the Ground Floor space as soon as she can find approximately \$80,000 of her \$120,000 estimated Tenant Improvements. Although her business model assumes this \$80,000 would be a loan, we believe that the better way to serve Ms. Swinson, her business, the community, our lenders and The Heritage Building, would be to include \$80,000 as a part of the Landlord provided improvements. PDC can assist us in this goal by redirecting a portion of the Albina loan discount to this Tenant. As stated previously, The Heritage Building will be paying this amount back to the lenders.

Additionally, The Heritage Building has Letters of Interest from 2 other prospective Tenants. The first is for the expansion of an existing Tenant, Research Into Action for the entire 3rd floor space. This expansion into 5000 plus square feet will free up their existing offices for new tenants who will not need to do additional improvements. Our estimates are that approximately \$120,000 will be required to replicate Research Into Action's existing improvements on the 3rd floor.

The second Letter is from a local small business consultancy firm who is expanding and would like to occupy 2100 feet on the second floor. The Heritage provided Tenant Improvements for this tenant will be kept to \$22 foot or approximately \$22,000. All totaled, these three tenants need \$221,000 of additional Tenant Improvements, an amount that would support 100% occupancy of The Heritage Building. If PDC were to redirect the \$212,000 from the Albina discount, Heritage can easily fund the \$9,000 difference.

PDC claims that this action will support the PDC goals of 1) *Sustainability and Social Equity*, 2) *Healthy Neighborhoods*, 3) *Strong Economic Growth and Competitive Region* and 4) *Effective Stewardship over our Resources and Operations, and Employee Investment*.

The Heritage Building, LLC is fully supportive of the enumerated PDC goals. Without appearing facile or downright dense, what we don't understand from this request, is how the requested action would actually support the above goals, particularly if no additional benefits accrue to the Tenants or the owners of the building. From the outside, this request as currently made, appears to support only

the interests of PDC and Albina Bank.

To those of us on the outside, how PDC develops and adjusts its budget is complicated and at times, downright mysterious. However, what is left out of any budget analysis in this Report is the effect of the payment of \$730,680 towards the Albina Loan, \$292,109 on the PDC "A" loan and an estimated \$100,000 on the PDC "B" loan. This totals \$1,122,789 that Heritage will pay to PDC over the next 54 months. Having a full building will help insure those payments.

What we do know is that \$287,759 of the total amount shown on page 4 under Total Projected Heritage Building Expenditures (FY 2008-09) and tagged as loan proceeds, has been in the PDC budget since FY 2005-06, where it was originally part of \$2,450,000, representing the loan amounts we signed on to borrow in September of 2005. Given that The Heritage Building, LLC will be paying to PDC over the next 54 months, approximately \$730,680, most of which is interest (\$153,000 of that amount will reduce the principal amount of the loan), it would seem that the short-term redirection of \$212,740 could be managed.

Perhaps the budgetary concerns expressed in this Summary can be met by including in the future fiscal year budgets, the repayment amounts of this loan you are about to purchase, plus the income from the existing PDC loans, since this will result in approximately \$730,680 of revenue to PDC over the next 54 months, followed by a single principal payment of \$1,903,99 . Over the next 54 months, PDC will receive a total dollar return of \$2,656,135 on their initial investment of \$2,049,116 (assuming the loan is purchased at its face value). In addition to the returned principal amount and the \$607,000 of income, the terms of the original PDC loan agreement requires that The Heritage Building pay in full, the entire "B" loan , at the time of any refinance. Four and a half years from now, when Heritage pays off the Albina Loan and the "B" loan, through a refinance or sale, PDC will receive a total of approximately \$3,000,000 in principal payments plus the \$1,122,789 that will be made in payments. By any scenario other than default and foreclosure, Heritage will be paying to PDC, between now and January 1, 2014, an amount in excess of \$4,000,000.

This should be an easy decision to make. The most beneficial action for all the parties concerned here; PDC, Portland taxpayers, Albina Bank, The Heritage Building, 3 new tenants and the surrounding community, would be for the Board to buy the Albina loan and fully fund it to its face value, with the \$212,740 being used for additional Tenant Improvements at The Heritage Building.

On January 4th of 2008, when Albina Bank gave the default notice to

The Heritage Building, one course of action for us was to give up and turn the keys over to the lenders. Our decision was to fight for our building one more time, an act that has saved PDC and the taxpayers of Portland several hundred thousand dollars, perhaps even more. When Albina refused to extend a foreclosure action until we could get new financing in place, we again could have given up, costing hundreds of thousands of dollars to PDC and the taxpayers of Portland. Instead, we did what every passionate and dedicated business does when faced with adversity, we went to work and resolved the problems. We are a resourceful group and I am certain that Heritage can find a way to help our tenants. PDC has the ability to assist with these tenants and Albina Bank has given the vehicle to do it with a Loan Discount of over \$212,000. Please help us bring these last 3 tenants to The Heritage Building now.