

OPEN SESSION

PRELIMINARY AGENDA

REGULAR MEETING

August 18, 2021

I. OPEN SESSION

12:00 PM

PLEDGE OF ALLEGIANCE

CONSENT ITEMS

- A. Approval of Minutes – Juli
- B. Approval of Checks – Kim

NEW BUSINESS/DISCUSSION ITEMS

- C. Revised Panther RV Lease – Kim
- D. Site Infrastructure Development Agreement (SIDA) – Port / Killian Pacific – Mark
- E. Commission Meeting Schedule Changes – David

PUBLIC COMMENT [3 min. apiece]

ACTION ITEMS

- F. Revised Panther RV Lease
- G. Site Infrastructure Development Agreement (SIDA) – Port / Killian Pacific
- H. Commission Meeting Schedule Changes

STAFF REPORTS & COMMENTS

- I. Chief Executive Officer, Chief Operating Officer, and Director of Planning & Development

COMMISSIONER REPORTS

PUBLIC COMMENT [3 min. apiece]

ADJOURN

On March 24, 2020 a new Governor's proclamation went into effect regarding public meetings. By order of Washington State Governor Jay Inslee, Proclamation 20-28.15, the Regular Commission Meeting will be available to the public by conference or video call. **This meeting is accessible via conference or video call at: +1 (253) 215-8782, Meeting ID: 977 5197 8968, Password: 091071 or via this video link: <https://zoom.us/j/97751978968?pwd=RzkzMTZVWTRwbmU1eW1rOXNWSk5Edz09>**

**LEASE
BUILDING 18**

THIS LEASE is made and entered into this day by and between the PORT OF CAMAS-WASHOUGAL, a municipal corporation organized and existing under the laws of the state of Washington, hereinafter called "Lessor", and PANTHER RV PRODUCTS, LLC, a Washington corporation authorized to engage in business and engaging in business in the State of Washington, hereinafter called "Lessee".

WITNESSETH:

Section 1. PREMISES LEASED: For and in consideration of the payment by Lessee of the rentals hereinafter specified, and performance by Lessee of the covenants and obligations hereinafter provided to be kept and performed by Lessee, Lessor does hereby lease, demise and let unto Lessee, Lessor's Industrial Building No. 18 bays 1, 2, 3, 4, and adjoining yard area, located at 4060 South Grant St, Washougal, Clark County, Washington 98671, as shown in Exhibit "A" attached hereto and incorporated by this reference (hereinafter called the premises). Lessee shall, in addition, have a right-of-way in common with others over and across private roads and streets giving access to the leased premises, which right-of-way shall terminate in the event such private roads and streets are dedicated to the public.

Section 2. TERM: The term of this Lease shall commence on August 1, 2021 and shall terminate on July 31, 2026. Upon the commencement of this Lease, the prior lease between Lessor and Lessee shall automatically terminate and this Lease shall be the only lease governing the premises from and after the commencement date of this Lease, provided that any obligations of Lessee that accrued prior to such termination and any obligations that survive termination of the prior lease shall not be terminated and shall survive such termination.

The term of this Lease may be extended for 1 additional period of 5 years upon the following conditions. This extension shall be subject to the mutual agreement of Lessor and Lessee, each in its sole and absolute discretion. Lessee shall give Lessor written notice ninety (90) days prior to the expiration of the then current term regarding Lessee's intent to extend the Lease. This extension shall be on the same terms, covenants, and conditions as provided in this Lease. Lessee shall not be entitled to extend if Lessee is in default under any term of this Lease at the time the extension is to commence.

Lessee shall give Lessor written notice ninety (90) days prior to the expiration of the then current term regarding Lessee's intent to extend the Lease or vacate the premises upon expiration of the then current term. The absence of timely notice from Lessee will be deemed to be notice that Lessee intends to vacate the premises upon expiration of the then current term.

If Lessee holds over after the expiration or termination of the term with Lessor's consent, such tenancy shall be deemed to be a holdover tenancy on a month-to-month basis. All other terms, covenants, and conditions of the Lease shall remain in effect, except that rent shall be increased by the same percentage as at the beginning of the last lease year. If Lessee holds over after the expiration or termination of the term without Lessor's consent, then such tenancy shall be deemed a holdover tenancy on a month-to-month basis, on the terms, covenants, and conditions of this Lease in effect at the expiration or termination of the term, except that rent shall be increased to 200% of the rent last payable under this Lease. This section does not grant any right to Lessee to holdover, and Lessee is liable to Lessor for any and all damages and expenses of Lessor as a result of any holdover.

Section 3. POSSESSION: Lessee shall have the right to possession of the premises

pursuant to this Lease commencing on the commencement date of the lease term.

Section 4. RENT: Lessee shall pay to Lessor, without any notice or demand, and without setoff or deduction, in addition to taxes, assessments and other charges required to be paid hereunder by Lessee, rent for the premises in the following monthly rent:

Rent for 8/1/21 to 7/31/22:	\$7,002.00 per month
Rent for 8/1/22 to 7/31/23:	\$7,002.00 per month
Rent for 8/1/23 to 7/31/24:	\$7,212.00 per month
Rent for 8/1/24 to 7/31/25:	\$7,212.00 per month
Rent for 8/1/25 to 7/31/26:	\$7,428.00 per month

Extension Period:

Rent for 8/1/26 to 7/31/27:	\$7,428.00 per month
Rent for 8/1/27 to 7/31/28:	\$7,651.00 per month
Rent for 8/1/28 to 7/31/29:	\$12,175.75 per month
Rent for 8/1/29 to 7/31/30:	\$12,541.02 per month
Rent for 8/1/30 to 7/31/31:	\$12,917.25 per month

In addition to the rental amounts specified above, Lessee shall pay to Lessor with each monthly rental payment the Washington State Leasehold Tax on the leased premises, which tax is currently 12.84% of the monthly rental payment. Rental payments are payable in advance on the 1st day of each month during the term of this lease.

Lessee agrees to pay a late charge, in an amount equal to 7% of the monthly rental payment then due with any rental or leasehold tax payment which is not received in full by Lessor by the tenth day of the month.

Section 5. PREPAID RENT AND SECURITY DEPOSIT: Upon execution of this Lease, Lessee shall deposit with Lessor the first month's base rent and leasehold excise tax in the amount of \$7,901.06 and \$6,924.83 towards a total security deposit in an amount equal to last month rent and leasehold excise tax. Lessee previously had \$7,651.00 on deposit. Total security

deposit is \$14,575.83. The security deposit shall be held by Lessor upon the following terms and conditions:

A. The security deposit is given to secure Lessee's performance of all obligations under the lease agreement, including without limitation, the payment of rentals under Section 4, the use requirements of Section 10, and the utility provisions of Section 7.

B. Lessor shall maintain the security deposit as part of its general funds and not in a separate account for this deposit, with all interest attributable to the Lessor only.

C. Upon the expiration or sooner termination of this lease, Lessee shall only be entitled to return of said deposit if all conditions of this lease agreement have been complied with, and the leased premises has been returned to Lessor in its original and sound condition, free of debris, refuse, contamination and other materials. Lessor shall have the right to deduct all costs and damages resulting from Lessee's breach of any portions of this lease from the security deposit, and any interest thereon, to the maximum amount held by Lessor. Lessee shall be entitled to a refund of all or any portion of the security deposit which is not necessary to compensate Lessor for Lessee's breach, ninety (90) days from Lessee's vacation of the premises.

D. Nothing herein shall be construed to limit Lessor's right to seek other remedies, as authorized by law or this lease, for damages to the leased premises or violation of this lease.

Section 6. LEASE BOND: Lessor hereby waives its right to require a lease bond pursuant to RCW 53.08.085.

Section 7. TAXES AND UTILITIES:

Lessee shall pay all charges and assessments for or related to electricity, water, sewer, garbage disposal, phone, cable, and any and all other utilities and services which shall, during the

term of this lease, be charged or imposed upon the premises.

Lessee shall pay all taxes, assessments, and other expenses arising from Lessee's possession of the premises, or operation of Lessee's business on the premises, or are required because of Lessee's operations to make the property conform to government regulations, or which are imposed upon Lessee or Lessor due to the existence of this lease.

Lessee shall pay and discharge promptly, as the same becomes due and before delinquency, the taxes, assessments and other charges as described herein. Lessee shall pay, upon demand, the taxes, assessments and other charges on behalf of Lessor, or if this is not permitted by law, Lessee shall reimburse Lessor for the amount of any such tax, assessment and other charge paid by Lessor, provided that Lessee shall have the right to contest any such tax or assessment at its own expense.

Section 8. LIENS: Lessee shall keep the premises free and clear of all liens, including mechanic's, materialmen's, or other liens for work or labor done, and liens for services, materials, appliances and power performed, contributed, furnished or used or to be used in or about the premises, or in connection with any operations of Lessee, or any alteration, improvement, repair, or addition which Lessee may make, permit, or cause to be made or any work or construction by, for, or permitted by Lessee on or about the premises. Lessor shall not be responsible for liens caused by Lessee's activities on the premises.

Nothing in this lease shall be deemed or construed in any way as constituting the consent or request of Lessor, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the premises or any part thereof, nor as giving Lessee any right, power, or authority to contract for or permit the rendering

of any services or the furnishing of any materials that would give rise to the filing of any lien against the premises or any part thereof.

In the event that any lien, charge, or order for the payment of money described as the responsibility of Lessee in this section is filed against Lessor or any portion of the premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within sixty (60) days after notice from Lessor to Lessee, in the manner provided in Section 26, of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable counsel fees, resulting therefrom.

Section 9. CONTESTING LIENS AND TAXES: Lessee may contest any lien set forth in Section 8 or any tax, assessment, or other charge which Lessee shall pay under Section 7, provided that Lessee notifies Lessor, in the manner provided in Section 26, of their intention to do so within sixty (60) days of the filing of such lien or within thirty (30) days of receipt of notice of such tax, assessment, or other charge; and provided further that Lessee posts a bond or other security with Lessor, prior to the contest, in an amount equal to the amount of the contested lien or tax, assessment, or other charge.

Within sixty (60) days of the determination of its validity, Lessee shall satisfy and discharge any remaining lien, or pay and discharge any remaining assessment, or other charge, and all penalties, interest, and costs in connection therewith. Satisfaction and discharge shall not be delayed until execution is had on any judgment rendered, nor shall satisfaction, payment and discharge be delayed until sale is made of the whole or any part of the premises on account thereof. Any such delay shall be a default of Lessee under this lease.

In the event of any such contest, Lessee shall protect and indemnify Lessor against all

loss, expense, and damage resulting therefrom.

Section 10. USE OF PREMISES: Lessee covenants and agrees as follows:

A. To actively and continuously use the premises throughout the term of this Lease solely for recreation vehicle e-commerce accessories, assembly, and manufacturing in the course of Lessee's business and other uses incidental to Lessee's business. Lessee's use and all equipment utilized by Lessee within the premises shall fully comply with all local, State, and/or federal requirements and, in addition, Lessee shall have procured in advance all necessary permits or authorizations for such use from any local, state or federal agency, including, but not limited to, approval for the intended use from the Washougal Fire and Building Department prior to occupancy. Lessee shall not use the premises for other purposes without Lessor's prior written consent.

B. To use the adjoining front yard area for employee and guest parking, and to use the adjoining rear yard area for shipping and receiving of equipment and other goods in the course of Lessee's business, and temporary short-term staging of goods and equipment in connection with such shipping and receiving operations. Except as expressly permitted in this section, no equipment or other goods shall be stored in the rear yard area beyond the time reasonably necessary for a shipping or receiving operation. Except as expressly permitted in this section, Lessee shall not use any yard area for overnight parking, or storage of any vehicles, campers, boats, or trailers, or containers, sheds, or drums, or any other storage of any other thing whatsoever. Lessee shall at all times keep all yard areas area in good, clean, neat, orderly, and safe condition, free of any debris, and free of any material deemed objectionable by Lessor.

