

The Governor's Proclamation 20-28 regarding the Open Public Meetings Act and Public Records Act temporarily prohibits in-person public attendance at meetings subject to the OPMA.

A GoToMeeting has been arranged to enable the public to listen and make public comments remotely.
To participate remotely, please use the following call-in information:
via GoToMeeting 1-866-899-4679, Access Code: 258-430-053

AGENDA

Port of Kennewick
Regular Commission Business Meeting
Port of Kennewick Commission Chambers (via GoToMeeting)
350 Clover Island Drive, Suite 200, Kennewick, Washington

Tuesday, October 13, 2020
2:00 p.m.

- I. CALL TO ORDER**
- II. ANNOUNCEMENTS AND ROLL CALL**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF AGENDA**
- V. PUBLIC COMMENT** (*Please state your name and address for the public record*)
- VI. CONSENT AGENDA**
 - A. Approval of Direct Deposit and ePayments Dated October 2, 2020
 - B. Approval of Warrant Register Dated October 13, 2020
 - C. Approval of Regular Commission Meeting Minutes September 22, 2020
- VII. EMERGENCY DELEGATION UPDATE** (**TIM**)
- VIII. PRESENTATION**
 - A. Public Owners Association, Ben Floyd, White Bluffs Consulting and Doris Goldstein (**LARRY**)
- IX. NEW BUSINESS**
 - A. Kiwanis' Community Playground (**TIM**)
- X. 2021-2022 WORK PLAN**
 - A. 2021-2022 Work Plan; Resolution 2020-20 (**LARRY**)

AGENDA

Port of Kennewick Regular Commission Business Meeting

Tuesday, October 13, 2020

Page 2

XI. RECESS

XII. REPORTS, COMMENTS AND DISCUSSION ITEMS

- A. Vista Field
 - 1. Task Status Update (LARRY)
- B. Clover Island/Columbia Drive
 - 1. Kennewick Waterfront Master Plan Update (LARRY)
 - 2. 1135 Update (TANA)
- C. Oak Street – Three Rivers Acquisitions LLC (AMBER)
- D. Tri-Cities Legislative Council (TANA)
- E. November and December Commission Meetings (BRIDGETTE)
- F. Chief Executive Officer Performance Evaluation (LUCINDA)
- G. Director Reports (TANA/NICK/LARRY/AMBER/LUCINDA/TIM)
- H. Commissioner Meetings (formal and informal meetings with groups or individuals)
- I. Non-Scheduled Items

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

XIV. ADJOURNMENT

PLEASE SILENCE ALL NOISE MAKING DEVICES



PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

SEPTEMBER 22, 2020 MINUTES

Commission Meeting recordings, with agenda items linked to corresponding audio, can be found on the Port's website at: <https://www.portofkennewick.org/commission-meetings-audio/>

Commission President Commissioner Don Barnes called the Regular Commission Meeting to order at 2:00 p.m. via GoToMeeting Teleconference.

ANNOUNCEMENTS AND ROLL CALL

The following were present:

Board Members: Commissioner Don Barnes, President (via telephone)
Skip Novakovich, Vice-President (via telephone)
Thomas Moak, Secretary (via telephone)

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

PLEDGE OF ALLEGIANCE

Commissioner Barnes 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 September 17, 2020**
Direct Deposit and E-Payments totaling \$59,450.49
- B. Approval of Direct Deposit and E-Payments Dated September 18, 2020**
Direct Deposit and E-Payments totaling \$1,884.24
- C. Approval of Warrant Register Dated September 22, 2020**
Expense Fund Voucher Number 102379 through 102411 for a grand total of \$158,228.46
- D. Approval of Regular Commission Meeting Minutes September 8, 2020**

PORT OF KENNEWICK REGULAR COMMISSION MEETING

SEPTEMBER 22, 2020 MINUTES

DRAFT

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

EMERGENCY DELEGATION UPDATE

Ms. Hanchette shared that COVID-19 continues to impact businesses and one tenant has seen a slowdown of business internet sales. The tenant is making an effort to get caught up in his rent and has not requested a rent deferral or abatement.

PRESENTATIONS

A. 2020 Year in Review

Mr. Peterson presented the year in review, October 2019 through today (Exhibit A).

Commissioner Moak stated one of his favorite meetings every year is when Mr. Peterson presents the year in review. Commissioner Moak appreciates Mr. Peterson's enthusiasm and the way he includes the partnerships and projects. As Mr. Peterson pointed out, the Port had many limitations due to COVID-19, yet we had a very successful year.

Commissioner Novakovich stated Mr. Peterson did an excellent job presenting the year in review. Commissioner Novakovich stated as a constituent and a Commissioner, he is very proud of what the Port has accomplished and what we have done for the Mid-Columbia.

Commissioner Barnes stated it is a source of great pride to look at the past twelve months and see what the Port of Kennewick has been able to accomplish, even during the pandemic. Commissioner Barnes stated well done and it is time to keep moving forward and make meaningful improvements and contributions to our community. He believes everyone on the team is looking forward to next year and making it even better than the year that we just completed. Commissioner Barnes offered congratulations to Mr. Peterson and all members of the Port staff and Commission.

B. 2021-2022 Planning Workshop

Mr. Arntzen expressed how proud he is off the staff and how they have been working hard on the draft work plan.

Mr. Peterson presented the draft work plan for the Commission review (Exhibit B).

Ms. Hanchette outlined the potential plan for updating the exterior of the Vista Field Development Buildings (VFDF).

Commissioner Novakovich stated that the Port is working on a Master Plan for the Kennewick Historic Waterfront District and yet no funds have been set aside for projects. Commissioner Novakovich stated the Commission has discussed the possibility of a stage on Clover Island for years and he has spoken to the owners of Clover Island Inn, who would really like to see that come to fruition. Makers Architecture talked a lot about adding vibrancy to the island and what people wanted to see was entertainment and music and an investment on a stage would make a

PORT OF KENNEWICK REGULAR COMMISSION MEETING

SEPTEMBER 22, 2020 MINUTES

DRAFT

lot of sense.

Commissioner Barnes recalls being approached by the owners of the Clover Island Inn regarding a stage as well; however, the Port committed to the 1135 Habitat Restoration project and at the last meeting, staff indicated that the project will cost more than was originally estimated. The 1135 project will clearly benefit all of the tenants on Clover Island, including Clover Island Inn. Commissioner Barnes stated he would like to see the 1135 project completed before committing to a stage on Clover Island.

Commissioner Moak agrees with Commissioner Novakovich regarding adding funds to the Kennewick Historic Waterfront District for recommended projects from Makers; however, the Port has not received any recommendations yet. Commissioner Moak has heard from Clover Island Inn for years and he has yet to see a design or what they would bring to the table. Commissioner Moak is reluctant to allocate money to a stage but he would like to see some funds committed to the Kennewick Historic Waterfront District, but that would be based on what the 1135 project would cost.

