

**Memorandum of Understanding (MOU)  
Between the Port of Camas-Washougal and RKm Development, Inc.  
For the Development of the Camas-Washougal Waterfront**

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THIS MEMORANDUM OF UNDERSTANDING (“MOU”), dated this \_\_\_ day of April, 2020 (“**Effective Date**”) is entered into among the Port of Camas-Washougal, a Washington special purpose public port district (“**Port**”) and RKm Development, Inc., an Oregon corporation (“**Developer**” or “**RKm**”). The Port and RKm are referred to collectively as the “**Parties**” and individually, a “**Party**.”

**Recitals**

- A.** Port owns real property and rights appurtenant thereto, located on the Columbia River, approximately 1 mile west of downtown Washougal, in the City of Washougal (“City”), County of Clark, State of Washington (hereinafter referred to as **the “Property”**). The Property is shown in **Figure 1** and is sometimes referred to as the Hambleton Site.
- B.** Port acquired the Property for the purpose of creating a catalytic mixed-use development in partnership with a private developer. The site 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 design and function for the development is intended to honor the natural beauty and history of the site and the community, as well as supporting the creation of a local and regional identity for the Cities of Washougal and Camas. The Port’s Waterfront Vision and Goals are shown in **Figure 2**.
- C.** Since acquisition, the Port has 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.

- D. 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. Port recognizes that developments of this nature are complex from a variety of standpoints; and further recognizes that Developer has demonstrated a strong track record of financing, building, and operating this type of project.
- E. This MOU confirms the basis upon which the Parties are prepared to negotiate the terms of future agreements, which the Parties expect to include a Master Leasing Agreement ("MLA") multiple Ground Leases, and potential sale of no more than 25% of the Net Developable Property (as that term is later defined herein) to Developer to provide for the development of the Property (**the "Project"**), all of which must be approved by the Port of Camas-Washougal Commission (the "Commission"). This MOU is not intended to address commitments made by any other organization, agency or institution. It is the intention of the Parties to enter into an MLA in order to more formally document their commitments.
- F. The Parties acknowledge that the COVID-19 was declared a national emergency by the President of the United States on March 13, 2020. Coronavirus are a group of viruses that can cause respiratory disease, with the potential to cause serious illness or loss of life. The unknown duration of the COVID-19 Pandemic (the "**COVID-19 Pandemic**") may have a significant impact on the Parties ability to accomplish the goals of this MOU in the timelines set forth and the Parties agree to account for such impacts as described herein.

The terms of this Agreement are as follows, and only the terms of Section 2 are binding:

## 1. The Waterfront Project Design and Implementation

- 1.1. As described in the Port's Vision and Goals statement, **Figure 2**, the Property's future development is intended to retain public access to the Waterfront, support the natural habitat, ensure a connection with the downtowns of Camas and Washougal, and establish a desirable mix of uses that create 18-hour activity.
- 1.2. This vision is physically manifested by the Waterfront Project Design (the "**WPD**"), **Figure 3**, that was co-designed by the Port and Developer, based on extensive input from the Camas-Washougal community and due diligence by both Parties. The WPD is also known to the Port Commission as the 2019 "**Master Plan**."
- 1.3. Timeframe.
  - 1.3.1 **Long Term.** The Parties view the build out of the WPD as a long-term project that may take place over 15 years or more, as described in more detail in Section 5. Over this time period, the WPD may be amended in recognition of new goals, market realities, or other new conditions. Therefore, the Parties view the WPD as a high-level framework of the Parties' aspiration for the Project, not a precise visualization of the type of development that is required or will be implemented.
  - 1.3.2 **Near Term.** While the Parties understand that build out of the WPD is a long-term project, the Parties' goal is to begin the Project in the next few years. Specific requirements for the Project buildout time frame are in Section 3.

- 1.4. Components of the full Waterfront Development. As the Port's Waterfront Vision and Goals turn into specific development, particular components are contemplated for measuring success toward achieving the vision and goals. Generally the following components are intended to be developed on the Waterfront; as generally shown on and adjacent to the Property in **Figure 4**.
- 1.4.1 **Port Land: Riverfront, Parks, and Open Spaces.** These are the subareas of the Property that will be owned in perpetuity by the Port and not subject to a ground lease or Developer-led development. These subareas may include parks, open spaces, plazas, parking lots, riverfront/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 final delineation of the Port and Developer Land will be surveyed, and exact boundaries will be identified in the MLA.
- 1.4.2 **Developable Land.** The components of the gross Developable Land on the Property are shown in **Figure 5** and consist of:
- i. City Streets to be included in City of Washougal Capital Improvement Plan ("**CIP**") (collectively "City Streets").
    1. The Parties expect that the City will place City Streets shown on Figure 5 on its CIP and Transportation Improvement Plan ("**TIP**"), which will make the City Streets eligible for City Transportation Impact Fee ("**TIF**") credits. Developer will thus 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, and
      - b. Other features that are generally publicly accessible and which will be built to current City of Washougal standards, to new standards that are acceptable to the City and defined within new agreements, or the standards established in the Port's existing Development Agreement with Washougal.
      - 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.
      - d. Stormwater facilities; sewer facilities; and other utilities.
    3. The Parties expect that these City Streets and associated infrastructure will 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.