C. Not to use or occupy the premises, or permit the premises to be used or occupied, for other than legal purposes, or in a manner which shall violate any certificate of

occupancy in force relating to any building or improvement hereafter erected thereon;

D. To conform to and abide by all lawful rules, laws and regulations in connection with the use of said premises and the operation of Lessee's business thereon, and not to permit said premises to be used in violation of any lawful rule, law, regulation or other authority; and

E. Not to commit or permit any waste of the leased premises nor commit or permit the maintenance or commission of any nuisance on the premises.

F. The Premises was improved with a grant award from the U.S. Department of Commerce, Economic Development Administration ("EDA"), Project No. 070107296 (the "Award"). The Premises must be used in a manner consistent with the authorized general and special purpose of the Award, the EDA recorded Agreement and Mortgage (document number 5349272), and the Award terms and conditions. This includes but is not limited to Lessee not discriminating against any qualified employee or applicant for employment because of race, color, national origin, religion, sex, age, or physical or mental disability.

G. Lessee will actively employ approximately 23 personnel in support of business operations of premises. Lessee currently employs 18 staff and will hire an additional 4-5 staff members within 36 months of execution of lease.

Section 11. NO REPRESENTATION: Lessee has leased the premises after an opportunity for examination thereof and of the subsurface conditions beneath the same, and without any representation on the part of Lessor, except that Lessor states that it has no knowledge of any spill of hazardous materials or the presence of any hazardous materials on the

leased premises as of the date of the commencement of the lease term. As used in this lease, the term “hazardous substances” or “hazardous materials” means any hazardous or toxic substances, materials or waste, including but not limited to those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes as are or become regulated under any applicable local, state or federal law. Subject to Lessor’s obligations under this Lease, Lessee assumes the sole responsibility for the condition, operation, maintenance and management of the leased premises.

Section 12. IMPROVEMENTS:

A. Lessee Improvements. Lessee shall not make any changes, alterations, or improvements to the leased premises or surrounding yard area (“Tenant Improvements”) without the written consent of the Lessor being first obtained, which shall not be unreasonably withheld. All Tenant Improvements shall be performed by Lessee at its cost, and in compliance with all applicable law, including but not limited to all applicable building permit processes.

In the event Lessor consents to a proposed Tenant Improvement, such consent shall include Lessor's written determination as to whether Lessee shall be required to remove said improvement at the expiration or termination of this Lease. In the event no such written determination exists as to any proposed improvement made during the course of the Lease, then at the expiration or other termination of this lease, all improvements, which shall remain upon the Premises, shall upon Lessor’s determination, as determined in its sole and absolute discretion, be either (1) removed and the Premises restored by Lessee at its sole cost and expense, or (2) become the property of Lessor.

All machinery, fixtures, portable buildings and equipment installed by Lessee and which are adapted only for the special use of Lessee, shall be considered to be trade fixtures and may be removed at the termination of the Lease by Lessee. Lessee shall at its own expense repair all damage caused by the removal of trade fixtures, and shall restore the Premises to its same condition as immediately prior to such removal.

Section 13. REPAIR AND MAINTENANCE: Lessor shall maintain the roof, outer walls, structural members, exterior plumbing, and landscaping on the premises at its own expense. Lessee shall be responsible for the cost of any repairs made pursuant to this paragraph which are caused by the intentional or negligent acts of its employees, agents or licensees. Lessee shall complete all repairs within 90 days by a Lessor approved contractor or utilize Lessor maintenance staff at the Lessor contract rate. Lessee agrees to reimburse Lessor for said repairs immediately upon demand.

Lessor shall have no liability to Lessee for incidental damages or property damage suffered by Lessee as a result of its failure to maintain or repair those portions of the premises described above, its only obligation being to maintain or repair such portions of the premises. Lessee agrees to promptly notify Lessor of the need for exterior or structural repairs.

Except as provided above, Lessee agrees to maintain the premises and all improvements in a good state of repair and at the termination of this lease to return the premises and all improvements and adjoining yard area to Lessor in as good state and condition as the same are in at the time Lessee commences occupying same, reasonable wear and tear from the normal use thereof and fire or other casualty being excepted. Lessee agrees to keep all adjoining yard areas at all times in good, clean, neat, orderly, and safe condition, free from any debris, and free from any material deemed objectionable by Lessor.

Section 14. INDEMNITY: Lessee shall indemnify and save harmless Lessor from and against any and all liability, claims, damage, penalties, or judgments arising from any loss, injury, death or damage to person or property sustained by any person in or about the premises resulting from the act or omission of Lessee, Lessee's officers, agents, employees, contractors, and sublessees, or of any occupant, visitor, or user of any part of Lessee's premises. Lessee further covenants and agrees to indemnify and hold Lessor harmless against the claims of all and every person whomsoever arising out of or in any way connected with Lessee's occupation or use of the premises, except for claims by Lessor's employees or agents for injuries sustained during the course of employment through no fault of Lessee. Lessee shall pay all attorney's fees and other expenses incurred by Lessor in defending any and all suits which may be brought against Lessor or in which Lessor may be impleaded with others upon any of the aforementioned matters, except as may result from the acts set forth in the paragraph immediately below.

Lessor shall indemnify and hold harmless Lessee and its directors, officers, employees, and agents, from and against any and all losses, claims, and damages arising from Lessor's gross negligence or intentional misconduct. Except for the gross negligence or intentional misconduct of Lessor or its agents, or employees, Lessor shall not be responsible for or liable for, and Lessee, notwithstanding that joint or concurrent liability may be imposed upon Lessor by a statute or court decision, hereby waives all claims against Lessor for any damage or injury to any person or to any property on or about the premises subject to this lease, including liability for costs, attorney's fees and reasonable expenses arising out of said claims.

Lessee covenants and agrees to reimburse Lessor for all costs or expenses of repair or replacement of any of Lessor's property damaged or destroyed as a result of Lessee's use or occupation of the premises or use of Port property or facilities. Lessee further covenants and

agrees to carry liability insurance protecting itself and Lessor from all liability arising out of this Section 14. The provisions of this section shall survive the expiration or earlier termination of this lease.

Section 15. INSURANCE:

A. Lessee shall procure at its sole cost and expense and keep in effect from the date of this lease and at all times until the end of the term either Comprehensive General Liability insurance or Commercial General Liability insurance applying to the use and occupancy of the premises and the business operated by Lessee (or any other occupant) on the premises and providing coverage against all Lessee's liabilities pursuant to Sections 10-14 of this lease. Such coverage shall have a minimum combined single limit of liability of at least One Million Dollars (\$1,000,000.00) and such limit shall be increased from time to time to such amount as may be mutually acceptable to Lessor and Lessee in their reasonable judgment. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term; shall be endorsed to provide that such coverage shall be primary; and that any insurance maintained by Lessor shall be excess insurance only.

B. Lessee shall furnish Lessor with acceptable evidence that the insurance is in effect and in amounts sufficient to satisfy this section. All insurance policies required by this Section shall provide that they shall not be reduced, canceled or substantially amended or modified as to terms without thirty (30) days advance written notice to Lessor. All insurance policies required to be carried under this lease shall be with recognized insurance carriers, having an A rating from A. M. Best Company or like or similar rating from an equally recognized rating company, acceptable to Lessor, and shall name Lessor as an additional insured. All such

insurance shall provide for severability of interests; shall provide that an act or omission of one of the named insured shall not reduce or avoid coverage to the other named insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Such coverage shall be endorsed to waive the insurer's rights of subrogation against Lessor and Lessee if such waiver can be obtained at reasonable cost.

Lessee shall deliver to Lessor on or before the date on which the term commences, and thereafter at least ten (10) days before the expiration dates of expiring policies, certified copies of its insurance policies, or a certificate evidencing the same issued by the insurer thereunder, showing that all premiums have been paid for the full policy period; and in the event Lessee shall fail to procure such insurance, or to deliver such policies or certificates, Lessor may, at its option and in addition to Lessor's other remedies in the event of a default by Lessee hereunder, procure the same for the account of Lessee, and the cost thereof shall be paid to Lessor within ten (10) days following written demand therefor.

Section 16. HAZARDOUS SUBSTANCES - LESSEE'S OBLIGATIONS: Lessee shall not, without Lessor's prior written consent, keep on or about the leased premises, for use, disposal, treatment, generation, storage or sale, any substances designated as, or containing components designated as hazardous, dangerous, toxic or harmful (collectively referred to as "hazardous substances"), and/or which are subject to regulation by any federal, state or local law, regulation, statute or ordinance. With respect to any hazardous substances, Lessee shall:

A. Comply promptly, timely, and completely with all governmental requirements for reporting, keeping and submitting manifests, and obtaining and keeping current identification numbers;

B. Submit to Lessor true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or submitted to the appropriate governmental authorities;

C. Within five (5) days of Lessor's request, submit written reports to Lessor regarding Lessee's use, storage, treatment, transportation, generation, disposal or sale of hazardous substances and provide evidence satisfactory to Lessor of Lessee's compliance with the applicable governmental regulation;

D. Allow Lessor or Lessor's agents or representatives to come on the leased premises during regular business hours, and after hours with three (3) hours advance notice to Lessee, to check Lessee's compliance with all applicable governmental regulations regarding hazardous substances;

E. Comply with minimum levels, standards or other performance standards or requirements which may be set forth or established for certain hazardous substances (if minimum standards or levels are applicable to hazardous substances present on the premises, these levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this lease); and

F. Comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of hazardous substances.

Any and all costs incurred by Lessor and associated with Lessor's special or non-routine inspection of Lessee's premises and Lessor's monitoring of Lessee's compliance with this section, and including Lessor's attorneys' fees and costs, shall be additional rent and shall be due and payable to Lessor immediately upon demand by Lessor. However, Lessor shall solely bear

the expense of inspections made on a routine basis, without reasonable cause to believe that Lessee is in violation of this section.

Lessee shall be fully and completely liable to Lessor for any and all cleanup costs and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Lessee's use, disposal, transportation, generation and/or sale of hazardous substances, in or about the leased premises.

Lessee shall indemnify, defend and save Lessor harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Lessor (as well as Lessor's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of hazardous substances.

Upon Lessee's default under this section, in addition to the rights and remedies set forth elsewhere in this lease, Lessor shall be entitled to the following rights and remedies:

- A. At Lessor's option, to terminate this lease immediately; and
- B. To recover any and all damage associated with the default, including, but not limited to cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by Lessor and other lessees of the leased premises, and any and all damages and claims asserted by third parties and Lessor's attorneys' fees and costs.

The provisions of this section shall survive the expiration or earlier termination of this lease.

Section 17. ASSIGNMENT/SUBLETTING: Lessee shall not assign this lease nor sublet the whole or any part of the premises without the prior written consent of Lessor, in its sole and absolute discretion. Any such assignment or sublease shall not relieve Lessee from the responsibility of paying the rentals accruing under this lease or from keeping and performing all

other obligations herein imposed upon and assumed by it. It is understood and agreed that any consent by Lessor to any assignment or subletting by Lessee shall not be considered or construed to be a consent to any subsequent assignment or subletting nor as a waiver of the right of Lessor to refuse to consent to any subsequent assignment or subletting.

Section 18. QUIET ENJOYMENT:

A. Lessee, upon paying the rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements, and provisions of this lease on its part to be kept, shall quietly have and enjoy the premises during the lease term, subject to the provisions herein, without hindrance by Lessor.

B. Lessor warrants that it has fee simple title to the premises and the power and authority to execute this lease and to carry out and perform all covenants to be performed by it hereunder.