Commissioner Novakovich believes the Port should move forward on maintaining the exterior of the VDFD Buildings.

Commissioner Moak thinks the numbers are too high for the VDFD Buildings and suggested spreading that out over the course of two budget cycles.

Commissioner Barnes confirmed the proposed budget allows for \$1,300,000 for total asset replacement costs, which includes the VDFD Buildings at \$800,000.

Mr. Peterson stated the VDFD exterior work is above and beyond the standard asset replacement costs, which are budgeted at \$500,000.

The Commission continued to discuss the VDFD Building allocation and the Kennewick Historic Waterfront District.

Mr. Arntzen would like to discuss options with staff related to the draft work plan.

Mr. Kooiker added that in the current budget cycle, the Port will expend the total \$500,000 on asset replacement by the end of the year.

RECESS

Commissioner Barnes called for a recess for at 4:09 p.m. until 4:14 p.m.

Commissioner Barnes reconvened the meeting at 4:14 p.m.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

SEPTEMBER 22, 2020 MINUTES

DRAFT

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. *Vista Field*

1. *Public Owners Association Update*

Mr. Peterson introduced Ben Floyd of White Bluffs Consulting and Doris Goldstein. They have been working on the Vista Field Public Owners Association with Steve DiJulio and Chris Napier of Foster Garvey.

Mr. Floyd reviewed information that was presented at the September 8, 2020 Commission Business Meeting.

Ms. Goldstein outlined the proposed Vista Field Owners Association structure and timeline (EXHIBIT C).

The Commission discussed the various options that were laid out by Ms. Goldstein and Mr. Floyd.

Mr. Floyd gave a brief overview of the next steps that will take place during future Commission Meetings.

B. *Chief Executive Officer Evaluation Process*

Ms. Luke reported that she sent the Commission the Chief Executive Officer Evaluation packet for review on September 17, 2020, which included a summary of 2020 accomplishments and achievements, the 2019 performance review, and a blank evaluation form for the 2020 review process. Ms. Luke stated she would like to receive the Commission comments by October 2, 2020. Ms. Luke will then compile all of the comments into one document for review at the October 13, 2020 Commission Meeting. Ms. Luke stated the CEO evaluation process deadline is November 15, 2020.

C. *All Aboard Washington Presentation Update*

Mr. Peterson reached out to Mr. Burdick regarding his request related to All Aboard Washington passenger rail service. Mr. Peterson contacted the Benton Franklin Council of Governments, which is the regional transportation entity and suggested Mr. Burdick reach out to them.

D. *Director Reports*

Mr. Peterson appreciated the opportunity to present the year in review and the discussion surrounding the work plan.

Ms. Hanchette reported that she will be presenting the Port's Real Estate Policy for discussion related to modifications to the current broker's commission.

Ms. Hanchette stated there is a sensitive issue with the marina in that a boat needs to be removed. The tenant has been in the marina for several years and has paid sporadically and is currently behind in payments. Ms. Hanchette is working with tenant to remove the boat, to mitigate the risk to the Port and the possible exposure of gifting of public funds.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

SEPTEMBER 22, 2020 MINUTES

DRAFT

Commissioner Moak inquired if this falls under the moratorium on evictions.

Ms. Luke has not researched that specifically; however, that moratorium relates to residential rather than a boat or non-residential rental agreement. Ms. Luke will review the moratorium prior to Ms. Hanchette taking any action.

Mr. Arntzen thanked the Commission for giving staff the ability to walk through these complicated projects. Mr. Arntzen was very pleased with how staff and the consultants rolled out important information to the Commission.

E. Commissioner Meetings (formal and informal meetings with groups or individuals)
Commissioners reported on their respective committee meetings.

F. Non-Scheduled Items
No comments were made.

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 5:15p.m.

APPROVED:

**PORT of KENNEWICK
BOARD of COMMISSIONERS**

Don Barnes, President

Skip Novakovich, Vice President

Thomas Moak, Secretary

Introduction to Governing Documents for Vista Field

Relating to
The Declaration of Covenants, Conditions and Restrictions for Vista Field
and to The Vista Field Declaration of Covenants, Conditions and Restrictions
for Commercial Property

THE PORT OF KENNEWICK (the "Port") executes this Introduction to Governing Documents for Vista Field on the _____ day of _____, year of _____.

HISTORY AND DESIGN

History of the Site. The Vista Field Airport, which began operations in the 1940s, was an auxiliary field for training naval aviators located at the nearby Naval Air Station Pasco during World War II. In the decades after, it served as a public use airport. In 1991, the Port purchased the airport and surrounding lands from the City of Kennewick and took over its management.

Faced with declining use of the airfield, the Port in 2012 opened public discussion of the airport's future, including concepts for redevelopment as a mixed-use community led by the design firm, Duany Plater-Zyberk & Company (DPZ). After substantial stakeholder input over a six-month period, the Port Commission unanimously decided in 2013 that closure and redevelopment of the Vista Field Airport was in the community's best interest.

Vision. The 103-acre site is located in the City of Kennewick at the geographic and commercial heart of the Tri-Cities, Washington, next to the region's sports and convention venues. It is envisioned to have active areas used day and evening for living, working, recreating and entertaining through a broad mixture of uses:

- Public and quasi-public open spaces, ranging from small pocket parks to a large central plaza for recreation and entertainment.
- Nearly 1,100 residential units, including single family homes, condominium and apartments.
- Approximately 750,000 square feet of retail, office, service and entertainment, most of it in Vista Field's Village Center.

The City crafted the Urban Mixed Use (UMU) zoning district and adjusted other land use regulations to allow mixed-use, pedestrian-friendly development as envisioned in the 2017 City and Port-adopted Vista Field Master Plan.

Master Plan. Due to its history as an airfield, the site is long and relatively narrow. The Master Plan shows a main street and a parallel, secondary pedestrian-oriented street running the length of the site. These two very different streets weave around one another, with utility alleys running parallel to both. The Village Center is at the physical center of the plan.

Projects designed by DPZ interweave residential and commercial uses in a compact form, unlike more typical mixed-use projects that separate homes from businesses. Uses may be mixed within a single building, such as live/work units that may have an office or shop at street level and living space above. This tight interconnection between uses directly influences the form of governance of Vista Field.

GOVERNANCE STRUCTURE

Two Governing Documents. Examination of the master plan for Vista Field, experience with other DPZ-designed projects, discussions with Port and DPZ staff, and review of applicable Washington law with local counsel resulted in the preparation of the following two governing documents:

1. The Vista Field Declaration of Covenants, Conditions and Restrictions (the “Vista Field Declaration”), which establishes the common interest community to be known as Vista Field and applies to all property within Vista Field, and
2. The Vista Field Declaration of Covenants, Conditions and Restrictions for Commercial Property (the “Commercial Declaration”), which applies only to commercial and the commercial portions of mixed-use property within Vista Field.