ii. **Potential City Street.** One north-south “Potential City Street” is shown in **Figure 5**. Developer will 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 City CIP, the City has not, indicated willingness to place this street on its CIP or TIP, or make the street TIF creditable.

iii. **Net Developable Land**

1. Net Developable Land is the land that Port will ground lease or sell to Developer based on the draft terms set forth below, and subject to the terms of the contemplated MLA and Ground Lease(s).
2. 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.
3. Except where otherwise noted, all buildings and associated above and below ground site improvements on the Property will be funded, built, owned, and maintained by Developer.
4. 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 in the MLA and Ground Lease(s); and other binding regulation.
5. The current WPD envisions approximately 810,000 square feet of gross building area in all buildings; however, no maximum building area is implied by this MOU and the gross building area could be well in excess of 1 million square feet. The Parties envision that the WPD shall be entitled to permit no less than 600 dwelling units. The Parties envision that the WPD shall be entitled to permit residential densities at individual buildings of 100 dwelling units per acre or more. The Parties envision that building heights of 75’ shall be allowed.

1.1.1. Buildings will be attractive and well designed; incorporate high quality materials; and incorporate design features that reflect the best architectural aspects of downtown Camas and Washougal, as well as more modern interpretations of small-town, downtown architecture. The Parties may elect to adopt Design Guidelines to guide the design of future buildings.

1.4.3 **Potentially Developable Land.** The Best Western Inn is currently accessed through the South 2nd Street right of way. The Parties are unsure of the ownership of the South 2nd Street right of way, however potential owners may be the City or the Washington State Department of Transportation (“**WSDOT**”). The Parties intend to propose relocation of the South 2nd Street right of way from its current location to the configuration shown in **Figure 5**, with the Best Western Inn retaining a long-term right of access to South 2nd Street through a portion of the land labelled “Potentially Developable Land” on **Figure 5**. The Parties agree to work together to secure the use of this this Potentially Developable Land for parking, access for Best Western patrons,

and/or other uses upon relocation of 2nd Street South. The Potentially Developable Land is not owned by the Port and it is not included in the Net Developable Land area. However, if such Potentially Developable Land is made available for Development, the appropriate adjustment to Port's Net Investment and Base Land Value will be made.

- 1.4.4 **Offsite Infrastructure.** With the exception of the stormwater outfall, which is addressed in the Development Agreement between the Port and Parker's Landing LLC, the Parties are not currently aware of any offsite infrastructure that is required as a part of the WPD. The responsibility for permitting, funding, and building the offsite stormwater outfall and any other later-identified offsite infrastructure will need to be allocated between the Parties in the MLA or other agreements.

## 2. Actions to be Completed prior to Master Leasing Agreement

- 2.1. **Prior to Execution of the MLA.** The following actions will be undertaken by the Parties upon execution of this MOU in order to bring the Property to a "shovel ready" condition. So long as the conditions precedent in this Section 2.1 of the MOU are met and this MOU has not be terminated under Section 8, the actions in Sections 2.2 to Section 2.3.1.1 of the MOU must be completed prior to the execution of any MLA or Ground Leases, or be incorporated into a MLA to provide the regulatory entitlements, agreements, and other precursors to development. For purposes of this MOU, the Parkers Landing LLC Development Agreement and other development agreements affecting the property are comprised of documents recorded with Clark County, Washington Auditor's Office as Recorded Document Numbers 4864422, 5531755, 5531769, 5019502, 4857873, 5531754. Developer shall provide the Port with written notice, via email or letter, of acceptance of the amendment(s) to the Parkers Landing LLC Development Agreement and other development agreements affecting the Property prior to the Port finalizing such amendment(s) with the City of Washougal or other parties.
- 2.1.1 The Parties' goal is to complete all of the actions in this Section 2 by December 31, 2020. A conceptual and non-binding timeline showing actions to be completed in 2020 and thereafter is shown in **Figure 6**. While this timeline is conceptual only, it illustrates the approximate order and timing of events described in this Section 2 and other sections of the MOU. Because approvals or actions are in some cases required from other parties (e.g., City of Washougal, Parkers Landing LLC) in order to complete some of the actions described below, the Parties acknowledge that neither Party can guarantee these approvals.
- 2.2. **Port: Actions** that the Port is responsible for funding and completing prior to a Port-Developer Master Leasing Agreement. The cost of the actions described in Section 2.2 may be added to the Port's Net Investment and Base Land Value.
- 2.2.1 Revise and Execute Amended Agreement(s) between Port and Parkers Landing LLC. The purpose of these revised agreements will be to allow development of all aspects of the WPD. This will require revisions to the terms of the agreements listed and numbered in Section 2.1 above. The purpose of these revised agreements will be to allow development of all aspects of the WPD generally as conceptually described in Section 1, and in Section 1.4.2. This task shall include, but not be limited to, updating the recitals in Recorded Document 5531769 to reflect contemplated amendments to the "Companion Agreement" to allow residential use, and in Recorded Document

