

# AGENDA

*Port of Kennewick  
Special Commission Business Meeting  
Tri-Cities Business & Visitor Center  
Bechtel Board Room  
7130 W. Grandridge Boulevard  
Kennewick, Washington*

Tuesday, September 10, 2019  
2:00 p.m.

## **I. CALL TO ORDER**

## **II. PLEDGE OF ALLEGIANCE**

## **III. APPROVAL OF AGENDA**

## **IV. PUBLIC COMMENT** *(Please state your name and address for the public record)*

## **V. CONSENT AGENDA**

- A. Approval of Direct Deposit and ePayments Dated September 4, 2019
- B. Approval of Warrant Register Dated September 10, 2019
- C. Approval of Special Commission Business Meeting Minutes August 27, 2019

## **VI. REPORTS, COMMENTS AND DISCUSSION ITEMS**

- A. Amendment of Goal 3 in CEO's 2019-2020 Goals and Objectives; Resolution 2019-20 (**LUCY**)
- B. West Richland Offer Update (**LUCY/AMBER**)
- C. Southridge Auction Services (**AMBER**)
- D. Amendment of DDM Investments (Cedars) Ground Lease; Resolution 2019-19 (**AMBER**)
- E. October 22, 2019 Commission Meeting (**LUCY**)
- F. Commissioner Meetings (formal and informal meetings with groups or individuals)
- G. Non-Scheduled Items

## **VII. OLD BUSINESS**

- A. Citizen Complaint
  - 1. Selection of Neutral (**LUCY**)

## **VIII. PUBLIC COMMENT** *(Please state your name and address for the public record)*

## **IX. EXECUTIVE SESSION**

- A. Potential Litigation, per RCW 42.30.110(1)(i) (**LUCY**)
- B. Real Estate, Minimum Price, per RCW 42.30.110(1)(c) (**AMBER**)  
*(Ask public if they are staying, and if not, where they can be located if the Executive Session ends early.)*

## **X. ADJOURNMENT**

***PLEASE SILENCE CELL PHONES***



# PORT OF KENNEWICK SPECIAL COMMISSION MEETING

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**AUGUST 27, 2019 MINUTES**

Commission President Thomas Moak called the Special Commission Meeting to order at 2:00 p.m. in the Bechtel Board Room located at 7130 West Grandridge Boulevard, Kennewick, Washington 99336.

## **The following were present:**

**Board Members:** Thomas Moak, President  
Don Barnes, Vice-President  
Skip Novakovich, Secretary

**Staff Members:** Tim Arntzen, Chief Executive Officer  
Tana Bader Inglima, Deputy Chief Executive Officer  
Amber Hanchette, Director of Real Estate and Operations  
Nick Kooiker, Chief Financial Officer  
Larry Peterson, Director of Planning and Development  
Lisa Schumacher, Special Projects Coordinator  
Bridgette Scott, Executive Assistant  
Lucinda Luke, Port Counsel

## **PLEDGE OF ALLEGIANCE**

Commissioner Moak led the Pledge of Allegiance.

## **APPROVAL OF THE AGENDA**

***MOTION:*** Commissioner Novakovich moved to approve the Agenda as presented; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

## **PUBLIC COMMENT**

No comments were made.

## **CONSENT AGENDA**

- A. Approval of Direct Deposit and E-Payments Dated August 19, 2019**  
Direct Deposit and E-Payments totaling \$58,397.13
- B. Approval of Warrant Register Dated August 27, 2019**  
Expense Fund Voucher Number 101348 through 101379 for a grand total of \$251,776.96
- C. Approval of Special Commission Business Meeting Minutes August 13, 2019**

***MOTION:*** Commissioner Barnes moved for approval of the Consent Agenda as presented; Commissioner Novakovich seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

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## NEW BUSINESS

### A. *Dave Mitcham, Cedars Lease Agreement*

Ms. Hanchette introduced Dave and Darci Mitcham, owners of Cedars Restaurant. The Mitcham's own the building; however, they lease the land and the east parking lot from the Port of Kennewick. Ms. Hanchette stated the Mitchams would like to update the Commission on the restaurant and discuss some lease items they would like to offer for Commission consideration.

Dave Mitcham thanked the Commission for the opportunity to speak today and introduced Carrie Lundgren of River Realty. Mr. Mitcham has worked with the Port for over four decades and is ready to sell Cedars and retire. Mr. Mitcham stated Carrie and Doug Lundgren would like to purchase Cedars; however, there is an issue with the lease escalation of approximately 30%, which could be a potential deal breaker. Mr. Mitcham stated regardless of the deal going through, he would face the same issues in the future as Mr. and Ms. Lundgren. Mr. Mitcham asked Ms. Lundgren to outline the details of the lease.

Ms. Lundgren thanked the Commission for allowing her the opportunity to speak and stated this is an opportunity to discuss the current land lease. The Mitchams and Lundgrens would like to re-open negotiations with the Port regarding the current ground lease. Ms. Lundgren understands the Port's mission is to provide sound economic growth opportunities and create jobs and improve the quality of life in the Port district. This current lease causes a hardship and threatens the economic vitality of keeping Cedars opened or operated by future owners. The current lease has a negative impact and this is why we are asking for an opportunity to discuss re-negotiations. The land that Cedars occupies is currently in an opportunity zone, by definition, an opportunity zone is an economically distressed area of the community designated by the federal government. It was determined by a licensed appraiser within the last year, on behalf of the Mitchams and their efforts to sell, that the property is being negatively impacted by lease increases. Ms. Lundgren read the appraiser's statement:

*"Weakness of the property: land lease continues for 42 years and 8 months to February 28, 2061; however, the lease options have exceptionally large lease increases in rent, which negatively affects the value of the property."*

In addition to that, when you are dealing with a lender and financing a property, they are looking at the short term and long term of the lease and the vitality of the company. Currently the business has no indication of economic growth or growth sales that would increase at this level of percentage of the lease. Therefore, in financing, this could become a very negative impact in trying to finance the property with the significant lease increase in two years. Ms. Lundgren asked if the Lundgrens and Mitchams can sit down with staff to see if we can make something beneficial to both parties and maintain the jobs, and the growth and vitality of Clover Island.

Commissioner Moak appreciates the comments and thanked the Mitchams for the work that Cedars has put in on the island for many years. Commissioner Moak asked Ms. Hanchette how the lease terms are determined for tenants.

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Ms. Hanchette stated the Port moved to a standard lease several years ago; however, the Cedars lease was signed in 2006, and she believes the terms worked for both parties at that time. Ms. Hanchette stated Cedars Restaurant has been on the island since the 1970's, and the Mitchams took over the lease from Ray Gillette, the previous owner. The Mitchams entered into their own fifteen year lease with the Port in 2006; and in 2018, the Commission approved a lease amendment which added four, five year options. The lease has a built-in escalation clause, and when the 15 year lease expires March 2021, the rate increases for five years (2021-2026) and then increase again in 5 years (2026-2031). Their lease is different from the standard lease agreement which offers a flat escalation.

Commissioner Novakovich pointed out that at year 15, the lease increases a \$1,000 a month, from \$3,500 to \$4,500, and then after five years, the lease increases from \$4,500-\$6,000 per month. Commissioner Novakovich stated as a small business owner, he could not sustain a business with those kinds of escalations. Commissioner Novakovich agrees that the Port needs to look after their tenants and after small businesses, and he is willing to look at the lease to keep the business viable; however, with these kind of escalations, he does not see how anyone can stay in business with those increases.

Commissioner Barnes is familiar with various ways of adding escalations to leases and inquired if there has been any thought or consideration to tying the increases to the Consumer Price Index (CPI).

Ms. Hanchette stated the Port has had a number of leases that were tied to the CPI, but because the CPI varied so much over time, it created a burden to the accounting department to calculate the increases. Staff opted, through the lease amendment, to set the escalation at a standard flat percentage rate, rather than averaging the CPI over five years.

Commissioner Novakovich stated the lease started out reasonable and inquired if there was a goal the Port was trying to achieve with the escalation.

Ms. Hanchette stated not to her knowledge.

Mr. Arntzen assisted with the negotiations between Mr. Gillette and Mr. Mitcham and if memory serves, Mr. Gillette picked some numbers, and we were unaware of how he got to choose those particular numbers. Mr. Arntzen reiterated Mr. Mitcham's request of continued discussions with staff to come up with a reasonable proposal for the lease. Mr. Arntzen stated staff will work with the Mitchams and Lundgrens and report back to the Commission regarding the process and a potential proposal.

Commissioner Moak stated at that point of negotiations, the rate was deemed fair by everybody that was involved; however, with the escalation, those numbers may not work or be fair. Commissioner Moak supports the idea of re-negotiations but believes we need to protect the best interests of the Port. Commissioner Moak hopes that the negotiations can be tied into the sale of Cedars. The Mitchams have done a great job for four decades, and Commissioner Moak has no

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objections to staff working with Mitchams and the Lundgrens to come up with a number that is fair to all sides.

Commissioner Barnes agrees with Commissioner Moak's comments and stated staff is capable of negotiating a fair lease. Commissioner Barnes does not believe this is just a just dollars and cents issue. Commissioner Barnes believes it is in the best interest of the Port to have Cedars, an iconic restaurant on the island, surviving, and creating vibrancy, because it helps surrounding businesses on Clover Island and Columbia Drive. Commissioner Barnes does not believe the Port should be looking at achieving a specific lease amount, but more in terms of a mutually beneficial, long term relationship. Commissioner Barnes mulled, what is a fair and reasonable rate for the land at that particular location for this business. Commissioner Barnes wants to make sure this business is surviving and creating that vibrancy and creating a gathering place at Clover Island and Columbia Drive that the Port hopes to achieve. Commissioner Barnes would like see staff work with Mitchams and the Lundgrens to negotiate something that is mutually beneficial, for a good long term healthy relationship.

Commissioner Moak inquired if staff has enough direction.

Ms. Hanchette stated yes.

Mr. Arntzen noted, if the Port creates a very workable deal for one tenant on the island, others may ask for a lease review as well.

## OLD BUSINESS

### **B. Citizen Complaint**

Ms. Luke stated there are two items on the Agenda: selection of the neutral and sanctions for Commissioner Moak. Prior to that, however, there has been a recent development Ms. Luke would like to address to the Commissioners. Ms. Luke distributed copies of a letter she received late this morning, via email, from Joel Comfort of Miller, Mertens, and Comfort, addressed to her, referencing Commissioner Barnes and her response to the letter. Ms. Luke stated because she received the letter late this morning, she had little time to go into an in-depth response, but addressed some of the issues raised in the letter. Ms. Luke read the letter she received and her responses into the record.

*Mr. Comfort:*

*"I write to you on behalf of Commissioner Don Barnes, whom I will be representing in the hearing related to the so-called "citizens" complaint against him. Since Commissioner Barnes and Commissioner Moak have been drug through the mud in the public eye, it seems only fair that the public should also know the full context, so they can judge for themselves regarding the motivation of the Complainant. To the end, I am aware that the Port is providing access to the redacted complaint on its website, along with the investigator's report. There are no exemptions to the Public Records Act that permit continued redaction of the complaint. Moreover, I understand that the Port has already released the unredacted complaint to at least one third party, several months ago, in response to a records request. Presumably,*

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*this is because the Port already recognizes there is no basis for continued redaction. Since this whole affair appears to be attracting enough public and media attention to justify the Port putting a special link on their website to the report and the complaint, please direct Port staff to update the website to include the unredacted complaint."*

*Ms. Luke's response:*

- 1. It has been the Port's policy to maintain the confidentiality of complainants (see Port Rule 5.2). I anticipate that you will refer me back to the "except to the extent required to complete any investigation and in event that an action is taken" language included in Rule 5.2. The Port stands by its position to maintain the confidentiality of complainants as disclosure of the name of complainants has a chilling effect on having misconduct reported.*

Ms. Luke noted that that is a standard used throughout legal and Human Resources industry, as far as a chilling effect. You want to have complainants come forward and therefore, the complainants name is maintained confidential to the degree possible.

*Mr. Comfort:*

*At the Special Commission Meeting on August 13, 2019, Commissioner Barnes advised that he disagreed with the investigator's findings, and that he was exercising his right under Port policies to request a hearing to clear his name. I have reviewed your August 27, 2019 Agenda Report concerning this issue, and your proposed Resolution No. 2019-17. Please be advised that the proposed resolution violates the current version of the Port of Kennewick's Rules of Policy and Procedure, Section 5.7. The current policy states that the neutral shall be mutually decided by the Complainant and the Respondent. In this case that would be Commissioner Barnes and the Complainant. This is not a matter that can be submitted to the Commission as a body. The proposed resolution should not be part of the Agenda.*

*Ms. Luke's response:*

- 2. Ms. Luke disagreed with that assertion. The proposed resolution does not violate Port Rule 5.7 which states that "...as agreed upon by the Complainant and the Respondents". Because any such action involving two or more commissioners constitutes a meeting under the Open Public Meetings Act, such action must be taken by the Commission as a whole in an open public meeting. If you disagree that the OPMA applies to this action, please point me to the authority upon which you are relying.*

*Mr. Comfort:*

*My client received the draft Agenda packet late last Friday, containing your recommended neutrals. Commissioner Barnes and I will give due consideration to those neutrals, however, before doing so, please provide us with the hourly rates*



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*and expense to be charged by each of those you recommend. Considering the fact that “port officials” were quoted in the Tri-City Herald that a hearing will cost “at least \$50,000,” along with your fiscal impact statement that a hearing will cost \$75,000, my client believes that it is important to consider what each of these proposed neutrals charge, alongside their qualifications. I have handled innumerable matters in front of private neutrals, and I have never seen one cost anywhere close to \$50,000-\$75,000. At most, this is a two-day hearing (and more likely one day), with limited pre-hearing procedural issues to account for. There’s simply no reason this hearing would cost anywhere close to those numbers, unless the neutrals at JDR or JAMS charge an unreasonable rate. If that is the case, then we suggest that the parties look at selecting a neutral from Eastern Washington instead. There are a number of qualified neutrals located in Yakima, Wenatchee, Spokane, or Walla Walla that we can propose, and who undoubtedly charge substantially less than a neutral from Seattle. Once you provide the requested information, we will identify neutrals my client is agreeable to, or propose alternates, and the Complainant can do the same.*

*Ms. Luke’s response:*

- 3. The Port Rules also indicate that the neutral shall determine the hearing process. Because that process may take the form of an arbitration hearing, I have estimated fees and costs accordingly. I have had arbitration processes cost in excess of \$50,000. It is possible that a hearing will take longer than the two days you estimate, therefore the numbers provided are truly estimates. Additionally, the process leading up to a hearing may involve additional costs. As you know the typical hourly rates for most neutrals range from about \$350 – \$525 per hour. There may be some that charge less, and there are certainly many that charge more. Whether they are from Eastern or Western Washington or elsewhere. The estimates provided are based on Ms. Luke’s experience, and Mr. Comfort has other experiences. Ms. Luke does not discount this.*