The Vista Field Declaration and the Commercial Declaration (together, the “Declarations”) are recorded along with this Introduction. Both concern the development of the 103-acre area known as the Master Plan Area and its long-term operation as a vibrant mixed-use area in the City. A description of the Master Plan Area is attached as an exhibit to this document.

Independent Operation. Even though the Vista Field Declaration affects the entire common interest community and the Commercial Declaration applies only to its commercial and mixed-use properties, the Vista Field Declaration is not a master declaration as that term is generally used. The two Declarations have separate purposes and are intended to operate independently.

VISTA FIELD DECLARATION

Purpose. The Vista Field Declaration is primarily intended to manage and maintain those parts of Vista Field that are used by the entire community. Known as Common Elements, these include certain streets, open space, water features and other facilities and grounds.

Master Plan. The Master Plan lays out the overall design and development concept for Vista Field. It is subject to change and refinement during development.

Phasing. With the recording of the Vista Field Declaration and submission of the first phase, Vista Field is officially created as a common interest community. Additional land may be added in phases. The Port, known in the documents as the “Founder,” may add any part of the Master Plan Area, in any order. Once land is added to the Vista Field Declaration, it is subject to its terms, including the requirement to pay assessments.

As each phase is created, a supplemental declaration will be recorded, making the additional property part of the Vista Field community that is subject to the Vista Field Declaration.

Washington Uniform Common Interest Ownership Act. The Vista Field Declaration is written to comply with the Washington Uniform Common Interest Ownership Act (the “Act”). The Act, which was enacted in 2018, applies to all common interest communities that include residential property.

Vista Field Association Membership. Members of the Vista Field Association include all property owners within Vista Field, both residential and commercial. The Declaration allows the Founder to retain control of the Association for the longest period permitted under the Act. Under the Act, the Founder may select a majority of the board until 75% of all of the Parcels that will ultimately be part of Vista Field have been sold.

Allocated Interests. The Declaration states a formula to assign to each Parcel an Allocated Interest as required by the Act. The Allocated Interest for a Parcel determines both its share of the assessments and its voting rights. Most residences are assigned the same assessment per unit.

However, dwelling units of smaller than 1000 square feet and units in apartment buildings pay slightly less. Allocated Interests for commercial space is based on square footage.

Maintenance Zones. Maintenance Zones are smaller areas within Vista Field that share limited common elements or that require other specialized shared maintenance, such as a landscaped courtyard that is part of a bungalow court. They are a flexible tool to tailor services and cost allocation to particular areas within the community as they are developed. The Maintenance Zone concept allows the Association to provide this additional maintenance and bill the cost to the benefited homeowners.

Design Review. All new construction and modification of existing buildings is subject to design review. Design review is reserved to the Founder during the entire Development Period, defined in the Declaration as six months after the Founder neither owns a total of at least one acre of land in the Master Plan Area nor holds any Parcels for sale in the normal course of business, but no later than 75 years. At the end of the Development Period, the review rights for residential property is automatically assigned to the Association, while review rights for commercial and mixed-use parcels is assigned to the Commercial Association described below.

Effect of Declaration on Commercial Property. Like residential owners, commercial property owners pay assessments for the maintenance of Common Elements that serve the entire community. However, the Vista Field Association is not responsible for maintaining primarily commercial space or regulating businesses. Instead, the Commercial Declaration, a separate document summarized below, governs the operation of commercial property and the commercial portions of mixed-use property wherever located in Vista Field.

COMMERCIAL DECLARATION

Purpose. The Commercial Declaration has three primary purposes:

- *Maintenance:* The Commercial Property Association through its General Manager will be responsible for maintenance of the commercial common areas, such as plazas, landscaping and street furniture.
- *Management:* The General Manager will oversee and regulate businesses' use of shared space, and may regulate some aspects of business operation, such as hours of operation. It may also participate in such services as shared parking arrangements, sanitation and security.
- *Promotion:* The Commercial Property Association's Marketing Director will promote Vista Field for the mutual benefit of all businesses, including advertising, special event programming, seasonal decoration and other promotional activities.

Application only to Commercial Property. The Commercial Declaration applies to all commercial property anywhere within Vista Field, plus the commercial portion of mixed-use buildings. Any residential parcel within Vista Field will be automatically excluded. If the use of the parcel is later changed to commercial, it becomes subject to the Commercial Declaration as uses change. The reverse is also true; commercial property that is converted to residential use would no longer be subject to the Commercial Declaration.

Commercial Property Association. All commercial property owners within Vista Field will be members of the Commercial Property Association and pay assessments based on Assigned Value. As provided in the Commercial Declaration, Assigned Value is based on the appraised value of a commercial parcel or the commercial portion of a mixed-use property as determined by the Benton County Tax Assessor.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for

the state of: _____

Residing at: _____

My appointment expires: ____

Exhibit A: Master Plan Area

DRAFT 9/25/20

VF LOGO HERE

DECLARATION

of

Covenants, Conditions and Restrictions

For

Vista Field

Prepared by:

Doris S. Goldstein, Attorney
PO Box 23646
Jacksonville, FL 32241
dgoldstein@walkablemixeduse.com

Christopher S. Napier, Attorney
Foster Garvey PC
1111 Third Avenue, Suite 3000
Seattle, WA 98101
chris.napier@foster.com

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Declaration of Covenants, Conditions and Restrictions
For
Vista Field

Table of Contents

RECITALS:	1
SUBMISSION TO DECLARATION	1
Part I: Development Plan.....	3
1.1 Master Plan	3
1.2 Description of Community	4
1.3 Phasing	5
1.4 Easements	6
1.5 Special Declarant Rights	7
Part II: The Association	9
2.1 Establishment.....	9
2.2 Allocated Interests.....	10
Part III: Shared Spaces	12
3.1 Common Elements	12
3.2 Limited Common Elements	13
3.3 Streets.....	14
3.4 Parking	14
3.5 Landscaping and Lighting	15
Part IV: Relationships between Parcels.....	16
4.1 Easements Between Parcels	16
4.2 Maintenance Zones	17
4.3 Dependent Attached Houses	19
4.4 Sub-Associations	20
Part V: Association Budget and Assessments.....	21
5.1 Association Budget.....	21
5.2 Services	22
5.3 Assessments	23
5.4 Effect of Nonpayment of Assessment; Remedies	23
5.5 Working Capital Contribution	24
Part VI: Residential Property.....	25
6.1 Covenants and Restrictions.....	25

6.2 Rule-Making and Enforcement	25
Part VII: Design Review.....	27
7.1 Town Architect	27
7.2 Design Code	27
7.3 Review Process	28
7.4 Basis for Decision, Variances.....	29
7.5 Remedies	30
7.6 Additional Terms.....	31
Part VIII: Modification, Repair and Reconstruction	33
8.1 Modification of Common Elements.....	33
8.2 Repair and Reconstruction.....	35
Part IX: General Provisions	36
9.1 Amendment	36
9.2 Effect and Termination	37
9.3 Additional Terms.....	37
Exhibit A: Legal Description, The Initial Property	39
Exhibit B: Legal Description, The Master Plan Area	40

Glossary

Capitalized words are defined terms, which means they have a specific meaning as defined in this Declaration. Defined terms are usually defined the first time they are used in the text or in a portion of the text where the definition is important. Below is a table listing defined terms and where they can be found.