Section 19. ACCESS: Lessor or Lessor's employees and designees shall have the right to enter upon the premises at all reasonable times to examine the premises and to exhibit the premises to prospective purchasers and prospective lessees, and Lessor shall at all times be provided a key for independent access to the premises. Any persons other than Lessor or Lessor's employees who need access to the building will at Lessee's request sign a reasonable non-disclosure agreement before entering the building, except in an emergency.

Section 20. CURE BY LESSOR: If Lessee shall default in the performance of any provision under this lease, Lessor, at its option, may perform the same for the account and at the expense of Lessee. Upon notification to Lessee of the cost thereof to Lessor, Lessee shall promptly reimburse Lessor the amount of that cost, plus interest at the rate of twelve (12%) percent per annum from the date of incurring of such cost to the date of repayment. In the event

of such default by Lessee, Lessor may enter upon the premises for the purpose of causing such provisions to be fulfilled. Such entry shall not be deemed an eviction of Lessee. Lessor's action hereunder shall not be deemed a waiver of Lessee's default. Lessor, at its option, without relinquishing any remedy or right, may separately commence proceedings against Lessee for reimbursement of Lessor and for any other remedies for breach of this lease.

Section 21. **BANKRUPTCY AND INSOLVENCY:** If, after the commencement of the lease term:

A. Lessee then having the title to the leasehold estate created hereunder shall while having such title be adjudicated a bankrupt or adjudged to be insolvent; or

B. A receiver or trustee shall be appointed for Lessee's property and affairs; or

C. Lessee shall make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver; or

D. Any execution or attachment shall be issued against Lessee or any of Lessee's property, whereby the premises or any buildings or improvements thereon shall be taken or occupied or attempted to be taken or occupied by someone other than Lessee, except as may herein be permitted, and such adjudication, appointment, assignment, petition, execution, or attachment shall not be set aside, vacated, discharged, or bonded within ninety (90) days after the issuance of the same, then a default hereunder shall be deemed to have occurred so that the provisions of Section 21 hereof shall become effective and Lessor shall have the rights and remedies provided therein. Notwithstanding anything to the contrary hereinabove contained, upon the occurrence of a default pursuant to this Section 21, if the rent due and payable hereunder shall continue to be paid and the other covenants, provisions and agreements of this

lease on Lessee's part to be kept and performed shall continue to be kept and performed, no event of default shall have been deemed to have occurred and the provisions of Section 21 hereof shall not become effective.

Section 22. DEFAULT:

A. In the event any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided:

1. The occurrence of any event set forth in Section 22 hereof, without the curing of same as therein provided; or

2. The filing of a petition by or against Lessee for adjudication as a bankrupt, or for reorganization or agreement, or for any similar relief, under the Bankruptcy Code as now or hereafter amended; or

3. Lessee's failure to pay any installment of rent when the same shall be due and payable and the continuance of such failure for a period of three (3) days after receipt by Lessee of notice in writing from Lessor, in the manner provided in Section 26; or

4. Lessee's failure to perform any of the other covenants, provisions, and agreements herein contained on Lessee's part to be kept or performed and the continuance of such failure without the curing of same for a period of ten (10) days after receipt by Lessee of notice in writing from Lessor specifying in detail the nature of such failure, or Lessee shall not cure said failure as provided in Paragraph B of this Section 22, then Lessor may, at its option, give to Lessee written notice of election to terminate the lease term upon a date specified in such notice, which date shall not be less than twenty (20) business days (Saturdays, Sundays and legal holidays excluded) after the date of receipt by Lessee of such notice from Lessor. Upon the date specified in said notice, the term and estate hereby vested in Lessee shall cease and any and all

other right, title, and interest of Lessee hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire lease term had elapsed, but Lessee shall continue to be liable to Lessor as provided herein. Simultaneously with the sending of the notice to Lessee, as hereinabove provided, Lessor shall send a copy of such notice to any sublessee of the premises or portions thereof that Lessor may select, in writing from time to time, and any additional persons or parties having an interest in the premises that Lessor may select, in writing, from time to time. The curing of any default within the above time limits by any of the aforesaid parties or combination thereof, shall constitute a curing of any default hereunder with like effect as if Lessee had cured the same hereunder.

B. In the event that Lessor gives notice of a default of such a nature that it cannot be cured within the period prescribed in Paragraph A4 of this Section 22, then such default shall not be deemed to continue, so long as Lessee, after receiving such notice, proceeds to cure the default as soon as reasonably possible and continues to take all steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. No default under Paragraph A4 of this Section 22 shall be deemed to continue if and so long as Lessee shall be proceeding to cure the same in good faith.

C. In the event that any default of Lessee shall be cured in any manner hereinabove provided, such default shall be deemed never to have occurred and Lessee's right hereunder shall continue unaffected by such default.

D. Upon any termination of the lease term pursuant to Paragraph A of this Section 22, or at any time thereafter, Lessor may, in addition to and without prejudice to any other rights and remedies Lessor shall have at law or in equity, re-enter the premises and recover possession thereof and dispossess any or all occupants of the premises in the manner prescribed

by statute relating to summary proceedings, or similar statutes; but Lessee in such case shall remain liable to Lessor as provided herein.

E. In case of any such default, re-entry, termination and/or disposition by summary proceedings:

1. The rent shall become due thereupon and be paid up to the time of such re-entry, termination and/or disposition;

2. Lessor may re-let the premises or any part thereof, either in the name of Lessor or otherwise, for a term which may, at Lessor's option, be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent, but such re-letting shall not be construed as an acceptance of a surrender of the leasehold interest; and

3. Lessee or the representatives of Lessee shall also pay Lessor as liquidated damages for the failure of Lessee to observe and perform Lessee's covenants herein contained any deficiency between the rent hereby collected on account of the lease of the premises for each month of the period which would otherwise have constituted the balance of the lease term. In computing liquidated damages, there shall be added to the said deficiency such reasonable expenses and counsel fees as Lessor may incur in connection with the default and re-letting. Any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Lessor to collect the deficiency for any subsequent month by a similar proceeding.

Lessor, at its option, may make such alterations, repairs, replacements, and/or decorations in the premises as Lessor, in Lessor's sole judgment, considers advisable and necessary for the purpose of re-letting the premises; and the making of such alterations, repairs, replacements,

and/or decorations shall not operate or be construed to release Lessee from liability hereunder. Lessor agrees to mitigate in good faith all damages and to re-let the premises in the event of any default specified herein.

Section 23. **WAIVERS:** Failure of Lessor to complain of any act or omission on the part of Lessee, no matter how long the same may continue, or the receipt of rent by Lessor with knowledge of any breach or default of this lease by Lessee, shall not be deemed to be a waiver by Lessor of any of its rights herein. No waiver by Lessor at any time, express or implied, of any breach of any provision of this lease shall be deemed a waiver of any subsequent breach of the same or any other provision. Failure of Lessor to insist upon strict performance or to exercise any option herein conferred in any one or more instances in the event of default shall not be construed to be a waiver or relinquishment of any such or any other right herein extended to the Lessor.

Section 24. **GOVERNMENTAL REGULATIONS:** During the lease term, Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county, town, and city governments and of all other governmental authorities affecting the premises or appurtenances thereto or any part thereof whether the same are in force at the commencement of the lease term or may in the future be passed, enacted, or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Section 24.

Section 25. **NOTICE OF LITIGATION AND COUNSEL FEES:**

A. Within ten (10) days of Lessee having knowledge of any litigation or other

proceeding that shall be commenced against Lessee or against the premises to secure or recover possession thereof or that may affect the interests of Lessor in the premises, Lessee shall give written notice thereof to Lessor.

B. In the event any party shall bring suit to compel performance of or to recover for any breach of any covenant, agreement or condition of this lease, the prevailing party in said action shall be entitled to recover from the other party costs and reasonable attorney's fees.

C. Notwithstanding anything to the contrary hereinabove contained, in the event that Lessor is made a party to litigation against the Lessee, relating to the premises, or against the premises commenced by a third party, wherein Lessor is not at fault, Lessee shall pay, upon demand, all of Lessor's counsel fees and costs.

Section 26. NOTICES: Every notice, consent or other communication authorized or required by this lease shall be deemed to be sufficient if in writing, and sent postage prepaid by registered or certified mail, return receipt requested, directed to the other party at the address listed below, or at such other address as the other party may designate by notice given from time to time in accordance with this section. In the event a party notifies the other in writing of a change of address in accordance with this section, said address shall substitute for the address listed below for all subsequent notices. Notices shall be deemed effective when personally served, or upon delivery or refusal of delivery by the addressee if mailed in the manner provided by this section:

Lessor: Port of Camas-Washougal
24 So. "A" Street
Washougal, WA 98671

Lessee: Panther RV Products, LLC.
4060 S. Grant St.
Washougal, WA 98671

Section 27. **RIGHTS CUMULATIVE:** The rights, powers, and remedies of Lessor, as provided herein, shall be deemed to be cumulative, and no one of them shall be exclusive of any other, or of any other right, power, or remedy allowed by law.

Section 28. **TIME OF THE ESSENCE:** Time and punctual and exact performance and observation by Lessor and Lessee of the provisions herein are of the essence of this lease.

Section 29. **SEVERABILITY:** In the event that any provision of this lease shall be declared invalid by any court of competent jurisdiction, such provisions shall be severed from this lease, and such declaration shall not affect the remainder of this lease. This lease shall remain in full force and effect for the balance of its lease term.

Section 30. **INTERPRETATION:** Whenever the singular number is used herein, the same shall include the plural, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only. Upon any sale or assignment of the interest of either Lessor or Lessee herein, their respective successors in interest shall, during the term of this ownership of their respective estates herein, be deemed to be Lessor or Lessee, as the case may be.

Section 31. **SUCCESSORS:** All of the terms, conditions, covenants and agreements of this lease shall extend to and be binding upon Lessor, Lessee, and their respective heirs, personal representatives, successors and assigns, and upon any person coming into ownership or possession of any interest in the premises by operation of law, or otherwise, and shall be construed as covenants running with the land.

Section 32. **ENTIRE AGREEMENT:** This lease constitutes and shall be construed as the entire agreement of the parties. No oral statement shall have any force or effect. This

agreement shall not be modified or canceled except by writing subscribed by Lessor and Lessee.

Section 33. AUDITS; RETENTION OF RECORDS:

Audits and Inspections: At any time during normal business hours and as frequently as is deemed necessary, the Lessee shall make available to the Lessor and the U.S. Department of Commerce, Economic Development Administration (EDA) or EDA's authorized agents, for their examination, all of its records pertaining to matters covered by this Lease and only matters relating to the Lease.

Retention of Records: All records in the possession of the Lessee pertaining to this Lease shall be retained for a period of three (3) years after the expiration of the Lease or any extensions thereof. All records shall be retained beyond the three (3) year period if audit findings have not been resolved within that period or if other disputes have not been resolved.