*Mr. Comfort:*

*Additionally, I have reviewed the policies adopted by the Commission and those policies do not permit the Commission to sanction an individual Commissioner in the manner you have recommended. Specifically, the policies permit a censure or a reprimand as a sanction, and further permit the Commissioner’s committee assignments to be rescinded. The policies do not, however, allow the Commission to sanction an individual Commissioner with mandatory training, and certainly not at their own expense. I suspect you will rely upon the catch-all provision of the sanctions section (“additional action”) of the policies to justify the recommendation. This provision, however, is so vague that it is not enforceable. The Commissioners are individually elected officials who have been chosen by their constituents to represent them on the Commission. If the vague “additional action” language is read broadly it would clearly have a chilling effect on the democratic process. This would permit two Commissioners to effectively impose any sanction*

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*they wanted against a political opponent. BY way of example, a majority of the Commission could hamstring or punish the Commissioner for acting in oppositions to the majority. In contrast, a censure or a public reprimand (or removal from a committee post) gives notice to the Port's constituency that the Commission as a body disagrees with a particular Commissioner's behavior. From there, the constituents can decide if they want to recall the elected official (pursuant to RCW 29A.56 et seq.), or elect a new Commissioner at the next election.*

*Ms. Luke's response:*

- 4. Does not agree with Mr. Comfort's assertions regarding what remedial actions may be taken pursuant to the Port Rules and will provide him with a more in depth response. Ms. Luke stated the catch-all phrase "additional action" does give broad authority on Port Counsel to determine appropriate remedial action, in order to curtail misconduct and to hopefully prevent it in the future.*

*Mr. Comfort:*

*On another matter, at the August 13, 2019 Special Commission Meeting, you inaccurately represented that Commissioner Barnes' term as the reviewing Commissioner for Mr. Arntzen's yearly review had expired, and that it was time to appoint a new Commissioner to the CEO Evaluation Committee. That was untrue. Please review the Commission minutes from October 10, 2017 which clearly document that the Commission voted to appoint Commissioner Barnes as the reviewing Commissioner until December 31, 2019. Commissioner Barnes' term had not expired. What is also concerning is that you made it a point to recommend that Commissioner Novakovich be appointed to the committee after your "careful review of various matters pending before the Port Commission and the potential liability that could arise from the recently completed citizen complaint investigation." Considering all of the circumstances surrounding the citizen complaint investigation I would submit that Commissioner Novakovich has no less conflict than Commissioner Barnes or Commissioner Moak when it comes to evaluating the CEO.*

*Ms. Luke's response:*

- 5. Ms. Luke did not inaccurately state that Commissioner Barnes' term on the CEO Evaluation Committee was coming to an end, it was. The Port Commission meeting minutes from October 10, 2017 do not dictate the term of Commissioner Barnes' appointment to the CEO Evaluation Committee. Resolution 2017-16 appointed Commissioner Barnes to the CEO Evaluation Committee and adopted the new Section 15.0 of the Rules. Rule 15.1.1 states that the Commissioner appointed to the committee is to serve a two-year term. Commissioner Barnes has served through two years of CEO evaluations. If he were to serve a full two calendar years (until October 10, 2019,) his term would have ended early in a third annual CEO evaluation cycle.*



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*Mr. Comfort:*

*In summary, please direct the Port to post the unredacted complaint on the Port's website within the investigative report. Commissioner Barnes looks forward to the opportunity to address the conclusions made in the report through the hearing process. However, he will not be pushed into selecting a neutral, nor will he concede his mutual right (with the Complainant) to select a neutral. Resolution No. 2017-17 should not be part of the agenda. Additionally, please provide me with the additional information concerning the rates charged by the neutrals you proposed in the agenda. Clearly, cost is an issue, and one that should be considered by all parties before a decision is made.*

*Ms. Luke responded that she looks forward to working with Mr. Comfort to move this matter toward resolution.*

## **1. Selection of Neutral**

Ms. Luke stated the Port Commission has been provided a packet of information related to neutral panels that are available under Judicial Arbitration Mediation Services (JAMS) or the Judicial Dispute Resolution Service (JDR). Ms. Luke narrowed the search with JAMS to neutrals to those with public agency experience and provided a list of 11 neutrals, with various backgrounds, all of which have been judges, retired from bench or lawyers or both. All which have a number of years ruling from the bench, and ruling from a position of being a neutral. Ms. Luke provided, in addition to the JAMS and JDR rosters, and information on each agency, a copy of the Port Commission Rules of Policy and Procedure Section 5, which was amended June 11, 2019. As stated in Mr. Comfort's letter, Ms. Luke estimated fees and costs for a hearing process to be \$75,000, not including Port CEO and staff time. Ms. Luke stated this is an estimate, without yet knowing what the hearing process may look like. Ms. Luke would be happy to provide a revised estimate once we know what that hearing process will entail.

In the August 13, 2019 Commission meeting, Commissioner Don Barnes reported that he did not accept the Recommended Action resulting from Tara L. Parker's August 6, 2019 Report of Independent Investigation determination that Commissioner Barnes A) violated Port Rules when he contacted DPZ and the State Auditor's Office regarding business matters, and B) created a hostile work environment for Port CEO in violation of Port policies. Commissioner Barnes disagreed with these findings and requested a hearing before a neutral, as provided in Port Policies and Procedure.

Pursuant to Port Rule Section 5.7, when a complaint is made by one or more of the Commissioners against one or more Commissioner, the determination and recommended action of Port counsel shall be submitted to a mutually agreeable neutral selected from the panel of neutrals available at the Seattle office of Judicial Arbitration and Mediation Services ("JAMS") or Judicial Dispute Resolution ("JDR"), or other similarly qualified third party neutral as agreed upon by the Complainant and the Respondents.

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Ms. Luke provided the panels of JAMS and JDR panels for consideration and review to the Commissioners and specifically provided biographies of certain neutrals who came highly recommended from both inside her office as well as outside from other attorneys who have utilized their services. Ms. Luke focused the JAMS list by searching for experience with governmental and public agencies. JDR has a smaller panel of neutrals and did not offer that search option. You will note that most of the neutrals available on these rosters are retired judges with extensive courtroom, arbitration, and mediation experience. Additionally, most neutrals practiced law for many years prior to becoming a judge. Any of the neutrals on these panels will be qualified to handle the hearing process contemplated by the Port Rule Section 5.

Ms. Luke provided biographies from JAMS neutrals Hon. Sharon Armstrong (\$525 per hour), Hon. Ronald E. Cox (\$400 per hour) Hon. Helen L. Halpert (\$450 per hour), Lawrence R. Mills, and Hon. Thomas McPhee (\$450 per hour) and JDR neutrals Hon. George Finkle, Hon. Paris K. Kallas, Hon. Steve Scott.

Ms. Luke stated in her experience, these rates are consistent with neutrals not only in Western Washington, but neutrals that have been retained recently in Eastern Washington. It is always possible to find neutrals that are less expensive; however, she would consider them less experienced, less qualified or equally qualified. Ms. Luke is willing to entertain other ideas, however, she has not heard back from the Commissioners about other proposals as to alternative neutrals that they would propose at this point in time.

Ms. Luke recommends that the Commission consider Hon. Sharon Armstrong, who came highly recommended, if available. Alternatively, either of the other two retired judges from JAMS (Judge Halpert or McPhee) or Hon. Steve Scott from JDR for the neutral to conduct the hearing contemplated by Port Rule Section 5. Ms. Luke also recommends that an alternate neutral be selected in the case that the first choice of neutrals is not available. Ms. Luke asked for Commission feedback, and if they would like to proceed with selection of a neutral today.

Commissioner Barnes respectfully disagrees with the interpretation of our Port Counsel of this selection process. Commissioner Barnes believes that since Commissioner Moak has not opted for a hearing before a neutral that the neutral is supposed to be a mutual selection between himself as a singular respondent and the claimant. Commissioner Barnes received this package after 5:30 on Friday afternoon and has not had time to go through this in a manner that would be sufficient to make a selection. This is a lot of material and it is an important decision. Commissioner Barnes thinks that more than a day, less than a day, or a day and a half is not a reasonable period of time for one to make a selection for an important matter like this. Commissioner Barnes disagrees with the resolution that is prepared. Commissioner Barnes thinks the selection of a neutral to be made mutually between the respondent (himself) and claimant. Commissioner Barnes respectfully disagrees that Commissioner Moak does not have a part in this, he did not ask for a hearing before a neutral, he was named as a respondent in the original complaint,

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but he is no longer a party to the neutral process. Commissioner Barnes is not in favor of this resolution, he is not in favor of this process until, as Mr. Comfort pointed out in the letter, until we have received information requested regarding potential neutrals, had sufficient time to evaluate that, and then respond.

Commissioner Novakovich inquired if the motion is to be made, should it also include the selection of an alternate neutral, in case the first neutral is not available.

Ms. Luke stated the motion could add the adoption that included an alternate neutral, in case the first choice is unavailable, which has happened before.

Commissioner Moak inquired if this decision needs to be made today.

Ms. Luke stated it is something to move the hearing process forward. That is the only consideration is the timeliness of the hearing process and not dragging it out.

Commissioner Moak stated that it has already dragged out and does not believe another two weeks will make a difference. Commissioner Moak expressed his concern and it is the one expressed by Mr. Comfort and Commissioner Barnes, is that he does not think he is a party to this. He is either a complainant or a respondent and so he does not know that it is his duty to impose a resolution because clearly Commissioner Barnes does not support, that it is Commissioner Moak's rank to impose that. Commissioner Moak asked Ms. Luke, as either a complainant or the respondent, to respond.

Ms. Luke stated Commissioner Moak is a respondent, the complaint was against both...

Commissioner Moak stated not enough for this particular incident, excuse me for interrupting, but what Commissioner Barnes is being accused of or adjudicated or whatever you would like to use. It's not anything that Commissioner Moak is a party to, he is party to a separate charge, which we will deal with next. Commissioner Moak is not a party to the issues that Commissioner Barnes is appealing.

Ms. Luke stated the complaint was against both Commissioner Moak and Commissioner Barnes, and you were both respondents. Some of the allegations of the complaint are closely intertwined. Ms. Luke stated that Commissioner Moak has not requested, but he still a respondent. Ms. Luke apologized that she has not given an in-depth response, because the issue was raised shortly before the meeting today.

Commissioner Moak understands that and we are trying to deal with things very quickly that have come from Mr. Comfort's letter and your response. Commissioner Moak asked if Ms. Luke and Mr. Comfort or Commissioner Barnes, or anybody else work things out to make a smoother process in two weeks that people might feel more comfortable with an answer, than for Commissioner Moak to make a decision today on something that he is very uncomfortable making. That in fact, one of the respondents has said that he has not had time to review and Commissioner Moak understands that.

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Ms. Luke stated the Commission does not need to make a decision today regarding a neutral and the Commission can certainly decide to wait two weeks. Ms. Luke does not believe she can work out the details with Mr. Comfort, and believes this is an issue that the Port has to comply very clearly with the Open Public Meetings Act (OPMA) as to a selection of a neutral. And so it will need to come back before the Commission, however, as Ms. Luke stated in her response to Mr. Comfort, if she is wrong, if there is something out there that she is unaware of, she is willing to hear it from Mr. Comfort, just so that we ensure compliance with OPMA and any other rules or regulations that might be applicable to this process. Ms. Luke is certainly trying to do the best that she can in order for the Port to comply with all applicable laws.

Commissioner Moak agrees with a lot of points that Mr. Comfort made, but Ms. Luke is our attorney. His job as president of this Commission, as a Commissioner, is to listen to because he has not retained counsel, Ms. Luke is counsel for the Commission. Commissioner Moak would make that decision, but he does not think he can make that decision today, to appoint either Ms. Armstrong or anybody else, when he thinks one of the respondents feels like, would like a little bit more information.

Commissioner Novakovich stated it obviously appears that if he were to make a motion to approve this resolution, it would go down 2:1.

***MOTION: Commissioner Novakovich moved to table the discussion on Resolution 2019-17 to September 10, 2019 meeting. Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.***

Commissioner Barnes stated Mr. Comfort has requested information, so he hopes that we will receive some information so that we can make an evaluation and make a determination. Commissioner Barnes thinks it was pretty presumptuous that he would just agree with the person recommended here when he just received the information Friday night, after 5:30 p.m. Thank you very much for giving him more time to make a reasonable selection.

## **2. Sanctions for Commissioner Moak**

Ms. Luke stated this item follows the Special Business Meeting of August 13, 2019 where Commissioner Moak indicated that he accepted the recommended action.

Ms. Luke stated the fiscal impact, as referenced earlier in the meeting, fees and costs for the investigative process to August 13, 2019 were \$52,000, not including Port CEO and staff time. Fees and costs associated with training to be conducted with Commissioner Moak are to be borne by Commissioner Moak pursuant to the Recommended Action. Additional fiscal impact is cost of publication and other fees and costs incurred to fully enact the Recommended Action accepted by Commissioner Moak. Although difficult to estimate, Ms. Luke believes the Port will incur an additional fiscal impact of \$10,000.

In the August 13, 2019 Commission meeting, Commissioner Tom Moak reported that he accepted the Recommended Action which includes:

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- A. Verbal reprimand reported in Commission meeting minutes.
- B. Satisfactory completion by Commissioner Moak of training identified by Port Counsel covering the following topics:
  - Professional communication skills
  - Port Commission Rules and Policies.
  - All costs and fees for all such training shall be paid by Commissioner Moak.
- C. Cooperative participation in team building activities and trainings with Port CEO and staff. Such activities shall be identified by Port Counsel with the assistance of consultants, Port CEO and staff.
- D. Publication of the above sanctions is to be made in the *Tri-City Herald*.

Ms. Luke recommended the Commission adopt the proposed Resolution and upon adoption, Ms. Luke will read the verbal reprimand into the record. The verbal reprimand is attached to the proposed Resolution 2019-18 and should be read into the record today. Training and team building steps will be conducted over time as directed and scheduled by Port counsel.