Act:	<i>Submission to Declaration</i>
Allocated Interests:	<i>Section 2.2 and the Act</i>
Architectural Review Committee (ARC):	<i>Section 7.3</i>
Articles of Incorporation:	<i>Submission to Declaration and Paragraph 2.1.1</i>
Association:	<i>Submission to Declaration, Paragraph 1.1.1, 2.1.1</i>
Assessments:	<i>Section 5.3</i>
Board:	<i>Paragraph 2.1.2 and the Act</i>
Bylaws:	<i>Submission to Declaration and Paragraph 2.1.1</i>
Capital Improvement:	<i>Section 9.1</i>
Commercial Association:	<i>Paragraph 1.2.3</i>
Commercial Declaration:	<i>Paragraph 1.2.3</i>
Common Streets:	<i>Paragraph 3.3.2</i>
Common Elements:	<i>Section 3.1 and the Act</i>
Common Interest Community:	<i>Submission to Declaration</i>
Dependent Attached House:	<i>Section 4.3</i>
Design Code:	<i>Section 7.2</i>
Development Period:	<i>Paragraph 1.3.7</i>
Founder:	<i>Submission to Declaration, Paragraph 1.3.4</i>
Initial Property:	<i>Submission to Declaration</i>
Limited Common Element:	<i>Section 3.2</i>
Master Plan:	<i>Paragraph 1.1.1</i>
Master Plan Area:	<i>Submission to Declaration and Paragraph 1.1.2</i>
Maintenance Zone:	<i>Section 4.2</i>
Mixed-Use Parcel:	<i>Paragraph 1.2.2</i>
Owner:	<i>Submission to Declaration</i>
Parcel:	<i>Submission to Declaration</i>
Plat:	<i>Submission to Declaration</i>
Property:	<i>Submission to Declaration</i>
Special Assessment:	<i>Paragraph 5.3.3</i>
Special Use Parcel	<i>Paragraph 2.2.5</i>
Specially Allocated Assessment:	<i>Paragraphs 5.1.2, 5.3.2 and the Act</i>
Supplemental Declaration:	<i>Paragraph 1.3.2</i>
Town Architect	<i>Section 7.1</i>
Village Center:	<i>Paragraph 1.2.2</i>

DECLARATION
of
Covenants, Conditions and Restrictions
For
VISTA FIELD

THE PORT OF KENNEWICK, to be known in this document as the “Founder,” makes this Declaration of Covenants, Conditions and Restrictions for Vista Field (the “Declaration”) on the _____ day of _____, year of _____.

RECITALS:

- A. The Founder is the owner of all of the property in Benton County, Washington, described on Exhibit A (the “Initial Property”) and Exhibit B (the “Master Plan Area”).
- B. The purpose of this Declaration and the unique characteristics of the common interest community to be known as Vista Field are as described in the Introduction to Governing Documents for Vista Field, recorded in the Official Public Records of Benton County, Washington (the “Introduction”), immediately prior to this document and hereby incorporated by reference.

SUBMISSION TO DECLARATION

The Founder hereby submits the Initial Property to this Declaration of Covenants, Conditions and Restrictions and declares that the Initial Property and any other property made subject to this Declaration (together, the “Common Interest Community”) shall be held, sold and conveyed subject to the covenants, restrictions and easements of this Declaration.

It is intended that this submission be in accordance with Chapter 64.90, Revised Code of Washington, which, as amended from time to time, shall be known in this Declaration as the Washington Uniform Common Interest Ownership Act, or the Act. The Founder is to be considered the Declarant under the Act.

Vista Field is a plat community under the Act, in which land has been subdivided in accordance with a drawing of a subdivision known in Chapter 58.17, Revised Code of Washington, as a Plat. A Plat is also known as a Map under the Act.

This Declaration shall run with the land and be binding upon each Owner of a Parcel within the Common Interest Community, their heirs, successors and assigns, and upon all other parties, heirs, successors and assigns having any right, title or interest in all or any part of the Common Interest Community.

A “Parcel” is the smallest piece of land that can be owned within the Common Interest Community; it is usually a platted lot but can also be a condominium unit. A Parcel shall be considered a Unit under the Act.

A person, group of people or entity that owns a Parcel is known in this Declaration as an “Owner.” The Founder may also be an Owner for so long as the Founder is record owner of any Parcel.

The Founder also hereby provides notice of certain restrictions, as further described in Paragraph 1.1.4, for the property described on Exhibit B (the “Master Plan Area”) but does not submit the entire Master Plan Area to all the terms of this Declaration at this time.

The following attachments to this Declaration are hereby fully incorporated by reference:

- Exhibit A, Legal Descriptions, The Initial Property
- Exhibit B, Legal Description, The Master Plan Area

Part I:

Development Plan

- 1.1 The Master Plan
- 1.2 Description of Community
- 1.3 Phasing
- 1.4 Easements
- 1.5 Special Declarant Rights

1.1 Master Plan

1.1.1 Master Plan. The Master Plan is a conceptual drawing created by the design firm, Duany Plater-Zyberk & Company (DPZ) to illustrate a plan for development of the Master Plan Area. The Master Plan shows the general location of streets, open space and buildings, the relationship between commercial and residential property and the connections between Vista Field and the surrounding areas of the City of Kennewick. The Master Plan is general in nature and subject to change at the Founder's discretion. It is not a Plat and does not confer any legal rights to Owners of property within Vista Field.

1.1.2 Master Plan Area. The Master Plan Area is all that property described on Exhibit B comprising approximately 103 acres, including the Initial Property. The Master Plan Area is owned initially by the Founder and may be developed in any sequence. Although it is the current plan to do so, it is not required that all land within the Master Plan Area be developed as part of Vista Field and made subject to this Declaration.

1.1.3 Modification of Master Plan Area. The Founder may modify the Master Plan Area by adding or removing property at any time during the Development Period. Any additional land must be within one-half mile of the then-current boundaries of the Master Plan Area. Subject to City requirements, the Founder may record an amendment to this Declaration providing notice of such change, which shall not require the consent of any party other than the Founder and the owner of the property being added or removed, if different from the Founder.

