

**PRELIMINARY AGENDA**

**REGULAR MEETING**

**February 17, 2021**

- I. "COOLER TALK" 11:45 AM**
- II. OPEN SESSION 12:00 PM**  
PLEDGE OF ALLEGIANCE
- **CONSENT ITEMS**
    - A. Approval of Minutes – Krista
    - B. Approval of Checks – Krista
  - **NEW BUSINESS/DISCUSSION ITEMS**
    - C. Waterfront Development Agreement Discussion – Mark
    - D. Waterfront Master Lease Agreement Discussion - David
    - E. COVID-19 Policy Revision – Jen
    - F. Intech Lease Renewal - Derek
  - **PUBLIC COMMENT** [3 min. apiece]

**RECESS REGULAR MEETING:**

**OPEN THE ANNUAL PUBLIC INDUSTRIAL CORPORATION (P.I.C.) MEETING**

- i. Approval of 2020 Minutes - Kim
- ii. Election of Officers for 2021 - Kim

**CLOSE ANNUAL P.I.C. MEETING**

**RECONVENE REGULAR MEETING**

- **ACTION ITEMS**
  - G. Approve Waterfront Development Agreement - Mark
  - H. Approve COVID-19 Policy Revision – Jen
  - I. Approve Intech Lease Renewal – Derek
- **STAFF REPORTS & COMMENTS**
  - J. Chief Executive Officer, Chief Operating Officer and Director of Planning and 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 20-28.13, the Regular Commission Meeting will be available to the public (only) 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=V2o3bTRNOUVkMlhZMVo3cHkzZDhuQT09>**

**MINUTES OF THE REGULAR COMMISSION MEETING**  
**PORT OF CAMAS-WASHOUGAL**  
**February 3, 2021**

By: Kim Noah, Chief Operating Officer

A regular meeting of the Commissioners of the Port of Camas-Washougal was held at the Port Offices, 24 South 'A' Street, Washougal, WA, on Wednesday, February 3, 2021, at 5:00 pm.

PRESENT: Commissioners Larry Keister, Cassi Marshall, and John Spencer; Chief Executive Officer David Ripp; Chief Operating Officer Kim Noah; Director of Planning and Development Mark Miller; Legal Counsel; port staff members; and members of the press and public. The general public has access through a designated conference call line and Zoom video.

At 5:01 pm, following the Pledge of Allegiance, Commission President Larry Keister called the Open Session public meeting to order, noting that because of Governor Inslee's Proclamation 20-28, and the Washington State legislature's Resolution SCR 8402, the Commission is social distancing and at least 10 feet apart. The Chat function has been disabled.

- **CONSENT ITEMS**

- Minutes

Commissioner Keister presented Minutes from the January 20, 2021 – Regular Meeting. Reading of the Minutes were dispensed with; it is noted that copies had been provided previously to all Commissioners. After a brief discussion, a motion was made by Commissioner Marshall, seconded by Commissioner Spencer. January 20, 2021 - Regular Meeting minutes carried unanimously.

- Claims / Checks

Chief Operating Officer Kim Noah presented the current payables. After review and brief discussion, upon motion by Commissioner Spencer, seconded by Commissioner Marshall and carried unanimously, the electronic payments and the issuance of general fund checks 7017-7037 and 50065-50066 in the total amount of \$128,610.12 were approved as presented.

- **NEW BUSINESS / DISCUSSION ITEMS**

- Abigail Wilson Girl Scout Gold Award Project Presentation

Commissioner Cassi Marshall introduced Abigail Wilson who is a senior at Union High School, where she takes an extremely challenging course load. Currently she has six Advanced Placement classes, as well as Orchestra. She has been a Girl Scout for many years, and is working toward the highest organizational achievement possible, the Gold Award. The Girl Scouts website says this about the award: "Issues of the world, meet your match. Gold Award Girl Scouts are the dreamers and the doers who take 'make the world a better place' to the next level. The Girl Scout Gold Award is the mark of the truly remarkable - proof that not only can she make a difference, but that she already has. Seniors and Ambassadors who earn the Gold Award tackle issues that are dear to them and drive lasting change in their communities and

beyond." Abigail has chosen to pursue the ivy removal project at the Port because she has a passion for improving our environment and ecosystems. Abigail presented her ivy removal project where she would remove ivy on port property in the marina and will replace the ivy with native plants such as rhododendron, crinkle leaf creeper and mock orange.

- Waterfront Development Agreement Discussion

Director of Planning & Development Mark Miller presented an update on the waterfront development agreement that is currently being reviewed by the City of Washougal. Pursuant to RCW 36.70B.170(1) and Washougal Municipal Code ("WMC") 18.94.160 (development agreements), the Parties are authorized to enter into a development agreement that sets forth provisions that apply to and govern the Property's development and use. The DA dictates the building requirements for the development, such as building heights, allowed vehicle trips, and parking. No decisions were made.

- RKm Phase I Design

Chief Executive Officer David Ripp introduced Roy Kim who presented RKm's Phase I design for the waterfront development. The presentation consisted of 1) area in which Developer proposes Phase I take place, 2) conceptual site plans for Phase I, 3) conceptual infrastructure, streetscape/plaza, and roadway plans for Phase I, 4) proposed timeline for Phase I including permitting, groundbreaking, construction, certificate of occupancy, and beginning of operations/opening day, 5) summary of Developer's "business case" for development, and 6) summary of Developer's major sources of funds for Phase I activities.

Commissioner Spencer asked how many square feet of restaurant/retail will there be, and would the pedestrian plaza be part of phase I? Roy Kim replied that the plaza would be part of Phase I, as it provides access from the waterfront development to the waterfront trail. Kim also stated that the design is for smaller restaurants, 2,000-5,000 sq ft. but will have a variety of restaurant sizes.

Commissioner Marshall commented to Roy Kim that she appreciated that he took prior public input and created public spaces close to the waterfront trail. Roy stated he will make sure to continue to keep the public's input in mind throughout the development.

Commissioner Keister stated that the development was a well thought out vision. He asked if there would be availability for office space on the 2<sup>nd</sup> floor of the buildings being constructed. Roy Kim stated that they haven't gotten that far in the design work but that they are contemplating apartments on the 2<sup>nd</sup> floor. Kim did state however, that some apartment buildings being constructed come with working spaces and that RKm is currently looking at that type of design. Future phases may have office spaces. Keister then opened up the discussion for public comment.

Shawnee Driskell: She stated the project looks fantastic. She asked if there was available space to partner with on the east side of the roundabout? Roy Kim said he'll look into her business and get back to her.

Julie Russell: She asked if there were plans for restrooms, as she hates porta potties. Roy Kim replied that yes, when there are public plazas there should be restrooms to go along with them.

Kim Vine: She asked if there would be condos in any of the phases. Roy stated that right now they are only dealing with apartments. What about senior living? Senior living is on the table. Has there been discussion on expanding the breakwater dock for transitory use? Kim Noah, Chief Operating Officer stated that the plan is to convert the current partially slipped moorage on the breakwater to be completely transitory moorage once the waterfront is constructed as the use will warrant this.

Jim Cooper: He had three comments related to parking capacity, restaurants, and view corridors. In relation to restaurants he stated local businesses should run the restaurants rather than chain restaurants and encouraged RKM to look locally. He noticed the view corridors focus was on the waterfront, but that the views should also include the entire valley from Mount Norway to Mount Hood. He felt the planned six-story buildings were higher than he imagined and hoped they wouldn't block the views of the surrounding area.

Sam Bearbauer: She is a local business owner and is excited about more space. She asked if there would be availability for boutiques size businesses that may be 500-1,500 sq ft. She also commented that she hopes RKM's vetting style for businesses would encourage diversity. She also was interested in RKM's timeline to allocate space to businesses. Roy stated he would get her contact info so he could get in touch with her. Roy agreed with not having chain restaurants but local restaurants, but he stated it is hard to pull off. He stated he'd like the communities help to get in contact with businesses that should be on the waterfront site. Roy stated that real estate brokers give him national chain suggestions, they don't like to give local businesses.

Ken Vartanian: He is a senior citizen living in Camas, looking at downsizing. He asked who is RKM's target market for the apartments? He also asked why RKM didn't consider older citizens that want to downsize into condos? Roy Kim stated that typical apartments have 70% occupied by 30 years and younger. Also, you don't expect too many families unless they are young families waiting for an opportunity to buy homes. Roy stated the apartment sizes would range from studios to 3 bedrooms 1,200-1,400 sq ft.

Miranda Martin: She is an environmental educator living in Washougal. She asked what the accountability plans are for stormwater management, erosion control, native plants, water filtration, etc. Roy Kim stated the stormwater outfall was currently being designed and water will be treated before being released into the Columbia River. She thanked RKM for incorporating roof top gardens into the design. She asked where the public can view the waterfront's master plan. She was directed to the Waterfront Revitalization webpage. Commissioner Spencer also encouraged Miranda to attend the port's strategic planning sessions where environmental sustainability is a big emphasis.

Bernie Bacon: She commented on hoping the current sewer capacity is adequate for the development as sewer rates are already high in Washougal. She also wondered if the development would impact staffing for fire and police. And finally, she commented if there would be underground parking.

Suzy Truitt: She asked if the roads leading to the development would have bike lanes? David Ripp, Chief Executive Officer commented that yes, they would.

Doug Byron: He asked how many parking spots would be available for the first phase? Roy Kim stated he didn't have that exact number yet, but that it is driven by code and they would be located to the north of the building.

- Waterfront Master Lease Agreement Discussion

Chief Executive Officer David Ripp stated that the Master Lease Agreement is 95% complete and would be presented at the next meeting for discussion. The Master Lease Agreement that is currently being established between the Port and RKM Development, Inc. (Developer) recognizes an understanding between the Port and Developer with regard to the lease or acquisition by Developer of parcels within the waterfront property and design, development and performance criteria for Developer's timely overall development of the waterfront property and the development of each project. No decisions were made.

- Kubota Tractor Purchase

Director of Planning & Development Mark Miller presented staff's proposal for the purchase of a new enclosed cab excavator with flail arm mower from Dan's Tractor for \$62,552.54 less the port's trade-in of its 2012 Kubota Excavator for \$26,000 for a total cost of \$39,367.09 which includes sales tax. Approval to purchase Kubota Excavator will be requested during Action Items.

- **PUBLIC COMMENT #1**

No comments.

- **ACTION ITEMS**

- Approve Kubota Tractor Purchase

Commissioner Keister requested formal approval to purchase a Kubota KX040-4R3AP Tractor in the amount of \$39,367.09, which includes sales tax, as presented in discussion items. Upon motion by Commissioner Keister, seconded by Commissioner Spencer and carried unanimously, the approval to purchase the Kubota tractor as presented, effective February 3, 2021.

- **STAFF REPORTS & COMMENTS**

- Chief Executive Officer David Ripp

Update on the next Strategic Planning meeting, originally scheduled for March 17 will be rescheduled to either March 3 or April 7. The focus of this meeting will be to review current goals as well as new ones. Discussion will also occur on the comments received from the February 18 Advisory Committee meeting.

- Director of Planning and Development Mark Miller

He highlighted Debra Itzen's 20-year anniversary and all the great work and dedication she has provided to the Port; she was also promoted with a title change to Contracts Manager.

- **COMMISSIONER REPORTS**

- Commissioner Marshall

Congratulations to Manager Debra! Attended Port Day this week and everyone is focused on COVID recovery and equity talks and implementing changes. Broadband was also brought up a lot along with transportation. Great collaboration with our Clark County groups. Crossing fingers for federal funding. The PUD commission met, and they are talking about broadband and promoting electric vehicles. Ninebark's development was highlighted with their electric charging station design. She sees opportunities for the port to participate in this as well.

Commissioner Spencer

Had first WPPA board meeting today and thrilled with the quality of the other board members. Federal transportation discussion occurred and there may be federal money coming available.

Commissioner Keister

He missed the opportunity to network due to COVID and having to Zoom for the Port Legislative Day. Equity is the guiding principle policy for the State, and it will be discussed by the Port during our strategic planning session. He stated he appreciated the community joining us!

- **PUBLIC COMMENT #2**

Martha Martin, Washougal thank you to Roy for respecting our community.

The meeting adjourned at 7:12 pm.

PORT OF CAMAS-WASHOUGAL COMMISSION

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Commissioners

**DEVELOPMENT AGREEMENT**

**Grantors:** Port of Camas-Washougal

**Grantee:** City of Washougal

**Abbreviated Legal:**

**Assessor's Tax Parcel No(s):** 73139062; 73139042; 73139052; 73134179; 73134153; 71791000

**Other Reference No(s):** AF #s 5019502; 5531755

**Effective Date:** \_\_\_\_\_, 2021

**Parties:** The Port of Camas-Washougal,  
a municipal corporation  
24 South A Street  
Washougal, WA 98671  
(hereinafter referred to as the **"Port"**)

and

City of Washougal, WA,  
a municipal corporation  
1701 C Street  
Washougal, WA 98671  
(hereinafter referred to as **"City"**)  
(collectively **"Parties"**)

## EXHIBITS

- Exhibit A. Port Property Legal Description
- Exhibit B. The Property or Port Property Graphic Depiction
- Exhibit C. Parkers Landing LLC Property (“PL Property”)
- Exhibit D. Waterfront Property Master Plan
- Exhibit E. Public Streets A, 2, 3, and 4.
- Exhibit F. Waterfront Development Standards
- Exhibit G. City of Washougal Traffic Impact Fee Program Technical Document
- Exhibit H. Kittelson & Associates Traffic Impact Analysis for Parker’s Landing (dated 3/28/2013)
- Exhibit I. Water, Sewer and Stormwater SDC Rates
- Exhibit J. Relevant WMC Code sections

## RECITALS

- A. The Port of Camas Washougal owns certain real estate property as identified as Tax Parcel numbers 73139062; 73139042; 73139052; 73134179; 73134153; and 71791000 (“the **Property**”) The Property is legally described in **Exhibit A** and depicted in **Exhibit B**.
- B. The Port Property presents special circumstances requiring a flexible approach to site development through a Master Plan and overarching site planning. For the purpose of this Development Agreement (“**Development Agreement**” or “**Agreement**”), “**Site**” is defined to mean any plot or parcel of land or combination of contiguous lots or parcels of land. These special circumstances include the Property’s role in providing public access to the Columbia River waterfront with uses that support and encourage recreation, water access, public gathering, dining, shopping, employment, residential, and other uses.
- C. In the past, the Parties together and with other entities that are not parties to this Development Agreement have entered into various past agreements regarding development of the Property. The Clark County recording numbers for these past agreements are 4864422, 5019502, 5104756, 5531754, 5531755, and 5531769. This Development Agreement supersedes the terms of those Past Agreements, except where this Development Agreement makes clear that past terms remain in effect.
- D. The Port has spent considerable resources in acquiring the Property, conducting environmental assessment and remediation of the Property from its former lumber yard use, developing a waterfront park and nature play area, conducting planning, and other activities.
- E. The Port and its consultants conducted extensive outreach to citizens of the Cities of Washougal and Camas in order to generate citizen input for the future of the Property. Citizens submitted 890 surveys describing their vision. Following this outreach effort, the Port Commission adopted

a vision for development of the Property in the Waterfront Vision (“**Vision**”) and Master Plan (“**Plan**” or “**Master Plan**.”) The Vision and Plan is to design and build a lively, walkable place with community gathering and character spaces, open spaces, and a mix of uses including commercial, retail, employment, residential, and other compatible uses. The design and function for the development will honor the natural beauty and history of the site and the community, as well as support the creation of a local and regional identity for the Cities of Washougal and Camas. The Master Plan approved by the Port is shown in **Exhibit D**. The Master Plan remains conceptual in nature and road alignments, public open space design, building design, and other aspects of the Plan may be modified as the Project is built out during the term of this Agreement.

- F. The approved Master Plan serves as the guiding document for the Property’s development, which will occur in phases, over the next twenty (20) years.
- G. Pursuant to RCW 36.70B.170(1) and Washougal Municipal Code (“WMC”) 18.94.160 (development agreements), the Parties are authorized to enter into a development agreement that sets forth provisions that apply to and govern the Property’s development and use.

NOW, THEREFORE, the Parties agree as follows:

1. **Definitions.** Throughout this Agreement, the following defined terms shall have the meanings set forth below. It is noted that other terms have been defined in the Recitals above and others may be defined within this Agreement. Those defined terms shall have the meaning set forth therein.
  - 1.1. “**Developer**” means an organized business entity authorized by the Port to make Improvements on the Property that are consistent with the Master Plan.
  - 1.2. “**Improvements**” or “**Developer Improvements**” means all site improvements, buildings, structures, and fixtures now or hereafter placed or constructed in, under, upon or adjacent to a Parcel, including the to-be-constructed building as part of a Project including, but not limited to, all additions to or replacements thereof made from time to time, and all access ways, local roads, pedestrian areas, fences, paved areas, utility distribution facilities, lighting, signage and other infrastructure improvements to be built by Developer.
  - 1.3. “**Parcel**” means a specific parcel of real property within the Property on which a Project will be constructed.
  - 1.4. “**Project**” means the development and construction of Improvements on a Parcel or Parcels, including all related obligations.
2. **Recitals and Exhibits.** The recitals and exhibits attached hereto are hereby incorporated into this Agreement and shall be binding on the Parties as terms of this Development Agreement.
3. **Purposes.** The purposes of this Development Agreement are to:
  - 3.1. Acknowledge that the Master Plan for the Property (**Exhibit D**), approved by the Port Commission, governs the development of the Property.

- 3.2. Provide a framework for development of the Property that the City will use to permit development of the Property in whole or as a series of Projects or phases subject to WMC Chapter 18.88 Site Plan Approval, and to specify the Development Standards that will guide development of the Property, and modifications to the applicable WMC zoning regulations as set forth herein.
- 3.3. Establish processes and standards that will supersede past agreements upon the execution of this Development Agreement.
4. **Development Standards.** In 2019, the Port of Camas-Washougal—based on extensive public outreach and with its design consultants—prepared a Master Plan for the Property that provides for a mixed-use development.
  - 4.1 The Development Standards for the Property are set forth in **Exhibit F**. In many cases, these Development Standards use the current zoning for the Property (Highway Commercial District (CH)) as a basis for defining standards. In other cases, the Development Standards use regulations developed for WMC Chapter 18.35: Town Center Districts, or other standards developed by the Port in consultation with the City. One Past Agreement (2013 Amended and Superseding Development Agreement, Clark County recording #5019502) included design standards that are superseded by this Development Agreement, as to agreements, obligations, binding terms, rights and responsibilities of, by and between the Port and City.
5. **Multifamily Tax Exemption Program (“MFTE Program”).** The City acknowledges that the approved Master Plan contemplates the construction of multifamily housing development as Projects on the Property and that the Development Standards allow multifamily development. The Parties further acknowledge that the Port plans to authorize one or more Developers to build the Master Plan and that one or more Developers may build multifamily housing as a part of the Master Plan.
  - 5.1. The Property is within the “waterfront commercial district” designated by WMC 3.58 Multifamily Tax Exemption Program (“**MFTE Program**”) as a residential target area. Developers may therefore apply for their multifamily housing Projects to receive the limited eight-year exemption from ad valorem property taxation provided by WMC 3.58 Multifamily Tax Exemption Program and as modified herein. The City agrees it shall accept MFTE Program applications from Developers of this Property during the full Term of this Agreement as defined in Section 18 of this Agreement, even if the term of this Agreement extends beyond the sunset date of the MFTE Program provided in WMC 3.58.080. At the time of a Developer’s application for a tax exemption for a multifamily Project, the City shall process said application pursuant to the procedures and requirements of WMC 3.58 in effect as of the effective date of this Agreement, and as modified herein. With respect to such application and granting of such tax exemption, the City and Port agree:
    - 5.1.1. The City shall not impose any additional discretionary requirements other than those requirements set forth under WMC 3.58 and as modified herein as of the effective date of this Agreement for multifamily housing development on the Property to qualify for the MFTE Program. Where the Development Standards of this Agreement conflict with the standards and guidelines set forth in WMC 3.58.060, the Development Standards shall control; provided however, the City reserves authority to impose new or different

regulations to the extent required by a serious threat to public health and safety, as required by RCW 36.70B.170 (4).

5.1.2. Improvements that are amenities made available exclusively to residents of the multifamily housing development on the Property, including parking improvements, shall be improvements that qualify for the ad valorem property taxation under WMC 3.58.

5.2. **Application of the MFTE to the Port Property and PL Property.** The 2018 First Addendum to Amended and Superseding Development Agreement, a past agreement recorded as Clark County Auditor's No. 5531755, addressed the application of the MFTE Program to the Port Property and to an adjacent property owned by Parkers Landing, LLC ("**PL Property**", shown in **Exhibit C**). Agreement No. 5531755 provides that one-third of the Combined Property Area of the Port Property and PL Property must be reserved for commercial development ("**Combined Site Area**"). This is consistent with WMC 3.58.060(1)(g), which also provides that one-third of the site area of any Master Plan Mixed-Use Development within the waterfront commercial district must be set aside for commercial development. However, as to the Port and City, this Agreement supersedes the terms of Clark County Auditor's No. 5531755 pertaining to the MFTE Program, the Combined Site Area, and the one-third area set aside. The Port and City agree via this Agreement that one-third of the Combined Site Area must be reserved for commercial or Vertical Mixed-Use Development.

5.2.1. 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).

5.2.2. 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.

5.2.3. 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.

5.2.4. Parkers Landing LLC's will manifest its agreement to the provisions of 5.2 and 5.2.1 through 5.2.3 herein above via a separate contemporaneous Agreement between the Port and Parkers Landing LLC.

5.3. Eligibility for the tax exemption is subject to review and approval by the City Community Development Director ("**Director**") of an application submitted pursuant to WMC 3.58.040(5) and (6) and a contract with the City approved by City Council as required by WMC 3.58.040(6)(a).

6. **Phased Development.** The Port and/or Developers will develop the Property in a number of Projects or phases. Developers will develop the Property in coordination with the Port. For each Project, Developers or Port will request that the City approve individual Parcels as documented via the Site Plan Application process in order to provide a flexible approach to development of the Property. Developers and the Port will be subject to the application and approval processes provided by WMC Chapter 18.88 Site Plan Approval, as modified herein. The Parties acknowledges that the combination of Parcels or creation of new Parcels, if desired, must follow the process for City approval as required by city ordinance, and that such Parcel combinations are not authorized solely via the City's entry into this Development Agreement.
7. **Transportation.** Transportation, trip generation, and Traffic Impact Fees for the Port Property are addressed in Section 5.6 of the Amended and Superseding Development Agreement dated September 23, 2013, recorded under Clark County Auditor File No. 5019502, between Parkers Landing LLC, the Port, and City which was amended by Section 4 of the First Addendum to Superseding Development Agreement under Clark County Recording No. 5531769, dated July 20, 2018 ("**Superseding DA**").