Commissioner Moak stated that he did agree to accept that and he did want to move on, and he still believes that is the right thing to do. He still believes that the sanctions are harsh, compared to a single incident that the investigator found that he yelled at the CEO. Commissioner Moak thinks all of this that is being expected, for one single incident, if that is the way we are going to play the game, he thinks its escalating issues rather than diffusing issues. Commissioner Moak agreed to do it and he will, and he looks forward to the cooperative participation and team building with the CEO and staff. Commissioner Moak really does think there's a lot of issues related to Port Rules and what the job of this Chair, is to deal with, conduct that is outside the bounds. And learn about that and what sanctions that the president needs to take for that. Commissioner Moak thinks all of this was good, but he thinks it seems a little over the top, to think that he is the only one that needs that, but yet, he is the one who is being sanctioned for that. But Commissioner Moak agreed to accept it and he does, and his conduct needs to be better, and he will continue to exercise his role as a policy making role here with this Commission, along with his two colleagues, because he thinks that policy role, along with the work of staff, and our consultants has resulted in a great Vista Field project and a great Columbia Gardens project and he thinks if we can get back to working together as a team, to continue that work, that we will hear about more later, he thinks that's good. Commissioner Moak looks forward to his participation in that.

Commissioner Barnes appreciates Commissioner Moak's comments and he has a concern about this resolution as it is prepared. This portion of our policies and procedure was recently adopted in January 2019. This is the first action of the sanction or censure under this provision of these policies. Commissioner Barnes concern is that we are establishing a very dangerous precedent going forward by enabling or allowing say two Commissioners, to sanction or penalize one commissioner in a way that has financial impact to require training at his own expense, for a single outburst, and he was there. Commissioner Barnes agrees, he thinks it's a bit harsh, but he respects the fact that

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Commissioner Moak wants to accept this and move forward. But Commissioner Barnes cannot support this resolution as it is written, because he thinks it establishes a dangerous precedent going forward, that will enable two Commissioners to impose financial hardship on a minority, disagreeing Commissioner, and he can't accept that, and he does not think it is fair, he does not think it is the right precedent to establish, this section of the policy was just adopted this year. For those reasons, Commissioner Barnes cannot support the resolution as written.

***MOTION: Commissioner Novakovich moved to approve Resolution 2019-18, adopting the Recommended Action of Port Counsel for Commissioner Moak's violation of the Port Rule requiring civil and respectful treatment of others; Commissioner Moak seconded.***

## **PUBLIC COMMENT**

No comments were made.

### ***Discussion:***

***MOTION: Commissioner Barnes moved to amend Resolution 2019-18, by striking provisions B and C on page one; Motion dies for lack of second.***

***With no further discussion, motion carried. All in favor 2 (Commissioners Moak and Novakovich):1 Nay (Commissioner Barnes).***

Ms. Luke read the verbal reprimand into the record:

*On March 25, 2019 a citizen complaint against Commissioners Moak and Barnes was received by the Port and an investigation of the complaint was conducted by independent legal counsel, Tara L. Parker.*

*Tara L. Parker issued her Report of Independent Investigation on August 6, 2019 wherein she found that Commissioner Tom Moak violated the Port Rule requiring civil and respectful treatment of others on one occasion. More specifically she found that in the February 19, 2019 Commission meeting executive session Commissioner Moak yelled at Port CEO "I blame you" in reference to the Ivy property matter.*

*Commissioner Moak is hereby reprimanded for yelling at the Port CEO which action violated the Port Rule requiring civil and respectful treatment of others.*

Commissioner Moak inquired if this ends this particular discussion today.

Ms. Luke stated yes.



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## REPORTS, COMMENTS AND DISCUSSION ITEMS

### A. *City of West Richland Update*

Ms. Hanchette updated the Commission on the City of West Richland's offer for the former racetrack property consisting of 93 acres. Ms. Hanchette has been working to initiate the appraisal process; however, this is a very active climate and appraisers are 4-6 weeks out. Additionally, Ms. Hanchette connected Port and City legal counsel together, who have been discussing the Purchase and Sale Agreement (PSA) and other terms. Ms. Hanchette stated this is an ongoing discussion and asked Ms. Luke to walk through the intricacies of the proposal.

Ms. Luke connected with City of West Richland Counsel, Bronson Brown to discuss the proposed transaction. Ms. Luke laid out her thoughts about what the transaction should look like in order to meet the City's main priority of a police station which would require a 4 to 5 acre parcel. Ms. Luke offered her thoughts about single transaction with the City that carved out a 5 acre parcel of the total 92 acres. The transaction would be a cash sale with a closing as soon as the City required, in order to meet its bond obligations. Then, that parcel would be sold with a pro-rated parcel of 18 acre feet with water rights that was set out in the Port's Master Plan. In addition, under the same transaction, the Port would sell the balance of the 87 acres to the City, with the transfer of the City's Rural Capital County Funds (RCCF) to the Port, through an Interlocal Agreement with Benton County, with a closing to occur at later date. Ms. Luke stated the City indicated an interest in purchasing the excess water rights, which is estimated at 80 acre feet at the rate of \$6,000 per acre foot. This would be a cash sale as well, but dealt with sequentially to the closing on the 87 acre parcel. Ms. Luke stated Mr. Brown had a meeting scheduled with the City and would get back to Ms. Luke after the meeting. Ms. Luke received a call from Mayor Brent Gerry, Roscoe Slade, and Mr. Brown, who wanted to offer their thoughts about the transaction. Ms. Luke updated the Commission on the City's proposal.

The City would like to close on the entire 92 acres, not just the 5 acre parcel related to the police station, to meet the deadline. The purchase price is still \$1,250,000 via transfer of the City's RCCF funding to the Port. The City has offered to provide security in the form of a deed of trust and note. The backstop for that, if, for any reason the full purchase price is not received through the RCCF fund process, that the City will pay the balance and do so by April 2023. In a separate transaction, the City would consider the purchase of the excess water right once the Department of Ecology confirms the amount available. The City would then have 90 days to determine whether to proceed with that purchase. Ms. Luke will continue to work with Mr. Brown to prepare a draft agreement pursuant to what the City is proposing to bring back to the Commission for consideration.

Commissioner Barnes asked staff what the Port paid for the 93 acres.

Ms. Luke believes it was \$1,750,000.

Commissioner Barnes confirmed that the Port paid \$1,750,000 in 2008.

Ms. Hanchette stated that is correct.

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Commissioner Barnes reiterated that the Port paid \$1,750,000 in 2008 and did additional work on the Master Plan with Oneza and Associates. Commissioner Barnes confirmed that the Port is now contemplating a sale for \$1,250,000.

Ms. Hanchette stated that is correct, that is the City's offer.

Commissioner Barnes cannot support this transaction and does not see anything that makes sense from the Port's point of view.

Commissioner Novakovich stated there are issues with the water rights, and speculates, the water rights alone that the Port would transfer to Vista Field and the fairgrounds are worth somewhere over \$500,000. So if you add that \$500,000 to the \$1,250,000, the Port is back up to what we paid for the former racetrack property.

Commissioner Moak inquired what is the timeframe to get additional information to the Commission.

Ms. Luke hopes that staff is able to bring additional information back at next meeting, but she is not certain because we are still drafting the terms.

Ms. Hanchette believes within the next couple of meetings.

Commissioner Moak would expect that the 1% for arts would be included.

Ms. Hanchette provided the Art Policy to the City. Ms. Hanchette stated the Art Policy stipulates 2% for sales in excess of \$500,000 and read Section 3A, of the Art Policy:

***Section 3. Artwork required as part of Port Land Sales:***

- A. *"When the Port sells unimproved real property, at the discretion of the Port Commission, the Port may require that a sum (as determined below) be paid by the purchaser and deposited with the Port to purchase artwork to be installed in a public area within the Port of Kennewick district boundaries. The selection of the site of the artwork shall be at the discretion of the Port Commission.*
- 1. For the first \$500,000, of sales price, a sum equivalent to 3% shall be assessed for artwork; and;*
  - 2. For sales in excess of \$500,000, a sum equivalent to 2% shall be assessed for artwork."*

Commissioner Moak looks forward to seeing that in the agreement, because he would like to support the agreement.

***B. Commissioner Meetings (formal and informal meetings with groups or individuals)***

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## ***C. Non-Scheduled Items***

1. Commissioner Novakovich attended the Washington State Department of Transportation meeting (WSDOT) with Mr. Peterson in Union Gap last week and spoke with WSDOT representatives regarding the Red Mountain Interchange. Commissioner Novakovich relayed that the representatives indicated that that project was dead and WSDOT is looking at possibly using the funds to instead improve State Route 224 and Keene.

## **PUBLIC COMMENTS**

No comments were made.

## **COMMISSION COMMENTS**

No comments were made.

## **ADJOURNMENT**

With no further business to bring before the Board; the meeting was adjourned 3:12 p.m.

***APPROVED:***

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Thomas Moak, President*

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*Don Barnes, Vice President*

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*Skip Novakovich, Secretary*



## AGENDA REPORT

**TO:** Port Commission

**FROM:** Lucinda Luke, Port Counsel

**MEETING DATE:** September 10, 2019

**AGENDA ITEM:** Amending a 2019/2020 Goal for the Chief Executive Officer

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- I. REFERENCE(S):** Resolution 2019-20  
July 30, 2019 Commission Meeting Minutes Excerpt
- II. FISCAL IMPACT:** Revenue neutral to the Port.
- III. DISCUSSION:** The Port Commission approved the 2019/2020 Goals and Objectives for the CEO on October 23, 2018. During the July 30, 2019 Commission Meeting, the Commission directed the CEO to negotiate a land sale with the City of West Richland in lieu of pursuing the ground lease or sale in the Columbia Drive area.
- IV. RECOMMENDATION:** Approve Resolution 2019-20 to reflect the change of direction made by the Port Commission.
- V. ACTION REQUESTED OF COMMISSION:**  
*Motion: I move approval of Resolution 2019-20 amending Goal 3 of the CEO's 2019/2020 Goals and Objectives; and further ratify and approve all action by port officers and employees in furtherance hereof.*

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Commissioner Moak inquired if the costs will be added to the sale of the property.

Mr. Peterson stated staff is tracking costs and believes the costs will be recouped during the land sales.

Commissioner Moak asked if this cost was part of the Vista Field budget.

Mr. Peterson stated yes, the funds were allocated when the Commission amended the budget in March 2019.

### PUBLIC COMMENT

No comments were made.

***MOTION: Commissioner Novakovich moved to approve Resolution 2019-14, authorizing the Port's Chief Executive Officer to execute a contract with Public Utility District #1 of Benton County for placement and installation of electrical infrastructure within the Vista Field Phase #1A project for the sum not to exceed \$337,884.51. Further, all action by port officers and employees in furtherance hereof is ratified and approved; and the Port Chief Executive Officer is authorized to take all action necessary in furtherance hereof; Commissioner Barnes seconded. With no further discussion, motion carried unanimously. All in favor 3:0.***

#### **B. City of West Richland Update**

Mr. Arntzen stated before the Commission is an offer on the former racetrack property located in the City of West Richland. Mr. Arntzen stated the Comprehensive Scheme of Harbor Improvements and the former racetrack Master Plan states that the Port will hold the property for four to seven years, and develop when the timing is right. Mr. Arntzen stated if the Commission likes the offer before them, the Comp Scheme would need to be amended. The City of West Richland has made an offer on the former raceway and if directed by the Commission, Ms. Hanchette and City staff would follow the standard Purchase and Sale Agreement (PSA) process. Mr. Arntzen outlined the important terms of the proposal and stated there are several moving parts in terms of price and payment terms, use of property, and timing. Mr. Arntzen asked for guidance from the Commission on the complicated offer. Mr. Arntzen introduced City of West Richland Mayor, Brent Gerry, who is here today to discuss the offer.

Mayor Gerry thanked the Commission for the opportunity to speak and gave an overview of the City's Proposal. In April 2019, the City of West Richland citizens passed a \$12,500,000 bond for a new police department. The City identified several Department of Natural Resources (DNR) properties that would best suit the new police station and held a town hall meeting to discuss the potential locations; however, the citizens did not approve of any of the locations. Because of the timing with the bond, there is a sense of urgency to locate another property. City staff have had numerous discussions with local land owners, but have been unable to secure a location for the new police station. Mayor Gerry contacted Mr. Arntzen and Ms. Hanchette regarding the process of putting together a formal offer for the former racetrack property.

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As a financing source, the City is proposing a transfer of their share of Benton County's Rural Capital County Funds (RCCF) to the Port's RCCF account. Mayor Gerry met with Adam Fyall, Sustainable Development Manager for Benton County, to discuss the potential opportunity of transferring the City's RCCF funds to the Port. Mayor Gerry stated the \$1,250,000 offer price may seem low; however, the Port has the opportunity to leverage the RCCF funds with matching funds to either meet or exceed the market value of the property. The City is the anchor tenant at the Belmont Business district and has sold a number of properties and would emulate the same model at the former racetrack, becoming an anchor tenant with the new police facility and use the Port's Master Plan as a guideline for development. The City has received numerous inquiries about commercial properties for wine-related businesses because of the growth of the community; however, there is no land available on Red Mountain Center. Mayor Gerry believes if the Port were to accept the City's offer, the Port would be fulfilling its mission of creating economic development and allow the City to grow. Furthermore, Mr. Gerry stated the Port's Comp Scheme says to hold the property until the I82 Interchange access was completed; however, the Federal Highway Commission (FHC) will not break access in the Interstate for economic development. Several agencies have done modeling which shows the benefit of Interchange, but unfortunately, the modeling was not satisfactory to the FHC. Mayor Gerry is hopeful that the Commission will entertain the offer on the former racetrack to the City of West Richland, who will be able to act as an anchor tenant and spur further economic development in that area.

Ms. Hanchette gave the Commission some statistical information on the former raceway:

- The racetrack is nearly 93 acres;
- 45 acres are currently being farmed and the lease expires December 31, 2019;
- The Port purchased the property in 2008 for \$1,750,000;
- The property was appraised in 2016 and came in at \$1,750,000 with racetrack removed.

Commissioner Novakovich inquired how much would it cost to remove the racetrack.

Ms. Hanchette stated that number was not provided with the appraisal and asked Mr. Peterson for an estimate.

Mr. Peterson believes the cost to remove the racetrack could be anywhere from \$150,000 - \$200,000; however, that does not include leveling the site, which could be quite significant. This is based upon the Port recently removing five acres of asphalt in Vista Field.

Ms. Hanchette stated in recent years, staff worked to get the property into the Urban Growth Area for the City. Additionally, the Port entered into an Interlocal Agreement with Kennewick Irrigation District for rubicon gates and canals for \$75,000 to remove the inundation clause. The offer mentions, in addition to the police station, adding some recreation fields and marketing property for economic development. The Port's Master Plan for the former racetrack calls for an industrial component to support the Red Mountain wine industry. The offer stipulates that the City would transfer 100% of their RCCF funds to the Port. Furthermore, the offer contains a few contingencies related to water rights; however the Port is currently having an assessment done on the water rights to determine the uses and quantity of water rights that exist on the property. Ms. Hanchette stated



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the property's assets include the water rights and land. Ms. Hanchette inquired if the Commission had additional questions related to the property.

Commissioner Barnes asked staff to estimate the holding cost per year for the Port to retain the property.