1.1.4 Conveyances of Property within Master Plan Area. Property within Master Plan Area is not subject to this Declaration unless it is part of the Initial Property or added as provided in Section 1.3. The Founder intends that any property within the Master Plan Area that is conveyed to a party other than the Founder during the Development Period shall be made subject to this Declaration unless the instrument of conveyance or other recorded instrument executed by the Founder clearly indicates otherwise. If an instrument submitting the property to the Declaration is not recorded prior to, or at the time of, such conveyance to a party other than the Founder (and/or any amendments to this Declaration and the Plat required by the Washington Uniform Common Interest Ownership Act), the Founder shall have the right to record a corrective instrument submitting such property to this Declaration (and/or any such amendments).

1.2 Description of Community

1.2.1 Name. Vista Field, a plat community, is the name by which the community shall be known to the public and may include all of the property within the Master Plan Area, whether or not submitted to this Declaration. The name of the association is the Vista Field Association (the “Association”).

1.2.2 Mixed Use.

(a) **Community.** Vista Field is a mixed-use community, where residents as well as the general public can enjoy shops, restaurants and activities. While commercial activity is primarily located within a centralized business area known as the Village Center, there is no physical division between the commercial districts and the remainder of Vista Field and smaller commercial areas may be developed in other parts of Vista Field. Concerts, festivals and other events that invite the public may take place within Vista Field, contributing to an active civic life. Commercial property is subject to a Commercial Declaration as described in paragraph 1.2.3. Except as expressly provided in this Declaration, this Declaration and the Association do not regulate the operation of the businesses within the Common Interest Community.

(b) **Parcels.** The Master Plan for Vista Field encourages the development of Mixed-Use Parcels that include both commercial and residential space under single ownership. An example of a small Mixed-Use Parcel, also known as a live/work unit, may be a townhouse with an office or small shop below and a residential unit above. A Mixed-Use Parcel could be a larger building with both commercial space and residential units, some of which would likely be rented. Note that a mixed-use condominium building would not usually be a Mixed-Use Parcel because the condominium units, some of which would be residential and some of which would be commercial, would be separately owned.

1.2.3 Commercial Declaration. In addition to this Declaration, all commercial property within Vista Field is subject to a separate instrument known as the Vista Field Declaration of Covenants, Conditions and Restrictions for Commercial Property (“Commercial Declaration”), which creates a separate association known as the Commercial Association. The Commercial Declaration applies only to commercial property within Vista Field, plus the commercial portion of Mixed-Use Parcels. Only owners of a commercial or Mixed-Use Parcel shall be a member of the Commercial Association. Assessments and voting rights in the Commercial Association are based on commercial Parcels, or the commercial portion of Mixed-Use Parcels. Residential Parcels are not members of the Commercial Association and do not pay assessments to the Commercial Association.

1.2.4 Arts Fund. The Founder shall establish a fund (the “Arts Fund”) and contribute to the Arts Fund an amount equal to one percent of the sales price of sales from the Founder to the first purchaser of all Parcels within Vista Field. The Arts Fund shall be administered by the Founder and used by the Founder to select and install art within Vista Field in accordance with its Art Policy, Port of Kennewick Resolution 2016-29. In general, art will be located in accessible outdoor spaces and other areas where it can be enjoyed by the public. Installations are intended to be made by artists to engage the public and enhance the natural and built environment. Art may be functional, such as specially designed playground equipment, light posts or bicycle racks. At the Founder’s discretion, works purchased with the fund may be contributed to the Association as part of the

Common Elements, or privately administered and maintained by the Founder or its assigns. The Founder may discontinue the contribution for any future phase by so noting in the Supplemental Declaration creating that phase.

1.25 Number of Parcels. The Initial Property includes ____ Parcels. The maximum number of Parcels that may be created is _____.

1.26 Restrictions on Sale or Lease. There are no restrictions on the sale of Parcels or the amount that can be received from any sale or property transfer. Residential Parcels may be leased, subject to regulation by the Association in Paragraph 6.2.2. Commercial Parcels may be leased subject to the Commercial Declaration.

1.2.7 Interpretation. This Declaration shall be liberally construed to allow for the operation of a mixed-use community within the Common Interest Community. In no event shall the Association have authority to regulate the operation of commercial uses within the Common Interest Community, including without limitation days and hours of operation of individual businesses.

1.3 Phasing

1.3.1 Additional Property. Property within the Master Plan Area will be platted and made subject to this Declaration in phases. Additional Property may be added to this Declaration in the following ways:

- (a) **By the Founder.** The Founder shall have the right, but not the obligation, at any time during the Development Period, to add to the Common Interest Community any part of the Master Plan Area, including any land added to the Master Plan Area as provided in paragraph 1.1.3. Such action shall not require the consent of the Association or any Owners.
- (b) **By the Association.** Subject to the Act, property of any type may be added to the Common Interest Community at any time by a majority vote of the Board. During the Development Period, such action shall require the consent of the Founder.

1.3.2 Method of Submitting Additional Property to Declaration.

- (a) **Supplemental Declaration.** If the requirements in Paragraph 1.3.1 are met, property may be added by the recording of a Supplemental Declaration describing the property to be added, including a cross-reference by recording number to the Plat, and executed with the formality of a deed (and by the recording of any amendments to this Declaration and the Plat required by the Washington Uniform Common Interest Ownership Act). The Supplemental Declaration shall require execution or consent and joinder of the parties listed in Paragraph 1.31 (a) or (b) as applicable, plus the owner of the additional property if different.
- (b) **Deed.** Alternatively, for property added by the Founder, the Founder may submit the property to this Declaration by specifically declaring the land to be subject to this Declaration in the deed conveying the property from the Founder to the first Owner other than the Founder (and by recording any amendments to this Declaration and the Plat required by the Washington Uniform Common Interest Ownership Act).

1.3.3 Special Provisions. The Supplemental Declaration or deed may identify Common Elements as described in Section 3.1 or Limited Common Elements as described in Section 3.2, may set forth Allocated Interests for Parcels within the additional property

in accordance with the provisions of Section 2.2 of this Declaration, may create a new Maintenance Zone as described in Section 4.2 and may modify or add to the provisions of this Declaration as to the additional property if needed to reflect the different character of the additional property.

1.3.4 Effect. A Supplemental Declaration or deed adding the Additional Property (and by any amendments to this Declaration and the Plat required by the Washington Uniform Common Interest Ownership Act) shall become effective upon being recorded in the county's public records.