5531755 to modify the residential restriction imposed on the Port Property under Section 5.

- 2.2.2 Revise and Execute Amended Development Agreement(s) between Port and City. The purpose of these revised Agreements will be to allow development of all aspects of the WPD as conceptually described in Section 1 herein, and in Section 1.4.2 in particular. This will require revisions to the terms of the documented listed and numbered in Section 2.1 above.
- 2.2.3 Prepare **SEPA Checklist** as addendum to Port-City Development Agreement(s), if required by City.
- 2.2.4 Prepare a revised **Traffic Impact Analysis**, as addendum to Port-City Development Agreement(s), if required by City.
- 2.2.5 Preparation of a **Contaminated Media Management Plan (“CMMP”)** that will guide development of the Waterfront. The CMMP is subject to approval by Washington Department of Ecology (“Ecology”).
- 2.2.6 Either a) secure approvals from **WSDOT** for a realigned South 2<sup>nd</sup> Street and new ingress/egress point to the Marina Way Roundabout, or b) in consultation with Developer, select a WPD option that does not require realignment of this roadway. The Parties agree that although the Port will take the lead in securing any WSDOT approval and will consult with Developer on a WPD option that does not require realignment of this roadway, the costs associated with either option described herein shall be borne by the Developer as a part of Developer’s cost to build City Streets and associated infrastructure.
- 2.3. **Developer:** Actions that Developer is responsible for funding and completing prior to the Parties entering the MLA.
- 2.3.1 Within six (6) months of execution of this MOU, Developer will make one or more presentations to Port Commission and Port Staff summarizing Developer’s plans for Phase 1 of development and activities Developer proposes to complete between 2020 and 2023. Phase 1 includes all land and buildings to be completed as a part of Ground Lease 1, and these terms are further defined in Section 3.1.2. In addition, if desired by Developer, Developer will also present information about conceptual plans for Future Phases of development in these presentation(s). If permitted, some of this content may be presented in Executive Session. Developer will share digital presentation files and/or other documents with the Port that convey a summary of the information in this section 2.3.1. All documents may be conceptual/schematic in nature—in other words, further subsequent design refinements will be made. Developer’s presentations and related materials should include the following:
  - i. Proposed area in which Developer proposes that Phase 1 development will take place, which location shall be subject to the Port’s concurrence.
  - ii. Conceptual site plans for Phase 1 showing types of uses proposed for each building, and associated quantification (“quantums”) of development (e.g., the number of units, amount of square footage, parking, etc.). Conceptual site plans for Phase 1

may include the location of one or more restaurant(s). Location of ground floor commercial spaces. If possible, other visualizations such as massing, sections, etc.

- iii. Conceptual infrastructure, streetscape/plaza, and roadway plans for Phase 1.
- iv. Proposed timeline for Phase 1 including permitting, groundbreaking, construction, certificate of occupancy, and beginning of operations/opening day.
- v. Summary of Developer's "business case" for development; in other words, Developer's understanding of reasons that Phase 1 development is financially feasible and will be supported by market demand.
- vi. Summary of Developer's major sources of funds for Phase 1 activities.

### **3. Master Leasing Agreement and Ground Lease(s)**

3.1. Following completion of the actions described in Section 2 above the Parties expect to be prepared to enter into Port-Developer agreements authorizing development of the Property. The Parties currently anticipate the following agreements:

3.1.1 **Master Leasing Agreement (MLA).** The Parties anticipate that the MLA will be executed within no more than 12 months of execution of this MOU. The MLA will:

- i. Encompass the entire gross Developable Land Area (approximately 21.4 acres).
- ii. Set forth the binding Land Transaction Terms (see below) and other terms for subsequent Ground Leases.
- iii. Govern the relationship of the Parties for a period of approximately 15 years, with options to mutually extend.
- iv. Include remedies in the event that one or both Parties do not fulfill their obligations.

3.1.2 **Ground Leases and Phases.** The Parties anticipate multiple Ground Leases associated with full development broadly depicted in the WPD.