#### 7.1. **Public Streets**

7.1.1. Exhibit E shows the Property and a series of streets labelled A, 2, 3, and 4 that shall be "Public Streets." The City will use best efforts to place these proposed public streets on the City's Capital Facilities Plan (CFP). Pursuant to City of Washougal Code section 15.64.060, the City also finds that the proposed public streets would serve the goals and objectives of the capital facilities plan and the stated transportation policies of the City's Comprehensive Plan, regardless of whether the proposed public streets are actually placed on the CFP. In both instances, the Developer will be eligible for TIF credits pursuant to WMC 15.64.060 and the CFP as of the date of the Agreement. Should the majority of the buildings that are serviced by these roads become publicly owned and non-property-tax-revenue generating for a period of more than one (1) year, the City will vacate the dedicated right-of-way and the streets will become private with full maintenance responsibilities to be performed by the Port.

7.1.2. Developer or the Port shall build the Public Street consistent with the Development Standards in this Agreement, and the City agrees to accept dedication of the Public Streets for the City's long-term ownership and maintenance. In addition, the Port agrees to work with the City to develop a long term maintenance agreement for the landscaping within all of the proposed public streets.

- 7.1.3. Public Street 3 shall be dedicated to the City for the City's long-term ownership and maintenance but shall not be receive TIF credits from the City.
- 7.1.4. Subsequent to the construction of Public Streets A, 2, and 4, the City's current South Second Street right-of-way south of Marina Way will no longer be necessary because of the new Public Streets. Therefore, within three (3) months of the construction and dedication of Public Streets A, 2, and 4 to the City, the City shall vacate its current South Second Street right-of-way south of Marina Way and deed same to the Port and this right-of-way shall become part of the Port Property.
- 7.2. **Marina Way Roundabout.** The City acknowledges that, as a component of the development of the Master Plan, the Port or Developer will likely need to modify access to the Property from the Marina Way Roundabout at South Second Street, and that this roundabout is controlled by the Washington State Department of Transportation (WSDOT). The City is supportive of this modification.
- 7.2.1. The realignment of South Second Street will likely require that a section of City-owned right of way that is currently a part of South Second Street and is less than 0.5 acres (one-half acre) in size be transferred from City ownership to Port ownership. The City agrees to process the approval of this transfer at no cost to the Port in recognition that a much greater area of land will be transferred to the City consistent with section 7.1 above, and that there would be no obvious City use for this "stranded" property following the realignment of South Second Street.
- 7.3. **Private Streets.** The other streets shown on **Exhibit E** but not labelled as Streets A, 2, 3, and 4 may be privately-owned streets and/or rights of way.
- 7.4. **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 LLC have evolved, and that the land uses planned for the Port Property are expected to include a mix of commercial and residential uses, this Agreement revises Section 5.6 of the Amended and Superseding Development Agreement and section 4 of the 2018 First Addendum to the Amended and Superseding Development Agreement as follows:
- 7.4.1. The Total PM Peak Hour Trips reserved for the Port Property and PL Property is 1,440, which is unchanged from the 2013 Amended and Superseding Development Agreement and is shown in Trip Generation Summary on Exhibit C (Clark County Auditor Recording page 36) of that 2013 Amended and Superseding Development Agreement.
- 7.4.2. Parkers Landing LLC 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 PM peak hour trips generated by this PL Property development will not be more than 200, and these trips will be deducted from the Total PM Peak Hour Trips.

- 7.4.3. The remaining trips shall be reserved for Port Property. Notwithstanding this trip reservation, Parkers Landing LLC and the Port may in the future agree to reallocate trips as allowed in 2013 the Amended and Superseding Development Agreement.
- 7.4.4. Nothing contained in this revised Section 5.6 of the 2013 Amended and Superseding Development Agreement shall preclude the Port from seeking additional trips beyond those reserved in herein.
- 7.4.5. Parkers Landing LLC will manifest its agreement to the provisions of 7.41 through 7.4.4 herein above via a separate contemporaneous Agreement between the Port and Parkers Landing LLC.
- 7.5. **Traffic Impact Fees.** Per the 2013 Amended and Superseding Development Agreement, Transportation Impact Fees (“TIF”) will be vested to the Port at the rate and calculated pursuant to the formula set forth in that Amended and Superseding Development Agreement. This TIF rate is \$229 per net new ADT. The TIF formula is as follows:
- 7.5.1. Total TIFs = \$229 x net new average daily trips x BEF Reduction.  
The BEF Reduction refers to the Business Enhancement Factor, pursuant to the City of Washougal Traffic Impact Fee Business Enhancement Factor Program Technical Document dated September 20, 2010, attached as Exhibit D to the 2013 Amended and Superseding Development Agreement.
8. **Public Utilities: Water, Sewer and Stormwater.** The City hereby reserves for Port’s benefit and for the Property for the duration of this Agreement, the water, sewer, and stormwater systems development charges and other rates provided in WMC 3.91, 3.92, and 14.32 as of the date of this Agreement.
9. **Park Impact Fees Credits.** In recognition that, during the course of construction of the Waterfront Master Plan, Port and/or Developer will continue to make investments to parks and open spaces that are in excess of those made by a typical developer, and consistent with WMC chapter 15.62, the City shall grant Park Impact Fee Credits to the respective entity (Port and/or Developer) which provides these significant investments, under the following conditions:
- 9.1. The park improvements are either indicated in Exhibit D or approved as Park Impact Fee creditable by the City’s Community Development Director or designee in advance of their construction. In particular, the series of park, plaza, boardwalk, and open space improvements shown in Exhibit D adjacent to or south of South Second Street shall be creditable; and,
- 9.2. The park improvements are accessible and available to the general public during the same days and times as other, similar, nearby parks, particularly Washougal Waterfront Park.
10. **Vesting.** Unless otherwise stated in this Agreement, any amendments or additions made during the term of this Agreement to the City’s zoning or development regulations, Comprehensive Plan policies, transportation concurrency regulations, SEPA regulations and substantive SEPA policies or other laws, ordinances, comprehensive plan policies or other policies governing land development which otherwise would be applicable to the Project shall not apply to or affect the conditions of the Project. This vesting provision shall be applicable, without limitation, to all land use applications, permits, uses and development of the Project that occur on the Property within the term of this

Agreement. This vesting shall continue beyond the term of this Agreement as to any implementing land use application in process or granted by the City during the term of this Agreement, for the normal term of approval of any such application, permit, or approval.

11. **Election of Site Uses According to Subsequently Adopted Zoning Code, Development Regulations, and Impact Fee Formulas.** Notwithstanding anything herein to the contrary, the Port may, at any time during the term of this Development Agreement, elect to undertake land uses allowed by the Zoning Code, Development Regulations, and Impact Fee Formulas existing at the time of this Development Agreement or as amended during the duration of this Development Agreement. If the Port elects to retain its vested rights under this Development Agreement while seeking applicability of selected, subsequently-enacted Zoning Code, Development Regulations, and/or Impact Fee Formula provisions, the Port shall first seek and obtain a determination from the City's Community Development Director or designee in a Type I review that such mixing of regulatory requirements will not result in an incoherent or inconsistent blending of regulatory controls that would be contrary to the public interest.
12. **Severability.** If any provision of this Agreement or the application of the provisions herein to any person or circumstance, is determined by a court of law to be unenforceable or invalid, then the remainder of the Agreement or the application of the provisions herein to other persons or circumstances shall not be affected and shall remain in full force and effect. Further, as to those provisions held by a court of law to be unenforceable, the Parties shall confer and agree to amend the Agreement to implement the mutual intent of the Parties to the maximum extent allowed by law.
13. **Controlling Law.** In the event of any litigation arising hereunder, or with respect hereto, the law of the State of Washington will control, and all signatories hereto, do hereby submit themselves personally to the jurisdiction of the courts of the State of Washington, and do hereby agree that any action arising hereunder may be instituted in Clark County Superior Court, if the parties are served, including anywhere not within the State of Washington, by any method authorized by Washington law.
14. **Headings.** The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit, or otherwise modify the terms and conditions of this Agreement.
15. **Attorneys' Fees.** Should it be necessary for any Party to this Agreement to initiate a legal proceeding against the other Party to adjudicate any issues arising hereunder, the Party that substantially prevails shall be entitled to recover from the other Party such sum as the court or arbitrator may adjudge reasonable attorneys' fees, costs, expenses, and disbursements (including the fees and expenses of expert and fact witnesses) reasonably incurred or made by the substantially prevailing Party in preparation to participate in mediation or arbitration, to bring suit, during suit, on appeal, on petition for review, and in enforcing any judgment or award, from the other Party or Parties.
16. **Default.** In the event either Party fails to perform the terms and provisions of this Agreement,

which failure continues uncured for a period of sixty (60) days following written notice from the other Party (unless the Parties have mutually agreed in writing to extend this period) shall constitute a default under this Agreement. Any notice of default shall specify, the nature of the alleged default and, where appropriate, the manner in which the alleged default may be satisfactorily cured. If the nature of the alleged default is such that it cannot be reasonably cured within the sixty (60) day period, then the commencement of actions to cure the alleged default within the sixty (60) day period and diligent prosecution of such actions necessary to complete the cure of the alleged default, shall be deemed to be a cure within the sixty (60) day period. Upon a default that is not cured as provided above, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or terminate this Agreement. If the default is cured, then no default exists, and the noticing Party shall take no further action. In recognition of the possible assignment and sale of portions of the Property any claimed default shall relate as specifically as possible to the portion of the Property involved and any remedy against any party shall be limited to the extent possible to the owners of such portion of the Property with remedies that do not adversely affect the rights, duties or obligations of any other non-defaulting owner of portions of the Property not in default under this Agreement.

17. **Construction.** This Development Agreement sets forth the entire agreement of the Parties. This Development Agreement shall be construed as a whole. This Agreement is the product of negotiation and drafting by both Parties and their legal counsel, and it shall be deemed to have been drafted by no Party individually but as a joint effort of the Parties. No amendment, change or modification of any provision of this Development Agreement shall be valid unless set forth in writing and signed by both Parties, and so long as any portion of the Property remains in public ownership, approved by the legislative body of each entity. Approval of any such change by the City requires approval by the City Council after such public process as required by law. To the extent any conflict with any City regulations which may otherwise govern the Property, the terms and conditions of this Development Agreement shall prevail.
18. **Term.** The initial Term ("Term") of this Development Agreement shall be for twenty (20) years from the effective date of this Development Agreement. A five (5) year extension of this Development Agreement may be requested by the Port and shall be granted by the City's Community Development Director if the following conditions are met during the initial term: A) Public Street A, 2, and 4, as shown on the approved Master Plan, are constructed and dedicated to the City, B) necessary Site and utility improvements have been made to support build-out of the Master Plan, and C) building construction has been completed on at least 50% of the Property.
19. **Required Public Hearing.** This Development Agreement is authorized by an Ordinance of the City Council of the City of Washougal following a public hearing as required by RCW 36.70B.170.
20. **Threat to Public Health and Safety.** The City reserves the authority to modify one or more of the standards or requirements of development for the Property during the term of the Agreement, after notice, a public hearing, and adoption of findings and conclusions, to the extent required to avoid a serious threat to public health or safety, as provided in RCW 36.708.170.

- 21. **Binding Effect.** This Development Agreement shall be recorded in Clark County against the Property and shall run with the land, subject only to the express conditions or limitations of this Development Agreement, and shall be binding upon the Port and the City and any and all of their assigns and successors in interest and inure to the benefit of the respective successors and assigns of the Parties. Upon assignment of this Development Agreement or the conveyance of any Parcel of the Port's Property to which this Development Agreement is applicable, the assignee/grantee shall be deemed to assume all rights, obligations and liabilities set forth in this Development Agreement as they relate to such Parcel.
  
- 22. **Cooperation.** Each Party shall take such action (including, but not limited to the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party herein for the implementation or continuing performance of this Development Agreement. In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party of this Development Agreement, or any subsequent action taken consistent with this Development Agreement, the Parties shall cooperate in defending such action or proceeding to settlement of final judgment, including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense.
  
- 23. **Warranty of Port Authority.** Port hereby warrants to the City that the undersigned is authorized to negotiate and, upon and subject to the approval of the Port Commission, execute this Development Agreement and to bind the Port's Property and all successor fee owners subject to and contingent upon acquisition of the Property by Port or its successors or assigns.
  
- 24. **Warranty of City's Authority.** The City is delegated with the authority pursuant to RCW 36.70B.170, et al, to enter into Development Agreements as a proper exercise of municipal police power and contract authority. This Development Agreement is entered into pursuant to said authority. It is hereby warranted that the undersigned Mayor has and is authorized to enter into this Development Agreement as approved by ordinance after a public hearing as required by RCW 36.70B.200.

**SIGNATURES APPEAR ON NEXT PAGE**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Port:**

**PORT OF CAMAS-WASHOUGAL**, a Washington public port

By: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Its: \_\_\_\_\_

Date: \_\_\_\_\_

**City of Washougal:**

a Washington state municipality

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A. Port Property Legal Description

*Prepared by KC Development, LLC, dated August 12, 2020:*

A Portion of the David Parker Donation Land Claim Number 48, situated in the Southeast 1/4 of the Southeast 1/4 of Section 12, and in the Northeast 1/4 of the Northeast 1/4 of Section 13, Township 1 North, Range 3 East of the Willamette Meridian, Clark County, Washington, being more particularly described as follows:

Beginning at the intersection of the South line of said Section 12 with the East line of the David Parker Donation Land Claim Number 48, said point of beginning being N87°36'08"W, 32.34 feet from the Southeast corner of said section; thence along the East line of said Parker Claim, S22° 17'56.00"W, 40.16 feet to a point of non-tangent curvature; thence leaving said east line, along the arc of a 57.92 foot radius curve concave to the Southeast, through a central angle of 18°52'07" (Chord bears S64°58'39"W, 18.99 feet) a distance of 19.07 feet to a point of non-tangency; thence S53°08'21"W, 20.84 feet; thence S47°24'29"W, 11.77 feet; thence S47°53'45"W, 5.34 feet; thence S53°27'30"W, 12.99 feet to a point of non-tangent curvature; thence along the arc of a 29.24 foot radius curve concave to the Southeast, through a central angle of 70°40'37" (Chord bears S83°19'45"W, 33.83 feet) a distance of 36.07 feet to a point of non-tangency; thence N59°04'53"W, 1.96 feet; thence S26°29'47"W, 6.86 feet; thence N85°49'32"W, 8.01 feet; thence S05°56'02"W, 2.86 feet; thence N82°14'52"W, 64.73 feet to a point of curvature; thence along the arc of a 470.75 foot radius curve concave to the Southwest, through a central angle of 6°51'46" (Chord bears N85°40'44"W, 56.35 feet) a distance of 56.38 feet to a point of non-tangency; thence N02°17'24"E, 3.96 feet; thence N87°55'18"W, 31.95 feet; thence S02°14'46"W, 4.10 feet; thence N88°09'38"W, 135.11 feet to a point of curvature; thence along the arc of a 345.50 foot radius curve concave to the Southeast, through a central angle of 11°43'23" (Chord bears S85°58'41"W, 70.57 feet) a distance of 70.69 feet to a point of tangency; thence S80°06'59"W, 14.33 feet; thence N11°22'17"W, 4.24 feet; thence S78°52'04"W, 31.84 feet; thence S10°40'25"E, 4.02 feet; thence S79°03'14"W, 49.28 feet to a point of curvature; thence along the arc of a 160.00 foot radius curve concave to the Northeast, through a central angle of 27°50'13" (Chord bears N87°01'40"W, 76.97 feet) a distance of 77.74 feet to a point of tangency; thence N73°06'33"W, 39.36 feet to a point of curvature; thence along the arc of a 94.00 foot radius curve concave to the Southwest, through a central angle of 14°10'31" (Chord bears N80°11'49"W, 23.20 feet) a distance of 23.26 to a point of tangency; thence N87°17'04"W, 19.42 feet to a point of curvature; thence along the arc of a 80.40 foot radius curve concave to the Southeast, through a central angle of 16°03'19" (Chord bears S84°41'17"W, 22.46 feet) a distance of 22.53 feet to a point of tangency; thence S76°39'37"W, 56.26 feet to a point of curvature; thence along the arc of a 50.00 foot radius curve concave to the Northeast, through a central angle of 35°41'06" (Chord bears N85°29'50"W, 30.64 feet) a distance of 31.14 feet to a point of tangency; thence N67°39'16"W, 13.20 feet; thence N41°54'28"E, 2.45 feet; thence N43°56'14"W, 30.84 feet; thence S48°22'37"W, 2.03 feet; thence N18°57'57"W, 5.86 feet; thence N22°47'17"W, 77.09 feet to a point of curvature; thence along the arc of 60.00 foot radius curve concave to the Southwest, through a central angle of 100°16'24" (Chord bears N72°55'29"W, 92.11 feet) a distance of 105.01 feet to a point of tangency; thence S56°56'19"W, 48.30 feet to a point of curvature; thence along the arc of a 100.00 foot radius curve concave to the Northwest, through a central angle of 9°56'56" (Chord bears S61°54'47"W, 17.34 feet) a distance of 17.36 feet to a point of tangency; thence S66°53'15"W, 37.59 feet to a point of curvature; thence along the arc of a 45.00 foot radius curve concave to the Southeast, through a central angle of 30°43'52" (Chord bears S51°31'19"W, 23.85 feet) a distance of 24.14 feet to a point of non-

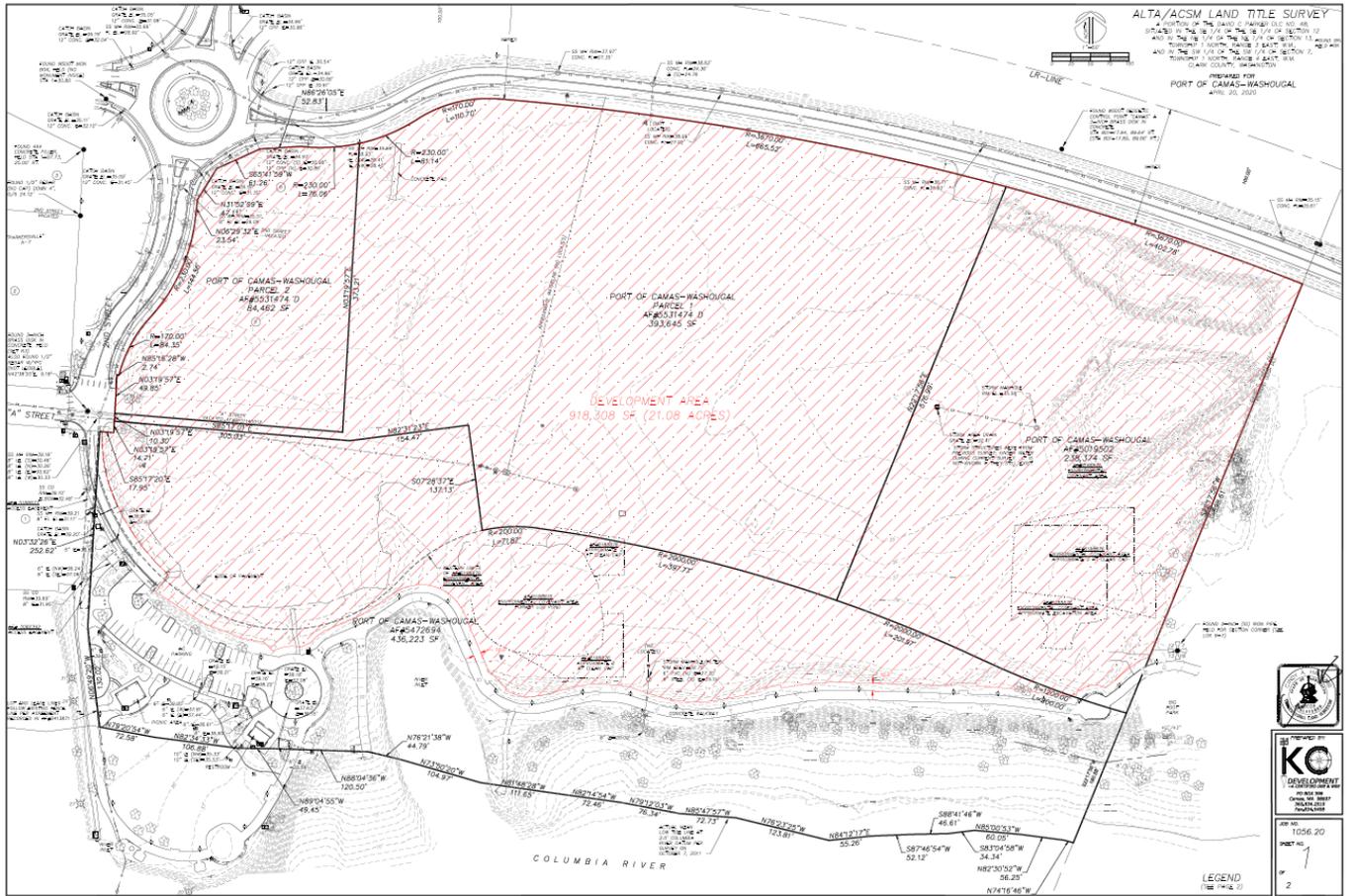
tangency; thence S63°13'44"W, 14.32 feet to a point of non-tangent curvature; thence along the arc of a 58.37 foot radius curve concave to the Southeast, through a central angle of 37°23'18" (Chord bears S81°26'51"W, 36.97 feet) a distance of 37.62 feet to a point of non-tangency; thence N45°22'11"W, 16.06 feet; thence N78°55'13"W, 28.38 feet; thence N68°52'50"W, 54.18 feet; thence N56°48'51"W, 73.43 feet; thence N35°34'38"E, 27.67 feet to a point of non-tangent curvature; thence along the arc of a 236.51 foot radius curve concave to the Northeast, through a central angle of 50°45'05" (Chord bears N24°41'40"W, 202.71 feet) a distance of 209.50 feet to a point of non-tangency; thence S85°17'20"E, 14.21 to the Northwest Corner of Block 8, Parkersville, a Plat of Record in Volume A, Page 7, Clark County Survey Records; thence along the Northerly extension of the West line of said Block 8, and continuing along the West line of Block 7, said Parkersville, N03°19'57"E, 74.86 feet; thence leaving said line, along the Right of Way line of State Route 14 as described by deed in Auditor's File Number 4709230, said Records, the following (10) courses: S85°16'28"E, 2.74 feet to a point of non-tangent curvature; thence along the arc of a 170.00 foot radius curve concave to the Southeast, through a central angle of 28°25'39" (Chord bears N28°17'20"E, 83.48 feet) a distance of 84.35 feet to a point of reverse curvature; thence along the arc of a 230.00 foot radius curve concave to the Northwest, through a central angle of 36°00'37" (Chord bears N24°29'51"E, 142.19 feet) a distance of 144.56 feet to a point of tangency; thence N06°29'32"E, 23.54 feet; thence N31°52'09"E, 47.11 feet; thence N65°41'59"E, 61.26 feet; thence N86°26'05"E, 52.83 feet to a point of curvature; thence along the arc of a 230.00 foot radius curve concave to the Northwest, through a central angle of 39°09'42" (Chord bears N76°53'18"E, 154.16 feet) a distance of 157.21 feet to a point of reverse curvature; thence along the arc of a 170.00 foot radius curve concave to the Southeast, through a central angle of 37°18'29" (Chord bears N75°57'42"E, 108.75 feet) a distance of 110.70 feet to a point of compound curvature; thence along the arc of a 3670.00 foot radius curve concave to the Southwest, through a central angle of 16°40'42" (Chord bears S77°02'43"E, 1064.53 feet) a distance of 1068.30 to the East line of said Parker Donation Land Claim; thence along said line, S22°17'56"W, 480.24 feet to the Point of Beginning.