1.3.5 Withdrawal of Property. During the Development Period, the Founder reserves the right to withdraw property from the Common Interest Community so long as all Owners within the area to be withdrawn consent, appropriate access to the remaining portions of the Common Interest Community is preserved, and subject also to any City requirements. Withdrawal shall be accomplished by recording of an instrument in the public records executed by the Founder and any other Owner of the property to be withdrawn and by the recording of any amendments to this Declaration and the Plat required by the Act.

1.3.6 Subdivision of Parcels. During the Development Period, the Founder may redefine Parcels prior to sale by dividing or combining Parcels or portions of Parcels and adjusting the boundary of a Parcel. The Founder shall also have the right to modify Plats of the land within the Common Interest Community to make adjustments to Parcel boundary lines with consent only of those Owners whose Parcel boundaries are to be changed. Any subdivision or combination of Parcels other than by the Founder shall require approval under the design review provisions of Part VII and shall also require the consent of the Founder during the Development Period. The division or combination of Parcels may also be subject to the Washington Uniform Common Interest Ownership Act and zoning or other governmental regulation.

1.3.7 Development Period. Wherever used in this Declaration, the Development Period shall be defined as that period of time that begins with the recording of this Declaration and continues for six months after the Founder neither owns a total of at least one acre of land in the Master Plan Area nor holds any Parcels in the Common Interest Community for sale in the normal course of business. However, in no event shall the Development Period extend beyond seventy five (75) years from the recording of this Declaration.

1.4 Easements

1.4.1 Reservation of Easements. The Founder hereby reserves the easements in this Section 1.4 for itself, its successors and assigns, and for the Association and its assigns as perpetual, nonexclusive easements, which shall benefit the Common Interest Community and all other properties owned by Founder or its assigns which are adjacent to, or reasonably near, the Common Interest Community (including property separated from the Common Interest Community by a public road).

1.4.2 Utility Easements. An easement is hereby reserved on, over, under and through the Common Interest Community for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, gas, television, cable or communication lines and other equipment. Except where indicated on the plat or as described in specific recorded easements, such easements shall

be located within the street right-of-way or other Common Elements, or in alley easement areas. By virtue of this easement the Founder, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits.

1.4.3 Police Powers. A blanket easement is hereby reserved throughout the Common Interest Community for private patrol services, and for police powers and services supplied by the local, state and federal governments.

1.4.4 Drainage. A blanket easement and right are hereby reserved on, over, under and through the ground within the Common Interest Community for drainage of surface water and other erosion controls.

1.4.5 Encroachment. An easement is hereby reserved for any improvements constructed on the Common Elements that encroach on any Parcel, whether due to any minor deviation from a Plat or the settling or shifting of any land or improvements.

1.4.6 Maintenance of Common Elements. To the extent reasonably necessary, an easement is hereby reserved over any Parcel for maintenance of the Common Elements or to perform any duties required or permitted to be performed by the Association, its agent or assigns.

1.4.7 Special Events. The Founder reserves for itself and for the Commercial Association an easement for use of the Common Elements within the Village Center for special events such as concerts and festivals. After any such events, the Commercial Association shall provide any additional maintenance required by the event, including trash collection, clean-up and restoration.

1.5 Special Declarant Rights

1.5.1 Special Declarant Rights. The provisions of this Section 1.5 are intended as Special Declarant Rights under the Act and are effective during the entire Development Period with respect to the entire Common Interest Community, unless the provision specifies otherwise. There are no assurances as to the portions of the Common Interest Community that may be affected by these rights, or the order in which these rights may be exercised. Any Special Declarant Rights may be exercised with respect to different parcels of real estate at different times. Exercise of a Special Declarant Right in any portion of the Common Interest Community does not require that the Special Declarant Right be exercised in any other portion of the Common Interest Community.

1.5.2 Development Rights. The Founder has the right to exercise any Development Right (without the consent of the Association or the Owners) permitted under the Act with respect to the entire Common Interest Community, including the following:

- (a) Add real estate or improvements to the Common Interest Community (including Capital Improvements);
- (b) Create Parcels, Common Elements, or Limited Common Elements within the Common Interest Community;
- (c) Subdivide or combine Parcels or convert Parcels into Common Elements;
- (d) Add and withdraw real estate from the Master Plan Area as further provided in Paragraph 1.1.3 and withdraw real estate from the Common Interest Community as further provided in Paragraph 1.3.5; and

- (e) Adjust the boundaries of a Parcel during the Development Period prior to sale, as provided in Paragraph 1.3.6, and
- (f) Reallocate Limited Common Elements with respect to Parcels that have not been conveyed by the Founder.

1.5.3 Additional Reserved Rights. In addition to the Development Rights, the Founder reserves the following rights with respect to the entire Common Interest Community:

- (a) Complete any improvements indicated on a Plat or described in this Declaration or a public offering statement delivered pursuant to paragraph 64.90.610(1)(h) of the Act;
- (b) Maintain sales offices, management offices, signs advertising the Common Interest Community, and models;
- (c) Use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real estate that may be added to the Common Interest Community, including those specified in Section 1.4;
- (d) Make the Common Interest Community subject to a master association;
- (e) Merge or consolidate the Common Interest Community with another common interest community of the same form of ownership;
- (f) Appoint or remove any officer or board member of the Association or any master association or veto or approve a proposed action of any board or association, pursuant to section 64.90.415 of the Act;
- (g) Control any construction, design review, or aesthetic standards committee or process as further provided in Part VII;
- (h) Attend meetings of the Owners and, except during an executive session, the Board;
- (i) Have access to the records of the Association to the same extent as a Parcel Owner.

Part II: The Association

- 2.1 Establishment
- 2.2 Allocated Interests

2.1 Establishment

2.1.1 Membership. The Association is established under Washington law as a nonprofit corporation responsible for the operation of a mixed-use plat community under the Act. This Declaration, the Articles of Incorporation and the Bylaws describe its powers and duties. All Owners are members of the Association. Membership is automatically attached to ownership of the Parcel and cannot be separated from title to the Parcel.

2.1.2 Board. The Owners shall elect the Board to represent them and make decisions about the operation of the Common Interest Community. Except for those matters described in this Declaration or the Act requiring a vote of the Owners or consent of Owners, the Board makes all decisions necessary for the operation of the property under this Declaration. The Bylaws contain procedures for electing the Board.

Approval by Owners

As a convenient reference and not as a limitation, actions requiring a vote of the Owners, or assent in writing, include the following:

Election of the Board.....	Paragraph 2.1.2
Ratification of Maintenance Zone budget	Paragraph 5.1.2
Ratification of Association budget	Paragraph 5.1.6
Repeal of Additional Services	Paragraph 5.2.1
Repeal of Rules and Regulations adopted by the Board	Paragraph 6.2.1
Ratification of expenditures for capital improvements.....	Paragraph 8.1.1
Conveyance or Dedication of the Common Elements	Section 8.1
Amendment or Termination of Declaration	Section 8.1

Except for those matters specifically requiring approval of the Owners, the Board has the power to act without membership approval.