- i. The Parties anticipate preparing, modifying, and executing the first Ground Lease ("Ground Lease 1") in late 2020, in order to enable groundbreaking in 2021.
- ii. Ground Leases will:
  - 1. Each encompass one Phase of development.
  - 2. Ground Lease 1 will encompass Phase 1 of development. Pursuant to Section 5.3.3 herein, Developer shall develop not less than 2.4 acres of Net Developable Land during Phase 1. The Port's desire is that Developer will include at least one restaurant, and ideally more, as part of Phase 1; details will be negotiated in the MLA. Ground Lease 1 shall be executed within no more than six months following the execution of the MLA.
  - 3. Each subsequent Ground Lease will encompass a Subsequent Phase. During each Subsequent Phase, Developer shall develop at least one-half acre of Net

Developable Land. Developer is also required to lease or purchase land at the pace defined in Section 5.3 Development Time Period.

4. Be subject to the terms of the MLA unless otherwise noted.

3.1.3 **Purchase and Sale Agreement(s) (“PSA”).** If the Port elects to sell a portion of the Property, a PSA would govern the transfer as to that specific portion of the Property.

3.2. **Transaction Terms.** The transaction terms below represent the result of discussions between the Parties and the reasonable agreement between the Parties as to the terms of future land transactions (ground leases, sales, etc.). The Parties may modify the terms during negotiation of the MLA.

### 3.2.1 **Transaction Types**

- i. **Ground leases.** Except for those portions if any which the Port determines to sell to the Developer, the Port’s Property will be conveyed to Developer via ground leases (also known as land leases). The purpose is to generate a consistent, predictable, revenue stream for the Port over the long term.
  1. **Term.** The term of ground leases shall be 50 years, with three 10-year extensions that can be exercised by the Developer, assuming that the Developer is not in default on ground lease payments at the time of extension.
  2. **Unsubordinated.** The ground leases will be unsubordinated. In other words, the Port’s interest in the Property will not be subordinated to any debt.
- ii. **Property sales.** The Port may elect to sell some portion of the Property to Developer on a fee simple basis.
  1. The Port will not sell the land associated with Phase 1 of the Project. The Port may consider land sales 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.).
  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 the Project, subject to the limitations above.



### 3.2.2 Land Value for Ground Leased Land.

- i. **Port's Net Investment.** The Base Land Value per square foot 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 is \$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. The value per square foot of gross Developable Land is lower. Additional investments that are made by the Port following the execution of this MOU may be added to the Base Land Value including the cost of a) the actions listed in Section 2, b) subject to the mutual agreement of the Parties, other actions associated with securing full entitlements to build the WPD on the Property not already identified in Section 2 of this MOU, c) environmental remediation costs undertaken prior to execution of the MLA as identified in the CMMP, d) offsite costs that the Parties agree to prior to execution of the MLA, or e) other costs subject to the mutual agreement of the Parties.
- ii. **Annual Adjustments.** At the beginning of each year the Base Land Value for the Property and for each executed ground 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.
- iii. **Periodic Adjustments.** In addition to Annual Adjustments, a new Base Land Value or fair market rental value for the Property shall be periodically established via an MAI appraisal, at the Port's discretion ("**Periodic Adjustments**"). This MAI appraisal may occur every 10, 15, or 20 years, or at another interval to be determined during negotiation of the MLA.
- iv. **Ground Lease Rate.** The Ground Lease Rate shall be 6.25%.
- v. **Payment Beginning Date and Step-In Schedule.** For any given Phase of development, Developer's ground lease payment schedule will be as follows:
  1. **During Construction Period** (between groundbreaking and Certificate of Occupancy), 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 will be defined in the MLA. The purpose of this section is to eliminate risk to the Port associated with a partially built Phase. The 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 Construction Period shall be extended. The Construction Period for Phases of development following Phase 1 shall be no longer than 24 months, unless the Parties agree in writing that substantial progress continues to be made, and that the Construction Period shall be extended.
  2. **Following Certificate of Occupancy** (due three months after CO): \$1. This is the first ground lease payment for any given phase.

3. **Second Quarter** (due six months after CO): 33% of the full Ground Lease Rate listed above. For example, the Second Quarter Ground Lease Rate would be 2.0% if the full Ground Lease Rate was 6.0%.
  4. **Third Quarter** (due nine months after CO): 66% of the full Ground Lease Rate listed above.
  5. **Fourth Quarter** (due one year after the CO) and all quarters thereafter: 100% of the of the full Ground Lease Rate listed above.
- vi. **Leasehold Excise Tax.** Developer will pay to Port any Washington State Leasehold Excise Taxes due for any Phases of development for which Ground Lease(s) have been executed. The current Leasehold Excise Tax rate is 12.84% of any ground 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.
  - vii. **Quarterly Ground Lease Payments.** Developer's quarterly ground lease payment to the Port shall be calculated as follows:
    1. Base Land Value per square foot multiplied by the net developable square feet covered by the Ground Lease multiplied by Ground Lease Rate / 4 = Quarterly Ground Lease Payment.
  - viii. **Land Value for Property Sales.** For property sales, the Base Land Value shall be used, and shall be adjusted at the beginning of each year 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 Port may elect to conduct an MAI Appraisal prior to the time of sale in order to increase the Land Value only as it pertains to establishing Land Value for property sales.