Containing 918,308 Square feet (21.081 Acres.)

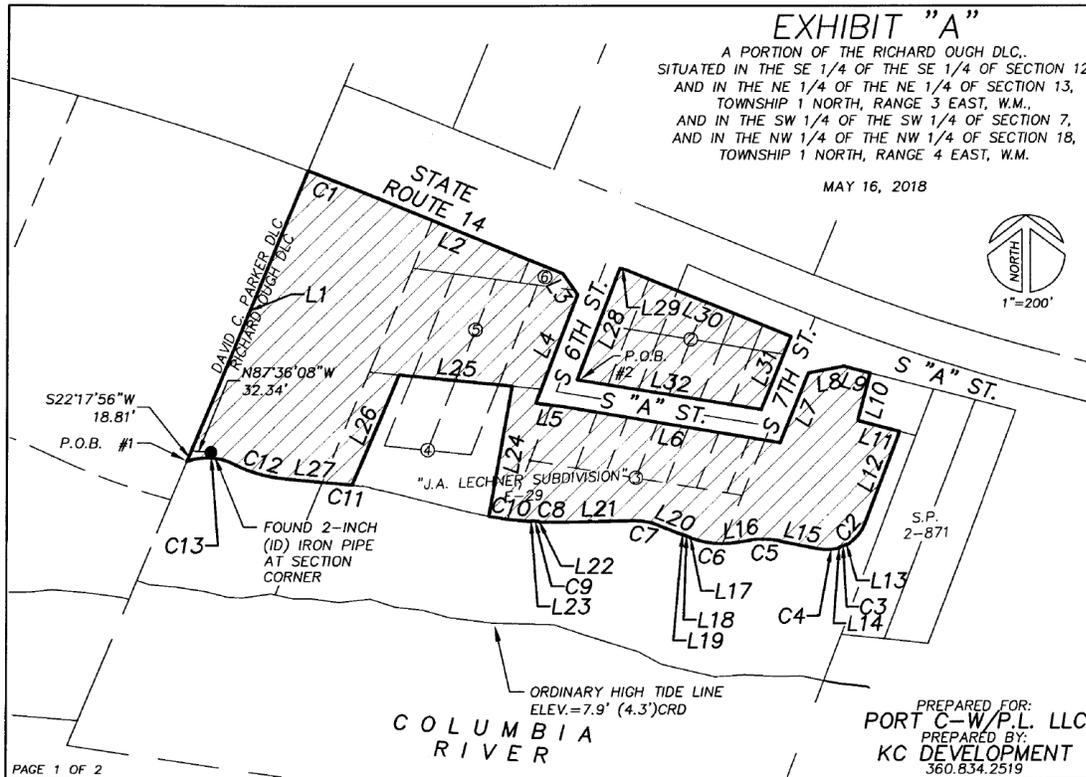
The basis of bearings is S22°17'56"W along the East line of the David Parker Donation Land Claim Number 48 pursuant to that Record of Survey in Book 63, Page 172, Clark County Survey Records.

# Exhibit B. The Property or Port Property Graphic Depiction

The Port Property is shown below as the "Development Area" filled with diagonal red dashes.



**Exhibit C. Parkers Landing LLC Property ("PL Property")**

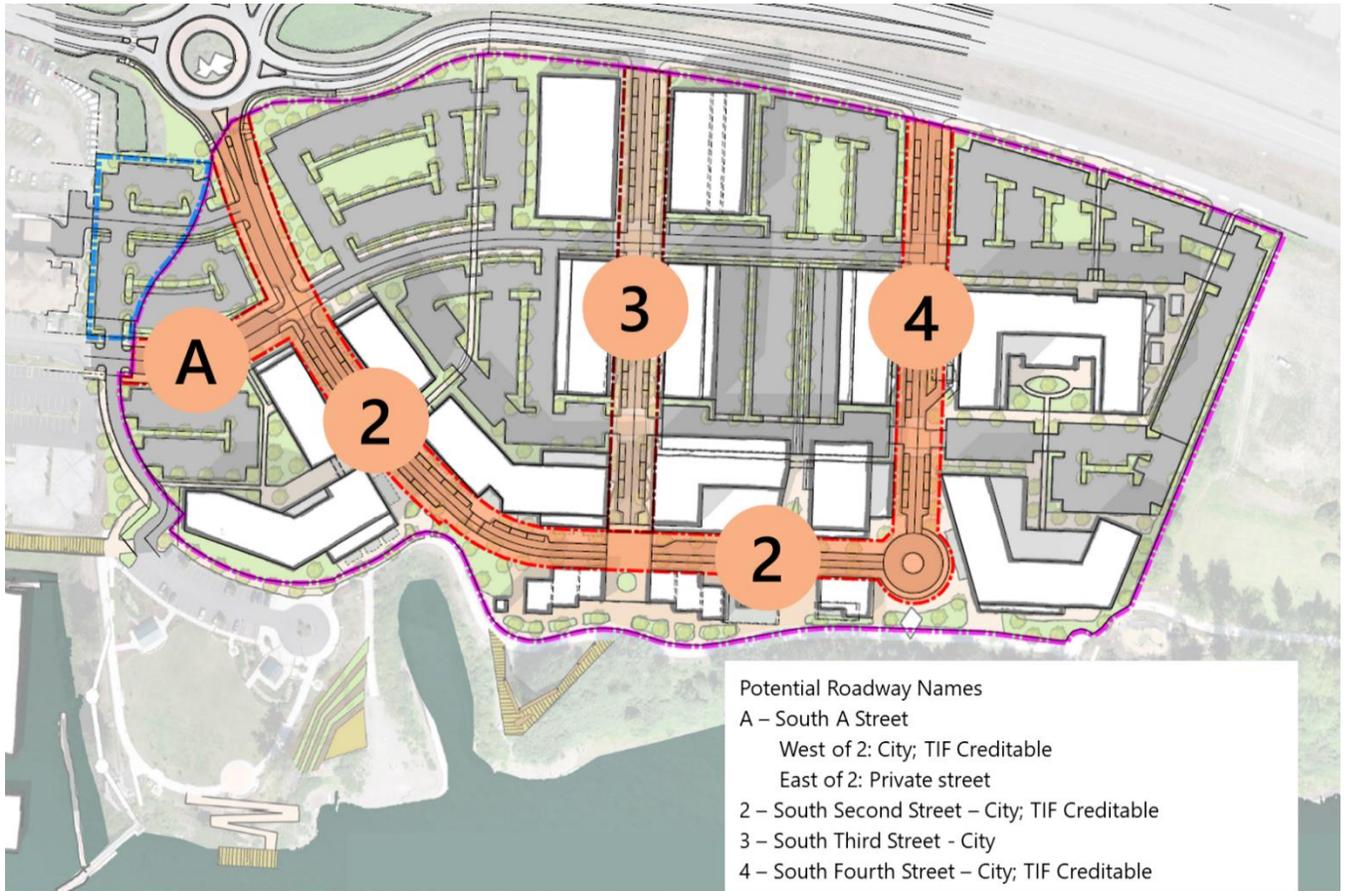


(Source: Clark County Auditor's document No. 5531755.)

Exhibit D. Waterfront Property Master Plan



**Exhibit E. Public Streets A, 2, 3, and 4.**



## Exhibit F. Waterfront Development Standards

1. **Source of Development Standards.** Most of the development standards that apply to the Property have been developed by using standards from the Washougal Municipal Code's (WMC, as written as of June 2020), or by adapting and modifying standards from the WMC, and specifically from the following WMC code sections:
  - 1.1. WMC Chapter 18.32 Commercial Districts: Highway Commercial (CH). The Property is located in the CH zone, though the Development Standards here supersede some sections of the CH code.
  - 1.2. WMC Chapter 18.35: Town Center Districts. This code section was created in order to foster mixed-use development in both high density core areas and adjacent neighborhoods, to increase the city's tax base, and as established under Recorded Document 5019502, the City can mix regulatory requirements to create a coherent and consistent blending of regulatory controls to achieve the Vision for the Master Plan area. Therefore, these Town Center regulations, as set forth here, will be applicable to the Waterfront in many cases.
  - 1.3. WMC Chapter 18.52: Parking and Loading.
  - 1.4. Other WMC sections referenced below.
2. **Mix of Uses.** The Parties confirm and agree that the mix of uses contemplated in the Master Plan are consistent with the City's zoning regulations as set forth and modified herein for the Property and with the Port's Master Plan Waterfront Vision of a redeveloped waterfront. Uses may include, but are not limited to, residential; office; retail/commercial (including but not limited to all acceptable formats of food and beverage retailing allowed per WMC 18.32, except that drive-through windows will only be allowed as a Conditional Use); mixed commercial and residential use, including professional offices; lodging; craft/light industrial; recreational; event space; and events/performing arts space.
3. **Density for Residential Uses**
  - 3.1. Residential density shall be limited according to FAR per Table 1.1 below, which is adapted from 18.35.040 (1);
  - 3.2. Bonus FAR may be earned to achieve the Maximum Allowable FAR according to Table 1.2 below, which is adapted from 18.35.040(1);
  - 3.3. The Maximum Lot Coverage percentages identified in WMC 18.32-2 shall be superseded and replaced by Table 1.1 below.
  - 3.4. An example of how the FAR could be depicted in a development example is included as Figure 2.
4. **Density for Non-Residential Uses**
  - 4.1. Non-residential density shall be limited according to FAR per Table 1.1 below, which is adapted from 18.35.040(1), and shall supersede CH (WMC 18.32) regulation of allowable development densities;
  - 4.2. Bonus FAR may be earned to achieve the Maximum Allowable FAR according to Table 1.2 below, which is adapted from 18.35.040(1);
  - 4.3. The Maximum Lot Coverage percentages identified in WMC 18.32-2 shall be superseded and replaced by Table 1.1 below.

**Table 1.1 Floor Area Ratio (FAR)**

Basic Allowable “As of Right”		Maximum Allowable with Bonuses	
Nonresidential	Residential	Nonresidential	Residential
3.0	3.0	4.0	4.5

**Figure 2. Example of a parcel developed at 3.0 FAR**

3.0 is the average FAR of the buildings shown below, which range from two to five stories.



**Table 1.2 FAR Bonuses**

(Definitions for certain features listed below are available at WMC 18.35.060)

Feature	Additional Floor Area Ratio
Street-level retail	100 s.f. of floor area for each linear foot of retail frontage
Public plaza	5 s.f. of floor area for each s.f. of plaza
Canopy	4 s.f. of floor area for each s.f. of canopy
Day care	4 s.f. of floor area for each s.f. of day care
Health club	2 s.f. of floor area for each s.f. of health club
Public meeting room	5 s.f. of floor area for each s.f. of meeting room
Public art	10 s.f. of floor area for each \$100.00 of valuation
Water feature	10 s.f. of floor area for each \$100.00 of valuation
Structured parking	0.5 s.f. of floor area for each s.f. of required parking above grade

<b>Feature</b>	<b>Additional Floor Area Ratio</b>
Below-grade parking	1 s.f. of floor area for each s.f. of required parking below grade
Green roof/rooftop garden	2 s.f. of floor area for each s.f. of green roof
Public restroom	10 s.f. of floor area for each s.f. of public restroom
Contribution to a park	10 s.f. of floor area for each \$100.00 of contribution to acquisition or development. This can be used to exceed the maximum FAR and maximum height by up to 25%
Contribution to, dedication, and construction of a large civic site such as an outdoor amphitheater, electric car recharge station, public tennis courts, library, senior citizen center, school <sup>1</sup>	10 s.f. of floor area for each \$100.00 value of dedication and construction. This can be used to exceed the maximum height by up to 25%
Bike corral	5 s.f. of floor area for each bike corral
On-site internal bikeway network	5 s.f. of floor area for each lineal foot of bike path
Affordable housing (low/mod median income) greater than 10 percent of the base residential density types within the development. See additional requirements at WMC <a href="#">18.35.045</a> .	20% density bonus
Installation of preferential carpool/vanpool parking facilities	1 s.f. of floor area for each s.f. of carpool/vanpool parking
Community garden	5 s.f. of floor area for each s.f. of community garden
Environmental enhancements <sup>2</sup>	5 s.f. of floor area for each s.f. of environmental enhancement beyond minimum required by critical area ordinance/shoreline program
Usable open space, beyond minimum requirements <sup>3</sup>	5 s.f. of floor area for each s.f. of usable open space beyond minimum required by critical area ordinance/shoreline program
Dedication of Port of Camas Washougal owned land within the Property that will be used for Right-of-Way Improvements <sup>4</sup>	1 s.f. of floor area for each s.f. of land area dedicated for Right of Way <sup>4</sup>

**Table 1.2 Notes**

- 1 Dedication of large civic sites may include dedication of just the land, or the land and actual building of the civic structures.
- 2 These include, but are not limited to, programs and improvements that will enhance existing wildlife habitat, rehabilitating wetlands disturbed by previous land use practices, measures to protect air quality and water quality, establishing fisheries in local streams, landscaping beyond code requirements and other such features. Environmental enhancements must produce

benefits for the enjoyment of all residents and visitors of Washougal. Improvements that are provided largely for the enjoyment of the development and which produce only minor benefits for the general population may receive some density credit, but only to the extent that the general public benefits from the improvements.

- 3 A trade-off for increased density and building mass, usable open space shall be provided within the development, including but not limited to commons, pocket parks, landscape features, green belts, and trail connections.
- 4 This bonus provision was added to those laid out in WMC 18.35. It would apply specifically to the Property.

## 5. Height

- 5.1. The maximum height provided by WMC for the existing Highway Commercial zone (Table 18.32-2) is 75 feet. The Parties agree to a maximum height of 80 feet for the Property, in recognition that greater floor-to-floor heights are usually required for retail, restaurant, commercial, and office uses, all of which the Parties agree are highly desirable for the waterfront. The Parties believe that greater maximum heights for the Property will increase the Port and Developer's opportunities to attract major employers, restaurants, and retailers.
- 5.2. Rooftop mechanical equipment, rooftop stairwells necessary for roof access, elevator overruns, solar photovoltaic panels, and parapets shall be allowed in excess of the maximum height by up to 16 feet, provided they are set back from the principal faces of each building by at least 10 feet; mechanical equipment that is within 10 feet of the principal faces of each building and above 75 feet in height from finished grade must be suitably screened and approved by the Director.
- 5.3. Where occupiable roof decks are provided that exceed 75 feet in height, necessary guards, railings, awnings, restroom spaces, interior support spaces (e.g. for storage, kitchen and food preparation areas) and an interior lobby and circulation space associated with vertical circulation areas shall be allowed up to an additional 12 feet in height, provided that total interior square footage at any roof deck does not exceed 3,000 square feet and that all interior floor area is set back from the principal faces of each building by at least 10 feet.
- 5.4. **Iconic Landmark Structures.** Port or Developers may seek to build one or more "Iconic Landmark Structures," such as a "watch tower" that could be ascended by visitors in order to enjoy special views of the Columbia River Gorge. Such structures will not be occupied on a permanent or long-term basis, but rather be occupied by visitors for short time periods. Such structures may exceed the maximum height defined above, subject to a conditional use permit.

## 6. Parking

- 6.1. Parking standards shall be governed by Table 1.3 herein, which adapts standards from 18.52 and 18.35, respectively, including amendments.
- 6.2. Parking stall sizes governed by WMC Table 18.52-2 shall be modified as follows:
  - 6.2.1 90 degree parking stalls shall be permitted to be 8'-9" wide x 18' deep and allow up to 30" of overhang of a landscaped area, provided suitable ground cover is provided in the landscape area and wheelstops and/or a minimum 6" high continuous concrete curb is provided.
  - 6.2.2 Double loaded drive aisles featuring 90 degree parking at each side shall be permitted to be 23' minimum width.

**Table 1.3 Parking Standards**

<b>USE</b>	<b>MINIMUM PARKING</b>	<b>MAXIMUM PARKING</b>
<u>Retail</u>	3 stalls/1,000 n.s.f. for the first 5,000 n.s.f. per block  2 stalls/1,000 n.s.f for next 5,000 n.s.f. per block  1.5 stalls/1,000 n.s.f. above 10,000 n.s.f. per block	<u>4 stalls/1,000 n.s.f.</u>
<u>Office</u>	<u>2 stalls/1,000 n.s.f or three spaces per practitioner for medical, dental or veterinarian clinics, whichever is less</u>	<u>4 stalls/1,000 n.s.f.</u>
<u>Residential</u>	<u>0.5 stall per unit</u>	<u>2 per unit</u>
<u>Senior Housing</u>	<u>0.25 stall per unit</u>	<u>1 per unit</u>
Memory Care Unit	0.1 stall per unit	1 per unit
<u>Restaurant</u>	<u>1 stall per 125 net square feet of seating area for the first 1,000 n.s.f. of seating area</u>  <u>1 stall per 250 net square feet of seating area above 1,000 n.s.f. of seating area</u>	<u>2 stalls per 4 seats</u>
<u>Hotel, motel</u>	<u>One space for each guest room plus one space for each two employees on largest shift, plus spaces required for restaurants or assembly rooms, when applicable</u>	
<u>Drug store</u>	<u>First 5,000 square feet = 13 spaces, plus one per additional 1,500 square feet</u>	
<u>Hardware store</u>	<u>Three spaces per 1,250 square feet of gross floor area</u>	
<u>Community center - Multi-use</u>	<u>One per five seats maximum occupancy</u>	
<u>Retail business unenclosed</u>	<u>One space for each 625 square feet of open sales/display area plus one space per employee</u>	
<u>Photographic studio</u>	<u>One space per 1,000 square feet of gross floor area</u>	
<u>Museum, art gallery</u>	<u>One space per 625 square feet of gross floor area</u>	
<u>Tennis, racquetball, handball, courts/Club</u>	<u>Three spaces per court or lane, one space per 325 square feet of gross floor area of related uses, and one space per employee</u>	
<u>Theater, cinema, auditorium</u>	<u>One space for each three seats</u>	
<u>Dance hall or school, bingo hall, electronic game rooms, and assembly halls without fixed seats</u>	<u>One space for each employee plus one space per 75 square feet of gross floor area</u>	
<u>Marina</u>	<u>One space per two slips</u>	

### Table 1.3 Legend

- A) Underlined provisions are taken directly from WMC 18.35.040 (3).
- B) Provisions not underlined are adaptations of WMC 18.35.040 (3).
- C) Provisions with dashed underlining are taken directly from WMC TABLE 18.52-1.

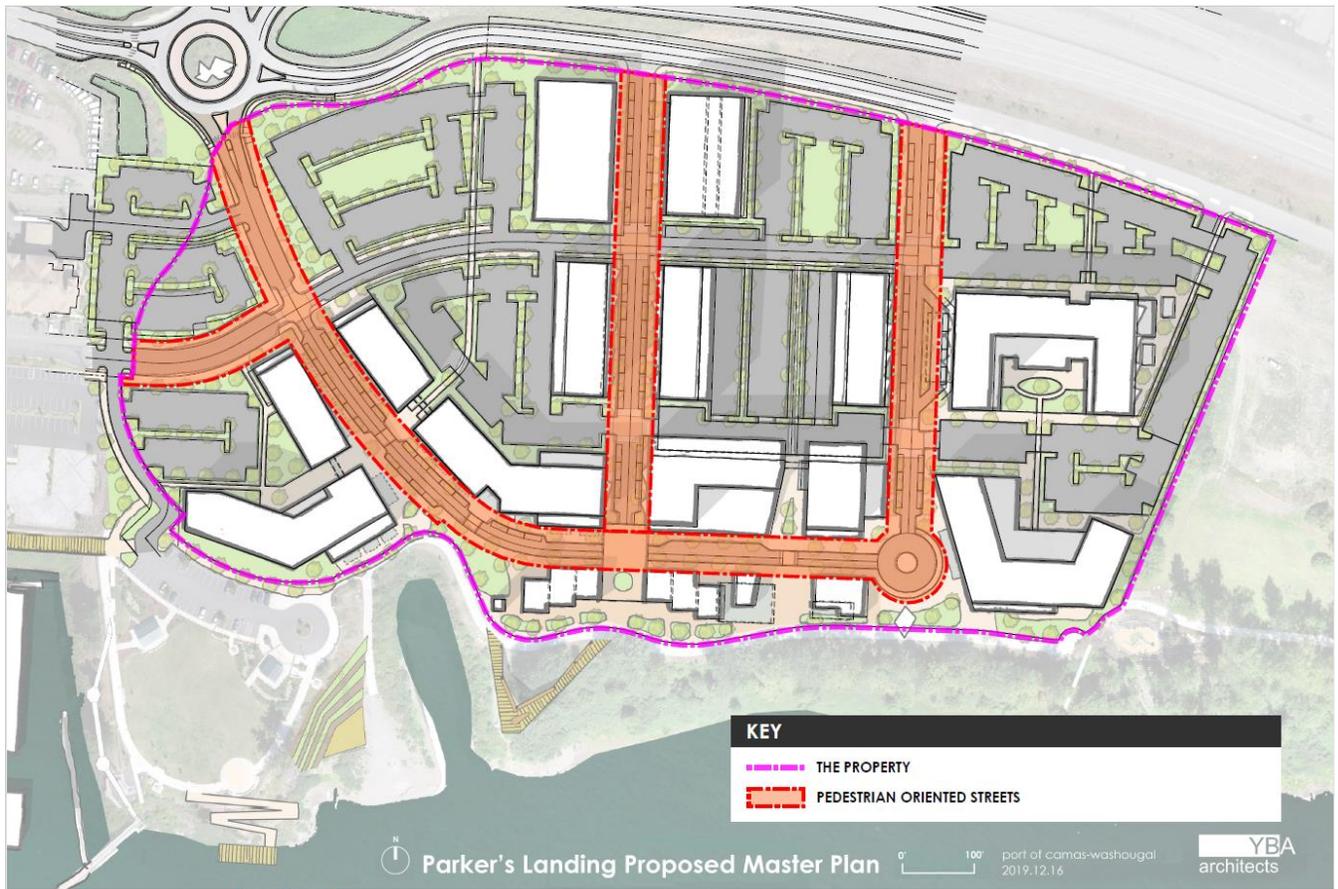
### Table 1.3 Notes

- 1. "Senior Housing" encompasses assisted *and* unassisted/apartment living.
- 2. Parking requirements for uses not listed shall be determined by a study of parking demand for that use.
- 3. Per WMC 18.52.060: The community development director may authorize a reduction in the total number of required off-street parking spaces for two or more uses jointly providing parking facilities when their respective hours of need of maximum parking do not normally overlap; provided, that the developer submits sufficient data to demonstrate that the hours of maximum demand for parking at the respective uses do not normally overlap.
- 4. Parking may be located off-site, so long as it is within 1,000 feet of the property, is connected to the property by sidewalks or walkways, and is tied to the site by an agreement that is to the satisfaction of the Community Development Director.
- 5. On-street parking on streets immediately adjacent to the property may be utilized to meet the parking requirements.