2.1.3 Voting Interests. The voting interest assigned to each Parcel shall be the same as its Allocated Interest, as provided in Section 2.2.

2.1.4 Voting Procedure. Wherever used in this Declaration, approval by a majority or other proportion of the Owners refers to a vote based on the total voting interests within the Association or applicable group of Owners, either at a properly called membership meeting or through another voting procedure established under the Bylaws and the Act. However, where the Declaration specifies consent in writing, or request in writing, then the necessary number is based on the total voting interests within the Association or applicable group of Owners, and signatures may be collected without a membership

meeting or other voting procedure. To the greatest extent permitted by law, the Association may institute voting by electronic or other means.

2.1.5 Period of Declarant Control. The Founder reserves the right to retain control of the Association to the greatest extent permitted by the Washington Uniform Common Interest Ownership Act

2.16 Additional Provisions. Additional provisions concerning the operation of the Association and the Board and voting procedure are contained in the Articles of Incorporation and the Bylaws. The Articles of Incorporation or Bylaws may establish provisions for classes of voting and board representation. Operation of the Association is also subject to the Act.

2.2 Allocated Interests

2.2.1 Generally. As required by the Act, Allocated Interests are used for voting rights in the Association as well as for determining Assessments. Each Parcel subject to this Declaration is assigned an Allocated Interest in accordance with this Section 2.2. Net usable square footage as used in this Section is as defined in Paragraph 2.2.7.

2.2.2 Residential Parcel. Each Residential Parcel's Allocated Interest shall be the sum of the Allocated Interests for all separately leasable dwelling units on that Parcel. Each such dwelling unit, whether a detached home, townhouse, condominium unit, a unit within a duplex or other multifamily dwelling, or a garage apartment or other accessory building, shall be assigned One Allocated Interest, except that 0.8 Allocated Interest shall be assigned to the following:

- a. all dwelling units of less than 1000 square feet of Net Usable Square Footage and
- b. dwelling units that are part of an apartment building or group of buildings that has at least four units and is under single ownership and management.

The above formula is intended to balance fairness against ease of administration, to encourage the development of affordable housing and to recognize the economies to the Association of collecting assessments for multiple units from a single owner.

2.2.3 Commercial Parcels. Commercial parcels shall be assigned one Allocated Interest per one thousand (1,000) square feet of net usable commercial square footage, as defined in paragraph 2.2.8. Commercial space may be assigned fractional interests and shall be rounded to the nearest 100 net usable square feet, or one-tenth of an Allocated Interest.

2.2.4 Mixed-Use Parcels. Mixed-Use Parcels that include both residential and commercial uses shall have an Allocated Interest that is equal to the sum of the residential and commercial uses.

2.2.5 Special Use Parcels. Special Use Parcels are unique Parcels that do not fit in the customary categories. The Supplemental Declaration adding the property that includes the Special Use Parcel shall designate the Parcel as a Special Use Parcel and assign an Allocated Interest for the Parcel which may be different from the formulas for other residential or commercial use. Any such Allocated Interest must be fair and reasonable, consistent with other Allocated Interests based on the expected use of the Parcel and its impact on the Common Elements.

2.2.6 Unimproved Parcels. Parcels that do not have a building that is substantially complete shall pay 0.25 Allocated Interest per year.

2.2.7 Definition of Net Usable Square Footage.

- (a) **Generally.** For purposes of calculating Allocated Interests for both residential and commercial uses, net usable square footage shall include all heated or air-conditioned space, measured to the center of the wall for interior common walls (such as the walls between condominium units) and measured to the exterior surface of the wall for all other exterior walls. There shall be no deduction for interior non-common walls.
- (b) **Commercial Space.** Commercial square footage shall include all interior space that may be used for commerce, office, storage and other support areas for the commercial use but shall not include any Residential Unit, or any lobbies, stairwells or walkways used primarily to access any residential space. Decks and other un-airconditioned space that are designed to be used on a regular basis for outdoor dining, bar or entertainment shall be considered as part of the net usable square footage at a reduced, 50% rate.
- (c) **Rule-making and Adjustments.** The Association in its reasonable discretion may determine the amount of assessed net usable square footage for a particular Parcel and may make rules for the process of calculating net usable square footage. The Association shall adjust or revise Allocated Interests if buildings are remodeled or uses for the Parcel change.

Part III:

Shared Spaces

- 3.1 Common Elements
- 3.2 Limited Common Elements
- 3.3 Streets
- 3.4 Parking
- 3.5 Lighting and Landscaping

3.1 Common Elements

3.1.1 Generally. The Association may own open space, recreational facilities, streets and other commonly used portions of the Common Interest Community or may hold use rights in the form of easements, leases or other rights. Those common areas for which the Association owns or which the undivided interests are vested in all of the Owner are called the Common Elements. Common Elements shall be labeled as such on the Plat or conveyed by deed, easement, lease, license or other agreement, as applicable, to the Association.

3.1.2 Maintenance Responsibility. The Association is responsible for managing the Common Elements and must keep the Common Elements clean and in good repair (except as provided herein with respect to Limited Common Elements). The Association may also make capital improvements to the Common Elements and may modify the uses of the Common Elements if approved in accordance with paragraph 8.1.1.

3.1.3 Association's Easements for Maintenance. To the extent reasonably necessary, the Association has, and is hereby granted, an easement over each Parcel for maintenance of the Common Elements. The Association also has, and is hereby granted, an easement with respect to any improvements constructed on the Common Elements that encroach on a Parcel, whether due to any minor deviation from the Plat or the settling or shifting of any land or improvements.

3.1.4 Use by Public. Passive recreational facilities such as parks, squares or plazas that are part of the Common Elements are intended to be open for appropriate use by the public, subject to reasonable regulation by the Association to prevent nuisances. Use of active recreational facilities such as swimming pools, tennis courts or other facilities, if created as part of the Common Elements, may not be open for use by the general public, or may be open under certain limited conditions, in each case as determined by the Board from time to time.

3.1.5 Owners' Easement of Enjoyment. Every Owner has, and is hereby granted, an easement for appropriate use and enjoyment of the Common Elements. For Limited Common Elements, such easement shall only benefit the Owner or Owners of the Parcels that are served by such Limited Common Elements. This easement passes with title to the Owner's Parcel and is automatically extended to the family members, tenants or guests

who reside on the Parcel or are accompanied by the Owner. The easement is subject to the Association's right of regulation in accordance with this Declaration and the Act and is also subject to any limitations that may be contained in the conveyance of that portion of the Common Elements to the Association.