SIGNATURES ARE ON NEXT PAGE

Exhibit A

*Panther RV
T.I.'s*



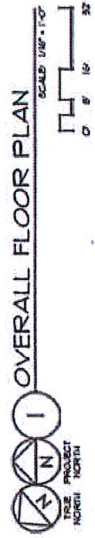
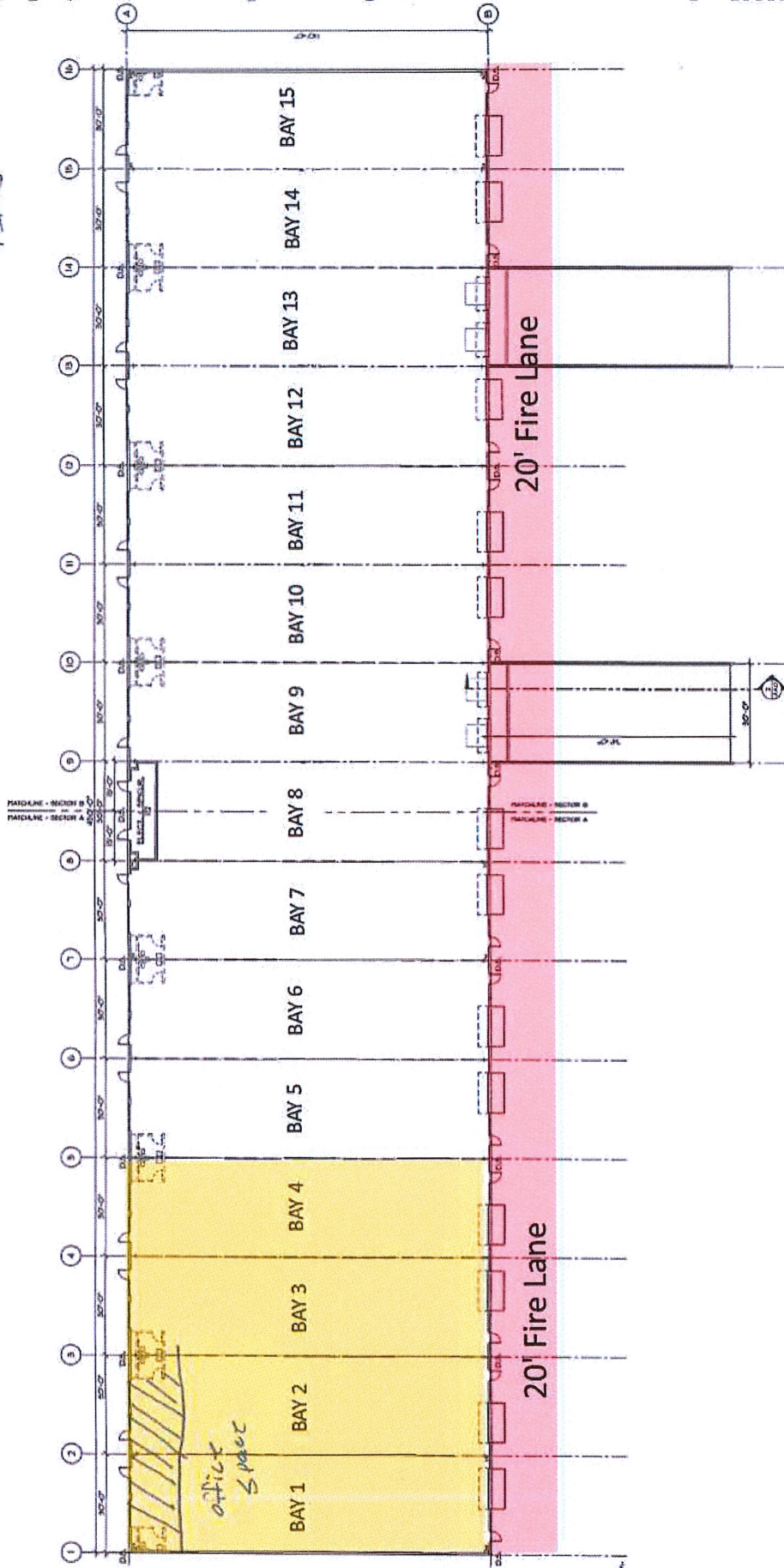
**JOHANSSON
ARCHITECTURE, PC**

Karl Johansson, AIA
311 G. Parkway Avenue
PO Box 728
Bath, Oregon, 97103
Ph: 503-487-4476
Fax: 503-487-4476

Port of Camas
- Washougal
Building #18
Sagehollow Commerce Center

400 South Clark Street
Washougal, WA, 98671

**Overall
Floor Plan**
PROJECT # 16000
FILE # 16000001.AWG
DATE July 15, 2017
REVISED:



A2.1



IN WITNESS WHEREOF, the parties have executed this lease in duplicate as of the

6th day of August, 2021.

LESSOR:

LESSEE:

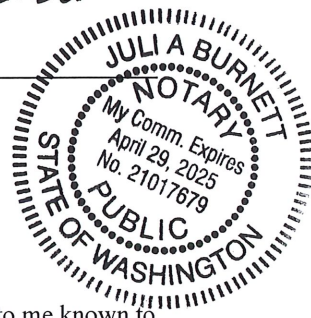
PORT OF CAMAS-WASHOUGAL

PANTHER RV PRODUCTS, LLC

By: _____
David Ripp, CEO

By: Richard Sweet
Managing Member

By: _____



STATE OF WASHINGTON)
) ss.
COUNTY OF CLARK)

On this ___ day of _____, 20___, before me personally appeared DAVID RIPP, to me known to be the Chief Executive Officer of the Port of Camas-Washougal, the entity that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of
Washington, residing at _____.
My commission expires _____.

STATE OF WASHINGTON)
) ss.
COUNTY OF CLARK)

On this 6th day of August, 2021, before me personally appeared Richard Sweet to me known to be the owner of Panther RV Products, the entity that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Juli A. Burnett

Notary Public in and for the State of
Washington, residing at Port of Camas-Washougal
My commission expires 4-29-2025

DRAFT COMMISSION VIEW
AFTER RECORDING RETURN TO:

**AMENDED AND RESTATED SITE INFRASTRUCTURE DEVELOPMENT AGREEMENT &
COVENANTS RUNNING WITH THE LAND**

Grantors:

PARKERS LANDING, LLC
PORT OF CAMAS-WASHOUGAL

Legal Description
(abbreviated):

Portions of: David C. Parker DLC, Richard Ough DLC, SEQ Section 12, T1N, R3E,
NEQ Section 13, T1N, R3E, SWQ Section 7, T1N, R4E, NWQ Section 18 T1N, R3E,
WM, Blocks 6-8, PARKERSVILLE, A/7, Blocks 2-6, J.A. LECHNER SUBDIVISION,
E/29. Additional legal descriptions appear on Exhibits A, B, C and D.

Tax Account No.:

75108088; 75108082; 75108078; 75108080; 75108092; 75108094; 75108096; 75108098;
71797000; 75109019; 75108042; 75108044; 75108046; 75108048; 75108050; 75108052;
75108054; 75108058, 75108060; 75108064; 75108066; 75108068; 75108070; 75108072;
75108074; 75108076; 73139052; 73139062; 73139042; 75108086; 75108084; 75108090;
75108078; 7419002; 71791000; 73134179; 73134153

Other Reference(s):

AF# 5531754 and AF# 5019502

Effective Date: _____, 2021

Parties: The Port of Camas-Washougal,
a public port district
24 South A Street
Washougal, WA 98671
and
Ninebark Apartment LLC,
a Washington limited liability company

1615 S.E. 3rd Avenue, Suite 100
Portland, Oregon 97214

Exhibits

- A. PL Property
- B. Port Property
- C. Trail Property
- D. Original Park Property
- E. Park Property
- F. Stormwater Facilities Easement
- G. Access Easement for maintenance south of the existing trail
- H. Park Plan
- I. Emergency Access and Pedestrian Easement Map
- J. PL Development Plan

**AMENDED AND RESTATED SITE INFRASTRUCTURE DEVELOPMENT AGREEMENT &
COVENANTS RUNNING WITH THE LAND**

This Site Infrastructure Development Agreement and Covenant Running with the Land (this “**Agreement**”) dated effective as of _____, 2021, is entered into by and between NINEBARK APARTMENTS LLC, a Washington limited liability company (“**Parkers Landing**”), and the PORT OF CAMAS-WASHOUGAL, a Washington Port District (the “**Port**”), each singularly “**Party**” and collectively “**Parties**”, and supersedes that certain Site Infrastructure Development Agreement & Covenants Running with the Land recorded July 23, 2018 under Clark County WA Recording No. 5531754. .

RECITALS

A. Parkers Landing is the owner of certain parcels of land containing approximately 8.338 acres, located in the City of Washougal, Clark County, State of Washington (the “**PL Property**”), which PL Property is more particularly described and depicted on **Exhibit A** attached hereto and incorporated herein by reference. Parkers Landing contemplates developing the PL Property.

B. The Port owns property adjacent to the PL Property (collectively, the “**Port Property**”), which Port Property contains approximately 32.122 total acres of which 21.08 acres is developable land, which is more particularly described and depicted on **Exhibit B** attached hereto and incorporated herein by reference. The Port contemplates developing the Port Property.

C. A portion of the Port Property comprising approximately 10.91 acres is referred to herein as the “**Trail Property**” and is depicted on **Exhibit C** attached hereto and incorporated herein by reference.

D. The Port also owns the certain parcel(s) of land containing approximately 1.00 acre adjacent to the PL Property (the “**Original Park Property**”), which Original Park Property is described and depicted on **Exhibit D** attached hereto and incorporated herein by reference. The configuration of the park area has changed from an open area to a more linear park design. The Port agreement to the changed park design and configuration, evidenced by the Port Commission’s adoption of this Agreement, is subject to the conditions in Section 4.2 herein below, including that Parkers Landing will undertake at its cost a boundary line adjustment to create the revised park area (“**Park Property**”) which will be approximately 1.20 acres in size and identified on **Exhibit E** attached hereto.

E. The PL Property, the Port Property and the Park Property are referred to herein as the “**Properties.**”

F. In connection with the Parties’ entry into the Site Infrastructure Development Agreement & Covenants Running with the Land recorded July 23, 2018 (“**Original SIDA**”) that this Agreement amends and

restates, Parkers Landing purchased the PL Property from the Port and the Port purchased a portion of the Port Property from Parkers Landing (the “**Transactions**”). The Parties’ entry into this Agreement is a material part of the consideration for the parties’ closing of the Transactions, and a copy of this Agreement shall be recorded and be binding and shall run with the land.

G. Through this Agreement, the Port and Parkers Landing seek to modify and set forth the Parties’ relative obligations with respect to planning, construction and cost sharing of certain infrastructure improvements and easements and covenants serving the Properties, including the Park Property, and for purposes of memorializing the requirements for the PL Property’s qualification for multifamily housing tax exemption for development on the PL Property pursuant to WMC Chapter 3.58.

H. Each and all of the covenants, conditions, easements and restrictions set forth in this Agreement shall run with the land of each of the Parcels (as defined below) and every portion of each thereof and shall apply to and bind the respective successors in interest to each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the covenants, conditions, easements and restrictions set forth in this Agreement are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels and constitute covenants running with the land pursuant to applicable law.

I. Nothing contained within this Agreement shall be construed or deemed to amend any Development Agreement involving the City of Washougal (“City”) and either Party hereto without the prior approval of the City through amending such Development Agreement or other mechanism approved by the City.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual covenants herein contained, and other valuable consideration (the receipt and sufficiency of which being hereby acknowledged), the Port and Parkers Landing hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definition of Terms. Whenever used in this Agreement, the following terms shall have the following meanings:

“Business Day”. Any Day excluding any Saturday, Sunday and national holiday(ies) observed by the federal government of the United States.

“City” shall mean the City of Washougal, Washington.

“Common Area” shall mean: (i) the areas where the Common Utility Facilities are located and (ii) any portion(s) of pedestrian and/or vehicular paths, trails or driveways designated by the Port and the Owner(s) of the PL Property(ies) on which the proposed Common Areas are located. Such Common Areas shall be identified in an amendment to this Agreement, which shall be recorded in the real property records of the County, and which shall require the signature of the Port and the applicable affected Owner(s) of the PL Properties.

“Common Utility Facilities” shall mean Utility Facilities for the common use of two or more Owners.

“Construction”. Any activity normally encompassed by any of the following terms: construction, reconstruction, demolition, excavation, building, rebuilding, renovation, restoration or any similar term performed within the Properties pursuant to the terms of this Agreement.