## 7. Street Standards

- 7.1. Shall follow the street types guidelines established by WMC 18.35.050, with the following minor clarifications:
- 7.2. Under WMC 18.35.050(2) Pedestrian-Oriented Streets:
  - 7.2.1. To reduce the visual impact of vehicles, (a)(i) is modified such that parallel parking would not be required where streets are within 200 feet of the shoreline;
  - 7.2.2. To balance the need for wider streets in certain areas to provide for fire aerial apparatus access to taller buildings with the need for streets to feel sufficiently intimate and pedestrian-oriented, (a)(i) is further modified to only require parallel parking on those streets where fire aerial apparatus access is not required;
  - 7.2.3. To allow for wider pedestrian-oriented sidewalks where desired, in alignment with the purpose of this street type, (ii) is modified to allow sidewalks in excess of 10 feet wide.
- 7.3. Marina Way will be exempted from the standards of 18.35.050 and the modifications set out above.
- 7.4. The Waterfront Street will be considered a "Pedestrian-Oriented Street" and per the modifications above may be exempted from a requirement for parallel parking within 200 feet of the shoreline and may feature sidewalks that exceed 10 feet in width, in addition to required 4 foot planting zones.
- 7.5. Aerial apparatus for firefighting is anticipated to be required to serve buildings over 30 feet in height from adjacent grade; therefore, affected streets are anticipated to be a minimum of 26 feet wide, exclusive of any parallel parking. On such streets, parallel parking requirements and street tree spacing may be adjusted to suit the requirements of the local Fire authority.

Figure 3. Street Types plan, within the Property.



## 8. Design Guidelines and Standards

- 8.1. Design standards set for in WMC 18.32.040 shall generally apply to the property, unless otherwise noted herein.
- 8.2. At the discretion of the Director, WMC 18.32.040(3)(g) shall not apply where architectural designs are proposed that possess sufficient merit for exemption.
- 8.3. All development design guidelines and standards agreed to by the Parties as part of previous Development Agreements for the Property shall be superseded by the development regulations in this Development Agreement and Exhibit, including the design standards included as an Exhibit F to the Amended and Superseding Development Agreement Clark County Recorded Document Number 5019502.

## 9. Design Review

- 9.1. Port and/or Developers may pursue the Administrative and/or Full Variance procedures as defined in WMC 18.94 in the event that future development proposals are not fully consistent with the development standards or design guidelines and standards identified in this Agreement.
- 9.2. **Iconic Landmark Structures.** Port or Developers may seek to build one or more “Iconic Landmark Structures,” such as a “watch tower” that could be ascended by visitors in order to enjoy special views of the Columbia River Gorge. Via the processes defined in WMC 18.94, the

City shall consider exceptions to the design guidelines and standards, maximum height, and other limitations, for such structures.

**Exhibit G. City of Washougal Traffic Impact Fee BEF Program Technical Document**

This is also an exhibit to the Superseding Development Agreement, which date is September 23, 2013, # 5019502.

**Exhibit H. Kittelson & Associates Traffic Impact Analysis for Parker's Landing (dated 3/28/2013)**

This is also an exhibit to the Superseding Development Agreement, which date is September 23, 2013, # 5019502.

**Exhibit I. Stormwater, Sewer, and Water SDC Rates**

This is also an exhibit to the Superseding Development Agreement, which date is September 23, 2013, # 5019502.

**Exhibit J. Relevant WMC Code sections**

WMC code sections, including but not limited to the following sections, are referenced and/or modified by this Development Agreement. The text of the WMC code sections that is referenced and/or modified by this Development Agreement is the text as available as of August 2020. The Port has saved copies of these code sections and will provide them to the City upon request.

- Chapter 3.58 MULTIFAMILY HOUSING TAX EXEMPTION
- Chapter 15.64 TRANSPORTATION IMPACT FEES
- Chapter 18.32 COMMERCIAL DISTRICTS, including Highway Commercial District (CH).
- Chapter 18.35 TOWN CENTER DISTRICTS
- Chapter 18.52 PARKING AND LOADING REGULATIONS
- Chapter 18.88 SITE PLAN APPROVAL
- Chapter 18.94 PROCEDURES, including 18.94.160 Development agreements.

PORT OF CAMAS-WASHOUGAL

And

RKM DEVELOPMENT, INC.

MASTER LEASING AGREEMENT

PORT OF CAMAS-WASHOUGAL WATERFRONT DEVELOPMENT

\_\_\_\_\_, 2021

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EXHIBITS

EXHIBIT A – Property Diagram and Legal Description

EXHIBIT B – Port Waterfront Goals and Vision

EXHIBIT C – Master Plan

EXHIBIT D – Master Plan Documents

EXHIBIT E – Background Information

EXHIBIT F – Master Development Schedule

THIS MASTER LEASING AGREEMENT (this "Agreement") is effective as of \_\_\_\_\_, \_\_ 2021 (the "Effective Date"), and is by and between the PORT OF CAMAS-WASHOUGAL, a Washington municipal corporation (the "Port") and RKM DEVELOPMENT, INC., an Oregon corporation ("Developer"), each a "Party" and collectively the "Parties."

### RECITALS

A. The Port owns approximately 21.08 acres of waterfront property and rights appurtenant thereto located on the Columbia River, approximately one mile west of downtown Washougal, in the City of Washougal, County of Clark, State of Washington (the "Property"). A diagram and legal description of the Property are contained in **Exhibit A** hereto.

B. The Port acquired the Property for the purpose of creating a catalytic mixed-use development in partnership with a private developer. The Property is the centerpiece of the Port's Waterfront Vision, intended to be a "lively, walkable place with community gathering and character spaces, commercial, retail, mixed use and residential uses". The development of the Property is intended to retain public access to the waterfront, support the natural habitat, ensure a connection with the downtowns of Washougal and Camas, establish a desirable mix of uses that create 18-hour activity, and achieve a basic level of green building certification and strive for sustainable design as described in the Port Waterfront Design Standards. The design and function for the development is also intended to honor the natural beauty and history of the site and the community, as well as to support the creation of a local and regional identity for the cities of Washougal and Camas. The Port's Waterfront Goals and Vision are contained in **Exhibit B** hereto.

**Commented [RK1]:** Based on discussion between Dave and Roy, revised with reference to Design Standards.

C. Based on the Port's Waterfront Goals and Vision, the Port and Developer prepared a Waterfront Project Design or "Master Plan" for the Property, which is the general vision for the development of the Property that Developer desires to undertake, and which was co-designed by the Port and Developer based on extensive input from the Camas-Washougal community and due diligence by both Parties (the "Master Plan"). The Master Plan for the Property is contained in **Exhibit C** hereto.

D. Since acquiring the Property, the Port has entered into restrictive covenants or other agreements with neighboring property owners, and the City of Washougal (the "City") adopted a development agreement for the Property that incorporates certain design standards for the Property (the "Development Agreement"), and developed Port design standards for the Property (collectively the "Master Plan Documents"). The Master Plan Documents are identified in **Exhibit D** hereto.

E. Since acquiring the Property, the Port has also undertaken a number of activities to prepare the Property for redevelopment. These activities include environmental assessment and remediation; design of a waterfront pedestrian/bicycle trail system and construction of its initial phase; design and construction of the Washougal Waterfront Park and associated parking; and concept planning for the long-term development of the Property including an infrastructure plan. The environmental assessment, and other existing Port documents related to the development of the Property are part of the "Background Information" that includes the documents listed in **Exhibit E** hereto. Through an amendment to this Agreement, the Background Information may be revised from time to time, and additional documents may be added as preparations for development and development of the Property continues.

F. The Port and Developer desire Developer to develop a mixed-use development at the Property consistent with the Port's Waterfront Goals and Vision and the Master Plan. The Port's decision to work with Developer is based in part on the Developer's experience with catalytic, large-scale, multi-phased mixed-use developments in the Portland region. The Port recognizes

that developments of this nature are complex; and further recognizes that Developer has demonstrated a strong track record of financing, building, and operating this type of development.

G. The Port and Developer entered into a Memorandum Of Understanding ("MOU") regarding the Property on April 27, 2020. This Agreement supersedes the MOU.

H. The Parties recognize that with regard to the development of the Property, the Port must act to reasonably protect public funds, must fulfill its other governmental functions, and cannot place public funds or public property at risk. Within the context of that limitation, the Port desires to work cooperatively with Developer to accomplish the development of the Property in a manner consistent with that proposed by the Developer and agreed to by the Port.

I. The Parties recognize that this Agreement anticipates a long-term relationship between Developer and the Port and, so long as each of the Parties are performing pursuant to the terms and conditions of this Agreement and this Agreement is still in effect, they shall receive the mutual benefits of this Agreement.

J. The conveyance of the Property, by lease or purchase, fulfills an important public purpose by promoting the policy to develop Camas-Washougal's waterfront with a mix of uses that will provide amenities for residents, visitors and businesses.

K. The Port and Developer envision the mixed use development contemplated herein as a private undertaking to be contracted, constructed, and operated by Developer or parcel-specific "Single Purpose Entities", as the term is defined in Section 1 below. In this Agreement, the term "Developer" shall refer to Developer or to such Single Purpose Entity, as applicable, unless the context clearly requires otherwise.

L. The Port and Developer envision that the Property will be developed with a series of projects (the "Project(s)") according to an overall schedule (the "Master Development Schedule"), which Master Development Schedule is contained in **Exhibit F** hereto.

M. This Agreement is intended by the parties to establish the understanding between the Port and Developer with regard to the (i) lease or acquisition by Developer of Parcels within the Property, and (ii) design, development, and performance criteria for Developer's timely overall development of the Property and the development of each Project.

#### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each Party, the benefit to the general public by the creation of the development contemplated herein, the Parties agree as follows:

#### **1. DEFINITIONS.**

The terms defined below and in the Recitals and elsewhere in this Agreement shall have the definitions as stated.

1.1. "Coordinating Committee" means a committee that is comprised of the Master Development Representatives of the Port and Developer. This committee will meet on a regular basis no less frequently than quarterly for the duration of this Agreement; no less frequently than monthly during development of a Developer Project; and as needed, to coordinate the Developer Projects.

1.2. "Development Agreement" means the Port-City of Washougal Development Agreement recorded in Clark County as Recorded Document Number [REDACTED].

1.3. "Developer Master Development Documents" means all documents, including, but not limited to, plans, specifications, designs, structural calculations, permit applications and permits that were created, used or obtained by Developer in regards to the Property as they now exist or are hereinafter created, subject to the architect's copyright protections. The Developer Master Development Documents do not include any Project specific documents for Projects where the Parcel has been leased or purchased.

1.4. "Developer Improvements" or "Improvements" means all site improvements, buildings, structures, and fixtures now or hereafter placed or constructed or to be placed or constructed by Developer or a Single Purpose Entity in, under, upon or adjacent to a Parcel as part of a Project, including but not limited to the building(s) to be constructed as part of a Project and all additions or replacements made thereto from time to time, and all access ways, local roads, pedestrian areas, fences, paved areas, utility distribution facilities, lighting, signage and other infrastructure improvements on a Parcel, and any offsite improvements constructed or to be constructed as part of a Project.

1.5. "Effective Date" means the date set forth in the first paragraph of this Agreement.

1.6. "Event(s) of Default" has the meaning given in Section 8.

1.7. "Force Majeure" has the meaning given in Section 10.31.

1.8. "Governmental Authorities" means any board, bureau, commission, authority, agency, department or body of any local, municipal, county, state or federal governmental or quasi-governmental unit, or any subdivision thereof, having jurisdiction over the development, construction, use, marketing or occupancy of the Property, or any public utility provider serving the Property, having, asserting, or acquiring jurisdiction over or providing utility service to a Project.

1.9. "Land Valuation" means the per square foot value that will be applied to each Parcel as determined by and as adjusted thereafter as provided in this Agreement.

1.10. "Lease" means a lease from the Port to Developer or a parcel-specific Single Purpose Entity for a Parcel to be mutually agreed to by the Parties.

1.11. "Legal Requirements" means all United States federal laws, Washington State, county, local laws and ordinances and regulations and other rules, orders, requirements and determinations of any Governmental Authorities now or hereafter in effect, whether or not presently contemplated, applicable to the Parties, the Property, a Parcel, or a Project, or the ownership, operation or possession of the Property, a Parcel, or a Project, including (without limitation) all those relating to parking restrictions, building codes, zoning or other land use matters, the Americans With Disabilities Act of 1990, as amended, the Development Agreement, the Master Plan Documents, the City land use regulatory code (vested in the Development Agreement or otherwise applicable to the Property), the City Shoreline Management Program, life safety requirements, and environmental laws, orders, decrees, covenants, and agreements with respect to the handling, treatment, storage, disposal, discharge, use, transportation, remediation, and management of hazardous substances.

1.12. "Lender" means the entity holding a mortgage, real estate contract or deed of trust encumbering Developer's or a parcel-specific Single Purpose Entity's interest in any Parcel and its successors and assigns provided that the funds advanced by the Lender are used for the Project.

1.13. "Market Conditions" means all the factors related to financing and the marketplace by a reasonable developer in determining that a Project can be designed, financed, built and utilized on a contaminated property in Washington State, including, but not limited to, new Legal Requirements and/or actions taken or withheld by Governmental Authorities, including any adverse impacts from COVID-19 that was declared a national emergency by the President of the United States on March 13, 2020, that alter ability to perform, market demand, market absorption, financing availability, environmental stigma, construction costs, local economic trends, regional economic trends, and national economic trends.

1.14. "Master Development Representative" means a person appointed by the Port and a person appointed by Developer to be the primary contact between the Port and Developer.

1.15. "Master Development Schedule" means the schedule for the completion of all development within the Property.

1.16. "Master Plan" means the general vision for the development of the Property that Developer desires to undertake, and which was co-designed by the Port and Developer based on extensive input from the Camas-Washougal community and due diligence by both Parties contained in Exhibit C hereto.

1.17. "Master Plan Documents" means the documents listed in Exhibit D hereto.

1.18. "Parcel" means a specific parcel of real property within the Property on which a Project will be constructed.

1.19. "Project" means the development and construction of Improvements on a Parcel or Parcels, including all related obligations.

1.20. "Project Construction Documents" means, collectively, all construction documentation that Developer or a parcel-specific Single Purpose Entity is required to submit as part of the City of Washougal's design review and permitting process and upon which Developer and/or Developer's contractors will rely in building the Improvements. These documents are based on the Site Plan Application Documents.

1.21. "Project Construction Schedule" means the schedule for construction of the Improvements approved as part of the Project Documents, including the dates for commencement and completion of construction.

1.22. "Project Documents" means this Agreement, the Lease, and the following documents:

1.22.1. "Project Memorandum" means a memorandum signed by the Port and Developer which sets forth the understanding of the parties related to the particular Project, including, but not limited to, (i) the method of conveyance and/or purchase, (ii) the Project entity, (iii) the approximate Parcel boundary, (iv) the Project Schedule, (v) the Land Valuation, and (v) any other terms mutually agreed to by the Parties.

1.22.2. "Project Schedule" means the schedule for a Project which will include (i) timing of preparation, review, and approval of the various Project Documents, (ii) the creation of the Parcel as a legal lot of record by the Port, (iii) acquisition of the Parcel, and (iv) the development schedule, including milestones for actions to be evaluated in compliance with the Master Development Schedule.

1.23. "Property" means the Port-owned approximately 21.08 acres of waterfront property and rights appurtenant thereto located on the Columbia River, approximately one mile west of downtown Washougal, in the City of Washougal, County of Clark, State of Washington, the diagram and legal description are contained in Exhibit A hereto.

1.24. "Single Purpose Entity" or "SPE" means a legal entity organized under the laws of the State of Washington and created by Developer, or an unrelated Single Purpose Entity, to undertake and own a Project on a Parcel. A Single Purpose Entity may own more than one Project and lease more than one Parcel.

1.25. "Site Plan Application Documents" means an architectural or artist's rendering that illustrates the Project's (i) scope, (ii) contemplated floor area, (iii) relationship to its surroundings, (iv) consistency with the Master Plan Documents, (v) traffic analysis including PM peak hour trips and a description of how trips generated by the Project fit within the total trips allowed for the Property and a debit of such trips from those allocated to the Port in the Development Agreement Recorded in the Clark County Auditor's Office as Recorded Document Number [REDACTED], and (vi) all other information and materials to be submitted to the City of Washougal for site development approval for a Project. The intent of the Site Plan Application Documents is to provide, visually and in text, an idea as to the nature and density of the Project and its proposed mix of uses.

1.26. "Substantial Completion" or "Substantially Complete" means the date on which the following has occurred: (i) the Improvements required to be developed by this Agreement are complete according to the approved Project Documents, except for punch list items that do not substantially prevent the use of the Improvements for their intended purposes, or (ii) the City has issued a temporary or final certificate of occupancy for the building portions of the Improvements (excluding certificates of occupancy for the interior of retail or office/commercial space for which further tenant improvements are contemplated).

1.27. "Transfer" means any sale, conveyance, transfer, lease or assignment, whether voluntary or involuntary, of any interest in this Agreement or any Parcel (excluding transfers to the City for City infrastructure and parks) and includes transfer to a trustee in bankruptcy, receiver or assignee for the benefit of creditors, any merger, consolidation, liquidation or dissolution. In addition, "Transfer" includes any sale or any transfer of direct or indirect interests in Developer or any of its constituent entities, other than transfers of minority interest that do not individually or in the aggregate result in the change of control or management of Developer, the Property or any Project.

**Commented [RK2]:** The term "Transfer Notification" was not found in the MLA by a Word search and is deleted.

## **2. PORT OF CAMAS-WASHOUGAL WATERFRONT DEVELOPMENT**

2.1 General Overview. Developer will develop a mixed-use development on the Property shown in Exhibit A, consistent with the Port Waterfront Goals and Vision contained in Exhibit B, the Master Plan contained in Exhibit C, and the Master Plan Documents identified in Exhibit D. Development will be completed in accordance with the Master Development Schedule contained in Exhibit F, and as further described in Section 3 below. Development will occur in multiple phases, each referred to as a "Project". Each Project will be developed and completed as described in Section 4 below. Each Project, and the overall Waterfront Development, shall maximize the potential for the Property to attain the Port Waterfront Goals and Vision contained in Exhibit B.

2.2 Components of Waterfront Development. Generally, the following components are intended to be developed as part of the Waterfront Development, as generally shown in Exhibit C, guided by the Port Waterfront Goals and Vision.

2.2.1 The Property. The components of the development on the Property are shown in Exhibit C and consist of the following:

2.2.1.1 City Streets. City Streets to be included in City of Washougal ("City") Capital Improvement Plan ("CIP"), collectively "City Streets".

1. The Parties expect that the City will place City Streets shown on Exhibit C on its CIP and Transportation Improvement Plan ("TIP"), which will make the City Streets eligible for City Transportation Impact Fee ("TIF") credits. Developer shall be able to claim the cost of street construction as a credit against TIFs owed by Developer.
2. These City Streets and associated infrastructure may include:
  - a. New streets, including drive lanes, in-street utilities, curbs, gutters, planter strips, sidewalks, on-street parking;
  - b. Other features that are generally publicly accessible and which will be built to current City standards, to new standards that are acceptable to the City and defined within new agreements, or the standards established in the Development Agreement;
  - c. Special "festival street" qualities, potentially including special paving, bollards, or other features that enable the streets to be occupied by special events and festivals; and
  - d. Stormwater facilities, sewer facilities, and other utilities.
3. These City Streets and associated infrastructure shall be funded and built by Developer.
4. The Parties expect that these City Streets and associated infrastructure will be dedicated to the City following construction, and that the City will then maintain them in perpetuity, except that planter strips and sidewalks will be maintained by Developer.

2.2.1.2 Potential City Street. One north-south "Potential City Street" is shown in Exhibit C. Developer shall fund and build this street and then dedicate it to the City. The City will then maintain the Potential City Street in perpetuity. However, unlike the City Streets to be included in the City CIP, the City has not indicated willingness to place this street on its CIP or TIP, or make the street TIF creditable.

2.2.1.3 Net Developable Land. Net Developable Land is the land that Port will lease or sell to Developer based on the terms set forth herein, excluding streets dedicated to the City, and subject to the terms of the contemplated Lease(s) or Purchase and Sale Agreement(s).

1. Net Developable Land may consist of buildings; site improvements and foundations; utilities; streets, drive lanes, pedestrian walkways, and bicycle lanes; surface and structured parking; landscaping; and associated improvements.
2. Except as otherwise expressly provided, all buildings and associated above and below ground site improvements on the Property will be funded, built, owned, and maintained by Developer.
3. The Parties expect the buildings to contain a mix of uses, including retail/commercial, office/employment, housing, lodging, and potentially other land uses with the mix of uses to be determined by the Developer in consultation with the Port, subject to the limitations of this Agreement, the Lease(s), and applicable Legal Requirements.
4. Buildings shall be designed consistent with the Master Plan Documents.

2.2.2 Additional Land. The Port may acquire additional land from WSDOT, the City of Washougal, or other parties, to add to the Property that is subject to this Agreement. Such land may be transferred at no cost to the Port, or may be purchased by the Port. In particular, this acquisition may take place during the design and engineering of the Marina Way Roundabout located adjacent to the northwest corner of the Property. If the Port acquires such additional land, then the Parties will amend this Agreement to add the additional land to the Property, the cost of such acquisition will be added to the Base Land Value, and the additional land may be transferred to Developer under the terms of Section 5 of this Agreement.

2.2.3 Offsite Improvements. With the exception of the stormwater outfall described in Sections 6.5 and 6.7.3 below, Developer shall be responsible for all design, permitting, construction, operation, and maintenance, and all costs thereof, with respect to any and all onsite and offsite improvements required with respect to the development of the Property, including realignment of the S. 2<sup>nd</sup> Street and new ingress/egress point to the Marina Way Roundabout. Developer shall not be responsible for operation and maintenance of any onsite or offsite improvements (i) after the ownership of such improvement is transferred to the City or other public entity, and (ii) as otherwise expressly provided in this Agreement.