#### 4. **Actions to be Completed following the Master Leasing Agreement**

- 4.3. **Developer:** Actions that Developer is responsible for funding and completing after the Parties enter the MLA
  - 4.3.1 **Site Plan Approvals from City.** Developer will responsible for submitting applications and securing site plan approval for each Phase of development pursuant to the Washougal Municipal Code ("WMC") Chapter 18.88 and/or other agreements identified in Section 2.1 that are in place at the time Developer seeks approval.
  - 4.3.2 Developer shall fund and build components of the Property as described in Section 1.4.2. including the Project components City Streets to be included in CIP and associated infrastructure, Potential City Street, and Net Developable Land.

#### 5. **Development Time Period and Phasing**

- 5.1. The Parties anticipate that both Developer and Port's roles and responsibilities will be refined and memorialized in the MLA and/or Ground Leases. Following completion of

the actions described in Section 2 above, the Parties expect to be prepared to enter into a mutually agreeable MLA and Ground Leases as described above.

## 5.2. Purpose

5.2.1 While the Port has a long-term time horizon to fulfill the Waterfront vision, the Port also wants RKM to develop the Waterfront within a reasonable time frame, in order to achieve its place-making goals for the community, and to generate ground lease revenue for the Port. Therefore, the Port needs to put limits on how slowly RKM can build out the Waterfront, and remedies (other courses of action) if RKM is unable to develop the Waterfront in the desired timeframe.

5.2.2 At the same time, RKM will likely desire flexibility. The economy, markets, and other unforeseen factors could change, and RKM cannot be held to an unreasonable development time frame—particularly if the economy is too weak to support new development.

5.2.3 This section attempts to balance the Parties' needs regarding phasing, timing, and remedies.

## 5.3. Development Time Period

5.3.1 As stated above, there are approximately 17.80 acres of net developable land within the WPD boundary.

5.3.2 The Development Time Period is defined as 15 years.

5.3.3 Therefore, Developer is required to ground lease (or purchase, per the terms above) at least 1.2 acres of the Property for every year that has transpired since the beginning of the Development Time Period.

i. The Parties may enter into Ground Lease(s) for multiple acres. If a Ground Lease encompasses multiple acres, it will meet Developer's leasing requirement for multiple years. For example, a 2.4-acre ground lease would satisfy the leasing requirement for two years.

ii. Each Ground Lease, whether for a small or large number of acres, shall be considered a "Phase" of development.

iii. Phase 1 of development must include a Ground Lease for at least 2.4 acres.

5.3.4 **Exceptions/Extensions.** This base Development Time Period shall be extended if there is a recession or other "force majeure" event, as defined in the MLA including strike, weather, flood, governmental restriction, unavailability of personnel or equipment, pandemic, acts of god or war, and the like, the Development Time Period shall be extended one (1) day for each one (1) day that Developer is prevented from performing due to force majeure. If the COVID-19 Pandemic, or any federal, state, or local action intended to address the spread of COVID-19, remains in place for more than two (2) weeks after the execution of this MOU, then one day will be added to any time requirement within this MOU for each additional day the COVID-19 Pandemic, or any federal, state, or local action intended to address the spread of COVID-19

continues. If the Parties conclude that the COVID-19 Pandemic or other force majeure has impeded Developer's ability to conduct planning for Phase 1 or any Subsequent Phase, then the Parties may agree in writing to further extend time requirements in the MOU. During a recession identified by the National Bureau of Economic Research (NBER), the requirement for Developer to ground lease (or purchase) land is paused. Thus, if there were a 2-year recession, the Development Time Period would be extended to 17 years. The process for the Parties to identify a force majeure and amend the Development Time Period should be set forth in the MLA.

5.3.5 The Development Time Period will start on the day that the Parties execute a mutually agreeable MLA. The Parties are required to reach agreement on the first Phase Ground Lease within six months after executing the MLA, unless this time period is extended by the Parties in writing.

5.3.6 **Remedies.** If Developer falls behind the Development Time Period described above, at any time following the completion of Phase 1, subject to a twelve (12) month notice and cure period in favor of Developer, Port has the right to ground lease or sell blocks to other parties. Developer's cure period may be extended by written agreement of the Parties. If Port ground leases property to other parties, Port or designee will be required to compensate Developer for the cost of one "half-street" of the on-site infrastructure and right of way built by Developer adjacent to the property in question.