“Default”. An occurrence of any event or omission which, with the giving of notice or passage of time or otherwise may become an Event of Default.

“Event of Default”. Any Event of Default as defined in Section 10.1 or 10.2 hereof as applicable.

“Improvements” shall mean and refer to buildings, vehicular or pedestrian accessways or driveways, parking lots, recreational structures, signage, billboards, landscaping, site improvements (which includes such items as utilities, paving etc.) and other similar structures.

“Infrastructure Improvements”. The Joint Stormwater Facilities as defined in Section 2.3 below and any other future shared infrastructure improvements serving the Properties as the Port and Parkers Landing agree to be constructed.

“Laws”. Any and all present and future statutes, ordinances, rules, regulations, or binding determinations by any governmental authority having jurisdiction over the Port, Parkers Landing, or the Properties or any of them.

“Lien”. With respect to any property, any security deed, mortgage, deed to secure debt, deed of trust, lien, pledge, assignment, charge, security interest, title retention agreement, levy, execution, seizure, attachment, garnishment, or other encumbrance of any kind in respect of such property, whether or not choate, vested, or perfected.

“Owners” shall mean collectively, the owners of each of the Parcels (or in the event of a Prime Lease, then the Prime Lessee of the Parcel for the duration of the Prime Lease). The singular term “Owner” shall mean any one of the Owners. The term “Owner” excludes any person(s) or entities which hold an interest merely as security for the performance of an obligation. If a Parcel is sold pursuant to a real estate contract utilized as a financing device, then, upon the recording of such contract or a memorandum thereof, the vendee thereunder (rather than the fee owner) will be considered the Owner of such Parcel.

“Parcel” shall mean the Parcels comprising the Properties described on the attached Exhibits, and any other legally created parcel of real property within the Properties, including, without limitation, a parcel created by partition or subdivision of a portion of the Properties.

“Park Costs” shall mean all hard and soft costs associated with the initial design, planning and construction of the Park Property Improvements, including, without limitation, design costs and costs of preparing plans and specifications for the Park Property Improvements, pursuant to the Park Plans approved by Parkers Landing and the Port pursuant to Section 4.2; provided Park Costs shall not include the costs of any design, engineering, plans, or work of any kind related to buffer enhancement, wetland, stormwater or mitigation, nor any maintenance costs of same.

“Park Property Improvements” shall mean the initial park improvements approved by the Port and Parkers Landing and constructed by Parkers Landing pursuant to Section 4.2, provided Park Property Improvements shall not include the design, engineering, plans, or work of any kind related to buffer enhancement, wetland, stormwater or mitigation.

“Parties”. Shall mean the Port and Parkers Landing.

“Person”. Any natural person, corporation, partnership, limited liability company, business trust or other legal entity.

“Project Engineer”. A designated civil engineer agreed to by the Port and Parkers Landing.

“Separate Utility Facilities” shall mean and refer to Utility Facilities installed on a Parcel and not for use or service in common by other Owners.

“Stormwater Facilities”. Any engineered facilities that are designed to convey, capture, treat, remove pollutants from, store, or control the flow rate of storm runoff, including, without limitation, pipes, ditches, swales, filters, tanks, retention ponds or other retention facilities, infiltration facilities, and outfalls.

1.2 Other Capitalized Terms. Capitalized terms used herein but not defined in this Article 1 shall have the meanings set forth for such terms in this Agreement.

ARTICLE 2 STORMWATER FACILITIES

2.1 Intent. The parties acknowledge and agree that, as of the closing of the Transactions, no stormwater facilities serve the PL Property. The terms and conditions of this Article 2 are a material inducement for Parkers Landing to purchase the PL Property.

2.2 Stormwater Outfall and Facilities. The Port and or its assigns and agents shall be the applicant and be responsible for designing, constructing, utilizing and maintaining the stormwater outfall which discharges stormwater from the Port, public roadways and PL Properties to the Columbia River (“**Stormwater Outfall**”). The cost of designing, permitting, constructing and maintaining the Stormwater Outfall shall be divided 29 percent to Parkers Landing and 71 percent to Port, which represents the proportionate share of each Property’s contribution to the discharge. It is expected that the Stormwater Outfall falls within the scope of the City’s National Pollutant Discharge Elimination System permit (“**NPDES Permit**”). Each Party shall be responsible for designing, constructing, utilizing and maintaining t Stormwater Facilities to serve its own property as it sees fit, including the right to use certain portions of the Park Property for stormwater facilities as provided in section 2.4 below. The Port and or its assigns and agents shall use its best efforts to complete construction of the Stormwater Outfall not later than December 31, 2021. Parkers Landing and the Port shall grant to each other a reciprocal easement for the construction, installation, operation, maintenance, repair and replacement of the Stormwater Outfall and associated stormwater lines adjacent to and to the extent such facilities are located on each Party’s property, in a form as depicted in **Exhibit F** attached hereto.

2.3 Joint Stormwater Facilities. The Port and Parkers Landing have and shall continue to coordinate and agree on design, development, permitting construction and maintenance of Stormwater Facilities to serve the PL Property and the Port Property (the “**Joint Stormwater Facilities**”), and grant to each other reciprocal easements for the construction, installation, operation, maintenance, repair and replacement of Joint Stormwater Facilities in a form as depicted in **Exhibit F**, attached hereto including if needed, that portion of the Stormwater Facilities in which runoff from each property is combined to discharge from the Stormwater Outfall, in accordance with the terms and conditions of these Sections 2.2 and 2.3. Facilities cost incurred pursuant to this Section 2.3 shall be split 71 percent to Port and 29 percent to Parkers Landing.

(a) Cost Sharing.

(a) Construction and Cost Allocation of Joint Stormwater Facilities. The Party responsible for the construction of the Joint Stormwater Facilities shall be based upon mutual agreement of Port and Parkers Landing and shall comply with the Port’s public procurement processes, as applicable. The total soft and hard costs of the Joint Stormwater Facilities shall be allocated between Parkers Landing and the Port based upon a mutual agreement of Port and Parkers Landing provided such cost allocation shall reflect their proportionate use of the total capacity of the Joint Stormwater Facility based on the estimated needs of the Properties when fully developed, as determined by the parties’ Project Engineer. Any costs of the Joint Stormwater Facilities which serves property outside of the Properties, including the City’s frontage road adjacent to the Properties, shall be paid by the benefited property which amount shall be applied to equally reduce the contributions required by the Port and Parkers Landing, or shall be borne equally by the Parties.

2.4 Reservation of Park Property for Stormwater Facilities and Possible Riparian Buffer Mitigation. Parkers Landing may use a portion of the Park Property for (a) Stormwater Facilities and/or (b) riparian buffer mitigation, provided that the plans and specifications for the Stormwater Facilities and riparian buffer mitigation within the Park Property shall be mutually approved in writing by Parkers Landing and the Port, each acting reasonably and in good faith; provided, however, such plans shall be subject to any necessary governmental approvals. Without limiting the generality of the foregoing, it is expressly agreed and understood that neither the Stormwater Facilities nor the riparian buffer mitigation within the Park Property shall not detract from the primary use of the Park Property

as a linear, interactive park available for public use and the Port may disapprove of any plans and specifications for Stormwater Facilities and riparian buffer mitigation in the Park that materially detract from that purpose. If the Port and Parkers Landing agree to plans and specifications for Stormwater Facilities and riparian buffer mitigation within the Park Property, the Port shall grant Parkers Landing and, if necessary, the City, such commercially reasonable perpetual, non-exclusive easements and or conservation covenant as may be necessary over the Park Property for the installation, maintenance, repair and replacement of the Stormwater Facilities and the riparian buffer mitigation area, which easements/covenants shall run with with the Land and benefit and burden successor Owners of the PL Property and Park Property. If Stormwater Facilities serving only the PL Property are located on the Park Property, the Owner of the PL Property, at its sole cost and expense, shall be responsible for all maintenance and repair of the Stormwater Facilities. If the Stormwater Facilities serve both the PL Property and Port Property, then the benefitted Owners shall separately, acting reasonably and in good faith, agree upon maintenance and repair obligations and allocation of the costs thereof. The Owner of the PL Property, at its sole cost and expense, shall be responsible for the implementation, approval(s) and recording as may be needed for the riparian buffer mitigation area in the Park Property and south of the Trail Property and all monitoring, maintenance and repair of such riparian buffer mitigation area(s). The Port shall grant an Access and Maintenance Easement for this purposes south of the existing trail in the form attached hereto as **Exhibit G**.

ARTICLE 3 COORDINATION OF CONSTRUCTION OF INFRASTRUCTURE IMPROVEMENTS

3.1 Future Shared Infrastructure. In the event that either Party proposes any future shared infrastructure improvements, the allocation of responsibility for the construction and the allocation of costs for such infrastructure improvements will be determined by Parkers Landing and the Port by mutual agreement. Except for obligations set forth in Article 2 above with respect to stormwater facilities and Article 5 below with respect to easements, neither Party shall have any obligation to participate in any future shared infrastructure improvements; provided, however, that each Party shall, acting reasonably and in good faith, respond to any requests with respect to proposed future shared infrastructure improvements by the other Party.

3.2 Work Groups to Coordinate Infrastructure Improvements.

(a) Port and Parkers Landing shall coordinate development and construction of Infrastructure Improvements and Future Shared Infrastructure. Port and Parkers Landing shall create a work group (a “**Work Group**”) to, among other things, work collaboratively on:

- (i) communicating and cooperating in seeking all governmental approvals for construction of the Infrastructure Improvements and Future Shared Infrastructure;
- (ii) resolution of any inter-related civil engineering issues;
- (iii) development of tentative construction schedules;
- (iv) addressing site maintenance during the construction;
- (v) addressing future maintenance obligations for the Infrastructure Improvements and Future Shared Infrastructure, and
- (vi) agreeing upon reimbursement procedures with respect to any expenditure to be performed by a Party where the other Party will have a reimbursement obligation with respect to such expenditure.

(b) The Work Group shall consist of representatives of the Project Engineer, the Port, Parkers Landing and such other persons who possess the information and skills needed to achieve the objectives of the Work Group. Parkers Landing and the Port each shall appoint a lead representative to the Work Group. The lead

representative shall coordinate scheduling of Work Group activity and be responsible for documenting the agreements reached by the Work Group as required herein.

(c) Lead representatives shall determine on behalf of the Party he or she represents if the proposals from the Work Group are acceptable. If the Work Group fails to agree upon the specifications or other information necessary to undertake the Infrastructure Improvements by the agreed-upon deadlines or if an agreement cannot be reached regarding such deadlines, the Party undertaking the impacted Infrastructure Improvement shall have the right to propose such specifications or schedules to the other Party. The Party receiving the specifications or schedules shall have ten (10) Business Days to provide comments on the proposal. If comments are submitted, the Party undertaking the Infrastructure Improvement shall notify the other Party within ten (10) Business Days if the comments will be incorporated into the Party's plan and, if so, in what manner. The Parties shall then proceed under the resulting plan or schedule.

3.3 Construction of the Infrastructure Improvements and Future Shared Infrastructure. The construction of the Infrastructure Improvements and Future Shared Infrastructure shall be supervised by the Project Engineer(s). The applicable Infrastructure Improvements and Future Shared Infrastructure shall be constructed by the entity designated pursuant to this Agreement to construct such Infrastructure Improvements. All Infrastructure Improvements and Future Shared Infrastructure shall be constructed in a good and workmanlike manner, in compliance with all applicable Laws, and in a manner that minimizes interference or disruption to any person or entity. Once the construction of an Infrastructure Improvement or Future Shared Infrastructure has commenced, such Infrastructure Improvement or Future Shared Infrastructure shall be diligently pursued to completion.