2.2.4 Port Land – Riverfront, Parks, and Open Spaces. These areas adjacent to the Property will be owned in perpetuity by the Port and not subject to a lease or Developer-led development, except as otherwise provided in this Agreement. These areas may include parks, open spaces, plazas, parking lots, riverfront and riparian areas, overwater areas, and other areas. Port Land extends from the Columbia River to approximately 10 feet north of the north edge of the Waterfront Trail; the exact boundary is identified in Exhibit A.

2.3 Developer Right to Develop the Property. Pursuant to this Agreement, except as otherwise mutually agreed to by the Parties regarding development of a Parcel by an unrelated third party, with each Party acting in its sole and absolute discretion with respect to any such agreement, and subject to compliance with all rights and requirements herein, Developer is hereby granted an exclusive right to develop Projects within the Property. Developer will develop and operate the Property in accordance with this Agreement, the Port Waterfront Goals and Vision, the Master Plan and Master Plan Documents, the Master Development Schedule,

and all Legal Requirements. This right constitutes an executory contract right and does not create an interest in land.

2.4 Developer Responsibility for Project Development. Developer has sole responsibility for obtaining all necessary permits and approvals, construction, and compliance with all Legal Requirements as they relate to the development of each Project and the ownership, construction, and operation of the Developer Improvements for each Project, except that the Port must create a legal lot of record for each Project. Developer at its own cost has and shall prepare such Project Construction Documents as may be necessary to undertake the development contemplated herein. Developer at its own cost shall obtain and furnish all plans, engineering, supervision, labor, material, supplies, and equipment necessary for completion and operation of each Project and Developer Improvement.

2.5 Port Cooperation. The Port shall reasonably cooperate with Developer in the prosecution and completion of the Projects contemplated herein. Provided, however, the Port's agreement to reasonably cooperate shall not in any way limit the Port's rights contained in this Agreement to (i) act in its sole discretion where such a right is granted, (ii) enforce all the terms and conditions of this Agreement, (iii) declare a default, and (iv) terminate this Agreement. The Port agrees that so long as there has been no Event of Default by Developer under this Agreement, it will not take actions inconsistent with this Agreement with regard to any Project. However, nothing herein shall prevent the Port from (i) non-defamatory evaluation, investigation, or discussions regarding the performance of Developer, (ii) declining to waive any term, condition or requirement of this Agreement, or (iii) declining to incur liability or out-of-pocket costs or expenses. Further, nothing herein shall require the Port to violate any Legal Requirements.

### 3. MASTER DEVELOPMENT SCHEDULE.

3.1 Master Development Schedule. Subject to any allowable extension under Section 3.3. of this Agreement, the period during which Developer shall complete the development of the Property is fifteen (15) years, commencing on the Effective Date of this Agreement, with two five-year options to extend upon mutual agreement of the Parties as to each extension, unless earlier terminated by mutual agreement of the Parties, or otherwise pursuant to this Agreement, or applicable law. Developer shall complete the development of the Property consistent with the Master Plan in accordance with the Master Development Schedule in **Exhibit F** hereto, including but not limited to the following: Development will occur in multiple phases, with each phase being a Project. Each Project will be the subject of a separate Lease (or purchase, if agreed to by the Port). Phase 1 shall include a Lease for at least 2.4 acres, and the Lease shall be entered into within 6 months of the Effective Date of this Agreement, unless the Parties agree in writing that substantial progress continues to be made, and the time period to enter the first Lease is extended. Developer shall enter into a Lease (or purchase, if agreed to by the Port) of at least 1.2 acres of Net Developable Land (as defined in Section 2.2.1.3; i.e., land exclusive of any streets to be dedicated to the City) of the Property for every year that transpires from the Effective Date of this Agreement. If a Lease includes multiple acres, it will meet the requirement for several years. For example, a 2.4 acre Lease would satisfy the requirement for two (2) years.

3.2 Modification of Master Development Schedule. The Master Development Schedule may be modified by mutual agreement of the Parties, each acting in its sole and absolute discretion, and without any obligation of either Party to agree to modify the Master Development Schedule, except as otherwise provided in Sections 3.3 and 3.4 below.

3.3 Extension of Master Development Schedule - Market and Other Conditions. The Master Development Schedule was developed recognizing the current Market Conditions, reasonably

foreseeable Market Conditions, and anticipated normal fluctuations in Market Conditions. Developer has examined the Market Conditions and agreed to a schedule that will allow for the timely completion of the development based on current and reasonably foreseeable Market Conditions. The Master Development Schedule will be reasonably extended by mutual agreement of the Port and Developer for up to twenty-four (24) months to account for abnormal or unforeseen changes in Market Conditions that have a material adverse impact on Developer's ability to develop the Property, as reasonably demonstrated by Developer to the Port. Thereafter, any further extension(s) will be within the Port's sole discretion based upon any reason or no reason. For example, if Developer demonstrates to the Port that during a recession identified by the National Bureau of Economic Research (NBER) the recession is having a material adverse impact on Developer's ability to develop the Property, the requirement for Developer to lease (or purchase) land is paused. Thus, if there were a 2-year recession, the requirement to develop the Property would be paused for two (2) years and the overall term of this Agreement would be extended to seventeen (17) years. Similarly, if there is a pandemic related shutdown, and Developer demonstrates to the Port that the shutdown is having a material adverse impact on Developer's ability to develop the Property, the requirement for Developer to lease (or purchase) land is paused for the duration of such shutdown, not to exceed twenty-four (24) months.

3.4 Notice for Request to Extend Master Development Schedule. To extend the Master Development Schedule under this Section 3, the Party requesting the extension must provide written notice to the non-requesting Party. The Party receiving the request to extend the Master Development Schedule must respond to the requesting party within thirty (30) business days. Any agreed upon extension will be reflected by an amendment to this Agreement.

3.5 Relationship Between Schedules. As provided herein, each Project requires an associated Project Schedule, which will be developed and timely communicated to the Port, prior to transferring the Parcel for said Project to Developer.

3.6 Regular Reports to the Port. Developer will keep the Port fully apprised of its efforts to develop and operate the Property in accordance with the Master Development Schedule and the Master Plan. Developer will promptly respond, in a commercially reasonable form, with detailed information to Port requests for information concerning this topic.

#### **4. EACH PROJECT'S DEVELOPMENT.**

4.1 Project Planning Period. The Project Planning Period shall include all activities described in Sections 4.2 through 4.9 below, including but not limited to Developer's preparation of a Project Memorandum, Project Schedule, and Site Plan Application Documents, and Developer's Parcel acquisition through a lease or purchase. The Project Planning Period for Phase 1 (measured from the execution of this Agreement through the signing of the Lease for Phase 1) shall be no more than 6 months, or shall end 30 days after WSDOT Project Development Approval and Right Of Way Dedication Approval for the Marina Way Roundabout modification, whichever occurs later, unless the Parties agree in writing to a shorter period, or unless the Parties agree in writing that substantial progress continues to be made, and that the Project Planning Period shall be extended. The Project Planning Period for all subsequent Projects shall be no more than 12 months (measured from the execution of the Lease for the prior Project to the execution of the Lease for the subject Project), unless the Lease for the prior Project includes multiple acres thus satisfying the Master Development Schedule for several years under Section 3.1, or unless the Parties agree in writing that substantial progress continues to be made, and that the Project Planning Period shall be extended.

4.2 Project Memorandum. Developer shall prepare a Project Memorandum for each Project. Each Project Memorandum will consist of anticipated and relevant details of each Project, will be consistent with the terms and conditions of this Agreement, and will be subject to review and approval by the Port.

4.3 Site Plan Application Documents. Developer shall provide sufficiently detailed Site Plan Application Documents to allow the Port to evaluate the design's compliance with the Master Plan Documents and the Master Development Schedule. The Site Plan Application Documents will be a precursor to the Developer seeking Site Development Approval from the City of Washougal and will include all information and materials to be submitted to the City.

4.4 Approval of Project Memorandum and Attachments. After the Parties have reached agreement regarding the Project Memorandum and attachments, the Port will approve the final documents, which approval shall not be unreasonably withheld, conditioned or delayed so long as the Project is consistent with the Master Plan and Master Plan Documents. Approval of the final documents will be signified by the Port's signature and date on the Project Memorandum. The Port's approval of any Project Memorandum will not constitute the Port's determination as to the technical merit, compliance with the Legal Requirements, or advisability of the business decisions underlying Developer's detailed site plan, financing agreements, or construction plans and specifications as these elements remain in the sole discretion and responsibility of Developer. The Port's signature will evidence the Port's agreement that Developer's Project Memorandum represents an opportunity for the Port to obtain a return on investment from the Project.

4.5 Adequate Assurance of Ability to Complete Project. Upon request by the Port, Developer or a parcel-specific Special Purpose Entity, will provide commercially reasonable documentation of its ability to complete a Project. Evidence of a loan commitment or other credit facility are examples of commercially reasonable documentation. In addition, upon request by the Port, Developer will provide certainty to the Port that either: a) the Project will be built and occupied as designed; or b) if not built and completed as designed, the site and buildings(s) will be demolished and returned to a clean, empty, shovel ready condition. The method of providing this certainty shall be by performance bond or as otherwise mutually agreed by the Parties, and shall be provided only during the time period between groundbreaking and the City's issuance of a Certificate of Occupancy for the Project. The purpose of this section is to eliminate risk to the Port associated with a partially built Project.

4.6 Modifications. The Parties shall meet and confer to discuss any Material Modification to the Project Documents or Site Plan Application Documents proposed by Developer. A Material Modification is any material and substantial modification that (i) conflicts with the Project Documents, Master Plan, or Master Plan Documents; (ii) alters the exterior physical appearance of the Project in a material and substantial way; (iii) alters the exterior dimensions or structure of any improvement to be constructed on the Parcel; (iv) materially alters the interior layout of any building to be constructed on the Parcel; or (v) causes the commencement or completion of construction to be delayed by more than sixty (60) days unless such delay can be attributed to Force Majeure or any other exception that is outlined in this Agreement.

4.7 Compliance with Project Schedule. Upon Project Schedule approval, Developer will comply with said Project Schedule (including preparation of the Project Documents) and promptly, and in all events no later than within thirty (30) days of discovery, report to the Port any Material Modification, anticipated Material Modification, or changes in the Project Schedule.

4.8 Port's Creation of Legal Lot of Record. Upon the Port's review and approval of the Site Plan Application Documents, the Port shall, within fourteen (14) days, diligently pursue the creation of the legal lot of record for the Project, which shall then be the Parcel. It is anticipated

that this process will take approximately sixty (60) days. The cost of creation of the legal lot of record shall be included in the overall cost of the Project and paid by Developer within thirty (30) days of the date of the invoice by the Port unless rendered impracticable by any unmet obligation of the Port under this Agreement.

4.9 Project Performance. Developer shall diligently perform its obligations under the terms of this Agreement according to the following standards:

4.9.1 At Developer's own cost, promptly apply for and diligently pursue and obtain all required permits and approvals, furnish all permit fees, impact fees, plans, engineering, supervision, labor, material, supplies, and equipment necessary for completion of each Project.

4.9.2 All construction hereunder shall comply with and be performed in accordance with any and all Legal Requirements.

4.9.3 At all times, the Project will be free and clear of all liens other than in connection with Lender financing consented to by the Port and those contemplated by this Agreement.

4.9.4 Developer will have reviewed and considered all relevant Background Information as part of its design process.

4.9.5 All construction of Improvements hereunder shall comply with and be performed in accordance with all applicable portions of the Master Plan, the Master Plan Documents, the Project Documents, and the Project Construction Documents.

4.9.6 Developer agrees to diligently design, construct, and complete the Improvements in accordance with the requirements of the Master Development Schedule, the Project Documents, and the Project Construction Documents, in a good and workmanlike manner, and in conformance with the Project Memorandum.

4.9.7 Consistent with the Agreement, once construction on a Project has been undertaken, Developer will continuously and diligently continue with the construction until the Project is fully completed.

4.9.8 Developer will construct and pay for the Developer Improvements on each Parcel.

4.10 Review of Documents and Property Investigation. Developer acknowledges that it has had the opportunity to consult with the Port and review documents relevant to the Property. Developer reserves the right to request additional access to the Property to conduct any Parcel-specific investigations it deems appropriate prior to Parcel lease or purchase in preparation for construction of specific Improvements, and for obtaining any additional feasibility determinations. Developer and the Port will execute a reasonable "no fee" access agreement, which shall include appropriate cross-indemnifications for personal injury suffered by Developer and/or the Port arising from such access.

4.11 Construction License. The Port will reasonably grant a temporary Construction License or other appropriate agreement in a form and on terms acceptable to the Port for land within the Property to allow Developer to (i) access a Parcel, (ii) temporarily stage material and equipment on adjacent property necessary to undertake a Project, (iii) access and build City Streets and other public infrastructure, or (iv) provide temporary parking.

4.12 Project Access by Port. The Port and its consultants will be provided reasonable access to the Project, upon forty-eight (48) hours advance notice except in case of emergency, during construction to monitor compliance with this Agreement.

4.13 Permitting and Construction Period. The Permitting and Construction Period shall commence upon execution of a Lease of a Parcel (or Purchase and Sale Agreement, if agreed

to by the Port). During this period, Developer shall diligently complete design and engineering for all elements of the Project, promptly apply for and diligently secure all necessary approvals and permits, promptly start construction once permits are available to be issued, and diligently complete construction. Construction on a particular Parcel is "complete" when it is "Substantially Complete", as evidenced by a certificate of occupancy, a temporary certificate of occupancy, or by such other means as the parties may mutually agree. "Substantially Complete" means the date on which the following has occurred: (i) the Improvements required to be developed by this Agreement are complete according to the approved Project Documents, except for punch list items that do not substantially prevent the use of the Improvements for their intended purposes, or (ii) the City has issued a temporary or final certificate of occupancy for the building portions of the Improvements (excluding certificates of occupancy for the interior of retail, office, or commercial space for which further tenant improvements are contemplated). The Permitting and Construction Period for Phase 1 shall be no longer than 36 months, unless the Parties agree in writing that substantial progress continues to be made, and that the Permitting and Construction Period shall be extended. The Permitting and Construction Period for subsequent phases shall be no longer than 24 months, unless the Parties agree in writing that substantial progress continues to be made, and that the Permitting and Construction Period shall be extended.

4.14 Conditions Precedent to Commencement of Construction. The following conditions shall have been satisfied before commencing construction on a Parcel:

4.14.1 Compliance with Agreement. Developer shall be in compliance with this Agreement, including, without limitation, all contracting requirements and receipt of all necessary permits for construction.

4.14.2 Approval. Developer shall have obtained Port approval of the Project Documents in accordance with the approval process set forth in this Agreement.

4.14.3 Governmental Approvals and Permits. Developer shall apply, at its sole cost, to the appropriate Governmental Authorities or third parties for, and shall diligently pursue and obtain, all permits, licenses, permissions, consents or approvals required in connection with the construction of the Improvements. The Port will cooperate with Developer to obtain all such permits, licenses, permissions, consents and approvals, but without liability or out-of-pocket cost or expense to the Port.

4.15 Phase 1 Requirements. The Phase 1 development of the Property shall include not less than 2.4 acres of Net Developable Land and shall include at least one restaurant and ideally more than one. Phase 1 shall also include all City Streets (A, 2, and 4 as shown on Exhibit C), as well as all utility and other infrastructure improvements within such City Streets of the type and size adequate to serve the Phase 1 Project and all future development of the entire Property under this Agreement, which shall be designed, funded, and constructed by Developer at its sole cost.

4.16 Buildings South of City Street #2. Buildings south of City Street #2 as shown in Exhibit C shall be no higher, as height is defined by the Washougal Municipal Code, than two (2) stories or thirty (30) feet in height, whichever is less.

4.17 Border Area. The Port will require Developer to improve the approximately ten (10) feet wide border area surrounding the Property consistent with the Master Plan in conjunction with Projects as appropriate for open space uses, including, but not limited to, plaza areas, outdoor seating, connection with the adjoining waterfront trail, landscaping, or other amenities. Any use by the Developer shall not negatively impact the Port's use of such border area and the adjoining waterfront trail and property. Any use of the border area by Developer shall be subject to an appropriate written agreement, such as an easement, license, or use agreement, with

appropriate provisions for construction, use, operation, and maintenance of any improvements. In general, all improvements constructed by Developer in the border area shall be designed, permitted, constructed, operated, and maintained at Developer's cost. Any use of the border area by Developer, and the terms of such use, shall be subject to the prior written agreement of the Port, in its sole and absolute discretion.

## **5. PARCEL TRANSFER BY LEASE OR SALE.**

### **5.1 General.**

5.1.1 Preference for Leases. Except for those portions, if any, that the Port in the Port's sole and absolute discretion agrees to sell to Developer, subject to Section 5.3. of this Agreement, the Property will be transferred to Developer by Leases. The purpose of leasing the Property is to generate a consistent and predictable revenue stream over the long term for the Port.

5.1.2 Development in Phases; Timing. Development will occur in multiple phases, with each phase being a Project. Each Project will be the subject of a separate Lease (or purchase agreement). The first Lease will encompass Phase 1, shall include the elements set forth in Section 4.15 of this Agreement, and shall be executed within no more than six months following the execution of this Agreement or 30 days after WSDOT Project Development Approval and Right Of Way Dedication Approval for the Marina Way Roundabout modification, whichever occurs later, unless the Parties agree in writing to a shorter or longer period, Each subsequent Lease will encompass a subsequent phase. During each subsequent phase, Developer shall develop with Developer Improvements at least one-half acre of Net Developable Land. Developer is required to lease or purchase land as set forth in Section 3.1 of this Agreement.

5.2 Leases. Each Lease shall be subject to the provisions of this Section 5.2 and consistent with other terms of this Agreement.

5.2.1 Term. Each Lease shall be for an initial term of fifty (50) years, with three (3) options, each option extending the term ten (10) years allowing for a maximum total term of eighty (80) years, provided that Developer is not in default under the Lease.

5.2.2 Rate. The annual rental rate for each Lease shall be the Base Land Value per square foot of the Net Developable Land of the Property multiplied by the net developable square feet covered by the Lease multiplied by 6.25%, payable in quarterly installments, plus applicable Washington State Leasehold Excise Tax, subject to the following provisions.

5.2.2.1 Base Land Value. The Base Land Value per square foot of the Net Developable Land of the Property shall be calculated as the Port's net investment (or "basis") in the Property (total costs less associated revenues such as land sales). This formula results in the "Base Land Value". As of October 2019, the Port's net investment in the Property was \$12.24 million and the net developable area of the Property is assumed to be approximately 17.80 acres. Therefore, the base value is \$15.79 per square foot of Net Developable Land. Additional investments that are made by the Port after October 2019 may be added to the Base Land Value including the cost of a) revising and executing amended agreements between the Port and Parkers Landing LLC that affect the Property; b) revising and executing amended development agreements between the Port and City of Washougal that affect the Property, including preparation of the SEPA Checklist, and a revised Traffic Impact Analysis if required; c) environmental remediation costs undertaken prior to execution of this Agreement as identified in the Contaminated Media Management Plan ("CMMP"), and preparation of the CMMP; d) securing WSDOT approval for modification of the Marina Way Roundabout; or e) other costs subject to the mutual agreement of the Parties.

5.2.2.2 Annual Adjustments. At the beginning of each calendar year, starting with January 1, 2021, the Base Land Value for the Property and for each executed Lease will be adjusted equal to any increase of the Consumer Price Index (CPI-U, West Region - Size Class A), as measured by the average annual CPI increase over the previous ten (10) years. The Annual Adjustment process shall not result in a reduction to the Base Land Value.

5.2.2.3 Periodic Adjustments. In addition to Annual Adjustments, a new Base Land Value or fair market rental value for the Property shall at the Port's discretion be periodically established via an MAI appraisal. This MAI appraisal may occur every 10 years, with the first 10 years beginning when the first Certificate of Occupancy is issued for Phase 1.

5.2.2.4 **Payment Beginning Date and Step-In Schedule.** For any given Project, Developer's lease payment schedule will be as follows:

1. During Permitting and Construction Period (Lease signing date through issuance of the first Certificate of Occupancy or expiration of the Permitting and Construction Period, whichever occurs first), Developer will meet the requirements of Section 4.5 of this Agreement.

2. The Rent Commencement Date is the date of issuance of the first Certificate of Occupancy or expiration of the Permitting and Construction Period, whichever occurs first. For the First Quarter following the Rent Commencement Date, rent is \$1.00, due three (3) months after the Rent Commencement Date. This is the first lease payment for any given Project.

3. Second Quarter following Rent Commencement Date, due six (6) months after Rent Commencement Date: 33% of the full Lease Rate listed above. For example, the Second Quarter Lease Rate would be 2.0% if the full Lease Rate were 6.0%.

4. Third Quarter following Rent Commencement Date, due nine (9) months after Rent Commencement Date: 66% of the full Lease Rate listed above.

5. Fourth Quarter following Rent Commencement Date, due twelve (12) months after Rent Commencement Date, and thereafter: 100% of the full Lease Rate listed above. After the first twelve (12) months following the Rent Commencement Date rent shall be paid monthly in advance.

5.2.3 Leasehold Excise Tax. Developer will pay to Port any Washington State Leasehold Excise Taxes due for all Projects for which Leases have been executed. The current Leasehold Excise Tax rate is 12.84% of any lease payments due, though this rate could increase. Upon receipt of Leasehold Excise Tax Payments from Developer, Port will then pay Leasehold Excise Taxes to the Washington State Department of Revenue.

5.2.4 Subordination. Each Lease shall be unsubordinated. In other words, the Port's interest in the Property shall not be subject to or subordinated to any debt. Subject to reasonable approval by the Port, Developer may mortgage the Developer's interest in the Lease as security for a Lender to the extent the Lender is providing capital for the Project. If Developer requests that its Lease act as security for a Lender in a mortgage, the Port shall have sixty (60) days to respond to such request.

5.2.5 Developer Guaranty. Each Lease to a Single Purpose Entity shall include a guaranty by Developer of such Single Purpose Entity's performance under the Lease.

5.3 Sales. Should the Port elect to sell a Parcel, subject to the terms of this Agreement, the parties shall negotiate and enter into a Purchase and Sale Agreement which shall be subject to the provisions of this Section 5.3 and consistent with the other provisions of this Agreement.

**Commented [RK3]:** Based on discussion between Dave and Roy, having a "bookend" on the rent start date is reasonable, the Permitting and Construction Period defines a reasonable period for that bookend, the step-in schedule during the first year is restated as it was in the MOU with rent payable in arrears, and after the first year rent will be payable monthly in advance.

5.3.1 Price. The price for a land sale shall be the Base Land Value for the area of land being sold, adjusted at the beginning of each year, starting with January 1, 2020, equal to any increase of the Consumer Price Index (CPI-U, West Region - Size Class A), as measured by the average annual CPI increase over the previous ten (10) years, provided that the annual adjustment process shall not result in a reduction to the Base Land Value. Alternatively, the Port in its sole and absolute discretion may elect to conduct an MAI Appraisal prior to the time of sale in order to increase the land value as it pertains only to establishing the price for such sale.