Mr. Kooiker stated the cost is approximately \$2,000/per year, which includes assessments and utilities.

Commissioner Barnes asked what the Port receives from the agriculture lease.

Ms. Hanchette stated the Port receives approximately \$6,900 from the agriculture lease; with clean-up costs, it is an estimated \$5,000/per year to hold the property.

Commissioner Barnes asked how much was the contract with Oneza for the Master Plan.

Mr. Peterson believes the economic analysis, Master Plan and engineer's report cost approximately \$125,000.

Commissioner Moak asked what is the cost for the right-of-way and utility easements.

Ms. Luke cannot provide an estimate because the Port has not spoken with Mr. Alexander.

Mr. Arntzen believes it is a fairly modest number and the price would need to be negotiated with Mr. Alexander. The Commission could ask the City to negotiate that cost, because of the good deal on the property.

Commissioner Moak stated if the buyer is receiving an excellent deal, then they should be the ones to handle that.

Mr. Arntzen stated the Port reviewed the lease previously and it most likely needs to be finished; however it can be a negotiating point.

Commissioner Moak inquired if Ms. Hanchette has discussed the 1% arts policy.

Ms. Hanchette has not discussed the art policy with Mayor Gerry and would need to refer back to the policy. Ms. Hanchette believes it is at the Commission's discretion if it is included in the PSA.

Commissioner Moak asked Mayor Gerry if Mr. Fyall believes this is something that the Benton County Commission would approve.

Mayor Gerry stated the City and Port would need to submit an RCCF joint application to Benton County. Mayor Gerry believes that Mr. Fyall felt that two entities working together to better each other would be a positive aspect for the Benton County Commission.

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Commissioner Novakovich believes this is a wonderful opportunity for the Port and the City. The City needs the ability to have some tax dollars infused into the City and he believes this would give the City land to develop. Commissioner Novakovich stated it would give the Port money to do other projects and he would like to see some of the funds invested into West Richland. Commissioner Novakovich proposed that staff negotiate a few items in question and ensure that Benton County is willing to allow the RCCF transfer and will continue to fund the RCCF program. If the County were to discontinue the program, where would that leave the Port? Additionally, the right-of-way and water rights need to be addressed as well. Commissioner Novakovich understands that the City is on a compressed timeline and he would like to see this done sooner rather than later.

Mr. Arntzen believes there are a few items to consider if the Commission were to move forward with a PSA with the City of West Richland. Mr. Arntzen stated firstly, the Comp Scheme has the Port holding the property for a period of 4-7 years; he would need to consult with staff regarding the timing of amending the Comp Scheme. Secondly, the timing of the agreement is a concern, and although staff could work as quickly as possible there is the issue of the timing of the transfer of water rights. Staff has been working on the application transfer water rights to Benton County and recently learned that it takes 90 days from submittal of the application to the Department of Ecology to review the water rights transfer. Mr. Arntzen stated many real estate transactions take time and he is not comfortable guaranteeing the City a time frame to complete the PSA. A third potential issue is the security for the purchase price. Mr. Arntzen stated the City would like to transfer their credits for RCCF to the Port. Mr. Arntzen believes many of those issues could be worked through; however, in the scenario where the Port applies for RCCF funding from Benton County, using the credits from the City, what would happen if Benton County does not approve the projects the Port submitted. Mr. Arntzen believes there needs to be some form of security in case the Port cannot get a project approved, then the Port would need to renegotiate for the value of the property. Mr. Arntzen suggested if the Port applied for \$400,000 of RCCF funds and the project was approved by Benton County, then the Port would transfer \$400,000 worth of property to the City. Additionally, the Port entered into a non-compete clause with City of Kennewick several years ago which states the Port would not do anything with the former racetrack property that competes with Columbia Gardens. Lastly, Mr. Arntzen stated Commissioner Barnes asked very good questions related to the value of the property and he inquired what the Commission's philosophy of this transaction would be. If the transaction will be a commercial transaction, the Port would seek a new appraisal of property and get better estimates on removal of the racetrack and what the value of the water rights are. But if the Commission's philosophy is a partnership or a political transaction, the Port could sell property for less than a commercial property to another jurisdiction. Mr. Arntzen would like some time to review the purchase price and asked the Commission for direction regarding the philosophy of the transaction and other items.

Commissioner Moak believed in the concept of the Master Plan and that this property would eventually support Red Mountain and the wine industry. Furthermore, Commissioner Moak believed that the Port would develop the property within the timeline outlined in the Comp Plan. Commissioner Moak believes the City would build something of value, but it is not what he envisioned for that property. As Mayor Gerry alluded, there is an issue with the I82 interchange and the Federal Highway Commission and Commissioner Moak does not believe they are any

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closer to approving the interchange. Commissioner Moak stated selling the property would be disappointing; however, from the Port's standpoint, he does not think this would be a commercial transaction. Last year, the Commission approved a PSA with Benton County Fire District #4 for a new fire station, which benefited the community of West Richland and believes there are the same kind of community benefits with this proposal. Commissioner Moak understands the cost of this property is considerable, especially when you consider all of the time staff has spent on it over the years. Commissioner Moak stated there are a lot of reasons not to sell it, but maybe it's time to move on the property. Commissioner Moak does not think the Port is going to develop the property any time soon and if West Richland thinks they can develop the property in a shorter period that will benefit the community, then the Commission should do what is best for Port district. Commissioner Moak is in support of the City's proposal.

Commissioner Barnes expressed his concerns about this transaction and stated recently, Jim Darling spoke at the Washington Public Ports Association (WPPA) Spring Conference about Return on Investment (ROI). Mr. Darling stated that ROI is not always measured in dollars and cents and a monetary ROI can be used to promote economic development; however, if you are not realizing much of a monetary ROI, then you look at public benefit. If the public benefit is significant in a transaction, then the transaction can be justified if public benefit is there. Commissioner Barnes stated there is a lot of uncertainty in the method of payment, because even if the funds are transferred from the City, the Port still needs approval of a project from Benton County. Additionally, Commissioner Barnes stated the proposal states maybe two jobs will be created, and he does not believe it meets the non-monetary ROI term. The Port purchased the property for \$1,750,000 and then invested additional funds in the Master Planning process, the removal of the inundation clause, and staff time. To hold this property for \$5,000 per year is a small amount in the big picture. Commissioner Barnes stated the City needs five acres to build a police station, maybe the Port and City should be discussing a five acre transaction. The Master Plan for the former racetrack will have a significant impact on economic development for the City and the Comp Scheme says to hold the property. Commissioner Barnes believes it would be better for both parties to discuss a five acre sale in short order and better payment terms. Commissioner Barnes cannot support the City's proposal to purchase the former racetrack.

Commissioner Novakovich believes this transaction is a partnership between the Port and the City, not a commercial property sale. Commissioner Novakovich stated the City has an opportunity to invest tax dollars and create economic development, which the Port is not in the position to do at this time. Although there is support for the Red Mountain Interchange it may never happen because of the Federal Highway Commission. The City has the opportunity to not only build a new police station, but create economic development within the Port district. Commissioner Novakovich believes it is time to do it, granted the price is less than what the Port has invested, but our mission is to go in and help our partners or private entities, to create jobs and create economic development. Commissioner Novakovich is concerned, like Commissioner Barnes, about the RCCF funds. Commissioner Novakovich liked Mr. Arntzen's suggestion of releasing the property as the Port receives the funds. Commissioner Novakovich would like to see this done as quickly as we can, considering everything staff needs to do, but also recognizing that there is a deadline. Commissioner Novakovich stated there are several items to review; however, he thinks it is important to take a look at the proposal, which will benefit both the Port District and the City.

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Mayor Gerry thanked the Commission for the discussion and appreciates the input and comments. Regarding Commissioner Barnes's concerns, West Richland City Council was very adamant about purchasing the entire property if the City was going to invest \$1,000,000 in infrastructure to get utilities to the property. Mayor Gerry believes the City Council would not invest \$1,000,000 for five acres of property. Mayor Gerry assumed if the Port wanted to partner in that investment the Council would be willing to partner; however he does not believe the Port's priorities today are in investing in infrastructure. Mayor Gerry stated the City is growing rapidly and there is a need to bring in commercial businesses to support the housing growth. The City has that interest and would like the opportunity to develop the property in same manner that the Port has done with Columbia Gardens and Vista Field.

Commissioner Moak stated there are several issues that need to be addressed, such as the RCCF financing, the worth of the property, and the issues that Mr. Arntzen spoke of. Commissioner Moak stated the compressed timeline that the City is working with may take additional resources and it may not all fall on Port staff to meet that timeline. If the Port needs to hire consultants for this proposal, then that should be factored into the price. It does not cost the Port much to hold the property, but if the City really wants the property, then they need to offer their resources to meet their timeline. Commissioner Moak agrees with Commissioner Novakovich and believes the Port should move forward with the City's proposal.

Mr. Arntzen reiterated the Commission's directive for staff to continue negotiations with the City and bring back a proposal of substance, with a reasonable and fair price and address the financial information and water rights. Mr. Arntzen stated some issues may be more complicated and may require more time, and he stressed that he does not want to be a guarantor of how fast staff can get this done. The City's \$12,500,000 project is riding on a timeline and Mr. Arntzen asked the record to reflect, and he believes the Commission should make it abundantly clear, that a compressed timeframe on someone else's part does not make an emergency on our part. Mr. Arntzen pledged to Mayor Gerry that staff will work as fast as they can; although he cannot guarantee meeting the compressed time frame.

Mayor Gerry appreciates and understands Mr. Arntzen's comments and offered City staff to help mitigate the burden Port staff may have in regards to the timeline. The City will do its due diligence and also has the monetary ability to pay for items in the contract. Mayor Gerry offered up City staff to assist the Port staff and stated the City has already assisted the Port on many items and made their own investment in the property.

Mr. Arntzen explained that he would re-prioritize other projects from the Work Plan that staff is pursuing to focus on this proposal. Mr. Arntzen thinks there is an opportunity to move the proposal forward, but again, he cannot guarantee time frame.

Commissioner Moak asked what projects would need to be re-prioritized.

Mr. Arntzen stated there was an emphasis on landing a ground lease or sale in the Kennewick Waterfront Area and we would need to move that priority down if the Commission agreed.

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Commissioner Moak inquired if that would damage the ability to move forward on those properties.

Mr. Arntzen stated it will impact the work, because of the limited resources. Projects will need to be re-prioritized to focus on West Richland.

Commissioner Moak asked if at some point, staff will be able to refocus on Columbia Gardens again.

Mr. Arntzen stated in regards to the Wine Village, it takes quite a bit of movement to get there and believes the project will be set back a number of months. If the Commission wanted staff to focus on West Richland, staff would do their best to move forward, but we could not guarantee the timeline.

Commissioner Novakovich likes what he is hearing and believes the partnership will benefit the entire Port district. Commissioner Novakovich emphasized that sometimes you need be flexible when opportunities arise and how you apply resources.

Mr. Arntzen stated another project that will be impacted is the Clover Island Master Plan.

Commissioner Barnes stated after hearing the additional comments regarding the impact to Port projects, he has less support for the City's proposal. The Port has a great jurisdictional partner with the City; however, who wouldn't want the property for 30 cents per square foot. Commissioner Barnes stated in addition to the bargain price, the Port has a fully committed staff, limited resources, and projects at Columbia Gardens and Vista Field. This property requires a minimal holding cost and this proposal is a difficult fit at best. Commissioner Barnes is concerned about spending Port time and resources on pursuing this when the price offered is very low and a questionable method of payment. Commissioner Barnes invited the City to rethink their offer and bring a revised offer for consideration. Commissioner Barnes reiterated that he cannot support this offer with this price, with this method of payment, given all of the current projects and limited resources. The Comp Scheme says to hold the property and the Commission is going against a lot of things to continue moving forward with this proposal. Commissioner Barnes stated the City has been a great partner, but we need a better fit, something that makes sense for the Port.

Commissioner Moak stated Commissioner Barnes's point is well taken, but the price can be negotiated. The Port has not countered the offer and the Commission has asked staff to investigate the City's use of the Benton County RCCF funds and report back. Some of Commissioner Barnes's concerns would be valid if the Port were doing this for the money. Commissioner Moak asked Mr. Arntzen if he has enough information from the Commission related to the City's proposal to move forward.

Mr. Arntzen has enough information to move forward with detailed negotiations. Mr. Arntzen believes this issue will be placed on future Agendas before an agreement can be met.

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Commissioner Moak confirmed that Mr. Arntzen has heard from all three Commissioners and their concerns and thoughts.

Mr. Arntzen stated the Commission comments are all valid and this is a difficult proposal that the Commission needs to address. Mr. Arntzen understands Commissioner Barnes' concerns and stated Benton County could decide not to approve any more RCCF projects and then where would the Port be. Mr. Arntzen has enough information and staff will work on a report to address the issues, which may take some time. Mr. Arntzen stated this is a very unconventional proposal and he appreciates the Commission discussion. Mr. Arntzen asked Mayor Gerry to work with Ms. Hanchette, Director of Real Estate and Operations on this proposal and additional details.

### C. *Non-Scheduled Items*

1. Commissioner Moak attended the WPPA Spring Conference in May and the Association of Washington Cities (AWC) Conference in June and stated the level of quality of the AWC is vastly higher than the WPPA conference. Commissioner Moak presented information on Spokane's \$63,000,000 bond for Riverfront Park in Spokane. Additionally, Commissioner Moak attended "Running Effective Public Comment Sessions" with Ann G. Macfarlane at the AWC Conference.
2. Ms. Bader Inglima stated recently the *Tri-City Herald* featured a photo of the construction of the new tasting room at Columbia Gardens and followed up with an expanded story about the wineries and building.

Ms. Bader Inglima will be doing an interview with Visit Tri-Cities on the lighthouse because August 7 is National Lighthouse Day. Clover Island continues to do the commemorative passport stamp for the lighthouse and Ice Harbor offers a seasonal lager.

The US Army Corps of Engineers (USACE) and the Fish and Wildlife service are running tests on the notch, which is a separate project from the 1135 project. The USACE is doing some shallow water monitoring and testing. On August 15, the entire USACE 1135 team will be meeting at the office to walk the shoreline for the A & E design work.

3. Mr. Arntzen recently met with Lieutenant Colonel Christian Dietz, Commander of the Walla Walla District USACE to discuss Duffy's Pond. Mr. Arntzen requested that the Port and the USACE form an informal committee of executives to become champions to rehabilitate Duffy's Pond. The committee would include Mr. Arntzen, Lt. Col. Dietz, and Marie Mosley, City Manager. Additionally, Mr. Arntzen will reach out to the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) to see if they would like to have representation on the committee. Mr. Arntzen believes it would be a visioning committee to remind our capable staffs of the milestones, and the fact that we would like to accomplish this project. Mr. Arntzen has no question about Port staff; however, sometimes when working with a federal agency it is good to remind them that we have a finish line.