ARTICLE 4 PARK PROPERTY

4.1 General Use; Rules and Regulations. The Park Property may be used only as public park space available to members of the public subject to rules and regulations established by the Port. The Port shall consult with Parkers Landing regarding Park regulations, but retains sole discretion on establishing the rules and regulations, provided that such rules and regulations shall include the items set forth below. Prior to construction of the Park Property Improvements, the Port shall consult with Parkers Landing regarding rules and regulations for the Park Property which shall include, but not be limited to, permitted hours of use, security and loitering restrictions, no overnight use, reasonable noise restrictions, and shall provide that the Port shall be responsible for providing security and for enforcing anti-loitering rules and regulations, to the extent allowed by law.

4.2 Park Property Improvements.

(a) Plans and Construction of Initial Park Property Improvements. On or before the date on which Parkers Landing obtains a certificate of occupancy with respect to improvements on any portion of its Properties that is adjacent to the Park Property, Parkers Landing shall construct the Park Property Improvements. The Park Property Improvements shall be constructed consistent with the Park Plans (as defined below).

(b) The configuration of the park area has changed from an open area to a more linear park design. The revised Park plan includes additional design features such as educational/interpretive areas, raised walkways, and additional landscape design. The Port's agreement to the revised Park plan, evidenced by the Commission's adoption of this Agreement, is subject to the conditions in this Section 4.2, including but not limited to Parkers Landing will undertake at its cost a boundary line adjustment to create the revised Park Property. Prior to submittal of that boundary line adjustment, Parkers Landing has initiated the design process and the prepared the plans and specifications for the construction and completion of the Park Property Improvements as shown on **Exhibit H**, attached hereto. In consultation with the Port. Once approved by the Port, which approval shall not be unreasonably withheld, conditioned or delayed, such plans and specifications shall constitute the "**Park Plans**." Within fifteen (15) business days of receipt of the draft plans the Port shall approve or disapprove the plans in writing. If the Port disapproves the Park Plans, it shall provide specific guidance as to what changes would yield approval. The Port shall also make a representative available at reasonable times to consult with Parkers Landing as requested during the preparation of the and after any disapproval of the plans and. In consideration of the changed Park Property

configuration Parkers Landing shall pay the Park Costs. The Port agrees to transfer to Parkers Landing any Park Impact Fee Credits received by the Port in relation to the Park Property.

(c) Maintenance.

(i) Prior to Parkers Landing's commencement of construction of the Park Property Improvements, the Port, at its sole cost and expense, shall maintain the Park Property in the Unimproved Condition. "Unimproved Condition" as used here means a clean and attractive condition. Unimproved Condition shall require the following minimum standards: prompt removal of trash and other debris; regular cutting or pruning of grass and other landscaping materials so that the unimprovement property remains aesthetically pleasing and free of excessive dust, fire or other hazards.

(ii) Upon commencement of and during construction of the Park Property Improvements, Parkers Landing shall perform regular and routine maintenance of the Park Property and Park Property Improvements, including landscaping, prompt removal of trash and other debris; regular watering and cutting or pruning of grass and other landscaping materials so that the Park remains aesthetically pleasing, free of excessive dust, fire or other hazards, and to assure that the same remain in good condition and repair. The Port, at its sole cost and expense, shall be responsible for regular maintenance of any improvements that the Port constructs on the Park Property, other than the Park Property Improvements.

(iii) After construction of the Park Property Improvements, Parkers Landing shall perform regular and routine maintenance of the Park Property and Park Property Improvements, including landscaping, prompt removal of trash and other debris; regular watering and cutting or pruning of grass and other landscaping materials so that the Park remains aesthetically pleasing, free of excessive dust, fire or other hazards, and to assure that the same remain in good condition and repair. The Port and Parkers Landing shall each use its best efforts to cause the City of Washougal to take ownership of the park land and improvements as well as maintenance responsibilities therefore.

(d) Port Improvement of Park Property. If, at any time, either prior to or after Parkers Landing's construction of the Park Property Improvements, the Port desires to substantially change improvements on the Park Property, the Port must obtain the prior written consent of the Owner(s) of the PL Property adjacent to the Park Property, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such change to the Park Property shall be at the Port's sole cost and expense and the Port shall be responsible for the repair and maintenance thereof.

(e) Maintenance Standards. Prior to Parkers Landing's development of the fully constructed Park and/or prior to the being dedicated to the public, the Port and Parkers Landing shall execute a written Park Maintenance And Operations Agreement, which will address rules and regulations for use and operation of the Park Property, and for Parkers Landings repair and maintenance of the Park Property and Park Property.

4.3 Indemnity.

(a) The Port and Parkers Landing shall defend, indemnify and hold each other harmless for, from and against any claim, loss, liability or expense (including discovery costs and other litigation costs, and reasonable attorneys' fees) to the extent that such arises out of or is related to the Park Property; provided that the obligation to defend, indemnify and hold harmless shall exclude claims, losses, liability or expenses to the extent arising out of the negligence or willful misconduct of indemnified Party. The Port shall maintain liability insurance with respect to the Park Property, which insurance shall name Parkers Landing as an additional insured.

(b) Parkers Landing shall defend, indemnify and hold the Port harmless for, from and against any claim, loss, liability or expense (including discovery costs and other litigation costs, and reasonable attorneys' fees) to the extent that such arises out of or is related to Parkers Landing's construction, repair or maintenance of the Park Property Improvements.

4.4 Sunset of Certain Obligations The obligations of paragraphs 4.2(c) (Maintenance), 4.2(e) (Maintenance Standards), and of paragraphs 4.3 (a) and (b) (Indemnification) shall be of no further force and effect if or when the City of Washougal accepts Park dedication and assumes ownership.

ARTICLE 5 EASEMENTS

5.1 Definitions and General Conditions. For the purposes of this Article 5, the following shall apply:

(a) Definitions.

(i) An Owner granting an easement is called the "Grantor", it being intended that such easement shall bind and include not only such Owner but also its successors and assigns with respect to the applicable Parcel(s) of such Grantor.

(ii) An Owner to whom the easement is granted is called the "Grantee", it being intended that such easement shall benefit and include not only such Owner but its successors, assigns, with respect to the applicable Parcel(s) of such Grantee.

(iii) The word "in" with respect to an easement granted "in" a particular Parcel means, as the context may require, "in", "on", "over", "through", "upon", "across", and "under", or any one or more of the foregoing.

(b) General Conditions.

(i) All easements granted herein are non-exclusive and are irrevocable and perpetual except as otherwise provided in this Agreement.

(ii) All easements herein shall be easements appurtenant and not easements in gross.

(iii) In the event an Owner transfers or conveys a portion of its Parcel, those easements granted under this Article 5, which benefit, bind, and burden the remainder of the Parcel not transferred or conveyed, to the extent applicable to the portion so transferred or conveyed, shall benefit, bind, and burden the portion of the Parcel so transferred or conveyed, and those easements granted under this Article 5, which benefit, bind, and burden the portion so transferred or conveyed shall benefit, bind, and burden the remainder of the Parcel of which it was a part, to the extent applicable to the remainder portion so retained.

(iv) The Grantee of an easement granted hereunder may from time to time permit its occupants to use such easements; provided, however, that no such easement is intended to directly benefit any such occupant, it being expressly agreed and understood that no person other than Owners shall be deemed a third-party beneficiary under this Agreement.

5.2 Easements for Pedestrian and Emergency Ingress and Egress.

(a) Non-exclusive and reciprocal easements are hereby reserved for each Owner(s) for emergency only vehicular ingress and egress over and across all driveways, alleys, and vehicular accessways that are designed for such use and designated Common Areas and for pedestrian and bicycle ingress and egress across those sidewalks, paths, crosswalks, walkways, and trails that are designed for such use and designated Common Areas. No Owner

may install a fence or other barrier that would unreasonably obstruct the passage of pedestrian or emergency use vehicles to a driveway, alley, accessway, sidewalk, path, crosswalk, walkway or trail that is designed for such use and designated as a Common Area, except that an Owner may put up a temporary barrier to a Common Area if, in the opinion of the Owner's attorneys, it is reasonably necessary to prevent the establishment of prescriptive easements or other similar rights. The foregoing limitation on barriers shall not prohibit the installation of curbing and other similar forms of traffic controls or temporary obstructions installed in connection with construction or repairs. The terms of this Section 5.2(a) shall not limit the rights of any Owner to use fences or other barriers to restrict access to portions of its Parcel(s) that are not Common Areas.

(b) The Owner of the PL Property shall produce an **Exhibit I** depicting the pedestrian and emergency access points and Common Areas covered by the easements described in this Section 5.2, which shall be attached hereto recorded. Each Owner hereby reserves the right to exclude or eject from its Parcel any person who is engaging in unlawful activities, or who poses an imminent threat of injury or death to others or themselves or an imminent threat of material damage to any property of the Owner or others. Before closing off any part of its Parcel that is a subject to any easement granted under this Section 5.2, such Owner shall give notice to each other Owner(s) and the Port of its intention to do so and shall use commercially reasonable efforts to minimize interference with the operation of the Properties.

(c) No cross-parking rights are intended to be granted by this Agreement. An Owner may make take such actions as that Owner determines reasonably appropriate to prevent the parking of vehicles on that Owner's Parcel by a Person that is not a Permitted Person, and may provide a fence, barrier or gate to secure private parking on its Parcel(s).

(d) The easements provided for in this Section 5.2 are subject to the terms and conditions of this Agreement, including, without limitation, insurance and indemnity provisions.

5.3 Easements for Utility Facilities.

(a) Subject to the terms of this Agreement, each Owner hereby agrees to grant such utility easements over its Parcel as may reasonably be requested by another Owner, provided, however, such easement will not unreasonably interfere with the use or intended use of the burdened property. All Separate Utility Facilities, to the extent on another Owner's Parcel(s) and all Common Utility Facilities shall be underground if reasonably possible, and the location of the Separate Utility Facilities shall be subject to the prior written approval of the Owner across whose Parcel such facilities are to be located. After the installation of utility facilities in an easement granted pursuant to this Section 5.3(a), the Grantee shall provide the Grantor with as-built drawings, showing the precise location and nature of all improvements. All easements granted pursuant to this Section 5.3 shall be granted for no separate consideration; however, Grantee shall pay all reasonable costs incurred by Grantor in connection with such easement, including, without limitation, attorneys' fees.

(b) Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities granted pursuant to this Section 5.3 shall be responsible, as between the Grantee and the Grantor, for the installation, maintenance, repair and removal, at the Grantee's expense, of all Separate Utility Facilities installed by or for the Grantee pursuant to the easement grant, as well as for all Separate Utility Facilities installed by or for the Grantee on its own Parcel. Any such installation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities shall be performed by or for the Grantee only after the Grantee's giving to the Grantor at least thirty (30) days advance notice of the Grantee's intention to do such work. However, in the case of an emergency, any such work may be immediately performed after giving to the Grantor such advance notice as is practicable under the circumstances. In addition, all such installation, maintenance, repair and removal shall be performed in a manner that causes as little disturbance to the Grantor as may be reasonably practicable under the circumstances, and any and all portions of the surface area of the Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of the Grantee, to the same condition in which they were prior to the commencement of any such work.

(c) The Grantee shall defend, reimburse, indemnify and hold the Grantor harmless for, from and against any and all claims, liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees), to the extent incurred in connection with the Grantee's exercise of the Separate Utility Facilities easements granted under this Section 5.3, except to the extent occasioned by the Grantor's negligent or wrongful act or omission to act.

(d) The Grantor of any easement for Separate Utility Facilities granted under this Section 5.3 may use the Utility Facilities installed pursuant to such easement; provided, however, that the increase in costs incurred in order to make such Utility Facilities adequate to serve the Grantor's additional use and installed at such Grantor's written direction shall be borne by the Grantor.