## 6. Ongoing Operations and Maintenance ("O&M")

- 6.1. The Parties agree that operating and maintaining the Project such that it remains clean, safe, welcoming, inviting, and attractive over the long term is to the benefit of the Parties.
- 6.2. **Port Land.** As between the Parties, the Port will be solely responsible for operating and maintaining the Port Land shown in **Figure 4**, including parks, trails, open spaces, and associated parking lots, unless otherwise agreed by the Parties in writing.
- 6.3. **Developable Land.** Unless parts of this land 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 Developable Land shown in **Figure 4**. Operations and Maintenance will include landscaping, cleaning, and capital repairs of onsite infrastructure such as streets, sidewalks, and street furniture, and of onsite sewer and water lines built by Developer.
- 6.4. **Stormwater.** Port and Developer may share the costs of operating and maintaining the stormwater outfall, which is addressed in the Development Agreement between the Port and Parker's Landing LLC; such cost sharing will be addressed in the SIA, MLA, or other agreements.
- 6.5. **Special Events and Situations.** O&M related to other activities may be mutually agreed upon by the Parties. During special events such as festivals, farmers markets, concerts, etc. the Port and Developer may, in each Parties' sole discretion, collaborate to fund and manage operations and maintenance activities.

## 7. Other Issues to be Resolved in the MLA

- 7.1. Other issues that the Parties' believe will be relevant to development of the Property, but are not resolved in this MOU, should be addressed in the MLA. These issues may include:
  - 7.1.1 **Ground Leases** will be on the basis of Gross Developable Land (including Net Developable Area, City Streets, and Potential City Streets). However, Ground Lease payments will be calculated on the basis of Net Developable Area. This concept and any necessary calculations should be clarified in the MLA.
  - 7.1.2 **Periodic Adjustments (Appraisals).** Section 3.2.2.iii describes the Periodic Adjustments that shall be periodically established via a MAI appraisal, at the Port's discretion, every 10, 15, or 20 years. These Periodic Adjustments establish a New Base Land Value. The Port has stated its preference that a New Base Land Value shall not be less than the initial Base Land Value multiplied by all intervening Annual (CPI) Adjustments. RKM has stated a preference that there should be a limit to the amount or percentage that the land value can increase during a Periodic Adjustment process because a) RKM has a desire to minimize unexpected, large fluctuations in cost and b) RKM's investments may contribute to land value increases over time. The Parties agree to negotiate mutually agreeable terms for adjusting a New Base Land Value by Periodic Adjustments during the MLA process.
  - 7.1.3 **Restaurants.** The Port desires one or more restaurant(s) be included in Phase 1 of development. This will be discussed and negotiated with RKM.
  - 7.1.4 **Port Design Guidelines, Approvals, and Process.** The Port has identified the Sandy and Troutdale, Oregon, Design Guidelines as potential models.
  - 7.1.5 **Easements.** For example, to ensure long-term public access to the Port's Waterfront Park and trails.
  - 7.1.6 **Remedies**, in the event that one of the Parties does not fulfill the responsibilities described in this MOU.

## 8. General Provisions.

- 8.1. **Term of MOU.** The term of this MOU shall begin upon the Effective Date and terminate upon the earlier of: 1) written termination of this MOU by either Party according to the terms herein; or 2) upon execution of a MLA for the Project.
- 8.2. Termination.
  - 8.2.1 If Developer reasonably determines, at any time prior to the execution of the MLA, that the potential development of the Property by Developer is not in its best interest, Developer may terminate this MOU by providing thirty (30) days advance written notice to the Port.
  - 8.2.2 If Port determines, at any time prior to the execution of the MLA, that Developer has not satisfactorily completed the actions defined in Section 2.3, or if Port determines that Developer has not provided the input necessary to revise Agreements as described in Sections 2.1 and 2.2, then Port may terminate this MOU by providing ninety (90) days advance written notice to Developer, subject to a thirty (30) day notice and cure period

in favor of Developer.

8.2.3 If the Parties cannot reach agreeable terms on the MLA for any reason within twelve (12) months of execution of this MOU, then either Party may terminate this MOU by providing thirty (30) days advance written notice to the other Party. At any time prior to the execution of the MLA, the Parties may mutually agree in writing to terminate this MOU.

8.3. **Notice.** Unless otherwise specified in this MOU, all communications, notices, and demands of any kind under this MOU shall be in writing and delivered by (a) a nationally recognized overnight courier, or (b) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and as follows:

To the Port: Port of Camas-Washougal  
Dave Ripp, CEO  
24 S. A Street  
Washougal, WA 98671

with a copy to:

Carolyn A. Lake  
Goodstein Law Group PLLC  
501 South "G" Street  
Tacoma, WA 98405  
CLake@goodsteinlaw.com

To the Developer: RkM Development, Inc.  
Roy Kim  
15160 NW Laidlaw Road, Suite 108  
Portland, OR 97229  
Email: roy@centralbethany.com

With a copy to:

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

All notices shall be deemed effective upon receipt. Any Party may from time to time change its address for purposes of this Section by notice in writing to the other Party.