5.3.2 Real Estate Excise Tax. Developer shall be responsible for the payment of Washington State Real Estate Excise Tax.

5.3.3 Title Insurance. The Port shall provide a standard ALTA title insurance policy insuring the title in the amount of the purchase price. Developer may elect to obtain additional endorsements or coverage at Developer's cost.

5.3.4 Deed. The conveyance shall be by Warranty Deed.

5.3.5 Other Conditions and Considerations Related to Sales.

1. The Port will not sell land associated with Phase 1 to Developer. The Port may consider land sales only after development of Phase 1 has been completed.
2. The Port does not expect to sell any land within the first 200 to 300 feet of the Columbia River ordinary high-water mark.
3. When considering a potential land sale, the Port will require Developer to provide specific information about the proposed land uses to be built on the land (e.g., land use, height, brand, total square footage, number of units, design features, etc.), similar to the Project Memorandum and related documents required for a lease.
4. The Port understands that developing certain land uses, such as condominium housing and for-sale townhomes on leased land, is impractical and/or financially infeasible because individual homebuyers cannot obtain financing for homes on leased land. The Port will take this into account when determining whether to approve land sales.
5. The Port will consider making not more than 25% of the Net Developable Land available for sale to Developer over the lifetime of this Agreement, subject to the limitations above.

## **6. PROPERTY CONDITION AND RESPONSIBILITY.**

6.1 Environmental Conditions. The environmental conditions of the Property are described in the Background Information. Developer acknowledges and agrees that it has received all documents listed in the Background Information, has reviewed the environmental documents and reports, and will conduct such other environmental studies as it deems appropriate prior to Project development, and is not relying on any representations from the Port concerning environmental conditions or the completeness or accuracy of these documents and reports. Developer is responsible for Parcel development consistent with the known environmental conditions of the Property and all obligations related thereto, including but not limited to those contained in the CMMP. Unless otherwise mutually agreed by the Parties, if environmental conditions are discovered on the Property that were not disclosed in the Background Information or otherwise known to Developer as of the execution of this Agreement, and not otherwise caused by the Developer's or Port's actions since this Agreement was entered (a

"preexisting unknown environmental condition"), the Port shall address such preexisting unknown environmental condition and the cost thereof will be added to the Port's Base Land Value. The Port shall consult with Developer regarding the means by which such preexisting unknown environmental condition will be addressed by the Port; however, the final decisions with respect thereto shall be in the Port's sole and absolute discretion. If in the Port's sole and absolute discretion the remediation of such preexisting unknown environmental condition is financially or otherwise unduly burdensome to the Port or impracticable, then the Port may elect to not address such preexisting unknown environmental condition for purposes of development as contemplated under this Agreement, and remove the affected area from this Agreement. If the method required to address the preexisting unknown environmental condition would be financially or otherwise unduly burdensome to Developer or impracticable, then Developer shall no longer be required to perform under this Agreement as to the affected area, and such area will be removed from this Agreement. The Port shall not be responsible for any delay to Developer's Project or any other costs or damages to Developer due to the discovery of, or Port actions to address, or removal of any area from this Agreement based on, any preexisting unknown environmental condition. Except as otherwise provided above, Developer and the Port shall each be responsible for all costs related to any hazardous substances or hazardous materials to the extent caused, contributed to, exacerbated, or released by such Party, as such terms are defined by applicable federal, state, and local law.

6.2 Archaeological Conditions. If any archaeological discoveries are made during the term of this Agreement or in the course of development of Improvements, then Developer shall consult with the Port and shall address the discovery in accordance with all applicable law, and in a way that is mutually agreed to by the Parties and allows development to proceed as contemplated under this Agreement. If the method required to address the discovery would be financially or otherwise unduly burdensome to Developer or impracticable, then Developer shall no longer be required to perform under this Agreement as to the affected area, and such area will be removed from this Agreement.

6.3 Geotechnical Conditions. The geotechnical conditions of the Property are the subject of information provided in the Background Information. Developer acknowledges and agrees that it has received all documents listed in the Background information, has reviewed the geotechnical documents and reports, and will conduct such other geotechnical studies as it deems appropriate prior to Project development, and is not relying on any representations from the Port concerning geotechnical conditions or the completeness or accuracy of these documents and reports. Developer or the applicable SPE is responsible for Parcel development consistent with the geotechnical conditions and is assuming the risk on any geological and geotechnical conditions.

6.4 Preparation of Site: Utilities. The Port shall not be responsible for and Developer shall be responsible for any demolition or site preparation in connection with the Project on the Parcel. The Port shall not be responsible for and Developer shall be responsible for any demolition or site preparation in connection with the installation of City infrastructure. The Port will reasonably cooperate, at no expense to the Port, in providing utility connections to the Parcel. Consistent with the Master Plan Documents, Developer shall make arrangements for necessary utility services directly with utility service providers (including private providers and the City). Any impact fees, costs of installation, connection, relocation or upgrade shall be paid by Developer, including, but not limited to, water, sanitary sewer, stormwater, natural gas, streetlights, traffic lights, electric utilities, telecommunications, and fire hydrants.

6.5 Infrastructure Improvements and Street Dedications. The Port has no duty or obligation under this Agreement to construct, install or modify any public infrastructure, including but not limited to any City or Washington State Department of Transportation (WSDOT) streets or other

infrastructure, except for the stormwater outfall addressed in the agreement between the Port and Parker's Landing LLC, recorded as Document No. [REDACTED] in the Clark County Records, as to which the Developer agrees to pay one half (½) of the Port's share of the installation costs. The City or WSDOT may require the dedication of right of way for local streets. Specific issues related to streets will be addressed in the Project Memorandum. Developer shall be responsible for all design, permitting, construction, operation, and maintenance, and all costs thereof, with respect to any and all onsite and offsite improvements required with respect to the development of the Property, except to the extent ownership of such improvement is transferred to the City or other public entity, and except as expressly provided otherwise within this Agreement.

6.6 Condition of the Property – No Representation. Except as expressly provided herein and in the exhibits attached hereto, the Port makes no representations or warranties as to the condition or suitability of the Property, including but not limited to soil conditions, environmental conditions, or any other conditions of the Property, for any improvements to be constructed by Developer. Without limiting the foregoing, and except as expressly provided in this Agreement, the Property is transferred or leased "AS-IS AND WITH ALL FAULTS." Developer agrees that it has not relied on representations or warranties made by the Port as to the physical or environmental or any other condition of the Property or its suitability for any improvements to be constructed by Developer, and that Developer assumes all risk and all costs with respect to the development of the Property, except as expressly provided otherwise within this Agreement.

6.7 Ongoing Operations and Maintenance. The Parties agree that operating and maintaining the Property such that it remains clean, safe, welcoming, inviting, and attractive over the long term is to the benefit of the Parties.

6.7.1 Property. Except for those parts of the Property that are deeded to the City and become public land, right of way, or City Streets, and the City agrees to maintain such dedicated land, Developer will be responsible for operating and maintaining the Property shown in Exhibit A. Operations and maintenance will include landscaping, cleaning, and capital repairs of onsite infrastructure such as streets, sidewalks, street furniture, onsite sewer and water lines built by Developer, and all other Developer Improvements.

6.7.2 Port Land. As between the Parties, the Port will be solely responsible for operating and maintaining the Port Land shown in Exhibit C, including parks, trails, open spaces, and associated parking lots, unless otherwise agreed by the Parties in writing.

6.7.3 Stormwater. Port and Developer will equally share the costs of the Port's share of operating and maintaining the stormwater outfall, which is addressed in the Development Agreement between the Port and Parker's Landing LLC recorded as Document No. [REDACTED] in the Clark County Records.

6.7.4 Special Events and Situations. Operations and maintenance costs related to other activities may be mutually agreed upon by the Parties. During special events such as festivals, farmers markets, concerts, and other events, the Port and Developer, each in its sole discretion, may collaborate to fund and manage operations and maintenance activities.

## **7. PROJECT OWNERSHIP; ASSIGNMENT.**

7.1 Developer Responsibility. This Agreement establishes a long-term relationship between the Port and Developer and the terms under which the Parties will perform in order that Developer or parcel-specific Single Purpose Entities may develop the Property.

7.2 Developer Ownership. For the term of this Agreement, Roy Kim shall maintain managerial control of Developer and the development of the Property under this Agreement. If

Roy Kim is unable or unwilling to maintain or in fact does not maintain such control, within thirty (30) days of such occurrence, Developer shall propose to the Port an individual with sufficient skill and experience to have such control for purposes of this Agreement. The Port shall provide its consent to the newly identified individual within fourteen (14) days, which consent shall not be unreasonably withheld. If the Port reasonably withholds consent, Developer may propose a different individual under the same terms. If the Port does not consent to a new individual to have control under this Agreement within ninety days of notice of Roy Kim's inability, unwillingness, or lack of such control, the Parties shall follow the mediation and arbitration provisions under Section 10 of this Agreement to obtain a determination of whether either individual proposed by Developer has sufficient skill and experience to have control for purposes of this Agreement.

7.3 Assignment of Project by Developer. Any time after approval of a Project Memorandum, as provided in and subject to the terms and conditions of this Agreement, Developer may transfer the Project referenced in the Project Memorandum to a Single Purpose Entity ("SPE"). No consent to such transfer by the Port is required so long as Roy Kim has managerial control of such SPE. The provisions regarding control under Section 7.2 shall also apply to such SPE. Developer will guaranty such SPE's performance of all obligations under this Agreement and any Lease, or obligations in a pending or the remaining obligations of a purchase agreement under this Agreement. A default by such SPE shall have the same effect as a default by Developer. Once development of a Project is complete, and a Certificate of Occupancy is granted for a Project, Developer may assign the Project to any third party subject to the Port's prior written consent, which consent will not be unreasonably withheld; in general, consent will not be withheld if Developer demonstrates that the proposed assignee has a successful track record managing similar projects, has sufficient financial capacity to successfully manage the Project, and has sufficient experience and skill to successfully manage the Project. Any other transfer of any interest in this Agreement or any Project under this Agreement, not otherwise described in Section 7.3 or Section 7.4, to any entity other than one where Roy Kim has managerial control as described in Section 7.2 shall require the prior written consent of the Port, in its sole and absolute discretion. Upon any transfer other than under Section 7.4, Developer will remain responsible for the performance of all the terms and conditions of this Agreement and of the Lease or remaining obligations of a purchase agreement for a Project, unless the Port agrees to release Developer upon such transfer, in the Port's sole and absolute discretion.

7.4 Development of Project by Unrelated Entity. Subject to approval by Developer and the Port, each acting in its sole and absolute discretion, a third party entity unrelated to Developer may develop a Project on a Parcel under this Agreement. In such event, Developer will not be responsible for the performance of the terms and conditions of this Agreement by such entity, except to the extent of any development of such Project by Developer.

7.5 Other Transfers; Notice of all Transfers. Except as expressly permitted in this Section 7, Developer shall not assign or otherwise transfer any interest in this Agreement or any Parcel or Project without the prior written consent of the Port, in its sole and absolute discretion. Developer shall give the Port thirty (30) days prior written notice of any assignment or other transfer of any interest in this Agreement or any Parcel or Project, or any transfer of an interest in Developer or any Parcel lessee or Parcel owner that individually or in the aggregate with other transfers results in the transfer of a controlling ownership interest in Developer, regardless whether or not Port consent is required with respect to such assignment or transfer.

## **8. DEFAULT, REMEDIES UPON DEFAULT, AND TERMINATION.**

8.1 Event of Default-Developer. An Event of Default is defined as a non-Force Majeure event and shall occur upon Developer's failure to keep, observe, or perform any of its respective

duties or obligations under this Agreement, subject to the notice and cure provision in Section 8.3 of this Agreement, which Event of Default shall be a default hereunder, including, without limitation, (i) failure of Developer to meet all deadlines or comply with the Master Development Schedule, (ii) failure of Developer or an SPE to comply with any Project Schedule, (iii) the willful making by Developer of an assignment for the benefit of creditors, contrary to the terms of this Agreement, or filing a petition in bankruptcy or reorganization under any bankruptcy or insolvency law or filing a petition to effect a composition or extension of time to pay its debts, (iv) the appointment of a receiver or trustee of the property of Developer, which appointment is not vacated or stayed within sixty (60) days, (v) the filing of a petition in bankruptcy against Developer or for its reorganization under any bankruptcy or insolvency law that is not dismissed or stayed by the court within sixty (60) days after such filing, (vi) any transfer by Developer that occurs in violation of this Agreement, (vii) the willful failure by Developer or a transferee to re-convey the Property to the Port if and when required to do so, (viii) other than specified above, any default by the Developer in the performance of any other obligations hereunder including failure to complete any consent decree obligation, or (ix) failure of Developer to maintain required insurance.

8.2 Event of Default-Port. An Event of Default is defined as a non-Force Majeure event and shall occur upon the Port's failure to keep, observe, or perform any of its respective duties or obligations under this Agreement, subject to the notice and cure provision in Section 8.3 of this Agreement, which Event of Default shall be a default hereunder, including, without limitation (i) failure of the Port to meet all deadlines or comply with the Master Development Schedule, (ii) any transfer by the Port that occurs in violation of this Agreement, or (iii) any failure by the Port to comply with all terms and conditions of this Agreement and/or to perform any Port obligation as required.

8.3 Notice of Default and Cure Provision. Upon any Event of Default or any other breach of any other term or condition of this Agreement, the non-defaulting Party shall notify the other Party in writing of the defaulting Party's purported breach, failure or act described as an Event of Default. After written notice of default by one Party to the other Party and such Party's failure to cure such default within thirty (30) days for failure to pay rent or any other monetary obligation, or within sixty (60) days for other defaults; provided, however, if such default cannot be reasonably cured within the 30 or 60 day cure period, as applicable, and the defaulting party is diligently pursuing a cure, the period to cure will be extended for a reasonable period to complete a cure, not to exceed a total of one hundred eighty (180) days without the non-defaulting Party's written consent which consent shall not be unreasonably withheld.

8.4 Remedies Upon Default. The non-defaulting party shall be entitled to draw upon or foreclose all or any part of the bonds or security provided under this Agreement or commence an action for equitable or other relief.

8.5 Special Remedy Upon Default - Automatic Modification of this Agreement - Developer Rights in the Property. During the period of an uncured Event of Default and thereafter during any time this Agreement remains in effect, the rights of Developer to acquire land within the Property for a Project shall no longer be exclusive. Rather, this Agreement shall be automatically modified to provide that all rights of Developer are deemed Rights of First Offer. This automatic change to the Agreement is separate from and in addition to all other remedies at law or equity. It has been specifically negotiated between the Port and Developer to allow the development to move forward despite Developer's default.

8.6 Special Rule for breach of Master Development Schedule. In addition to all other remedies provided herein or available to the Port under applicable law, if Developer falls behind the Master Development Schedule under Section 3 above, at any time following the completion

of Phase 1, subject to a written notice and a nine (9) month cure period in favor of Developer, the Port shall have the right to lease or sell property to other parties. Developer's cure period may be extended by written agreement of the Parties. If the Port leases property to other parties, the Port or designee will be required to compensate Developer for the cost of one "half-street" built by Developer adjacent to such property.

8.7 Termination. Upon the occurrence of an uncured Event of Default, the non-defaulting party may terminate this Agreement with respect to any undeveloped Property that has not yet been leased or sold to Developer or an SPE, by providing sixty (60) days' written notice of termination. This right of termination is separate from and in addition to all other remedies at law or equity, except that in the event of termination of this Agreement, specific performance to develop the Property can no longer be sought as a remedy against Developer.

8.8 Special Termination Right - Developer Master Development Documents. In the event of a termination of this Agreement, Developer shall deliver to the Port, without delay and at no cost to the Port, all Developer Master Development Documents, subject to Section 1.3.

8.9 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other Party, and all rights and remedies provided in this Agreement are in addition to any and all rights available under applicable law.

## **9. SPECIAL REMEDY – PORT'S PROJECT PARCEL RESCISSION OPTION.**

9.1 Rescission Option if Developer or SPE Fail to Start Construction. If Developer or the applicable SPE fails to commence construction of a Project by the Construction Start Date, as set forth in the Project Schedule (or as modified pursuant to this Agreement), then the Port shall have the right and option to rescind the sale of the Parcel or cancel the Lease (the "Rescission Option") by refunding the purchase price paid under the Sale Agreement or any rent prepaid under the Lease. Notwithstanding the foregoing, the Rescission Option shall terminate if Developer or the applicable SPE commences construction before the Port gives Developer written notice exercising the Rescission Option. This Rescission Option shall be set forth in the Deed or contained in the Lease.

9.2 Closing on Rescission Option - Owned Parcel. The closing of a repurchase due to a rescission of a Parcel purchased by Developer or an SPE shall be not later than sixty (60) days following the Port's exercise of the Rescission Option on a business day selected by the Port on not less than fifteen (15) days' written notice to Developer or the SPE (if used). The parties shall comply with the exemption to real estate excise tax stated in WAC 458-61A-209; provided, however, Developer shall pay the excise tax on the rescission if the transfer is not exempt. The Deed will be in the same form as used to convey the Parcel to Developer or the SPE (if used). Upon such re-conveyance to the Port, no encumbrances shall exist on title other than those that existed when title transferred to Developer or the SPE (if used), those consented to by the Port in writing (except any Lender security interest, which shall not be a permitted encumbrance) and those that were recorded as part of the Closing of the acquisition of the Parcel. Developer shall be responsible for obtaining the release of any Lender security interest. If the Port exercises the Rescission Option, Developer shall be released from further obligations under this Agreement for the Parcel, except those obligations that by their terms expressly survive termination. If Developer has commenced construction prior to the Port's exercise of the Rescission Option, the Rescission Option shall terminate. At Developer's request, the Port shall provide written

confirmation to a Lender that construction has commenced such that it satisfies any condition of a Lender to advance funds under a construction loan.

9.3 Rescission Option - Leased Parcel. The Rescission Option for a leased parcel shall be executed in accordance with the Lease.

9.4 Port's Right to Utilize Rescission Parcel. After a rescission occurs, the Port may utilize, sell, lease or otherwise dispose of the Parcel. This right is in addition to any other rights or remedies set forth in this Agreement.

## **10. MISCELLANEOUS PROVISIONS.**

10.1 Non-Discrimination. In the implementation of this Agreement, including construction of all Improvements and any leasing of the Projects, neither party shall discriminate against any person or entity by reason of race, color, creed, national origin, age, handicap, marital status, sex, or religion.

10.2 Reasonable Cooperation and Approvals by the Port. The Port's obligations to "reasonably cooperate" as set forth in this Agreement are only to the extent permitted by applicable law and do not convey or guaranty the performance, action or approval of any other Governmental Authorities. Approval by the Port of any item pursuant to this Agreement shall not constitute a representation or warranty by the Port that such item complies with Legal Requirements or the Master Plan Documents, and the Port assumes no liability with respect thereto. Approval by the Port of any item pursuant to this Agreement shall not constitute or guarantee issuance of any permit, license, permission, consent or approval required by any other Governmental Authorities or third party, and the Port assumes no liability with respect thereto. Notwithstanding any provision of this Agreement to the contrary, the Port is under no obligation or duty to supervise the design or construction of the Improvements. The Port's approval of the Project Memorandum and associated Project Documents shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or any obligation on the Port to ensure that work or materials are in compliance with the Project plans, Legal Requirements, or any building requirements imposed by a Governmental Authority. The Port is under no obligation or duty, and disclaims any responsibility, to pay for the cost of construction of the Improvements, the cost of which shall at all times remain the sole liability of Developer.

10.3 Indemnification by Developer. To the extent permitted by law, Developer shall indemnify, defend, and hold the Port, its commissioners, officers, and employees (collectively, "Port Indemnitees") harmless from and against all claims, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) arising out of or relating to Developer's activity conducted on or with respect to the Property, including any act or omission of Developer or its members, agents, employees, representatives, contractors, subcontractors, successors, assigns or invitees. The Port shall not be entitled to such indemnification as described in this Section 10.3, to the extent and in proportion that such claim, liability, loss, damage, cost or expense is caused by the negligence, bad faith, reckless or willful misconduct of the Port or the Port Indemnitees. This indemnification shall survive expiration or termination of this Agreement.

10.4 Indemnification by Port. To the extent permitted by law, the Port shall indemnify, defend, and hold the Developer or its members, agents, employees, representatives, contractors, subcontractors, successors, assigns or invitees, (collectively, "Developer Indemnitees") harmless from and against all claims, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) arising out of or relating to the Port's activity conducted on or with respect to the Property. The

Developer shall not be entitled to such indemnification as described in this Section 10.4, to the extent and in proportion that such claim, liability, loss, damage, cost or expense is caused by the negligence, bad faith, reckless or willful misconduct of the Developer or the Developer Indemnitees. This indemnification shall survive expiration or termination of this Agreement.

10.5 Permits. Developer acknowledges that the Port has not made any representation or warranty with respect to Developer's ability to obtain any permit or approval, or to meet any other requirements for development of a Project.

10.6 Indemnity from Liens. Developer shall defend, indemnify, and hold harmless the Port and Port Indemnitees against all mechanics', materialmens', and laborers' liens and all costs, expenses and liabilities arising from and relating to Developer's actions with respect to the Property. Nothing contained in this Agreement shall be construed as the consent or request of the Port, express or implied, for the performance of any labor or services or for the furnishing of any materials or equipment to a Project (or any part thereof). Notice is hereby given that the Port will not be liable for any labor, services, materials or equipment furnished or to be furnished to Developer, or anyone holding an interest in the property (or any part thereof) through or under Developer. If any such lien is asserted, the Party against whom it is asserted, at its expense, shall promptly discharge such lien in a manner reasonably satisfactory to the other Party.

10.7 Insurance. Except as to Parcels purchased by Developer, Developer shall maintain and keep in force insurance covering all activity on or about or with respect to the Property, including, but not limited to, the following requirements. An original certificate of insurance and a certified copy of the endorsement pages from each policy must be provided to the Port. Failure of Developer to maintain the required insurance shall be a default of this Agreement.

10.7.1 Builders All Risk Comprehensive Coverage. Developer or the applicable SPE shall keep, or shall require its general contractor to keep, all Project components insured for builders all risk comprehensive coverage, including earthquake, fire, and flood and to include amounts sufficient to prevent Developer from becoming a co-insurer under the terms of the applicable policies, but in any event in an amount not less than one hundred percent (100%) of the then full "Replacement Cost," being the cost of replacing the Project components, and all fixtures, equipment, improvements, and betterments thereto.

10.7.2 Commercial General Liability. Developer and each SPE shall carry, and shall require its construction contractor to carry on the contractor's and Developer's behalf, commercial general liability insurance providing coverage against claims for bodily injury, death or property damage in connection with any activity on the Property with broad form liability, contractual liability, and property damage endorsement, and written for combined single limits of liability of no less than Two Million Dollars (\$2,000,000), per occurrence, said amount to be adjusted from time to time with coverage deemed customary under like conditions.