# PORT OF KENNEWICK

## Resolution No. 2019-20

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AMENDING A 2019/2020 GOAL FOR THE CHIEF EXECUTIVE OFFICER (CEO)***

**WHEREAS**, the Port Commission approved the 2019/2020 Goals and Objectives for the CEO on October 23, 2018; and

**WHEREAS**, during the July 30, 2019 Commission Meeting, the Commission directed the CEO to negotiate a land sale with the City of West Richland in lieu of the ground lease or sale in the Columbia Drive area; and

**WHEREAS**, to accommodate this new project, current projects need to be reprioritized as this negotiation requires a substantial amount of staff time; and

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby amends Goal 3 of the CEO's 2019/2020 Goals and Objectives to reflect the direction given by the Commission as follows:

**~~"Columbia Drive:~~**

- ~~3) Sell one parcel or obtain one ground lease.~~
  - ~~• Goal is awarded when presented for Commission acceptance (e.g. via resolution or other Commission approval methods)."~~

**"West Richland:**

- 3) Negotiate the land sale of the former Race Track property with the City of West Richland and present the Purchase Offer to the Commission.
  - Goal is awarded when presented for Commission acceptance (e.g. via resolution or other Commission approval methods)."

**BE IT FURTHER RESOLVED** that all action by port officers and employees in furtherance hereof is ratified and approved; and further, the port Chief Executive Officer is authorized to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 10th day of September, 2019.

***PORT of KENNEWICK  
BOARD of COMMISSIONERS***

By: \_\_\_\_\_  
THOMAS MOAK, *President*

By: \_\_\_\_\_  
DON BARNES, *Vice President*

By: \_\_\_\_\_  
SKIP NOVAKOVICH, *Secretary*



## AGENDA REPORT

**TO:** Port Commission

**FROM:** Amber Hanchette, Director Real Estate & Operations

**MEETING DATE:** September 10, 2019

**AGENDA ITEM:** DDM Investments (Cedars) Ground Lease Modification

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- I. REFERENCE(S):** Cedars Lease dated November 22, 2005  
Resolution 2018-09 Cedars Lease Amendment dated May 2018  
Resolution 2019-19 and  
2019 Amendment to Ground Lease

- II. DISCUSSION:**  
Cedars restaurant has been a ground lease tenant on Clover Island since 1974.

In December 2005, the Port Commission approved a lease assignment to new owners, Dave and Darci Mitcham. The Mitcham's have successfully operated Cedars restaurant on Clover Island as a steakhouse and iconic feature in the Tri-Cities.

Lease terms: 15 year lease commencing March 1, 2006 and expiring February 28, 2021 with two (2) ten (10) year renewal options at varying escalation rates.

May 2018, the Port Commission approved a tenant lease amendment request extending the ground lease options from two (2) ten (10) year options to four (4) ten (10) year options.

The tenant is requesting a fixed annual rent escalation rate of 3.5% beginning March 1, 2021 rather than larger rent increases every five (5) years during the first two option periods as currently written in the lease.

- III. ACTION REQUESTED OF COMMISSION:**  
**To approve or deny tenant's request for lease modification to include a fixed annual rent escalation rate of 3.5% beginning March 1, 2021.**

*Motion: I move approval of Resolution 2019-19, a ground lease amendment for DDM Investments allowing for a fixed annual rent escalation rate of 3.5% beginning March 1, 2021.*

ORIGINAL

**GROUND LEASE AGREEMENT**

This Lease is made and entered into on this 22<sup>nd</sup> day of November, 2005 by and between the Port of Kennewick, a municipal corporation organized under the laws of the State of Washington, herein referred to as "Port" and Cedars Pier One, Inc., a Washington Corporation, herein referred to as "Tenant".

**WITNESSETH:**

WHEREAS, the parties had previously entered into a Lease agreement and various amendments with such documents terminating February 28, 2006; and

WHEREAS, the parties are desirous of entering into a new Lease agreement;

NOW THEREFORE, Port, acting under and by virtue of the authority granted to it under the laws of the State of Washington and in particular RCW 53.04.010 et seq., and RCW 14.08.010 et seq., leases to Tenant and Tenant hereby leases from Port the following described premises:

*Lots 6,7,8 and 9, Clover Island Plat, Kennewick, Washington, such plat recorded under Auditor's File No. 317685, records of Benton County, Washington.*

**SECTION I**  
**LEASE**

Port hereby Leases to Tenant upon the terms, covenants and conditions contained herein, the above-referenced real property (hereafter the "property" or "premises").

Tenant has inspected the property and agrees to take the property in its present condition. The Tenant is relying upon their own inspections of the property to determine whether to enter into this Lease, and the Tenant is not relying upon any representation made by the Port, its employees or agents, except as specifically set forth in this Lease. Port hereby covenants and agrees to provide Tenant with parking, spaces in the parking areas shared jointly with the Clover Island Inn and its assigns. Such parking is as shown on Exhibit "A" to this Lease and subject to the reciprocal parking agreement among the Port, Cedars and Clover Island Inn, dated October 5, 1983. Port will repair, maintain and illuminate the parking area at Port's own cost and expense. All other maintenance to the property shall be provided by Tenant at its own cost and expense.

**SECTION II**  
**TERM**

This Lease shall run for a period of fifteen (15) years commencing on the 1st day of March, 2006, and terminating on the 28th day of February, 2021.

**Renewal Options:**

A. Provided that Tenant is in possession of the premises, and that this Lease is not previously cancelled or terminated by either party as in this Lease provided, by operation of law or otherwise, and further provided that Tenant has

faithfully complied with and performed all of the terms of this Lease, and any extension of said term, and is not in default at the time of exercise of this option, then Port and Tenant covenant and agree that Tenant shall have the option to extend the term of this lease for two (2) terms of ten (10) years each, each term commencing at the expiration of the term of this Lease, upon the same terms, covenants and provision herein set forth except for rent as hereinafter provided. The option(s) for said renewal term(s) shall be exercised by Tenant giving Port not less than ninety (90) written notice of intention so to extend the term prior to the expiration of the term of the Lease or renewal term, as applicable.

### **SECTION III**

#### **RENT**

Tenant shall pay rent monthly in advance as set forth on Exhibit "B" of this Lease, commencing on the first day of this Lease.

The rent payment shall be made payable to the Port of Kennewick and shall be paid at the Port offices at 350 Clover Island Drive, Kennewick, Washington 99336, or at such other address as the Port shall direct in writing.

In addition to the rent provided for herein, Tenant shall pay the Leasehold tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold tax shall be paid with each installment of rent. The current Leasehold tax rate is 12.84%.

Any rent payment not paid within thirty days of the date upon which the payment is due shall accrue interest on the unpaid rent at the rate of one percent (1%) per month.

### **SECTION IV**

#### **CONDITION OF PROPERTY**

Tenant shall take the property in its present condition, without warranties or representations by the Port except as expressly set forth in this Lease.

### **SECTION V**

#### **SECURITY FOR RENT**

The provisions of RCW 53.08.085 provide Tenant must have rental secured by rental insurance, bond, or other security satisfactory to Port, which security shall be on file with the commission at all times during the term of the Lease.

### **SECTION VI**

#### **TAXES AND ASSESSMENTS**

Tenant shall pay all taxes assessed against the buildings and improvements owned by the Tenant and the other property of Tenant located upon the property, promptly as the same become due. Tenant shall pay all assessments hereafter levied against the property, or a portion thereof, during the term of this Lease, including assessments coming due to any special purpose governmental district; provided, however, if the assessment is payable in installments, whether or not interest shall accrue on the unpaid installments, the Tenant may pay the assessments in installments as they become due, provided that the Tenant's obligation to pay the assessments levied during the term of the Lease, even though paid in

installments, shall survive the termination or expiration of this Lease.

Tenant may choose to contest the legal validity or amount of any taxes, assessments, or charges which Tenant is responsible for under this Lease. If Tenant contests any such tax, assessment or charge, Tenant may withhold or defer payment or pay under protest but shall protect Port and the property from any lien. At the Port's discretion, in the event a lien is filed as a result of a contested or unpaid assessment, a bond may be required.

#### SECTION VII PURPOSES AND USES

Tenant shall use the property for a restaurant and bar and for purposes incidental thereto and for no other purposes except those approved in writing by Port. No storage outside of the building located on the property is allowed unless authorized by the Port.

If, by law or regulation, Tenant is required to maintain a license, permit, or certification in order to provide any of the services or operations permitted by this Lease, Tenant shall obtain and maintain the license, permit, or certification as required before it performs the regulated services or operation. Tenant shall keep all such licenses, permits, or certificates current during the term of or any extensions of this Lease. Tenant shall provide copies of all licenses, permits, or certifications to the Port upon request.

In the event the Tenant provides services or operates without the proper license, permit, or certification in violation of any statute, ordinance, rule or regulation, this shall be deemed a default under the terms of this Lease, and Port shall be entitled to immediately terminate this Lease upon written notice to Tenant.

#### SECTION VIII MAINTENANCE

Except as otherwise provided herein, Tenant shall keep and maintain all portions of the premises, including all landscaping, in a neat, clean, and sanitary condition, normal wear and tear excepted. Tenant will maintain the premises in the same condition the premises were in upon the execution of this Lease. All maintenance shall be at the expense of the tenant. Failure to maintain the premises as set forth in this Lease agreement shall be deemed a breach of this agreement and subject Tenant to the default provisions of the Lease agreement.

#### SECTION IX INDEMNITY

The Tenant shall indemnify and hold the Port harmless from any liability, loss, damages, expenses, or costs, including attorneys fees, incurred or arising from any demand, claim, suit, action, or any other proceeding resulting from the premises, any activities of the Tenant, any negligence, intentional or willful act or omission, or any default or breach of this agreement. It is further acknowledged Port has no responsibility for any of Tenant's activities including but not limited to maintenance, repair and operation.

SECTION X  
ALTERATIONS/IMPROVEMENTS

The Tenant may not make alterations, improvements or additions to the property without the written permission of the Port.

Legal title to the improvements associated with the property now or hereafter constructed, installed or placed by Tenant upon the property and all alterations thereto when constructed, installed or placed upon the property, shall be and remain in Tenant during the continuance of this Lease, except as otherwise proved in writing. Upon the termination or expiration hereof, legal title to all buildings, structures and other improvements shall automatically and without further consideration vest in the Port.

SECTION XI  
BANKRUPTCY

If the Tenant shall file a petition in bankruptcy, or be adjudicated a bankrupt, or make an assignment for the benefit of creditors, or take advantage of any insolvency act, the Port, apart from any other rights, privileges or actions available to it under this Lease, at law or in equity, may, at its election at any time thereafter, terminate and cancel this Lease by giving written notice of its intention to do so, and then and in that event, this Lease and the terms thereof shall expire and come to an end on the giving of that notice, as if the date was the date originally fixed in this Lease for the expiration hereof.

SECTION XII  
ASSIGNMENT AND SUBLETTING

Tenant shall neither assign, sublet nor transfer its interest in this Lease, in whole or in part, to any person or entity, without Port's prior written approval; provided, however, that such approval shall not be arbitrarily withheld, and in the event of any transfer, Tenant shall remain responsible for all of the covenants and terms herein.

SECTION XIII  
PUBLIC LIABILITY INSURANCE

Throughout the term, at Tenant's sole cost and expense, Tenant shall keep or cause to be kept in force, for the mutual benefit of Port and Tenant, comprehensive broad form general public liability insurance (including a contractual liability endorsement) against claims and liability for personal injury, death or property damage arising from the use, occupancy, misuse, or condition of the property and improvements, with limits of coverage in an amount and with deductibles in such amounts as may be reasonably acceptable to Port. During the Lease term the insurance policy limit shall be \$1,000,000.00.

Tenant shall name the Port as an additional insured on the public liability insurance policy required to be maintained by the terms of this Lease. Tenant shall deliver to Port, in the manner required for notices, a copy or certificate of all insurance policies requiring the insurance carrier to give Port at least thirty (30) days prior written notice before such policy terminates. Tenant shall not substantially modify any of the insurance policies required by this Lease without giving at least thirty (30) days prior written notice to Port.



#### SECTION XIV DEFAULT

Any of the following events shall be a default by Tenant and a breach of this Lease:

A. The failure or refusal to pay when due any installment of rent or other sum required by this Lease to be paid by Tenant, or the failure to perform as required or conditioned by any other covenant or condition of this Lease.

B. The appointment of a receiver to take possession of the property or improvements, or of Tenant's interest in the Leasehold estate or of Tenant's operations on the property for any reason, unless such appointment is dismissed, vacated or otherwise permanently stayed or terminated within sixty days after the appointment.

C. An assignment by Tenant for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt; or for extending time for payment, adjustment or satisfaction of Tenant's liability; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated, or otherwise permanently stayed or terminated within sixty days after the assignment, filing, or other initial event.

As a precondition to pursuing any remedy for an alleged default by Tenant, Port shall give written notice of default to Tenant, in the manner herein specified for the giving of notices. Each notice of default shall specify the alleged event of default and the intended remedy.

If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Tenant as provided in this Lease, Tenant shall have thirty (30) days after receipt of written notice to cure the default. For the cure of any other default, Tenant shall have thirty days after receipt of written notice to cure the default, provided, however, that if it takes more than thirty (30) days to cure a default, Tenant shall not be in default if it promptly undertakes a cure and diligently pursues it.

Time is of the essence of this Lease, and for each and every covenant or condition which must be performed hereunder.

#### SECTION XV PORT'S REMEDIES

If any default by Tenant continues uncured after receipt of written notice of default and the period to cure as required by this Lease, for the period applicable to the default, Port has the following remedies in addition to all other rights and remedies provided by law or equity to which Port may resort cumulatively or in the alternative:

A. Without terminating this Lease, Port shall be entitled to recover from Tenant any amounts due hereunder, or any damages arising out of the violation or failure of Tenant to perform any covenant, condition or provision of this Lease.

B. Port may elect to terminate this Lease and any and all interest and claim of Tenant by virtue of such Lease, whether such interest or claim is existing or prospective, and to terminate all interest of Tenant in the property and any improvements or fixtures thereon (except trade fixtures). In the event this Lease is

terminated, all obligations and indebtedness of Tenant to Port arising out of this Lease prior to the date of termination shall survive such termination. In the event of termination by Port, Port shall be entitled to recover immediately as damages the total of the following amounts:

1. The reasonable costs of re-entry and reletting, including, but not limited to, any expenses of cleaning, repairing, altering, remodeling, refurbishing, removing, Tenant's property or any other expenses incurred in recovering possession of the property or reletting the property, including, but not limited to, reasonable attorney's fees, court costs, broker's commissions and advertising expenses.