The Parties hereby agree to the terms of this MOU:

**DEVELOPER**

RKm Development, Inc.

An Oregon Corporation

By \_\_\_\_\_

Roy Kim

Managing Member

Date \_\_\_\_\_

**PORT**

Port of Camas-Washougal

A Washington Municipal Corporation

By \_\_\_\_\_

David Ripp

CEO

Date \_\_\_\_\_

9. Exhibits

Figure 1: The Property

“The Property” described in this MOU is the “Hambleton Site” shown below.



The Marina Site and Parkers Landing LLC Site are adjacent, related properties; however, they are not a part of the Property or Waterfront Project, except as they relate to the Property.



## Figure 2: Waterfront Goals and Vision

The following Waterfront Goals and Vision were developed by the Port and published as part of the December 14, 2018 Developer RFQ.

- 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

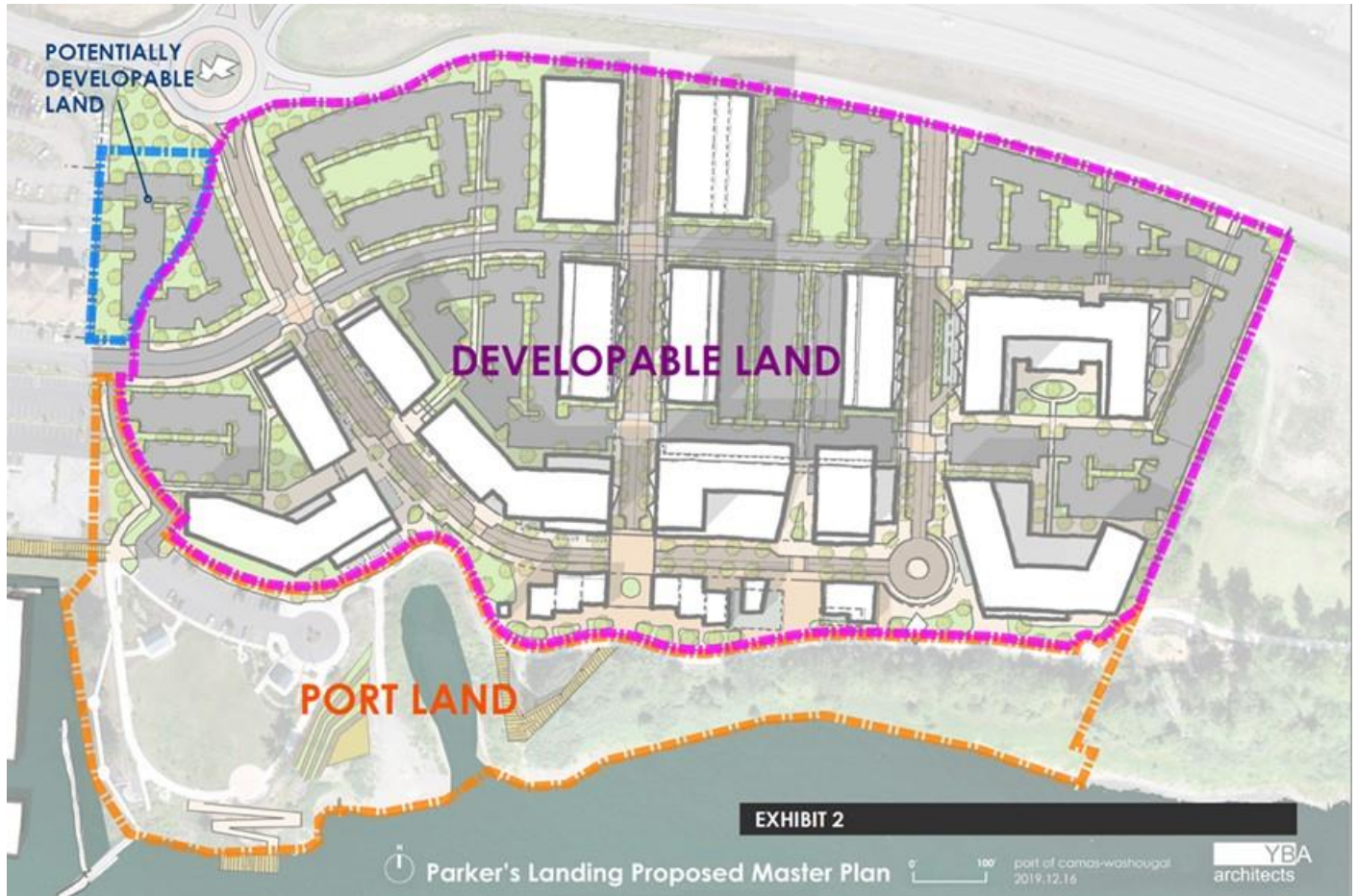
- Retail
  - Commercial
  - Office Space
  - Residential
  - Hotel
- Undesirable land uses: No Big Box Store or Strip Mall
- Adequate parking for land uses and public access
- Market Reality
  - Land use plan enables the long-term economic sustainability of the area and is financially feasible for the 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.