10.7.3 Property Insurance. Upon completion of the construction of the Improvements, Developer or the applicable SPE shall carry property insurance covering the Project, including earthquake if required by the institutional Lender, flood, boiler and machinery insurance, in an amount equal to at least one hundred percent (100%) of the replacement cost of all Improvements. Such insurance shall contain coverage against loss or damage by perils no less broad than the current edition of the ISO Special Form, 1985 Edition. Developer shall be responsible for payment of any deductibles under said insurance policies and any costs of restoration resulting from any uninsured or underinsured losses.

10.7.4 Insurance Policies. Insurance policies required herein shall be issued by companies authorized to do business in the State of Washington with the following qualifications:

10.7.4.1 The companies must be rated no less than "A," as to general policyholders rating and no less than "VII" as to financial category in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Incorporated.

10.7.4.2 The policies shall name the Port of Camas-Washougal as an additional insured for liability purposes.

10.7.4.3 The policies shall be issued as primary policies.

10.7.4.4 Each such policy or certificate of insurance mentioned and required in this section shall have attached thereto (a) an endorsement that such policy shall not be canceled without at least thirty (30) days' prior written notice to Developer and the Port; (b) an endorsement to the effect that the insurance as to any one insured shall not be invalidated by any act or neglect of any other insured; (c) an endorsement pursuant to which the insurance carrier waives all rights of subrogation against the parties hereto; and (d) an endorsement pursuant to which this insurance is primary and noncontributory.

10.7.4.5 The certificates of insurance and insurance policies shall be furnished to Developer and the Port prior to Commencement of Construction or any other activity by Developer with respect to the Property under this Agreement. The certificate(s) shall clearly indicate the insurance and the type, amount and classification, as required for strict compliance with this section.

10.7.4.6 The parties agree that cancellation or lapse of any policies required by this Agreement constitutes an Event of Default under this Agreement. In addition to any other legal remedies, the Port, after written notice to Developer, may obtain such insurance and pay such premiums and may elect (if not reimbursed by Developer within a reasonable period of time) to assert a claim for payment from Developer, together with costs and attorneys' fees in the assertion of such claim.

10.8 Total or Partial Destruction. If the Improvements are totally or partially destroyed at any time during the course of construction by Developer or an SPE prior to Substantial Completion, Developer or an SPE shall reconstruct or repair the damage and continue to pursue the Project to completion consistent with the terms of this Agreement, to the extent of available insurance, together with any additional funds that Developer elects to use for such purpose. Such reconstruction or repair shall commence as expeditiously as possible following such destruction, with delays resulting therefrom being treated as a Force Majeure event. If, due to the lack or insufficiency of available insurance or other funds, Developer or an SPE is unable to continue to develop the Project, then in all events Developer or an SPE shall at its cost promptly remove the damaged Improvements, secure the Parcel, clear the debris and generally make the Parcel as safe and attractive as practical given the circumstances. If Developer or an SPE is unable or unwilling to restart construction of the Project in accordance with this Agreement for a period of twelve (12) months or longer after the date of the casualty, and if the Parcel has not been sold to a third party by Developer or an SPE (with the proper approvals required hereunder), who will construct the Project to completion within a reasonable time after closing, then the Port shall have the right to purchase the Parcel using the Rescission Option contained in this Agreement. The parties acknowledge that the foregoing is a discretionary right and not an obligation, and that this right is granted in order to address the Port's concern that the Parcel not continue in the ownership of a party that is either unable or unwilling to develop the Parcel for an unreasonable length of time.

10.9 Exclusive Remedy For Reasonableness Determinations. Notwithstanding anything in this Agreement or otherwise to the contrary, if a Party is entitled to reasonably withhold its consent, the sole and exclusive remedy where such consent was unreasonably withheld or is the basis of an allegation of an Event of Default, is to bring a declaratory judgment action in Clark County Superior Court or arbitration to determine that the consent should have been provided under a reasonableness determination. Such action shall be determined by a judge alone or arbitrator and such determination shall be binding on all arbitrators or courts of competent jurisdiction. No damages or other remedies will be permitted, although the prevailing party shall be awarded its attorneys' fees in the action as adjudged by the judge or arbitrator.

10.10 Representations and Warranties. Each party hereby represents and warrants that (i) it is duly organized and exists in good standing under Washington law, (ii) it has all necessary rights, title, interest, power, and authority to enter into this Agreement and perform in accordance with its terms and provisions, (iii) the individuals signing this Agreement on its behalf have the authority to bind and to enter into this transaction, and (iv) it has taken all requisite action to legally authorize the execution, delivery, and performance of this Agreement.

10.11 Incorporation Into Other Contracts. In every contract for performance under this Agreement, the parties shall reference this Agreement and make every such contract subject to compliance with the terms and conditions of this Agreement.

10.12 Executory Contract. This Agreement constitutes an executory contract within the meaning of 11 U.S. Code § 365 and is not a contract that runs with the land or confers any property rights.

10.13 Estoppel Certificates. The Port and Developer shall, at any time and from time to time, within fifteen (15) days after written request by the other, execute, acknowledge, and deliver, to the party requesting same or to any existing or prospective Lender, assignee or subtenant designated by Developer, a certificate stating that to the signer's knowledge (i) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or if there have been modifications, identifying such modifications; and if this Agreement is not in force and effect, the certificate shall so state, and (ii) all conditions under this Agreement have been satisfied by the Port or Developer, as the case may be, and that no defenses or offsets exist against the enforcement of this Agreement by the other party, or, to the extent untrue, the certificate shall so state. The Party to whom any such certificate shall be issued may rely on the matters therein set forth.

10.14 No Third Party Beneficiaries. This Agreement has no third party beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties to this Agreement and their respective successors and assigns, if any, nor shall any provision give any third party any right of action or subrogation against any Party to this Agreement.

10.15 Modification. This Agreement may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this Agreement.

10.16 Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inference be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is explicitly permitted, such as in the case of a party being allowed to make a decision in its "sole judgment" or "sole discretion."

10.17 Provisions Surviving Termination. All provisions of this Agreement, including, but not limited to, those related to indemnification, and those requiring performance past the termination of this Agreement, shall survive the termination of this Agreement as separate obligations until fully performed.

10.18 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no transfer of any interest by Developer except pursuant to the express terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired its interest in compliance with the terms of this Agreement, or under law.

10.19 Notices. All notices, which may be or are required to be given pursuant to this Agreement shall be in writing and delivered to the parties at the following addresses:

To Port:

Attn: Chief Executive Officer  
Port of Camas-Washougal  
24 South 'A' Street  
Washougal, WA 98671

To Developer:

Attn: Roy Kim  
RKM Development, Inc.  
15160 NW Laidlaw Road, Suite 108  
Portland, OR 97229  
Email: roy@centralbethany.com

To Port Counsel:

Attn: Carolyn A. Lake  
Goodstein Law Group PLLC  
501 South "G" Street  
Tacoma, WA 98405

To Developer's Counsel

Attn: Jennifer Bragar  
Tomasi Salyer Martin  
121 SW Morrison Street, Suite 1850  
Portland, OR 97204  
Email: jbragar@tomasilegal.com

Any such notices shall be either (i) sent by certified mail, return receipt requested, postage and fees prepaid, in which case notice shall be effective upon receipt or refusal of a Party to accept delivery thereof; (ii) sent by a nationally recognized overnight courier, in which case notice shall be effective when actually received or refusal of a Party to accept delivery thereof pursuant to the records of such courier; or (iii) sent by email transmission to the Party and its counsel, provided that an original of said transmission shall be sent to the addressee by some other method permitted under this Section 10.19 on the same day as such transmission, in which case notice shall be effective upon confirmation of receipt of the email by written communication or email other than an automated response, or receipt or refusal of a Party to accept delivery thereof by such other method, whichever occurs first; or (iv) personally delivered, in which case notice shall be effective when actually delivered. The above addresses and telephone numbers may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

10.20 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

10.21 Waiver. No waiver by any Party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing by the Party granting the waiver; and no such waiver shall be construed to be a continuing waiver. The waiver by one Party of the

performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition, or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act, except to the extent the waiver affects a subsequent time for performing another act which shall also be waived by the waiver of the first act in the sequence, to the same extent or period of time as the first act. The waiver by either or both Parties of the time for performing any act shall not constitute waiver of the time for performing an identical act required to be performed at a later time.

10.22 Applicable Law: Jurisdiction. This Agreement shall be interpreted under and pursuant to the laws of the State of Washington without regard to choice of law provisions. In the event any action is brought to enforce any of the provisions of this Agreement, the Parties agree to be subject to the sole jurisdiction and venue in Clark County Superior Court.

10.23 Dispute Resolution. In the event of any dispute, a Party shall notify the other party of the dispute with as much detail as possible. The Parties shall use good faith efforts to resolve the dispute within thirty (30) days after receipt of a dispute notice. If the Parties are unable to resolve the dispute, or agree upon the appropriate corrective action to be taken, within such thirty (30) days, then either Party may pursue any course of action available to them. Pending resolution of the dispute, both Parties shall continue without delay to carry out all of their respective responsibilities under this Agreement. Except as specifically provided herein, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall first be subject to mediation, and if necessary, be determined by arbitration in Camas-Washougal, Washington before one arbitrator. The arbitration shall be administered by JAMS, or other appropriate arbitration service mutually agreed to by the Parties, pursuant to its Comprehensive Arbitration Rules and Procedures Streamlined Arbitration Rules and Procedures, or other appropriate procedures mutually agreed to by the Parties. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the Parties from seeking provisional remedies in aid of arbitration from the Clark County Superior Court.

10.24 Mediation. Either party may commence mediation by providing to JAMS (or other arbitration service mutually agreed to by the Parties) and the other Party, a written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties will cooperate with JAMS (or other arbitration service mutually agreed to by the Parties) and with one another in selecting a mediator from the JAMS (or other arbitration service mutually agreed to by the Parties) panel of neutrals with experience in development projects of the magnitude contemplated in this Agreement and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. Either Party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following forty-five (45) days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the Parties so desire. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until fifteen (15) days after the Earliest Initiation Date. The Parties will take such action, if any, required to effectuate such tolling.

10.25 Arbitration. If the Parties enter arbitration, then the parties will cooperate with JAMS (or other arbitration service mutually agreed to by the Parties) and with one another in selecting an arbitrator from the JAMS (or other arbitration service mutually agreed to by the Parties) panel of neutrals with experience in development projects of the magnitude contemplated in this Agreement and in scheduling the arbitration proceedings. In any arbitration arising out of or

related to this Agreement, the arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. If the arbitrator determines a Party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

10.26 Savings Clause. To the extent required to ensure the enforceability of any award, judgment or ruling, the Arbitrator may modify the arbitration procedures contained herein.

10.27 No Joint Venture and No Fiduciary Duties. Nothing contained in this Agreement shall create any partnership, joint venture or any other arrangement between the Port and Developer whereby one Party is responsible for the acts or omissions of the other. The Parties intend that the rights, obligations, and covenants in this Agreement and the collateral instruments shall be exclusively enforceable by the Port and Developer, their successors and assigns. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein. Moreover, neither the Port nor Developer have any fiduciary duties to the other.

10.28 Calculation of Time. All periods of time referred to herein, except those that reference business days, shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington. Those periods that reference business days shall not include Saturdays, Sundays, or legal holidays in the State of Washington, and if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next business day.

10.29 Time of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

10.30 Attorneys' Fees. In the event any proceeding is instituted to interpret or enforce any provision or resolve any dispute under this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall recover their costs and reasonable attorneys' fees.

10.31 Force Majeure. Whenever performance of an action is prescribed in this Agreement, neither Party shall be liable for a failure or delay in the performance of any of its obligations under this Agreement, and the period of time for performance shall be extended by the number of days that such performance is actually delayed due to acts of war, acts of terrorism, insurrection, strikes, lockouts, unavailability of personnel, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, pandemics, quarantine restrictions, or governmental restrictions associated with any of the foregoing, but excluding strikes or lockouts or unavailability of Developer's own employees. Such events are called "Force Majeure". For any Force Majeure event that will cause commencement of construction or Substantial Completion of a Project to be delayed more than sixty (60) days from the dates in the Project Schedule, Developer will inform the Port about the cause and nature of such delay and the progress in achieving such Substantial Completion. The provisions of this section shall not apply to nor operate to excuse a Party from the payment of any amount due to the other Party under this Agreement, unless any federal, state, or local law excuses or delays payment of such amount. Any timeline in this Agreement shall be extended one (1) day for each one (1) day that a Party is unable to perform due to a Force Majeure.

10.32 Fair Construction; Severability. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances become invalid or unenforceable, this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement and the remainder of this Agreement shall continue in full force and effect.

10.33 Subsequent Agreements. In any conflict between this Agreement and any subsequent security agreement, deed of trust, real estate contract, purchase and sale agreement or lease executed between Developer and the Port, the terms and conditions of the subsequent agreement shall control. Otherwise the terms of this Agreement shall apply.

10.34 Developer Authorized to Do Business in the State of Washington. During the term of this Agreement and until such time as the entire Property is developed, Developer shall have a principal place of business in Camas-Washougal, Washington and shall obtain and keep current all such documentation and licenses as are required under Washington State law in order to legally to transact business in the State of Washington.

10.35 Recitals and Exhibits Incorporated by Reference. The Recitals and all Exhibits to this Agreement are incorporated into this Agreement by reference as if fully set forth therein and form a material part thereof.

10.36 Entire Agreement. This Agreement, and any documents attached as exhibits, constitute the entire Agreement between the Parties as to the subject matter hereof and supersede all prior discussions and understandings between the Parties with reference to such subject matter. This Agreement supersedes and incorporates all prior written and oral understanding of the Parties. It is the intent of the Parties that this Agreement should be construed according to its fair meaning and without reference to any extrinsic documents or statements.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this document as of the day and year first above written.

**Developer:**  
**RKM DEVELOPMENT, INC.**

**Port:**  
**PORT OF CAMAS-WASHOUGAL**

By \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address:  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Address:  
Port of Camas-Washougal  
24 South 'A' Street  
Washougal, WA 98671  
(360) 835-

Approved as to form:

By: \_\_\_\_\_  
Attorney for Port of Camas-Washougal

STATE OF WASHINGTON

ss.

COUNTY OF \_\_\_\_\_

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual described in and who executed the within and foregoing instrument in his capacity as Executive Director for the PORT OF CAMAS-WASHOUGAL, and acknowledge that he signed the same as his free and voluntary act and deed in the capacity herein stated, for the uses and purposes therein mentioned.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the State of Washington, residing  
at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF

COUNTY OF \_\_\_\_\_

ss.

On this \_\_\_\_\_ day of 2021, before me personally appeared \_\_\_\_\_, to me known to be the [president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be] of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

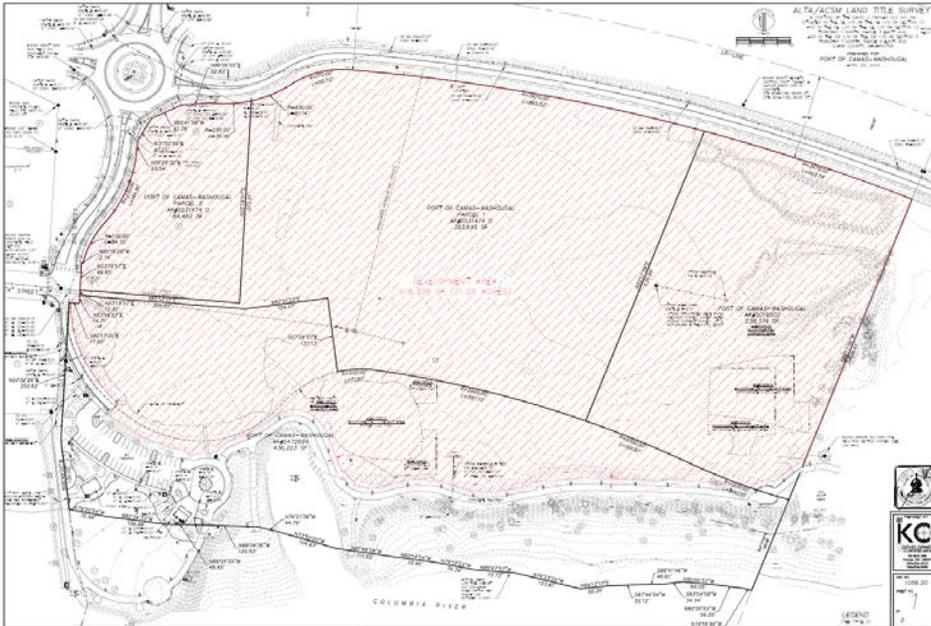
\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of \_\_\_\_\_,  
residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

## EXHIBIT A – Property Diagram and Legal Description



### Legal Description of the Property

A Portion of the David Parker Donation Land Claim Number 48, situated in the Southeast 1/4 of the Southeast 1/4 of Section 12, and in the Northeast 1/4 of the Northeast 1/4 of Section 13, Township 1 North, Range 3 East of the Willamette Meridian, Clark County, Washington, being more particularly described as follows:

Beginning at the intersection of the South line of said Section 12 with the East line of the David Parker Donation Land Claim Number 48, said point of beginning being  $N87^{\circ}36'08''W$ , 32.34 feet from the Southeast corner of said section; thence along the East line of said Parker Claim,  $S22^{\circ}17'56.00''W$ , 40.16 feet to a point of non-tangent curvature; thence leaving said east line, along the arc of a 57.92 foot radius curve concave to the Southeast, through a central angle of  $18^{\circ}52'07''$  (Chord bears  $S64^{\circ}58'39''W$ , 18.99 feet) a distance of 19.07 feet to a point of non-tangency; thence  $S53^{\circ}08'21''W$ , 20.84 feet; thence  $S47^{\circ}24'29''W$ , 11.77 feet; thence  $S47^{\circ}53'45''W$ , 5.34 feet; thence  $S53^{\circ}27'30''W$ , 12.99 feet to a point of non-tangent curvature; thence along the arc of a 29.24 foot radius curve concave to the Southeast, through a central angle of  $70^{\circ}40'37''$  (Chord bears  $S83^{\circ}19'45''W$ , 33.83 feet) a distance of 36.07 feet to a point of non-tangency; thence  $N59^{\circ}04'53''W$ , 1.96 feet; thence  $S26^{\circ}29'47''W$ , 6.86 feet; thence  $N85^{\circ}49'32''W$ , 8.01 feet; thence  $S05^{\circ}56'02''W$ , 2.86 feet; thence  $N82^{\circ}14'52''W$ , 64.73 feet to a point of curvature; thence along the arc of a 470.75 foot radius curve concave to the Southwest, through a central angle of  $6^{\circ}51'46''$  (Chord bears  $N85^{\circ}40'44''W$ , 56.35 feet) a distance of 56.38 feet to a point of non-tangency; thence  $N02^{\circ}17'24''E$ , 3.96 feet; thence  $N87^{\circ}55'18''W$ , 31.95 feet; thence  $S02^{\circ}14'46''W$ , 4.10 feet;

thence N88°09'38"W, 135.11 feet to a point of curvature; thence along the arc of a 345.50 foot radius curve concave to the Southeast, through a central angle of 11°43'23" (Chord bears S85°58'41"W, 70.57 feet) a distance of 70.69 feet to a point of tangency; thence S80°06'59"W, 14.33 feet; thence N11°22'17"W, 4.24 feet; thence S78°52'04"W, 31.84 feet; thence S10°40'25"E, 4.02 feet; thence S79°03'14"W, 49.28 feet to a point of curvature; thence along the arc of a 160.00 foot radius curve concave to the Northeast, through a central angle of 27°50'13" (Chord bears N87°01'40"W, 76.97 feet) a distance of 77.74 feet to a point of tangency; thence N73°06'33"W, 39.36 feet to a point of curvature; thence along the arc of a 94.00 foot radius curve concave to the Southwest, through a central angle of 14°10'31" (Chord bears N80°11'49"W, 23.20 feet) a distance of 23.26 to a point of tangency; thence N87°17'04"W, 19.42 feet to a point of curvature; thence along the arc of a 80.40 foot radius curve concave to the Southeast, through a central angle of 16°03'19" (Chord bears S84°41'17"W, 22.46 feet) a distance of 22.53 feet to a point of tangency; thence S76°39'37"W, 56.26 feet to a point of curvature; thence along the arc of a 50.00 foot radius curve concave to the Northeast, through a central angle of 35°41'06" (Chord bears N85°29'50"W, 30.64 feet) a distance of 31.14 feet to a point of tangency; thence N67°39'16"W, 13.20 feet; thence N41°54'28"E, 2.45 feet; thence N43°56'14"W, 30.84 feet; thence S48°22'37"W, 2.03 feet; thence N18°57'57"W, 5.86 feet; thence N22°47'17"W, 77.09 feet to a point of curvature; thence along the arc of 60.00 foot radius curve concave to the Southwest, through a central angle of 100°16'24" (Chord bears N72°55'29"W, 92.11 feet) a distance of 105.01 feet to a point of tangency; thence S56°56'19"W, 48.30 feet to a point of curvature; thence along the arc of a 100.00 foot radius curve concave to the Northwest, through a central angle of 9°56'56" (Chord bears S61°54'47"W, 17.34 feet) a distance of 17.36 feet to a point of tangency; thence S66°53'15"W, 37.59 feet to a point of curvature; thence along the arc of a 45.00 foot radius curve concave to the Southeast, through a central angle of 30°43'52" (Chord bears S51°31'19"W, 23.85 feet) a distance of 24.14 feet to a point of non-tangency; thence S63°13'44"W, 14.32 feet to a point of non-tangent curvature; thence along the arc of a 58.37 foot radius curve concave to the Southeast, through a central angle of 37°23'18" (Chord bears S81°26'51"W, 36.97 feet) a distance of 37.62 feet to a point of non-tangency; thence N45°22'11"W, 16.06 feet; thence N78°55'13"W, 28.38 feet; thence N68°52'50"W, 54.18 feet; thence N56°48'51"W, 73.43 feet; thence N35°34'38"E, 27.67 feet to a point of non-tangent curvature; thence along the arc of a 236.51 foot radius curve concave to the Northeast, through a central angle of 50°45'05" (Chord bears N24°41'40"W, 202.71 feet) a distance of 209.50 feet to a point of non-tangency; thence S85°17'20"E, 14.21 to the Northwest Corner of Block 8, Parkersville, a Plat of Record in Volume A, Page 7, Clark County Survey Records; thence along the Northerly extension of the West line of said Block 8, and continuing along the West line of Block 7, said Parkersville, N03°19'57"E, 74.86 feet; thence leaving said line, along the Right of Way line of State Route 14 as described by deed in Auditor's File Number 4709230, said Records, the following (10) courses: S85°16'28"E, 2.74 feet to a point of non-tangent curvature; thence along the arc of a 170.00 foot radius curve concave to the Southeast, through a central angle of 28°25'39" (Chord bears N28°17'20"E, 83.48 feet) a distance of 84.35 feet to a point of reverse curvature; thence along the arc of a 230.00 foot radius curve concave to the Northwest, through a central angle of 36°00'37" (Chord bears N24°29'51"E, 142.19 feet) a distance of 144.56 feet to a point of tangency; thence N06°29'32"E, 23.54 feet; thence N31°52'09"E, 47.11 feet; thence N65°41'59"E, 61.26 feet; thence N86°26'05"E, 52.83 feet to a point of curvature; thence along the arc of a 230.00 foot radius curve concave to the Northwest, through a central angle of 39°09'42" (Chord bears N76°53'18"E, 154.16 feet) a distance of 157.21 feet to a point of reverse curvature; thence along the arc of a 170.00 foot radius curve concave

to the Southeast, through a central angle of 37°18'29" (Chord bears N75°57'42"E, 108.75 feet) a distance of 110.70 feet to a point of compound curvature; thence along the arc of a 3670.00 foot radius curve concave to the Southwest, through a central angle of 16°40'42" (Chord bears S77°02'43"E, 1064.53 feet) a distance of 1068.30 to the East line of said Parker Donation Land Claim; thence along said line, S22°17'56"W, 480.24 feet to the Point of Beginning.