2. The loss of rental on the property accruing until the date when a new Tenant has been or with the exercise of reasonable diligence could have been obtained.

C. Port may re-enter the property and take possession thereof and remove any persons and property by legal action or by self-help and without liability for damages, and Tenant shall indemnify and hold Port harmless from any claim or demand arising out of such re-entry and removal of persons and property.

Such re-entry by Port shall not terminate the Lease or reLease Tenant from any obligations under the Lease. In the event Port re-enters the property for the purpose of reletting, Port may relet all or some portion of the property, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of a period of rent-free occupancy or other rental concession, and Port may not be required to relet to any Tenant which Port may reasonably consider objectionable.

D. In the event Port relets the property as agent for Tenant, Port shall be entitled to recover immediately as damages the total of the following amounts:

1. An amount equal to the total rental coming due for the remainder of the term of this Lease, computed based upon the periodic rent provided for herein and without discount or reduction for the purpose of adjusting such amount to present value of anticipated future payments, less any payments thereafter applied against such total rent by virtue of the new Lease.

2. The reasonable costs of re-entry and reletting, including but not limited to, any expense of cleaning, repairing, altering, remodeling, refurbishing, removing Tenant's property, or any other expenses incurred in recovering possession of the property or reletting the property, including, but not limited to, attorney's fees, court costs, broker's commissions and advertising expenses.

E. All payments received by Port from reletting shall be applied upon indebtedness and damages owing to Port from Tenant, if any.

SECTION XVI  
WAIVER

No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default on the payment of that particular rental payment, regardless of Port's knowledge of the preceding breach at the time of accepting rent. Acceptance of rent or other payment after termination shall not constitute a reinstatement, extension or renewal of this Lease, or revocation of any notice or other act by Port.

SECTION XVII  
ARBITRATION

Any dispute related to this lease shall be settled by arbitration which arbitration shall be conducted in Kennewick, Washington in accordance with the rules, then obtaining, of the American Arbitration Association or its successor, and judgment upon the award rendered shall be entered in any court having jurisdiction thereof. Each party to the arbitration shall pay half the cost thereof.

SECTION XVIII  
ACCESS BY PORT

Port, or Port's representatives and agents, shall have access to the property at reasonable times and upon reasonable notice, for the purpose of inspecting the property; provided that Port shall exercise all reasonable efforts not to unreasonably disturb the use and occupancy of the property by Tenant.

SECTION XIX  
HOLDING OVER

In the event Tenant shall hold over after the expiration or termination of this Lease, such holding over shall be deemed to create a tenancy from month-to-month on the same terms and conditions of the Lease and the rent shall be prorated over a 365 day year and paid by Tenant each month in advance. The tenancy may be terminated by either party giving the other party thirty days written notice of the intent to terminate.

SECTION XX  
HAZARDOUS MATERIALS

Tenant may not, without the prior written consent of Port, generate, store, handle, transfer, dispose of, or otherwise deal in any hazardous substance over, on, in, across, or around the Lease property. Hazardous substance shall be interpreted broadly to mean any substance or material defined or designated as hazardous through toxic waste, hazardous through toxic material, hazardous or toxic or radioactive substance, or other similar terms by any federal, state, or local environmental law, regulation, or rule presently in effect or hereafter enacted, and it shall be interpreted to include, but not limited to, any substance which in being used, or after released into the environment may be a fire danger, or which upon exposure, ingestion, or inhalation, or simulation, either directly from the environment or directly by ingestion through food chains or otherwise, will or may reasonably be anticipated

to cause property damage, sickness, death, disease, behavior abnormalities, cancer, or genetic abnormalities. Tenant shall hold harmless from and indemnify Port against and from any damage, loss, expenses, or liability resulting from any breach of this paragraph including all attorneys fees and costs occurred as a result thereof.

Tenant's entire operation shall comply with all local, state, federal, environmental, fire protection, and all other ordinances, rules and regulations.

Tenant shall not permit nor suffer any offensive use of Lease property, nor the commission of waste thereupon and shall not in any manner substantially change the premises unless approved in writing by Port. Tenant shall keep the premises in good order and in a clean, sanitary, and safe condition satisfactory to Port. In the event Port is not satisfied that Tenant is fulfilling the terms and conditions of this paragraph, Port shall so notify Tenant in writing. Thirty (30) days thereafter, if the conditions are not corrected by Tenant, Port may cause the corrections to be made and Tenant shall pay Port for the cost of any and all corrections.

Tenant, its subsidiaries, grantees, assigns, or successors in interest shall indemnify Port and hold it harmless for any claim, demand, removal, clean-up, investigation, lab costs, fees of consultants, contractors, lawyers, and charges for governmental personnel for any liability which may be incurred for any activity on the part of Tenant, its subsidiaries, successors and interests or assigns for any federal, state, county, local, or governmental requirement regarding the substances or waste or storage or disposal thereof upon the demised premises including, without limitation to, CERCLA, SARA, RCRA, Underground Storage Tank Facilities Act, Model Toxic Control Act or any additional enactments, regulations, amendments, or additions thereto.

#### SECTION XXI NOTICES

Any notices required or permitted to be given under the terms of this Lease, or by law, shall be in writing and may be given by personal delivery, or by registered or certified mail, return receipt requested, or by overnight courier, directed to the parties at the following addresses, or such other address as any party may designate in writing prior to the time of the giving of such notice, or in any other manner authorized by law:

*Port of Kennewick  
101 Clover Island Drive  
Kennewick, Washington 99336*

*Cedars Pier One, Inc.  
355 Clover Island Drive  
Kennewick, Washington 99336*

Any notice given shall be effective when actually received, or if given by certified or registered mail, upon the recipient's receipt of a notice from the U.S. Postal Service that the mailed notice is available for pick up.

#### **SECTION XXII** **NONMERGER**

If both Port's and Tenant's estates in the property or the improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except by the express election of the owner and the consent of the mortgage or mortgagees under all mortgages existing upon the property.

#### **SECTION XXIII** **CAPTIONS AND TABLE OF CONTENTS**

The Table of Contents of this Lease and the captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Lease or of any part or parts of this Lease.

#### **SECTION XXIV** **EXHIBITS AND ADDENDA**

All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references to them. References to "this Lease" include matters incorporated by reference.

#### **SECTION XXV** **BINDING ON HEIRS, SUCCESSORS, AND ASSIGNS**

Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding upon and inure to the benefits of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties. The Port agrees that if the property is sold, assigned, or conveyed, except for any conveyance to the United States, the Port will place a provision in any conveyance making the conveyance subject to the terms and conditions of this Lease. The Port represents, that if this Lease is recorded, any subsequent conveyance of the property by the Port will be subject to the terms of this Lease, with the exception of any conveyance to the United States.

#### **SECTION XXVI** **SEVERABILITY**

If any provision of this Lease is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

#### **SECTION XXVII** **LIENS**

Tenant shall not permit any portion of the property covered by this Lease to be subject to any liens resulting from any acts or omissions or commissions on its part.

SECTION XXVIII  
NO ORAL CHANGES

Neither this Lease nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the parties.

SECTION XXIX  
WAIVER OF BREACH

The failure of either party to insist upon a strict performance of any of the terms, covenants, and conditions of this Lease shall not be deemed a waiver of any rights or remedies of either such party, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, conditions, and covenants contained in this Lease.

SECTION XXX  
FORCE MAJEURE

If the Port or Tenant cannot perform any of its obligations (except Tenant is still obligated for any and all financial obligations and covenants under this Lease from the commencement date) due to events beyond such party's control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond the party's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions.

SECTION XXXI  
COMPLIANCE

Tenant shall comply with all laws and regulations of the federal government, state, county, and municipality wherein said demises properties are located with regard to sanitation, licenses, permits to do business and all other matters.

SECTION XXXII  
EMINENT DOMAIN

The parties agree that in the event any portion of the premises, or the whole thereof, shall be taken for a public use by the right of eminent domain, that all improvements placed upon the premises shall be and immediately become real property and shall be the property of the Port and shall be included in any and all condemnation action or actions concerning the same. The Port agrees that in the event of such taking by right of eminent domain, the Port will receive all compensation paid for the taking or damaging of the premises and the taking or damaging of the improvements, and will pay Tenant such amount of the judgment received as is included by way of the value of the permanent improvements taken or damaged in such eminent domain action. Provided, however, that the Port shall keep Tenant fully informed as to the status and negotiations with respect to the value of any settlement or compensation which includes Tenant's property.

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the date and year first above written.

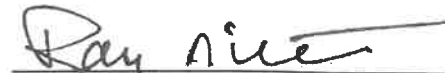
**BOARD OF COMMISSIONERS  
PORT OF KENNEWICK**

  
JOHN OLSON, *President*

  
DAVID HANSON, *Vice President*

  
GENE WAGNER, *Secretary*

**TENANT**

  
Signature

  
Printed Name/Title



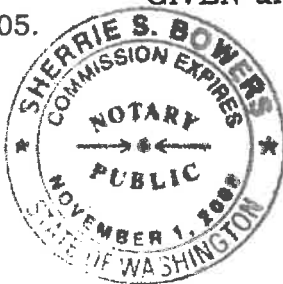
STATE OF WASHINGTON

)  
: ss.  
)

County of Benton

On this day personally appeared before me **John Olson, Gene Wagner and David Hanson** to me known to be the President, Vice President, and Secretary, respectively, of the Port of Kennewick, the municipal corporation that executed the foregoing instrument, and acknowledged the 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 they are authorized to execute the said instrument and that the seal affixed thereto is the corporate seal of said corporation.

GIVEN under my hand and official seal this 22<sup>nd</sup> day of November, 2005.



*Sherrie Bowers*

NOTARY PUBLIC in and for the State  
of Washington, residing at Kennewick  
My Commission Expires: NOV 1, 2008

STATE OF WASHINGTON

)  
: ss.  
)

County of Benton

On this day personally appeared before me Ray Gillett to me known to be the individual who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this 10<sup>th</sup> day of October, 2005.



*Mary J. Fitch*

NOTARY PUBLIC in and for the State  
of Washington, residing at Kennewick, Wa  
My Commission Expires: 11, 2008

## EXHIBIT "B"

### MONTHLY RENT SCHEDULE (Add applicable Leasehold tax)

YEAR 1	\$1,800
YEAR 2	\$2,000
YEAR 3	\$2,200
YEAR 4	\$2,500
YEARS 5 THROUGH 9	\$3,000
YEARS 10 THROUGH 15	\$3,500
YEARS 16 THROUGH 20*	\$4,500
YEARS 21 THROUGH 25*	\$6,000
YEARS 26 THROUGH 30*	\$6,500
YEARS 31 THROUGH 35*	\$7,000

\*If options validly exercised



**PORT of KENNEWICK**

*Open for Business!*

Lease effective 3/1/06

Yr 1 3/1/06 - 3/1/07

Yr 2 3/1/07 - 3/1/08

Yr 3 3/1/08 - 3/1/09

Yr 4 3/1/09 - 3/1/10

Yr 5 3/1/10 - 3/1/11

Yr 6 3/1/11 - 3/1/12

Yr 7 3/1/12 - 3/1/13

Yr 8 3/1/13 - 3/1/14

Yr 9 3/1/14 - 3/1/15

Yr 10 3/1/15 - 3/1/16

Yr 11 3/1/16 - 3/1/17

Yr 12 3/1/17 - 3/1/18

Yr 13 3/1/18 - 3/1/19

Yr 14 3/1/19 - 3/1/20

Yr 15 3/1/20 - 3/1/21

Yr 16 3/1/21 - 3/1/22

Yr 17 3/1/22 - 3/1/23

Yr 18 3/1/23 - 3/1/24

2500.00  
Rent Relief

\$3,000

3,500

4,500.



## **ASSIGNMENT OF LEASE**

THIS AGREEMENT is made between

**Cedars Pier One, Inc.  
A Washington Corporation  
355 Clover Island Drive  
Kennewick, WA 99336**

hereinafter referred to as "Assignor," and

**DDM Investments LLC  
A Washington Limited Liability Corporation**  

---

**Spokane, WA 99201**

hereinafter referred to as "Assignee".

The parties hereby covenant, promise, and agree as follows:

### **WITNESSETH:**

WHEREAS, the Assignor, as "Tenant", has heretofore entered into a Ground Lease Agreement with the Port of Kennewick dated the 22nd day of November, 2005 which Ground Lease Agreement was approved by the Port of Kennewick Board of Commissioners on November 22, 2005. A true and correct copy of the Ground Lease Agreement is attached hereto as EXHIBIT A; and

WHEREAS, the Ground Lease Agreement, at Section XII, provides for the assignment of the Tenant's interest:

**ASSIGNMENT AND SUBLETTING** Tenant shall neither assign, sublet nor transfer its interest in this Lease, in whole or in part, to any person or entity, without Port's prior written approval; provided, however, that such approval shall not be arbitrarily withheld, and in event of any transfer, tenant shall remain responsible for all of the covenants and terms herein.

WHEREAS, Assignor desires to assign the remainder of the term of the lease to DDM Investments LLC, hereinafter referred to as "Assignee"; and

WHEREAS, Assignee desires to accept the assignment of the Ground Lease Agreement and shall guarantee compliance with all lease terms and conditions of the Ground Lease Agreement; and

WHEREAS Assignor and Assignee agree to seek the approval of the Port of Kennewick for such assignment

### **ASSIGNMENT OF GROUND LEASE**

Cedars Pier One, Inc. to DDM Investments, LLC

**NOW THEREFORE** and in consideration of the terms hereof:

1. Assignor hereby assigns transfers to the Assignee all right title and interest of the Assignor, as "Tenant" in and to said Ground Lease Agreement, EXHIBIT A, hereto subject to all limitations and terms thereof and subject to all interests and claims of record in relation to the following real property:

**Lots 6,7,8 and 9, Clover Island Plat, Kennewick, Washington, such plat recorded under Auditor's File No. 317685, Records of Benton County, Washington.**

2. Assignee hereby agrees to accept, undertake and perform all obligations of the Tenant under said Ground Lease Agreement; and
3. Assignor acknowledges as agrees that, in consideration of this Assignment and the approval of the Port of Kennewick thereof and pursuant to Section XII of said Ground Lease Agreement that, this assignment notwithstanding, Assignor, its successors and assigns remain responsible to the Port of Kennewick for all of the covenants and terms of said lease.
4. In consideration of the approval of the Port of Kennewick, Assignee hereby covenants, confirms and ratifies all of the terms, covenants and conditions of the Ground Lease Agreement dated November 22, 2005, EXHIBIT A hereto, and agrees, on behalf of itself, its successors and assigns to be strictly bound by and to perform all of the undertakings of the Assignor as Tenant.
5. This Assignment of Ground Lease Agreement shall be recorded in the same manner as the Ground Lease Agreement and an original copy shall be retained in the files of the Port of Kennewick.
6. This Assignment of Lease shall be effect from and after January 2, 2006.