(e) The Grantor of any easement granted under this Section 5.3 may relocate on its Parcel any Utility Facilities installed pursuant to such easement; provided, however, that such relocation: (i) may be performed only after the Grantor has given the Grantee thirty (30) days' written notice of its intention to relocate such Utility Facilities; (ii) shall not unreasonably interfere with or diminish the utility services to the Grantee; (iii) shall not reduce or unreasonably impair the usefulness or function of such Utility Facilities; (iv) shall be located underground, if reasonably possible; and (v) shall be performed without cost or expense to the Grantee, and, if Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by the Grantee, which consent shall not be unreasonably withheld, delayed or conditioned.

5.4 Easements to Public Utilities. No Owner shall unreasonably withhold, condition or delay its approval and execution of an easement to a public utility as reasonably necessary to serve another Parcel.

ARTICLE 6 TRIP VESTING & ALLOCATION

6.1 Trip Vesting and Reservations. The 2013 Amended and Superseding Development Agreement (County Recording Document 5019502) at Paragraph 5.6 reserves certain vested and net new PM peak hour and Average Daily trips ("ADT") for the PL Property and the Port Property and is based on a Traffic Impact Analysis ("TIA") attached as Exhibit C to that 2013 Amended and Superseding Development Agreement. The total number of vested and reserved net new PM peak hour and ADTs have not changed. However, in recognition that the land uses planned by the Port and Parkers Landing have evolved, and that the land uses planned for the Port Property are expected to include a mix of commercial and residential use, subject to full and final approval by City utilizing the procedures it in its sole discretion determines to use, the Parties agree to the following:

(a) The total trips reserved for the Port Property and PL Property are as follows: 15,519 Total Daily Trips which is unchanged from the 2013 Amended and Superseding Development Agreement, includes both Pre-Existing Trips and Net New Trips, and is shown in Trip Generation Summary on Exhibit C (Clark County Auditor Recording page 36) of that 2013 Amended and Superseding Development Agreement and as shown in Exhibit I.

(b) Parkers Landing is in the process of securing Site Plan Approval for the PL Property, which is anticipated to be a multifamily housing project. The Net New Daily Trips generated by this PL Property development will not be more than 2,068, and these trips will be deducted from the Total Daily Trips, as reflected in the Amended and Restated Site Infrastructure Development Agreement and Covenant Running with the Land.

(c) The remaining 13,451 daily trips shall be reserved for Port Property. Notwithstanding this trip reservation, Parkers Landing and the Port may in the future agree to reallocate trips as allowed in the 2013 Amended and Superseding Development Agreement.

(d) Nothing contained in this Section 6.1 shall preclude the Port from seeking additional trips beyond those reserved in herein.

(e) The City of Washougal has manifested its agreement to the provisions of 6.1 herein above via a separate contemporaneous Agreement between the City and Port.

ARTICLE 7 RESIDENTIAL & OTHER USE RESTRICTIONS ON PORT PROPERTY

7.1 **Residential Restriction.** One-third of the Combined Property Area of the Port Property and PL Property (“Combined Site Area”) must be reserved for commercial development or Vertical Mixed-Use Development and may not be used for residential purposes. Any portion of the Port Property that is already developed for commercial use shall be included toward meeting this requirement. As used herein, “residential purposes” shall mean any type of intended for or constructed to the standards for use for dwelling purposes, including houses, apartments, multi-family structures, and residential condominiums. In the event that an Owner seeks a multifamily housing tax exemption for development on the PL Property, pursuant to WMC Chapter 3.58 of the Washougal Municipal Code, the Owner(s) of the Port Property shall cooperate and shall execute such documents as may be reasonably requested by the owner seeking the exemption. Such cooperation may necessitate, the approval of a master site plan that reflects the commercial square footage set-aside required by this Article 7.

7.2 **The Combined Site Area Defined.** The Combined Site Area calculation shall be as follows: the Port Property is 21.08 acres; the PL Property 8.34 acres; therefore, the Combined Property Area is 29.42 acres. Therefore, one-third of the Combined Site Area, or 9.81 acres, must be reserved for commercial development or Vertical Mixed-Use Development. These 9.81 acres of commercial development or Vertical Mixed-Use Development must take place on the Port Property and be completed by the Port or its Developer(s)/agent(s).

7.3 **Vertical Mixed-Use Projects Defined.** For the purposes of this Amendment, Vertical Mixed-Use Projects shall include the buildings, parking areas, and other site areas (e.g., plazas, walkways, and landscaped areas) that a) include ground floor commercial space and b) for which residential dwelling units occupy less than 50% of net leasable area of the ground floor of the building. Where live-work units are proposed (i.e. units that are designed to provide direct, accessible entry from public or private rights of way and which are laid out to provide open, flexible areas of at least 250 leasable square feet at the ground floor level of the unit for commercial use immediately accessible from the unit entrance), such units shall be considered commercial space. Building entrances, lobbies, building core spaces (such as elevators, stairways, and mechanical systems), back-of-house spaces, and amenity areas for residences in Vertical Mixed-Use Projects shall not be considered residential dwelling units.

7.4 **Commercial Development Defined.** Commercial development shall include such Projects, including buildings, parking areas, and other site areas, necessary for retail, office, lodging, and other general commercial buildings. Parking areas that serve non-residential (e.g. commercial) uses, and which are subject to shared parking arrangements wherein parking spaces are reserved for residential tenants during regular non-business hours, shall also be considered commercial development.

ARTICLE 8 PROHIBITED USES.

8.1 **Prohibited Uses.** No Parcel shall in any event be leased, subleased, operated or otherwise used for: (i) pawn shop, flea market, fire, bankruptcy or liquidations sales or similar enterprises, provided however, farmers’ market or Saturday markets and similar events are not included in this definition and are expressly allowed; (ii) second hand store or any facility or establishment primarily selling used merchandise, provided however that antiques dealers, mid-century furniture shops, upscale consignment stores are allowed; (iii) any primary use with on-site manufacturing or industrial assembly in excess of 5,000 square feet of floor area; (iv) transportation terminal for freight; (v) lumber and building material unenclosed retail sales unless ancillary to an enclosed hardware and home improvement supplies retail store; (vi) any business that provides sale, leasing or repair of manufactured homes, mobile homes, motorcycle, recreational vehicle, recreational motorized boats, used car lots, or any vehicle towing or storage services, vehicle repair, or any rental car facility or storage (including auto, boat or recreational vehicle) with outside storage or repair, other than short term parking of vehicles; (vii) recreational vehicle park or campground; (viii) industrial warehousing, manufacturing, processing or other industrial operation; (iv) any business using its space for the sale or display of pornography, nudity, graphic violence (excepting video game sales), illegal drug paraphernalia or for a massage parlor, adult book store or for the sale or rental or pornographic videos or videos rated “X” or having a similar rating.

ARTICLE 9 MAINTENANCE AND REPAIR OF THE COMMON UTILITY FACILITIES & TRAIL TRIMMING

9.1 Common Utility Facilities.

(a) The Owner of the Parcel on which a Common Utility Facility(ies) is located shall maintain such Common Utility Facility(ies), or cause it to be maintained, in good order, condition and repair. The cost of such maintenance obligations shall be equitably shared between each Owner whose Parcel(s) is benefited by such Common Utility Facility(ies) so long as the cause for the need of any maintenance was not due to a negligent act or omission by one Owner or its Occupant or their respective agents or employees (in which event such Owner shall be solely responsible for all costs of such maintenance). Any Person performing or causing to be performed maintenance or repair work agrees to promptly pay all costs and expenses associated with such maintenance or repairs to be diligently and promptly completed and to promptly clean the area and restore any affected portion of the Properties to a condition equal to or better than the condition which existed prior to the commencement of such work.

(b) In the event that an Owner on whose parcel a Common Utility Facility is located fails to maintain or repair the Common Utility Facility, any other Owner who uses such Common Utility Facility (the "Requesting Owner") may perform such maintenance or repair, provided the Requesting Owner first complies with the notice and cure period provisions of Section 10.1 and 10.2 herein below (except in the case of emergency, in which event no notice shall be required).

(c) Any Owner performing or causing to be performed maintenance or repair work agrees to promptly pay all costs and expenses associated with such maintenance or repairs to be diligently and promptly completed and to promptly clean the area and restore any affected portion of the Properties to a condition equal to or better than the condition which existed prior to the commencement of such work.

9.2 **Tree Trimming on Trail Property.** The Port as Owner of the Trail Property shall consider requests from the Owner of the PL Property to trim and/or remove trees on the Trail Property to provide a view corridor for the benefit of the PL Property. Any resulting tree trimming and removal shall be accomplished by the Port at the cost of the requesting Owner of the PL Property.

ARTICLE 10 DEFAULTS

10.1 **Events of Default.** An Event of Default by a party shall be deemed to have occurred under this Agreement if such Party fails or refuses to observe, perform or comply with any of the other provisions of this Agreement whether by neglect, inadvertence, intent or otherwise within thirty (30) days after written notice is given by the non-defaulting Party (a "Default Notice"); provided, however, that in the case of a failure which cannot reasonably be cured within the aforesaid thirty (30) day period, no Event of Default shall be deemed to exist and the non-defaulting Party may not exercise any of the remedies set forth in this Agreement, unless and until the defaulting Party shall have failed either (i) to commence action to effect such cure within such thirty (30) day period or (ii) to prosecute diligently and continuously such action until such failure has been cured. Any notice given pursuant to this Section shall identify the failure in question with reasonable particularity.

10.2 **Mediation and Arbitration of Disputes.** In the event that any disputes arise regarding the interpretation or enforcement of this Agreement, such disputes shall be resolved as follows:

(a) The Parties shall first attempt to resolve them by good faith negotiations. If any disputes cannot be resolved by direct negotiations within fifteen (15) days or such longer time as is mutually agreed by the Parties, then the Parties shall submit such disputes to mediation, which shall focus on the needs of all concerned Parties and seek to solve problems cooperatively, with an emphasis on dialogue and accommodation. The goal of the mediation shall be to fairly resolve each dispute in a manner which preserves and enhances the parties' relationships. Any Party desiring mediation may begin the process by giving the other Party a written request to mediate which describes the issues involved and invites the other Party to join in naming a mutually agreeable

mediator and setting a timeframe for the mediation meeting. The Parties and the mediator may adopt any procedural format that seems appropriate for the particular dispute. The contents of all discussions during the mediation shall be confidential and non-discoverable in subsequent arbitration or litigation, if any. Any Party may, without violating this Agreement, seek from a court any interim or provisional relief that may be necessary to property of that Party pending the mediation.

(b) If any dispute cannot be resolved through mediation, or if any Party refuses to mediate or to name a mutually acceptable mediator or establish a timeframe for mediation within a period of time that is reasonable considering the urgency of the disputed matter, or fails to agree to procedures for the mediation, then any Party who desires dispute resolution shall seek binding arbitration as hereinafter provided.

(c) All disputes among the Parties arising out of or related to this Agreement which have not been settled by mediation shall be resolved by binding arbitration within the State of Washington. Within twenty (20) days of receiving written demand for arbitration, the Parties involved in the dispute shall attempt to reach agreement upon the selection of a qualified impartial arbitrator. If the Parties cannot agree upon an arbitrator within twenty (20) days from the date written demand for arbitration is served, such arbitrator shall be appointed by a panel. The panel shall consist of one designee appointed by each Party. If the panel is an even number and the panel cannot agree upon an arbitrator, another panel member shall be appointed by the panel. The decision of the arbitrator so appointed shall be final and binding on the Parties. The cost of arbitration shall be shared equally among the Parties. Any arbitration shall be conducted in accordance with the rules of the Comprehensive Arbitration Rules of JAMS, The Resolutions Experts (a provider of dispute resolution services) (the "JAMS Rules") in effect, although the arbitration need not be conducted under the auspices of the Association. Any arbitration award may be enforced by judgment entered in the Superior Court of the State of Washington for Clark County.