Containing 918,308 Square feet (21.081 Acres.)

Legal Descriptions provided by KC Development, LLC, dated August 12, 2020

## EXHIBIT B – Port Waterfront Goals and Vision

The following Port Waterfront Goals and Vision were developed by the Port in 2018. They were included in the December 14, 2018 Developer RFQ and in the April 2020 Memorandum of Understanding between the Port and RKM Development.

- Preserve the “Character of Washougal”
  - Small town character
  - Outdoor recreation
  - Natural scenic beauty
  - Safe and family-friendly environment
  - Youth and future generations
- Keep Waterfront Accessible to the Public:
  - Waterfront Greenway:
    - Peninsula developed as a park
    - 10'-12' Trail developed along shoreline for public access to downtowns via pedestrian and bike
    - Landscape Buffers between trail and commercial development for people to congregate and maintain natural setting while walking the trail.
  - Play Areas for children
  - Plazas
- Support a natural habitat, environmental stewardship and protective views
  - View Corridors
  - Support clustering development into designated locations
  - Limit height of development to maintain views
  - Main Street Look/Village-Type Feel
- Ensure a clear physical and emotional connection to and from downtown as well as the rest of the community
  - Compliment not Compete with downtowns
  - Wayfinding Signage
  - Ample Community Space that would promote activity throughout the development
  - Ample Pathways and Trails
  - Events
- Incorporate art, history and culture to the Waterfront site
  - Historical Interpretive Signs
  - Tactile Arts
  - Performing Arts
  - Art Spaces
- Tourist/Regional Draw – develop something that differentiates us from other developments—“a destination” that attracts people and dollars from outside the community—at this gateway to the Gorge.

- Mixed Uses:
  - Desirable Uses that create 18-hour activity
    - Restaurants
    - Retail
    - Commercial
    - Office Space
    - Residential
    - Hotel
  - Undesirable land uses: No Big Box Store or Strip Mall
  - Adequate parking for land uses and public access
- Market Reality
  - Land use plan enables the long-term economic sustainability of the area and is financially feasible for the Port's private development partners.
- Fiscal Responsibility
  - Waterfront development should be completed in a fiscally responsible manner, that generates a return on Port investment.
- Timing
  - This is a long-term project – build out of all 20+ acres may take 10 years or more.
  - However, the Port has near-term expectations for action, and would like to see groundbreaking for some new development within the next 24 to 36 months.

EXHIBIT C – Master Plan [RKM – need to update]



#### EXHIBIT D – Master Plan Documents

1. Port Waterfront Design Standards, YBA Architects, [REDACTED] 2020. [We need to include the date and see this final]
2. DEVELOPMENT AGREEMENT; Parties: Port of Camas-Washougal and City of Washougal; dated Month Day, 2020; Clark County Recording Number X. [We need to include the date and see this final]
3. FIRST AMENDMENT TO SITE INFRASTRUCTURE DEVELOPMENT AGREEMENT & COVENANTS RUNNING WITH THE LAND; Parties: Port of Camas-Washougal and Parkers Landing, LLC; dated Month Day, 2020; Clark County Recording Number X. [We need to include the date and see this final]
4. SECOND ADDENDUM TO AMENDED AND SUPERSEDING DEVELOPMENT AGREEMENT; Parties: City of Washougal, Washington, Port of Camas-Washougal, and Parkers Landing, LLC; dated Month Day, 2020; Clark County Recording Number X. [We need to include the date and see this final]
5. Site Infrastructure DA & Covenants Running with the Land, Clark County Recording Number, 5531754, dated 7/20/2018.
6. First Addendum to Amended and Superseding DA, Clark County Recording Number, 5531755, dated 7/20/2018.
7. First Addendum to Amended and Superseding DA, Clark County Recording Number 5531769, dated 7/20/2018.
8. Amended and Superseding Development Agreement Clark County Recording Number 5104756, 9/8/2014.
9. Amended and Superseding Development Agreement, Clark County Recording Number 5019502, 9/23/2013.
10. Development Agreement, Clark County Recording Number 4864422, dated 5/19/2012.
11. Development Agreement, Clark County Recording Number 4857873, dated 5/19/2012.

## EXHIBIT E – Background Information

1. Archaeological -Cultural Resource Reports
  - Cultural Resource Reconnaissance, Archaeological Investigators NW (August-2011)
2. Department of Ecology Cleanup Plan
  - Construction Completion Report, Maul Foster & Alongi (MFA) (May-2015)
  - Draft Ecological Cleanup Plan, MFA (May 2013)
  - Draft Focused Site Assessment Report, MDA (January 2012)
  - Geophysical Site Investigation, Zonge International (July 2013)
  - Geotechnical Evaluation, Apex (April 2014)
  - Soil Management and Cap Maintenance Plan, MFA (March 2015)
3. Engineering
  - Black Pearl Geotechnical Report, PBS Engineering (June 2010)
  - Traffic Study, Kittleson & Associates (March 2013)
  - Shoreline Ordinary Highwater Survey, WSP (formerly Berger Abam) (August 2014)
  - Site Utility Documentation, PBS Engineering (June 2018)
  - Waterline Infrastructure, PBS Engineering (June 2018)
  - Waterfront Sewer PBS Engineering (June 2018)
4. Property Information
  - Hambleton Site Survey, LSE (December 2000)
  - Inlaid survey with Google Earth, KC Development (January 2017)
  - Site Survey, KC Development (April 2020)
5. Market Analysis
  - Parkers Landing: Waterfront Market & Development Scenarios Analysis ED Hovee, (March 2014)
  - Highest and Best Use Analysis for Parkers Landing Johnson Economics (September 2016)
  - Market Analysis Update, Leland Consulting Group, (February 2019)
6. Land Value Analysis
  - Port of Camas-Washougal, Integra Realty Resources (May 2017)
7. Washougal Waterfront, a Community Connected PSU Study, Port of Camas-Washougal (June 2014)

## EXHIBIT F – Master Development Schedule

### Master Development Schedule (MLA)

Milestone		MLA Section	Min. Size (Acres)	Date	Cumulative Years	Net Developable Land		Permitting & Construction (Months)	CO/ End of P&C Period
						Leased	Unleased		
Effective Date of MLA	Day # 1			<b>11/15/2020</b>		-	<b>17.08</b>		
Phase 1 lease execution	Within 6 months of Effective Date of MLA	3.1; 5.1.2	2.4	5/16/2021	0.5	2.4	14.7	36	5/16/2024
	Shall include City Streets A, 2, and 4; and complete utilities for Property	4.19				2.4	14.7		
	Shall include at least one restaurant	4.19				2.4	14.7		
Next Phase lease execution	Within 2 years of Phase 1 lease execution	3.1; 4.12	1.2	5/17/2023	2.5	3.6	13.5	24	5/16/2025
Subsequent phases	Each subsequent Year	3.1	1.2	5/16/2025	4.5	4.8	12.3	24	5/17/2027
		3.1	1.2	5/17/2027	6.5	6.0	11.1	24	5/16/2029
		3.1	1.2	5/16/2029	8.5	7.2	9.9	24	5/17/2031
		3.1	1.2	5/17/2031	10.5	8.4	8.7	24	5/16/2033
		3.1	1.2	5/16/2033	12.5	9.6	7.5	24	5/17/2035
		3.1	1.2	5/17/2035	14.5	10.8	6.3	24	5/16/2037
Buildout required	Within 15 years of Effective Date of MLA	3.1	6.3	11/15/2035	15.0	17.1	-	24	11/15/2037

This Master Development Schedule is subject to modification if the Parties exercise the options to extend under this Agreement.



## POLICIES & PROCEDURES MANUAL

Section:	EXECUTIVE POLICY & PROCEDURE	Revision Date:	01/06/2021
Subject:	COVID-19 Sick / Family Member Sick / Exposure / Secondary Exposure / Flying Out of State / Vaccine	Adoption Date:	05/02/2020

### **COVID-19 Sick / Family Member Sick / Exposure / Secondary Exposure / Flying Out of State**

The Port of Camas-Washougal considers the health and safety of our employees and their families our priority. With that in mind, we would like to provide you with the following information regarding feeling sick, exposure, secondary exposure, taking care of family member or being diagnosed with COVID-19, and flying out of state.

#### **Sick Employee**

Do not come in to work if you are not feeling good. Even if you do not have a fever. Monitor your symptoms and keep your Supervisor or Human Resource Manager informed. You will need to identify all individuals who worked in close proximity (within six feet for 15 minutes) in the last 14-days. This also includes visitors, vendors and customers. You will then need to self-isolate for the next 3 days monitoring your symptoms. If further symptoms occur, then you will need to quarantine yourself for 14 days. You will also need to go to your doctor and if available take a COVID-19 test. If your test is positive you will need to quarantine. Please notify your Supervisor or Human Resource Manager when you know the test results. While you are quarantined you will still need to complete your Daily Health Check. If you get a negative test, you will still need to stay home until your symptoms have stopped and you do not have a fever for 24 hours. If you tested negative, have no symptoms and no fever than you can come back to work before your quarantine is over. Coming back, you will either work at the Port isolated from other employees or work from home. This will continue until the end of your quarantine

If you are an essential employee that has no symptoms but are quarantined for the possible 14-day period and need to complete an essential job that can only be completed at the Port office:

- Employee will notify Supervisor and Human Resource Manger to schedule a safe time to enter the office.
- Employee will be responsible for cleaning and disinfecting upon leaving the office. Limit what is touched. When leaving wipe done all doorknobs and light switches if touched on the way out.



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### **What if I worked with a sick Employee? \*Exposure\***

If you worked with the sick employee, you will be notified of the possible exposure. You will then either work at the Port isolated from other employees or work from home. If you start feeling sick do not come in to work and notify your Supervisor or Human Resource Manager.

### **What if I had Exposure/Secondary exposure directly with someone with COVID-19?**

Call your Supervisor or Human Resource Manager immediately. Do not come into work to notify the Port of this information. You will then either work at the Port isolated from other employees or work from home. This will be for the duration of the 14-day quarantine period. If you start feeling sick do not come in to work and notify your Supervisor or Human Resource Manager.

### **Watch for symptoms**

People with COVID-19 have had a wide range of symptoms reported – ranging from mild symptoms to severe illness.

Symptoms may appear **2-14 days after exposure to the virus**. People with these symptoms may have COVID-19:

- Cough
- Shortness of breath or difficulty breathing
- Fever
- Chills
- Muscle pain
- Sore throat
- New loss of taste or smell

This list is not all possible symptoms. Other less common symptoms have been reported, including gastrointestinal symptoms like nausea, vomiting, or diarrhea.

**\*\*In all cases, follow the guidance of your doctor and local health department.** The decision to stop home quarantine should be made in consultation with your healthcare provider and state and local health departments. Some people, for example those with conditions that weaken their immune system, might continue to shed virus even after they recover.



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### **Employees who need to take care of a Family Member with COVID-19 Living/Not Living with them:**

Notify their Port Supervisor or Human Resource Manager. If you need to take care of a family member living/not living with you that has tested positive for COVID-19 you will be expected to work when possible, if you have a position that enables you to do so. This will be for the duration of the 14-day quarantine period. While you are taking care of your family member, you will still need to complete your Daily Health Check.

Returning to work you will either work at the Port isolated from other employees or work from home if you have a position that enables you to do so. If you start feeling sick do not come in to work and notify your Supervisor or Human Resource Manager.

### **Employees who have a Family Member at home with COVID-19 should:**

Notify their Port Supervisor or Human Resource Manager. If you have no symptoms, then you will be expected work at the Port isolated from other employees or work from home if you have a position that enables you to do so. This will be for the duration of the 14-day quarantine period.

If you start feeling sick do not come in to work and notify your Supervisor or Human Resource Manager.

### **Employees Flying out of State or Country**

Notify their Port Supervisor or Human Resource Manager.

Upon returning to work you will be expected work at the Port isolated from other employees or work from home if you have a position that enables you to do so. This will be for the duration of the 14-day quarantine period.

If you start feeling sick do not come in to work and notify your Supervisor or Human Resource Manager.



## POLICIES & PROCEDURES MANUAL

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### **Working Isolated Employee**

Employee will work out of the Port Administrative Office.

They will be using the Administrative Office lunchroom for lunches and computer work.

The women's bathroom will be turned into a unisex bathroom until the isolation period is over. The men's bathroom will be also turned into a unisex bathroom for Administrative Office employees to use. Do not use the women's bathroom as this will be for the isolated employees. This will avoid any Port Administrative Office employees encountering the isolated employees.

**\*A sign will be above the key pad that is next to the bathroom doors that you can stick on the door when in use.\***

All Administrative Office employees will need to enter the building through the front doors only.

The isolated employees will enter the building through the backdoor. Again, this will avoid any Port Administrative Office employees encountering the isolated employees. There will be a sign on the back door as a reminder that we are under COVID-19 protocol. The COVID-19 protocol sign will be removed when the isolation period is over.

### **Coming back after quarantine**

Employees coming back to work after the possible 14-day quarantine that had no symptoms or mild symptoms or tested positive will need to complete a COVID-19 Employee Self-Certification to Return to Work form.

### **Do I have to use my sick leave?**

The Families First Coronavirus Response Act (FFCRA or Act) required certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19.

These provisions will apply from April 01, 2020 through December 31, 2020 and are no longer in effect. The Port will monitor if future federal action reinstates this provision.



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### **Do I have to use my sick leave? Con't**

Paid Leave Entitlements: Up to two weeks based on their regular rate of pay. This means you would not have to use your sick leave for the first two weeks.

To find out more information on FFCRA or Act, please see the attached copy. If you need more information, contact the Human Resource Manager.

### **Vaccine**

The Port is implementing a voluntary vaccination policy regarding COVID-19 vaccination(s) for employees. In accordance with the Port's duty to provide and maintain a workplace that is free of known hazards, we strongly encourage employees to receive this vaccination to minimize the risk of infectious disease in our workplace. In making this decision, the Port reviewed recommendations from OSHA, CDC, EEOC, ADA, Washington State Health Department.

Employees may obtain the vaccination wherever they choose. The Port will pay for the Employees time to get vaccinated off-site during normal working hours.

The Port will send out vaccine information from time to time. This will keep employees informed of vaccine information, places to register to get vaccinated and places to get vaccinated.

Should you have any question regarding the Vaccine addition to this policy please contact the Human Resource Department Manager.

**LEASE  
BUILDING 9**

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 Intech Enterprises, Inc., 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. 9 and adjoining yard area, located at 3825 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 March 1, 2021 and shall terminate on February 28, 2022. 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 3 years upon the following conditions. Each such 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. Each 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 3/1/21 to 2/28/22: \$8,970.00 per month

**Extension Period:**

Rent for 3/1/22 to 2/28/23 \$9,320.85 per month

Rent for 3/1/23 to 2/29/24 \$9,686.70 per month

Rent for 3/1/24 to 2/28/25 \$9,909.80 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 1<sup>st</sup> 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.

At Lessee's option, rent and leasehold excise tax may be paid by an American Express or other credit card acceptable to Lessor, provided that Lessee assume and pay at the point of payment any fee or service charge incurred by Lessor from such method of payment.

**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 \$10,121.75 and \$500.00 towards a total security deposit in an amount equal to \$10,121.75 (1 month rent and leasehold excise tax), and Lessee shall make additional minimum payments of \$500.00 each month with rent and tax until the total security deposit is paid in full. 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 general office, refurbishing and storage of equipment sold in the course of Lessee's business as an industrial equipment broker, 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. In addition, Lessee may store up to 6 containers and 2 covered storage racks in the rear yard area designated yellow in Exhibit A. 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.

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 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: Intech Enterprises, Inc.  
3825 Grant Street  
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.

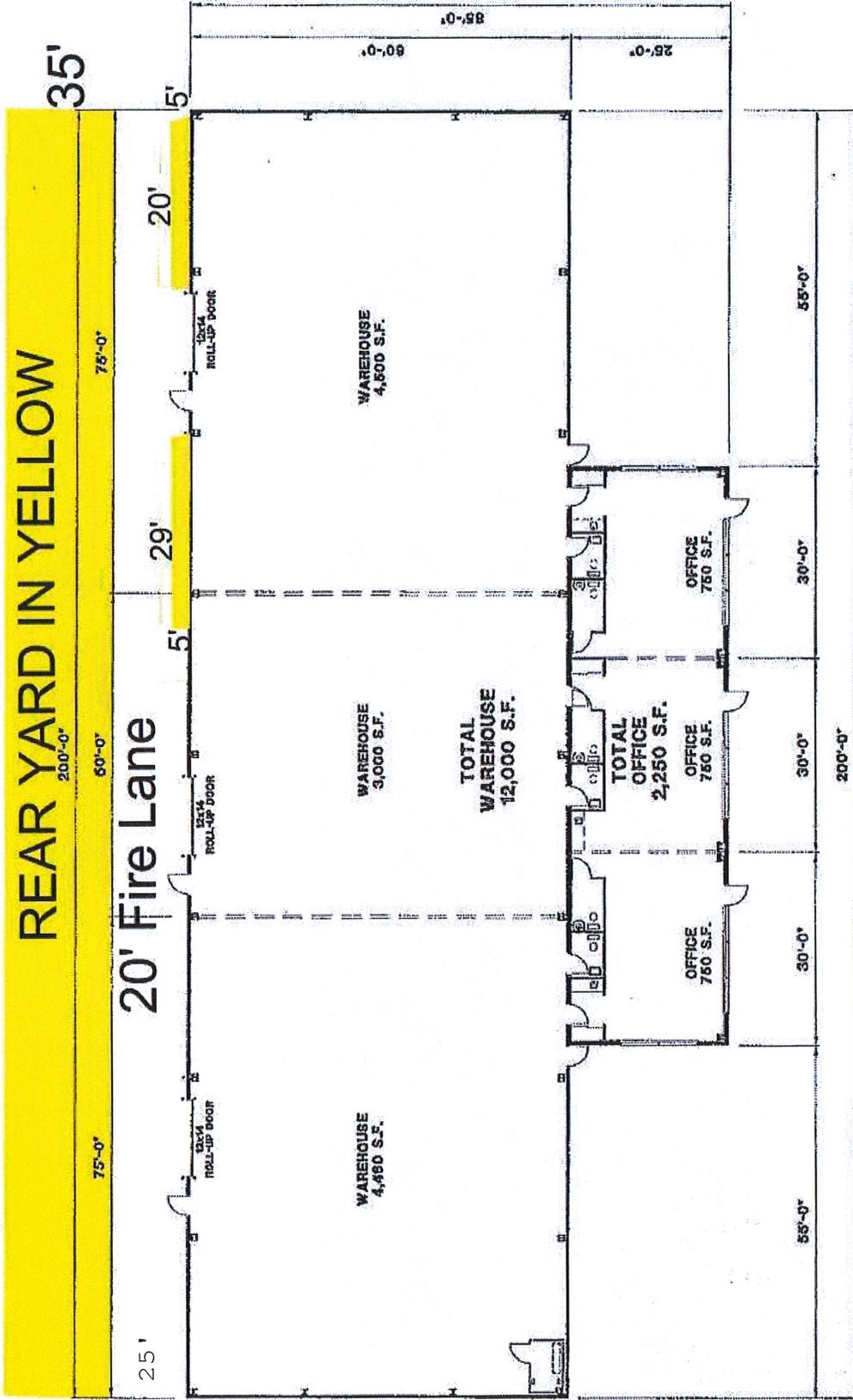
**SIGNATURES ARE ON NEXT PAGE**



# Exhibit A

200'

REAR YARD IN YELLOW



WILSON ASSOCIATES  
 ARCHITECTS & PLANNERS A.I.A.  
 404 E 15th ST. #5 VANCOUVER WA 98663  
 (360) 696-4722



EXHIBIT 'A'  
 PORT OF CAMAS/WASHOUGAL  
 BUILDING #9  
 3825 J. GOONT  
 WASHOUGAL, WA  
 98671



EXHIBIT 'A' BLDG 9  
3825 S. GRANT ST.  
WASHOUGAL, WA 98671

**MINUTES OF THE ANNUAL MEETING OF THE BOARD OF DIRECTORS  
of the  
PUBLIC INDUSTRIAL CORPORATION  
PORT OF CAMAS WASHOUGAL  
March 4, 2020**

By: Yvette Winden, Executive Assistant

A meeting of the Board of Directors of the Public Industrial Corporation (PIC) of the Port of Camas-Washougal was held at the Port Offices, 24 South 'A' Street, Washougal WA, on Wednesday, March 4, 2020, at 6:17 p.m., during a recess of the regular meeting of the Commissioners of the Port of Camas-Washougal. It was noted that proper notice of the meeting date and time had previously been provided.

PRESENT: Directors Larry Keister, John Spencer and Cassi Marshall; Port Chief Executive Officer David Ripp; Port Executive Assistant Yvette Winden; Director of Operations Kim Noah; Port Director of Planning and Development Mark Miller; Port legal counsel, and members of the press and public.

The reading of the Minutes of the annual meeting of February 4, 2019 was dispensed with, it being noted that a copy had previously been provided to all Directors. Upon motion by Director Keister and seconded by Director Spencer it was unanimously declared to be the Order of the Board to adopt the minutes from the February 4, 2019 annual meeting as presented.

It was moved by Director Spencer, seconded by Director Marshall and unanimously declared to be the Order of the Board to nominate and elect the following officers for the Public Industrial Corporation of the Port of Camas-Washougal for calendar year 2020:

President:	Larry Keister
Vice-President:	John Spencer
Secretary-Treasurer:	Cassi Marshall

Brief discussion followed on the purpose of PIC.

There being no further business of the Public Industrial Corporation, the meeting was adjourned at 6:22 p.m.

**PUBLIC INDUSTRIAL CORPORATION**

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Directors