IN WITNESS WHEREOF, the parties hereto have executed this instrument this 30 day of December, 2005.

**ASSIGNOR**

**CEDARS PIER ONE, INC.**

By Ray Gillett  
Ray Gillett - President

**ASSIGNEE**

**DDM INVESTMENTS LLC.**

By David Mitcham  
David Mitcham - President  
Glenn Mitchell Member

**ASSIGNMENT OF GROUND LEASE**

Cedars Pier One, Inc. to DDM Investments, LLC

Page 2 of 4

(25)

State of Washington )  
 County of Flathead ) ss

## CORPORATE ACKNOWLEDGMENT

ON this day personally appeared before me Ray Gillette  
 and \_\_\_\_\_, to me known to be the  
 President and \_\_\_\_\_ of  
 Cedar Pier One, Inc. that executed the foregoing instrument and acknowledged the said instrument to  
 be the free and voluntary act and deed of said corporation, for the uses and purposes herein mentioned,  
 and on oath stated that they are authorized to execute the said instrument.

Given under my hand and official seal this 30<sup>th</sup> day of December, 2005.



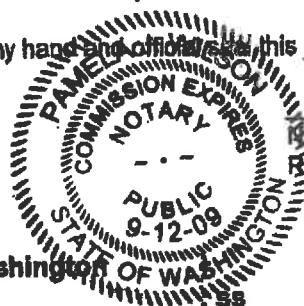
REBECCA WELCH  
 Notary Public in and for the State of Washington - Montana  
 Residing at Bigfork, Montana  
 My Commission Expires: June 15, 2006

State of Washington )  
 County of Benton ) ss

## CORPORATE ACKNOWLEDGMENT

ON this day personally appeared before me David Mitcham  
 and Darci Mitcham, to me known to be the  
 Members and \_\_\_\_\_ of  
 DDM Investments, LLC that executed the foregoing instrument and acknowledged the said instrument to  
 be the free and voluntary act and deed of said corporation, for the uses and purposes herein mentioned,  
 and on oath stated that they are authorized to execute the said instrument.

Given under my hand and official seal this 3 day of January, 2006.



Notary Public in and for the State of Washington  
 Residing at Wichita, KS

State of Washington )  
 County of Benton ) ss

## CORPORATE ACKNOWLEDGMENT

ON this day personally appeared before me Tim Arntzen, to me known to be the Executive Director of  
 the Port of Kennewick, a Washington Municipal Corporation who executed the foregoing instrument  
 and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for  
 the uses and purposes herein mentioned, and on oath stated that he is authorized to execute the said  
 instrument.

Given under my hand and official seal this 12<sup>th</sup> day of January, 2006.

Notary Public in and for the State of Washington  
 Residing at Kennewick

ASSIGNMENT OF GROUND LEASE

Cedars Pier One, Inc. to DDM Investments, LLC

Page 4 of 4

(27)

**APPROVAL OF ASSIGNMENT**  
**of**  
**GROUND LEASE AGREEMENT**  
**November 22, 2005**

**Cedars Pier One, Inc. to DDM Investments, LLC**

As authorized by its Board of Commissioners, the Port of Kennewick, in consideration of the specific undertakings of the parties therein, hereby approves the foregoing **Assignment of Ground Lease Agreement** assigning that certain **Ground Lease Agreement** dated November 22, 2005.

Dated 1/12/06

**PORT OF KENNEWICK**

By   
Tim Amizer  
Executive Director

**ASSIGNMENT OF GROUND LEASE**

**Cedars Pier One, Inc. to DDM Investments, LLC**

Page 3 of 4

(26)



## AMENDMENT TO GROUND LEASE

THIS AMENDMENT, entered into this 23<sup>rd</sup> day of May, 2018, by and between the Port of Kennewick, a Washington municipal corporation (hereinafter referred to as "Port"), and DDM Investments LLC, a Washington limited liability company (hereinafter referred to as "Tenant"),

### WITNESSETH

WHEREAS, on November 22, 2005, Port and Tenant's predecessor in interest entered into a Ground Lease (with Option to Purchase)(the "Ground Lease") for the lease of Lots 6, 7, 8 and 9, Clover Island Plat, Kennewick, Washington, such plat recorded under Auditor's File No. 317685, records of Benton County, Washington and as shown on Exhibit A of the Ground Lease (the "Property"). A true and correct copy of the Ground Lease is attached hereto and incorporated by reference herein as Exhibit "1". On December 30, 2005, effective from and after January 2, 2006, the Ground Lease was assigned from the original Tenant, Cedars Pier One, Inc. to DDM Investments LLC pursuant to an Assignment of Lease. A true and correct copy of the Assignment of Lease is attached hereto and incorporated by reference herein as Exhibit "2".

AND, WHEREAS, the Port and Tenant wish to set forth their agreement to provide Tenant with additional lease term renewal options, to address dock usage, and to address rent for the additional lease terms.

NOW, THEREFORE, it is agreed by and between the parties, as follows:

1. The following sentences are added before the last sentence of Section I, "Lease":

The Port and the Tenant may jointly use the dock immediately adjacent to the property. The Port will maintain the dock structure while the Tenant shall maintain dock cleanliness.

2. Section II, Term, "Renewal Options", of the Ground Lease Agreement is amended to read as follows:

Provided that Tenant is in possession of the premises, and that this Lease is not previously cancelled or terminated by either party as in this Lease provided, by operation of law or otherwise, and further provided that Tenant has faithfully complied with and performed all of the terms of this Lease, and any extension of said term, and is not in default at the time of exercise of this option, then Port and Tenant covenant and agree that Tenant shall have the option to extend the term of this Lease for four (4) successive terms of ten (10) years each, each successive term commencing at the expiration of the prior term of this Lease, upon the same terms, covenants and provisions herein set forth except for rent as hereinafter provided. The option(s) for said renewal term(s) shall be exercised by Tenant giving Port not less than ninety (90) days written notice prior to the expiration of the then applicable Lease term of Tenant's intention to exercise the renewal option.

3. Section III – RENT of the lease is hereby amended to read in full as follows:

SECTION III  
RENT

**Base Rent:** Tenant shall pay rent monthly in advance as set forth below commencing on the first day of this Lease and continuing monthly thereafter on the first day of each succeeding month as follows: (Rates for years 16 through 55 apply only if renewal term option is validly exercised.)

YEAR 1	\$1,800
YEAR 2	\$2,000
YEAR 3	\$2,200
YEAR 4	\$2,500
YEARS 5 THROUGH 9	\$3,000
YEARS 10 THROUGH 15	\$3,500
YEARS 16 THROUGH 20	\$4,500
YEARS 21 THROUGH 25	\$6,000
YEARS 26 THROUGH 30	\$6,500
YEARS 31 THROUGH 35	\$7,000
YEARS 36 THROUGH 55 (2.5% increase each lease year; e.g., Year 36 rate will be \$7175; Year 37 rate will be \$7354.38, with 2.5% increase added in the same manner each year thereafter.)	

**Leasehold Tax:** In addition to the rent provided for herein, Tenant shall pay the Leasehold tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold tax shall be paid with each installment of rent. The current Leasehold tax rate is 12.84%.

**Place of Payment:** The rent payment shall be made payable to the Port of Kennewick and shall be paid at the Port offices at 350 Clover Island Drive, Kennewick, Washington 99336, or at such other address as the Port shall direct in writing.

**Late Fees:** If any sums payable by Tenant to Port under this Lease are not received by the fifteenth (15<sup>th</sup>) day of the month in which they are due, Tenant shall pay Port an additional amount for the cost of collecting and handling such late payment as a late fee in an amount equal to the greater of (i) Fifty Dollars (\$50.00), or (ii) five percent (5%) of the overdue amount.

**Interest:** Any rent payment not paid within thirty days of the date upon which the payment is due shall accrue interest on the unpaid rent at the rate of one percent (1%) per month.

**Insufficient Funds:** If a Tenant check is returned by the bank for any reason, Tenant shall pay a NSF fee of Fifty Dollars (\$50.00) for administrative costs related to collecting and handling

such returned check. The Tenant shall also pay any associated bank fees charged to the Port related to the returned check. Landlord may require, at Landlord's sole discretion, that Tenant's future payments be made by cash, cashier's check or money order.

**Fees Reasonable; Effect of Acceptance:** Port and Tenant hereby agree that these charges represent a fair and reasonable estimate of what the Port might incur by reason of Tenant's late or NSF payment. These fees are due and payable with the current rent payment. Port's acceptance of any late charge, interest or NSF fee shall not be deemed an extension of the date rent is due or prevent Port from exercising any other rights or remedies under this Lease.

**Right to Revise Policy:** The Port reserves the right to revise its policy regarding late payment, interest and NSF check charges without notice to Tenant.

4. All remaining terms and conditions of the parties' Ground Lease Agreement and Assignment of Lease (Exhibits 1 and 2 attached), not inconsistent herewith, remain unchanged.

**PORT OF KENNEWICK**

**By:**

  
**Tim Arntzen, Chief Executive  
Officer**

**Title:**

**DDM INVESTMENTS LLC**

**By:**

  
**David W. Mitcham / Partner**  
DAVID W. MITCHAM

**By:**

  
**Darci Mitcham / Partner**

**Reviewed:**

**By:**

  
**Nick Kooiker, Port CFO**

**Title:**

**Approved as to form:**

**By:**

  
**Lucinda Luke, Port Legal Counsel**

**Title:**

such returned check. The Tenant shall also pay any associated bank fees charged to the Port related to the returned check. Landlord may require, at Landlord's sole discretion, that Tenant's future payments be made by cash, cashier's check or money order.

**Fees Reasonable; Effect of Acceptance:** Port and Tenant hereby agree that these charges represent a fair and reasonable estimate of what the Port might incur by reason of Tenant's late or NSF payment. These fees are due and payable with the current rent payment. Port's acceptance of any late charge, interest or NSF fee shall not be deemed an extension of the date rent is due or prevent Port from exercising any other rights or remedies under this Lease.

**Right to Revise Policy:** The Port reserves the right to revise its policy regarding late payment, interest and NSF check charges without notice to Tenant.

4. All remaining terms and conditions of the parties' Ground Lease Agreement and Assignment of Lease (Exhibits 1 and 2 attached), not inconsistent herewith, remain unchanged.

**PORT OF KENNEWICK**

By: \_\_\_\_\_  
Tim Arntzen, Chief Executive  
Title: Officer

Reviewed:

By: \_\_\_\_\_  
Title: Nick Koolker, Port CFO

**DDM INVESTMENTS LLC**

By: \_\_\_\_\_  
Name/Title: David W. Mitcham / Partner  
By: \_\_\_\_\_  
Name/Title: Daxci Mitcham / Partner

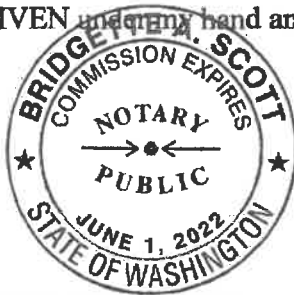
Approved as to form:

By: \_\_\_\_\_  
Title: Lucinda Luke, Port Legal Counsel

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

On this day personally appeared before me Tim Arntzen to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this 4th day of June 2018.



Bridgette A. Scott  
Notary Public in and for the State of Washington  
Residing at: Richland  
My Commission Expires: 06-01-2022

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

On this day personally appeared before me David W. Mitcham to me known to be the Partner of the **DDM Investments, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated he/she is authorized to execute the said instrument.

GIVEN under my hand and official seal this 23rd day of May 2018.

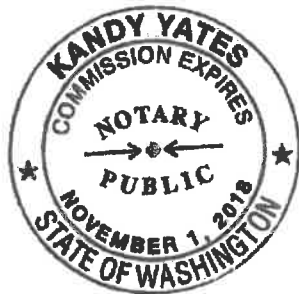


Bridgette A. Scott  
Notary Public in and for the State of Washington  
Residing at: Richland  
My Commission Expires: 06-01-2022

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

On this day personally appeared before me Darci Mitcham to me known to be the Partner of the DDM Investments, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated he/she is authorized to execute the said instrument.

GIVEN under my hand and official seal this 23<sup>rd</sup> day of May 2018.



Kandy Yates  
Notary Public in and for the State of Washington  
Residing at: Pasco, WA  
My Commission Expires: 11/1/2018

# **PORT OF KENNEWICK**

## **Resolution No. 2018-09**

### **A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN AMENDMENT TO COMMERCIAL LEASE AGREEMENT WITH DDM INVESTMENTS LLC**

**WHEREAS**, the Port of Kennewick (Port) is authorized to enter into certain leases upon such terms as the Port Commission deems proper; and

**WHEREAS**, DDM Investments LLC commonly known as Cedars Restaurant has a long-term ground lease effective November 22, 2005 through assignment of lease from original tenant effective after January 2, 2006 on the port's Clover Island property; and

**WHEREAS**, an Amendment for two additional ten (10) year lease renewal options has been negotiated by port staff and legal counsel; and

**WHEREAS**, the Port Commission has called a regularly scheduled public meeting with notice of such meeting given as provided by law and such public meeting was held at such time and on said date; and

**WHEREAS**, Port staff and legal counsel have reviewed the proposed Lease Amendment and find it is in proper form and it is in the Port's best interest; and

**WHEREAS**, after consideration of the attached lease amendment, the Port Commission has determined that the lease is proper.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby approves two additional ten (10) year lease renewal options with DDM Investments LLC as presented and authorizes the Port's Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.


**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 22nd day of May 2018.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By:

  
THOMAS MOAK, President

By:

  
DON BARNES, Vice President

By:

  
SKIP NOVAKOVICH, Secretary





# **PORT OF KENNEWICK**

## **Resolution No. 2018-09**

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**WHEREAS**, DDM Investments LLC commonly known as Cedars Restaurant has a long-term ground lease effective November 22, 2005 through assignment of lease from original tenant effective after January 2, 2006 on the port's Clover Island property; and

**WHEREAS**, an Amendment for two additional ten (10) year lease renewal options has been negotiated by port staff and legal counsel; and

**WHEREAS**, the Port Commission has called a regularly scheduled public meeting with notice of such meeting given as provided by law and such public meeting was held at such time and on said date; and

**WHEREAS**, Port staff and legal counsel have reviewed the proposed Lease Amendment and find it is in proper form and it is in the Port's best interest; and

**WHEREAS**, after consideration of the attached lease amendment, the Port Commission has determined that the lease is proper.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby approves two additional ten (10) year lease renewal options with DDM Investments LLC as presented and authorizes the Port's Chief Executive Officer to execute all documents and agreements on behalf of the Port to complete the transaction as specified above.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 22nd day of May 2018.