10.3 Remedies. Upon the occurrence of an Event of Default the non-defaulting Party shall be entitled to exercise any and all remedies conferred by this Agreement or otherwise available to such non-defaulting Party in law or in equity that are not in conflict with this Agreement.

10.4 No Waiver of Rights. No failure by a non-defaulting Party to insist upon strict performance of any of the terms of this Agreement or to exercise any right or remedy upon a Default hereunder, no acceptance by a non-defaulting Party of partial performance and no custom or practice of the Parties hereto at variance with the provisions hereof constitutes a waiver of any such Default or of the terms of this Agreement or a waiver of a non-defaulting Party's right to demand compliance with this Agreement. None of the terms of this Agreement to be kept, observed or performed by a defaulting Party and no breach thereof shall be waived, altered or modified except by a written instrument executed by the non-defaulting Party. No waiver of any breach shall affect or alter this Agreement but each of the terms of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach hereunder. No waiver of any Default hereunder by a defaulting Party shall be implied from any omission by a non-defaulting Party to take any action on account of such Default if such Default persists or is repeated, and no express waiver shall affect any Default other than the Default specified in the express waiver for the time and to the extent therein stated. One or more waivers shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

10.5 Rights Are Cumulative. All rights, powers, privileges, and remedies conferred by this Agreement upon the Port and Parkers Landing shall be cumulative and shall be deemed additional to any and all of the remedies to which either Party may be entitled in law, in equity, or otherwise, unless specifically and expressly limited by the provisions of this Agreement. Either Party shall have the right to restrain by injunction any violation or threatened violation of any of the terms, covenants, or conditions of this Agreement and by decree to compel performance of any such terms, covenants, or conditions, it being agreed by Parkers Landing and Port that the remedy at law for any breach of such term, covenant or condition (except those requiring the payment of a liquidated sum or damages in accordance with express provisions of this Agreement) is not adequate.

ARTICLE 11 DESIGN REVIEW

11.1 Port Design Review.

(a) No Improvement shall be commenced, erected, placed, materially altered, added to, or maintained on, within, beneath, or above the PL Property or any portion thereof until and unless a development plan showing conceptual site plan, construction type and general materials, and elevation design and landscape design has been submitted to and approved in writing by the Port. Once the development plan is approved, any development shall be completed in material conformance with the development plan, provided, however, that such approval shall not require any development to commence. Review pursuant to this Section 11.1 shall be limited to the appearance, aesthetic appeal and function of the proposed development in relation to the Port Properties; the Port may not withhold approval based upon the nature of the proposed use, except to the extent the use would violate the terms of this Agreement, including Section 7.1.

(b) Any Owner may remodel, paint, or redecorate the interior of structures on such Owner's Parcel without such approval; and (ii) no such approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme, to make minor alterations or to rebuild any Improvement in accordance with originally approved plans and specifications. The intent and purpose of this Section is to achieve a high standard of quality of workmanship and materials and to assure harmony of external design with existing Improvements.

(c) Notwithstanding anything herein to the contrary, the Port acknowledges and agrees that the Port Commission has approved the development plan for proposed multifamily development on the PL Property as described and depicted on **Exhibit J** attached hereto (the "**PL Development Plan**"). Any development on the PL Property that is in material conformance with the PL Development Plan shall not be subject to further Port Design Review under this Article 11.

11.2 Review Process by Port.

(a) Within fifteen (15) business days of submission of plans and specifications, the Port shall respond in writing by doing one of the following (each a "**Design Response**"): (a) approving the plans and specifications; or (b) disapproving the plans and specifications with an explanation that is reasonably detailed enough to allow the Owner to determine what changes would be necessary to gain approval; or (c) advising the applicant what materials or information is missing to provide the Approving Party with a reasonable opportunity to review and evaluate the plans and specifications. Within fifteen (15) business days of any re-submission, the Port shall respond with a Design Response.

(b) The Port shall make a representative reasonably available to consult with an Owner seeking guidance with respect to an application for approval pursuant to this Article 11.

11.3 Governmental Approvals. Compliance with the Port review process set forth in this Agreement is not a substitute for compliance with applicable City and County building, zoning, and subdivision regulations, and each Owner shall be responsible for obtaining all approvals, licenses, and permits required by applicable law prior to commencing construction. Approval of any Improvement by the Port does not assure approval by the City, County or any other governmental agency.

11.4 Limitation of Liability. The Port shall use reasonable judgment in approving or disapproving applications submitted to it. The Port and no member, manager, employee, agent, or consultant of any of the Port shall be (i) liable to any Person, including any Owner, occupant, or contractor, (a) for any act of the Port in connection with a submitted application, except to the extent the Port did not act in good faith; or (b) for any loss, liability, claim, or expense which may arise by reason of the approval or disapproval of any Improvement; or (ii) responsible in any way for any defects in any plans or specifications submitted, revised, or approved pursuant to this Article 11 or for any structural or other defect in any work done in accordance with any such plans and specifications.

11.5 Nonwaiver. Approval by the Port of any application shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar application thereafter submitted.

11.6 Effective Period of Consent. The Port's approval of any proposed Improvement shall automatically be revoked two (2) years after issuance unless construction of the Improvement has been commenced or the Owner has applied for and received an extension of time from the Port. If there has been no material change to the development, appearance or function of adjacent Parcels and if an Owner has not materially changed any of its Parcels or submitted applications to the appropriate governmental authority(ies) to change its Parcel(s) since the original approval was granted, the Approving Party may not withhold consent to an extension.

ARTICLE 12 AMENDMENTS

Except as otherwise set forth herein, this Agreement may not be modified, amended or terminated nor will additional land be added to be subject to this Agreement except as mutually agreed to by the Parties; provided that no amendment shall make materially more restrictive the use restrictions in Article 7 or materially diminish an easement granted under this Agreement without the written consent of all Owners of Parcels adversely affected thereby.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed to create the relationship between the Port and Parkers Landing of principal and agent, of mortgagee and mortgagor, of partners, of joint venturers, or of any association with each other or, except as may be expressly provided in this Agreement, so as to render either of the parties liable for the debts or obligations of the other.

13.2 Effect of Review, Objection, Failure to Object, Approval, Non-Approval or Consent. In no event shall any review, objection, failure to object, approval, non-approval, or consent by Port or Parkers Landing with respect to any act, plan, or proposal of the other made pursuant to any provision of this Agreement or otherwise be deemed: (i) to constitute an assumption by the Port or Parkers Landing of responsibility or liability for the adequacy or suitability of any such act, plan, or proposal, (ii) to constitute a waiver of any claim or right that the Port or Parkers Landing might have against the other or any other person or entity by reason of or in connection with any act or omission of such other person pursuant to or in accordance with any act, plan, or proposal reviewed by Port or Parkers Landing, or (iii) to result in the Port's or Parkers Landing's being deemed a joint tortfeasor with the other.

13.3 Notices. Notices given under this Agreement shall be in writing and delivered by certified or registered U.S. mail, postage paid with return receipt requested; by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid; by facsimile or other telecommunication device capable of transmitting or creating a written record; or personally. Unless Port or Parkers Landing designate another address for notice by notice given pursuant to this Section, notices should be sent to the following addresses:

Port: Port of Camas-Washougal
24 South A St.
Washougal, WA 98671
Attn: David Ripp

with a copy to: Goodstein Law Group, PLLC
501 S. G Street
Tacoma, WA 98402

Parkers Landing: Ninebark Apartments LLC
c/o Killian Pacific
1615 SE 3rd Avenue, Suite 100
Portland, OR, 97214
Attn: Nathan Scott

with a copy to: Horenstein Law Group PLLC
500 Broadway, Suite 370
Vancouver, WA 98660
Attn: Stephen W. Horenstein

For the purposes of this Agreement, the term “receipt” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to this Section as shown on the return receipt or by the records of the courier, (ii) the date of actual receipt of the notice or other document by the office of the person or entity specified pursuant to this Section, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

13.4 No Personal Liability. No director, commissioner, officer, official or employee of the Port or Parkers Landing shall be personally liable to the other (i) on account of any default or breach by Port or Parkers Landing under this Agreement; (ii) for any amount which may become due to the other under this Agreement; or (iii) with respect to any obligations under the terms of this Agreement. Neither the Port nor Parkers Landing shall collect or attempt to collect any money judgment for such matters from the personal assets of any of the directors, commissioners, officers, officials, partners, members or employees of the other on account of a failure by the other to comply with, observe, or perform any of the terms of this Agreement.

13.5 Headings. The headings of the various articles and sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions hereof.

13.6 Severability. If any provision of this Agreement or the application thereof to any person, business entity, public body, or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons, business entities, public bodies, or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.

13.7 Governing Law. This Agreement shall be governed by and interpreted and construed under the laws of the State of Washington.

13.8 Entire Agreement. In the making, execution, and delivery of this Agreement, neither Party has been induced by any representations, statements, covenants, or warranties made by the other Party or its agents, other than as specifically set forth herein. This Agreement constitutes the full, complete, and entire agreement between and among the Parties hereto with respect to the subject matters set forth herein and supersede all prior agreements between Port and Parkers Landing on the subject matters set forth herein. No agent, employee, officer, representative, or attorney of the Parties hereto has the authority to make, or has made, any statement, agreement, representation, or contemporaneous agreement, oral or written, in connection herewith modifying, adding to, or changing the provisions of this Agreement. No amendment of this Agreement shall be binding or effective unless such amendment shall be in writing, signed by both Port and Parkers Landing.

13.9 Time Is of Essence. All time limits stated in this Agreement are of the essence of this Agreement.

13.10 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original instrument, and such counterparts together shall constitute one and the same instrument.

13.11 Compliance. No failure of either Party hereto to exercise any right or power given hereunder or to insist upon strict compliance with any conditions and obligations specified herein, and no custom or practice of any of the parties hereto at variance with the terms of this Agreement, shall constitute a waiver of either Party's right to demand exact compliance with the terms and conditions of this Agreement.

13.12 No Third-Party Beneficiary. No individual or entity that is not a signatory to this Agreement (other than successors and assigns of the parties to this Agreement) shall have any rights or privileges under or arising out of this Agreement, nor shall any person or entity that is not a signatory to this Agreement otherwise be deemed a third-party beneficiary of this Agreement.

13.13 Estoppel Certificates. The Port and Parkers Landing shall execute, acknowledge and deliver to the other promptly upon written request a certificate certifying, among other things, any of the following as requested: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the modifications); and (b) that no notice has been given by the Port to Parkers Landing or by Parkers Landing to the Port of any default under this Agreement that has not been cured and to the best of its knowledge and belief no default exists (or, if such exists, describing the same). Certificates from the Port and Parkers Landing pertaining to the aforesaid matters may be relied upon by any existing or prospective lending institution and by any prospective assignee or successor of any interest under this Agreement. No certificate issued hereunder, however, shall be deemed to affect the rights and obligations of the Port and Parkers Landing between themselves under this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed as of the day and year first written above.

PORT OF CAMAS-WASHOUGAL

By: _____
Printed Name: _____
Its: _____

NINEBARK APARTMENTS LLC, a Washington limited liability company

By: _____
Printed Name: _____
Its: _____

DRAFT

STATE OF WASHINGTON)
) ss.
County of Clark)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, the _____ of PORT OF CAMAS-WASHOUGAL, on behalf of PORT OF CAMAS-WASHOUGAL.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
County of Clark)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, the _____ of NINEBARK APARTMENTS LLC, a Washington limited liability company, on behalf of the limited liability company.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____