**Figure 3: The Waterfront Project Design**

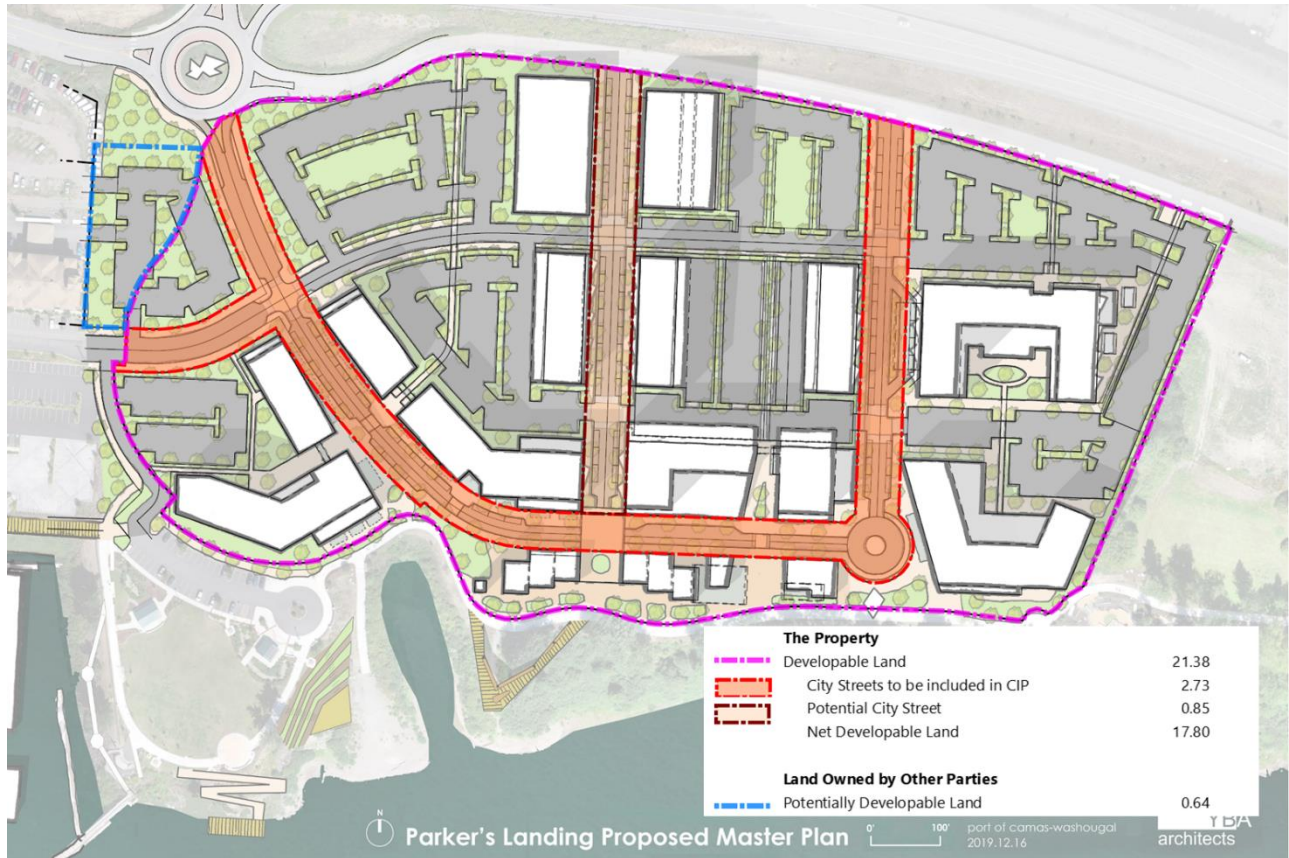
Site Plan Option D1, presented 12-16-2019 by YBA Architects to Port Commission.



Figure 4: Developable Land Subject to the WPD and Port Land Identified



**Figure 5. Conceptual Street Infrastructure and Net Developable Land**



**Figure 6. Conceptual Waterfront Development Project Schedule**

This project schedule is conceptual only and is not binding on either Party. The project schedule was prepared prior to the COVID-19 Pandemic, which may affect the timing of some processes.