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

By: 

THOMAS MOAK, *President*

By: 

DON BARNES, *Vice President*

By: 

SKIP NOVAKOVICH, *Secretary*

## AMENDMENT TO GROUND LEASE

THIS AMENDMENT, entered into this 23<sup>rd</sup> day of May, 2018, by and between the Port of Kennewick, a Washington municipal corporation (hereinafter referred to as "Port"), and DDM Investments LLC, a Washington limited liability company (hereinafter referred to as "Tenant"),

### WITNESSETH

WHEREAS, on November 22, 2005, Port and Tenant's predecessor in interest entered into a Ground Lease (with Option to Purchase)(the "Ground Lease") for the lease of Lots 6, 7, 8 and 9, Clover Island Plat, Kennewick, Washington, such plat recorded under Auditor's File No. 317685, records of Benton County, Washington and as shown on Exhibit A of the Ground Lease (the "Property"). A true and correct copy of the Ground Lease is attached hereto and incorporated by reference herein as Exhibit "1". On December 30, 2005, effective from and after January 2, 2006, the Ground Lease was assigned from the original Tenant, Cedars Pier One, Inc. to DDM Investments LLC pursuant to an Assignment of Lease. A true and correct copy of the Assignment of Lease is attached hereto and incorporated by reference herein as Exhibit "2".

AND, WHEREAS, the Port and Tenant wish to set forth their agreement to provide Tenant with additional lease term renewal options, to address dock usage, and to address rent for the additional lease terms.

NOW, THEREFORE, it is agreed by and between the parties, as follows:

1. The following sentences are added before the last sentence of Section I, "Lease":

The Port and the Tenant may jointly use the dock immediately adjacent to the property. The Port will maintain the dock structure while the Tenant shall maintain dock cleanliness.

2. Section II, Term, "Renewal Options", of the Ground Lease Agreement is amended to read as follows:

Provided that Tenant is in possession of the premises, and that this Lease is not previously cancelled or terminated by either party as in this Lease provided, by operation of law or otherwise, and further provided that Tenant has faithfully complied with and performed all of the terms of this Lease, and any extension of said term, and is not in default at the time of exercise of this option, then Port and Tenant covenant and agree that Tenant shall have the option to extend the term of this Lease for four (4) successive terms of ten (10) years each, each successive term commencing at the expiration of the prior term of this Lease, upon the same terms, covenants and provisions herein set forth except for rent as hereinafter provided. The option(s) for said renewal term(s) shall be exercised by Tenant giving Port not less than ninety (90) days written notice prior to the expiration of the then applicable Lease term of Tenant's intention to exercise the renewal option.

3. Section III – RENT of the lease is hereby amended to read in full as follows:

**SECTION III**  
**RENT**

**Base Rent:** Tenant shall pay rent monthly in advance as set forth below commencing on the first day of this Lease and continuing monthly thereafter on the first day of each succeeding month as follows: (Rates for years 16 through 55 apply only if renewal term option is validly exercised.)

YEAR 1	\$1,800
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YEAR 3	\$2,200
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YEARS 16 THROUGH 20	\$4,500
YEARS 21 THROUGH 25	\$6,000
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YEARS 36 THROUGH 55 (2.5% increase each lease year; e.g., Year 36 rate will be \$7175; Year 37 rate will be \$7354.38, with 2.5% increase added in the same manner each year thereafter.)	

**Leasehold Tax:** In addition to the rent provided for herein, Tenant shall pay the Leasehold tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold tax shall be paid with each installment of rent. The current Leasehold tax rate is 12.84%.

**Place of Payment:** The rent payment shall be made payable to the Port of Kennewick and shall be paid at the Port offices at 350 Clover Island Drive, Kennewick, Washington 99336, or at such other address as the Port shall direct in writing.

**Late Fees:** If any sums payable by Tenant to Port under this Lease are not received by the fifteenth (15<sup>th</sup>) day of the month in which they are due, Tenant shall pay Port an additional amount for the cost of collecting and handling such late payment as a late fee in an amount equal to the greater of (i) Fifty Dollars (\$50.00), or (ii) five percent (5%) of the overdue amount.

**Interest:** Any rent payment not paid within thirty days of the date upon which the payment is due shall accrue interest on the unpaid rent at the rate of one percent (1%) per month.

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**Right to Revise Policy:** The Port reserves the right to revise its policy regarding late payment, interest and NSF check charges without notice to Tenant.

4. All remaining terms and conditions of the parties' Ground Lease Agreement and Assignment of Lease (Exhibits 1 and 2 attached), not inconsistent herewith, remain unchanged.

**PORT OF KENNEWICK**

**By:**



  
**Tim Arntzen, Chief Executive  
Officer**

**Title:**

**DDM INVESTMENTS LLC**


**By:**

**Name/Title:**

  
  
DAVID W. MITCHAM / Partner

**By:**

**Name/Title:**

  
Darcy Mitcham / partner

**Reviewed:**

**By:**

**Title:**

  
**Nick Kooiker, Port CFO**

**Approved as to form:**

**By:**

**Title:**

  
**Lucinda Luke, Port Legal Counsel**

such returned check. The Tenant shall also pay any associated bank fees charged to the Port related to the returned check. Landlord may require, at Landlord's sole discretion, that Tenant's future payments be made by cash, cashier's check or money order.

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**PORT OF KENNEWICK**

By: \_\_\_\_\_  
Tim Arntzen, Chief Executive  
Title: Officer

Reviewed:

By: \_\_\_\_\_  
Title: Nick Koolker, Port CFO

**DDM INVESTMENTS LLC**

By: \_\_\_\_\_  
Name/Title: David W. Mitcham / Partner  
By: \_\_\_\_\_  
Name/Title: David Mitcham / Partner

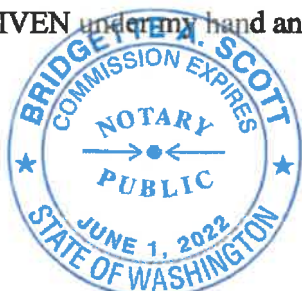
Approved as to form:

By: \_\_\_\_\_  
Title: Lucinda Luke, Port Legal Counsel

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

On this day personally appeared before me Tim Arntzen to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this 4th day of June 2018.

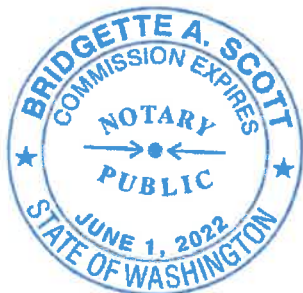


Bridgette A. Scott  
Notary Public in and for the State of Washington  
Residing at: Richland  
My Commission Expires: 06-01-2022

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

On this day personally appeared before me David W. Mitcham to me known to be the Partner of the **DDM Investments, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated he/she is authorized to execute the said instrument.

GIVEN under my hand and official seal this 23rd day of May 2018.



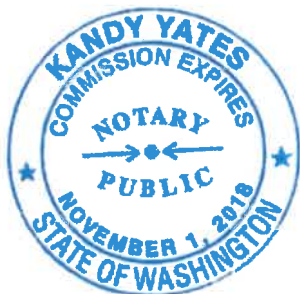
Bridgette A. Scott  
Notary Public in and for the State of Washington  
Residing at: Richland  
My Commission Expires: 06-01-2022



STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

On this day personally appeared before me Dorei Mitcham to me known to be the Partner of the **DDM Investments, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated he/she is authorized to execute the said instrument.

GIVEN under my hand and official seal this 23<sup>rd</sup> day of May 2018.



Kandy Yates  
Notary Public in and for the State of Washington  
Residing at: Pasco, WA  
My Commission Expires: 11/1/2018

# **PORT OF KENNEWICK**

## **Resolution No. 2019-19**

### ***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN AMENDMENT TO THE COMMERCIAL GROUND LEASE AGREEMENT WITH DDM INVESTMENTS LLC (CEDARS)***

**WHEREAS**, the Port of Kennewick (Port) is authorized to enter into certain leases upon such terms as the Port Commission deems proper; and

**WHEREAS**, DDM Investments LLC, commonly known as Cedars, has a long-term ground lease dated November 22, 2005, through assignment of lease from original tenant effective after January 2, 2006, on the Port's Clover Island property and an Amendment for two (2) additional ten (10) year lease renewal options received Commission approval on May 22, 2018; and

**WHEREAS**, an Amendment to modify rent escalation terms to 3.5% annually beginning March 1, 2021 has been negotiated with DDM Investments LLC by port staff; and

**WHEREAS**, the Port Commission has given notice of a public meeting with notice of such meeting given as provided by law and such public meeting was held at such time and on said date; and

**WHEREAS**, Port staff and legal counsel have reviewed the proposed Lease Amendment and find it is in proper form and it is in the Port's best interest; and

**WHEREAS**, after consideration of the attached Lease Amendment, the Port Commission has determined that the lease is proper.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the Board of Commissioners of the Port of Kennewick hereby approves a modification to rent escalation terms of 3.5% annually beginning March 1, 2021 with DDM Investments LLC as presented; and that all action by port officers and employees in furtherance hereof is ratified and approved; and further, the Port Chief Executive Officer is authorized to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 10th day of September, 2019.

***PORT of KENNEWICK  
BOARD of COMMISSIONERS***

By:

\_\_\_\_\_  
THOMAS MOAK, *President*

By:

\_\_\_\_\_  
DON BARNES, *Vice President*

By:

\_\_\_\_\_  
SKIP NOVAKOVICH, *Secretary*

## AMENDMENT TO GROUND LEASE

THIS AMENDMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Port of Kennewick, a Washington municipal corporation (hereinafter referred to as "Port"), and DDM Investments LLC, a Washington limited liability company (hereinafter referred to as "Tenant"),

### WITNESSETH

WHEREAS, on November 22, 2005, Port and Tenant's predecessor in interest entered into a Ground Lease (the "Ground Lease") for the lease of Lots 6, 7, 8 and 9, Clover Island Plat, Kennewick, Washington, such plat recorded under Auditor's File No. 317685, records of Benton County, Washington and as shown on Exhibit A of the Ground Lease (the "Property"). A true and correct copy of the Ground Lease is attached hereto and incorporated by reference herein as Exhibit "1". On December 30, 2005, effective from and after January 2, 2006, the Ground Lease was assigned from the original Tenant, Cedars Pier One, Inc. to DDM Investments LLC pursuant to an Assignment of Lease. A true and correct copy of the Assignment of Lease is attached hereto and incorporated by reference herein as Exhibit "2". On May 23, 2018, the Ground Lease was amended to extend Renewal Options to the Tenant. A true and correct copy of the Lease Amendment is attached hereto and incorporated by reference herein as Exhibit "3".

AND, WHEREAS, the Port and Tenant wish to set forth their agreement to provide Tenant with additional lease terms to address rent escalation rates.

Section III – RENT of the lease is hereby amended to read in full as follows:

### SECTION III RENT

**Base Rent:** Tenant shall pay rent monthly in advance as set forth below commencing on the first day of this Lease and continuing monthly thereafter on the first day of each succeeding month as follows: (Rates for years 16 through 55 apply only if renewal term option is validly exercised.)

YEAR 1	\$1,800
YEAR 2	\$2,000
YEAR 3	\$2,200
YEAR 4	\$2,500
YEARS 5 THROUGH 9	\$3,000
YEARS 10 THROUGH 15	\$3,500

YEARS 16 THROUGH 55 (3.5% increase each lease year; e.g., Year 16 rate will be \$3,622.50; Year 17 rate will be \$3,749.29, with 3.5% increase added in the same manner each year thereafter.)

**Leasehold Tax:** In addition to the rent provided for herein, Tenant shall pay the Leasehold tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold tax shall be paid with each installment of rent. The current Leasehold tax rate is 12.84%.

**Place of Payment:** The rent payment shall be made payable to the Port of Kennewick and shall be paid at the Port offices at 350 Clover Island Drive, Kennewick, Washington 99336, or at such other address as the Port shall direct in writing.

**Late Fees:** If any sums payable by Tenant to Port under this Lease are not received by the fifteenth (15<sup>th</sup>) day of the month in which they are due, Tenant shall pay Port an additional amount for the cost of collecting and handling such late payment as a late fee in an amount equal to the greater of (i) Fifty Dollars (\$50.00), or (ii) five percent (5%) of the overdue amount.

**Interest:** Any rent payment not paid within thirty days of the date upon which the payment is due shall accrue interest on the unpaid rent at the rate of one percent (1%) per month.

**Insufficient Funds:** If a Tenant check is returned by the bank for any reason, Tenant shall pay a NSF fee of Fifty Dollars (\$50.00) for administrative costs related to collecting and handling such returned check. The Tenant shall also pay any associated bank fees charged to the Port related to the returned check. Landlord may require, at Landlord's sole discretion, that Tenant's future payments be made by cash, cashier's check or money order.

**Fees Reasonable; Effect of Acceptance:** Port and Tenant hereby agree that these charges represent a fair and reasonable estimate of what the Port might incur by reason of Tenant's late or NSF payment. These fees are due and payable with the current rent payment. Port's acceptance of any late charge, interest or NSF fee shall not be deemed an extension of the date rent is due or prevent Port from exercising any other rights or remedies under this Lease.

**Right to Revise Policy:** The Port reserves the right to revise its policy regarding late payment, interest and NSF check charges without notice to Tenant.

All remaining terms and conditions of the parties' Ground Lease Agreement and Assignment of Lease, May 2018 Amendment to Ground Lease (Exhibits 1, 2 and 3 attached), not inconsistent herewith, remain unchanged.

**PORT OF KENNEWICK**

**DDM INVESTMENTS LLC**

**By:** \_\_\_\_\_  
**Tim Arntzen, Chief Executive**

**Title:** **Officer**

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

**Name/Title:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name/Title:** \_\_\_\_\_

**Reviewed:**

**Approved as to form:**

**By:** \_\_\_\_\_  
**Title:** Nick Kooiker, Port CFO

**By:** \_\_\_\_\_  
**Title:** Lucinda Luke, Port Legal Counsel

STATE OF WASHINGTON )

) ss.

County of Benton )

On this day personally appeared before me **Tim Arntzen** to me known to be the **Chief Executive Officer** of the **Port of Kennewick**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated he is authorized to execute the said instrument.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public in and for the State of Washington

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )

) ss.

County of Benton )

On this day personally appeared before me \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the **DDM Investments, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated he/she is authorized to execute the said instrument.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public in and for the State of Washington

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

On this day personally appeared before me \_\_\_\_\_ to me known to be the  
\_\_\_\_\_ of the **DDM Investments, LLC**, the limited liability company that  
executed the foregoing instrument, and acknowledged the said instrument to be the free and  
voluntary act and deed of said limited liability company for the uses and purposes therein mentioned,  
and on oath stated he/she is authorized to execute the said instrument.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_