3.1.6 Damage or Destruction of Common Elements by Owner. If any Owner or any of his guests, tenants, licensees, agents, employees or members of his family damages any of the Common Elements as a result of negligence or misuse, the Owner hereby authorizes the Association to repair the damage. In the case of vandalism or other reckless or intentional damage, the cost of repair shall be the responsibility of that Owner and shall become a Specially Allocated Assessment payable by the responsible Owner. The Association may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Owner shall be jointly and severally liable. This paragraph shall not be used to reduce the obligation of any insurer to the Association for any policy held by the Association.

3.1.7 Limitation. The Association shall use reasonable judgment in maintaining and regulating the Common Elements, but neither the Association nor the Founder makes any representation or assumes any liability for any loss or injury. The Founder and the Association make no representations concerning security and shall not be liable in any way for failure to provide services or quality of such services.

3.1.8 Additional Common Elements. The Founder may convey to the Association additional Common Elements which the Association shall accept for maintenance. The design, construction method and cost of each of the additional Common Elements shall be at the discretion of the Founder.

3.2 Limited Common Elements

3.2.1 Designation. Portions of the Common Elements that are intended for use by one or more, but not all Owners, are known as Limited Common Elements. An alley or shared courtyard is an example of a Limited Common Element. Limited Common Elements may be designated in a Plat, this Declaration or a Supplemental Declaration, or a deed, easement, lease, license, or other document conveying the property to the Association. In addition, the Board may reasonably determine that portions of the Common Elements are designed for use by only certain Owners. Unless otherwise specified or clear from the context, the term Common Elements includes Limited Common Elements.

3.2.3 Maintenance. Generally, the Association is responsible for maintenance of Limited Common Elements. The Association may by rule make Owners of Parcels responsible for some or all of the maintenance of the Limited Common Elements serving such Parcels.

3.2.4 Expenses. If the Limited Common Elements is maintained by the Association, the Association shall assess the cost in one of the following ways:

- (a) The Association shall distribute the cost of such maintenance among the Owners served by the Limited Common Elements, which may be by the establishment of a Maintenance Zone as provided in Part IV or other Specially Allocated Expenses.
- (b) The Association may reasonably determine that the benefit of separately billing and accounting for the cost of maintenance is not sufficient to justify the burden and may reasonably choose to maintain any particular Limited Common Element as part of the Common Elements.

3.3 Streets

3.3.1 Design. The streets in Vista Field have been designed to encourage drivers to drive at safer speeds, and to make the streets compatible for cars, bikes and people on foot. Such design elements include narrower street width, on-street parking, planting of street trees, building homes closer to the street, choice of paving materials and design and frequency of intersections. The plan for Vista Field includes a special street type called a Woonerf, which is intended primarily for pedestrians and cyclists but may be used by vehicles traveling at very low speeds.

3.3.2 Common Streets. Any streets that are not dedicated to the public and shown on the Plat as a Common Element shall be part of the Common Elements and shall be known as the Common Streets.

3.3.3 Access. The Common Streets are hereby made subject to an easement for pedestrian and vehicular access to and from other parts of Vista Field, including the Village Center, other parts of the Master Plan Area whether or not subject to this Declarant or developed as part of Vista Field, and areas outside Vista Field. However, the Association may reserve alleys or driveways as Limited Common Elements for the private use of Owners served by such alley or driveways.

3.3.4 Regulation. Subject to local government regulation, the Association may reasonably regulate driving within the Common Interest Community.

3.3.5 Maintenance of Rights-of-Way. To the extent permitted by governmental authorities, the Association may, but is not obligated to, maintain sidewalks and on-street parking, even if located within the public right-of-way, in order to improve safety or attractiveness of the Common Interest Community.

3.3.6 Modification. The Association shall not remove on-street parking shown on the Plat in order to increase driving lanes. The Association may remove spaces on a case-by-case basis as needed, such as for visibility, pick-up and drop-off zones or access. Except for occasional closure for street fairs or other events or as reasonably necessary to maintain their private nature, the Common Streets are not to be gated or access otherwise restricted. Alleys are required to be kept accessible for fire safety. Traffic calming measures, if needed, shall be as unobtrusive as possible.

3.4 Parking

3.4.1 Design. Much of the parking within Vista Field is intended to be shared, so that guests can park once and walk to various businesses. Through streets have a significant amount of on-street parking, which serves both residents and the Village Center (including the Performing Arts Center). Because on-street parking narrows the street width and slows traffic, it also serves as a traffic-calming measure. Larger parking lots or garages are intended to be shielded from view wherever possible.

3.4.2 Residential Parking Regulation. The Association may regulate or prohibit parking on the Woonerfs or designate areas where parking is permitted. The Association may regulate parking on other Common Streets in residential areas, including limiting the time periods for parking. Parking within the residential areas is intended to serve as overflow for the Town Center during unusually busy periods. If parking within residential areas is frequently and unduly impacted, the Association may limit its use to residents or guests of residents during certain time periods or establish other reasonable regulation, including charging for parking.

3.4.3 Commercial Parking Areas. Commercially-oriented parking may be managed by the Commercial Association or the owner of the parking area, as applicable, including the charging of fees for parking. Subject to local government regulation, surplus parking areas may be redeveloped.

3.5 Landscaping and Lighting

3.5.1 Common Landscaping and Rights-of-Way. The Association shall maintain any landscaping or signage that is part of the Common Elements. To the extent permitted by governmental authorities, the Association may, but is not obligated to, maintain street trees and any landscaping between the sidewalk and the street as if they were part of the Common Elements, even if located within the public right-of-way, and any other easement areas, public rights-of-way and other public or private properties located within reasonable proximity to the Common Interest Community if its deterioration would affect the appearance of or access to the Common Interest Community.

3.5.2 Surface Water Management. The Association shall have a blanket easement and right on, over, under and through the ground within the Common Interest Community to inspect, maintain and correct drainage of surface water and other erosion controls. This easement includes the right to cut or remove any vegetation, grade soil or to take any other action reasonably necessary for health or safety or to comply with governmental requirements. The Association shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practical.

3.5.3 Street Lights. The Association may purchase or lease, or lease to purchase, lighting for the streets and Common Elements from the local utility. Alternatively, the Association may enter into such agreements with the Founder or other entity if the lighting equipment to be provided meets the requirements of the Design Code and the terms are reasonable. To make outdoor lighting as unobtrusive as possible, the Association shall have an easement to hang or fix lighting for the Common Elements from houses on Parcels as provided in the Design Code. Owners of the houses to which lighting is attached may be required to maintain the lighting in good condition. The Association may repair lighting and replace light bulbs and is hereby granted an easement to do so. In most cases, such lighting is wired as part of the original construction to draw electricity from the house to which it is attached. Owners of such houses shall be responsible for paying the electricity for the light and shall not cut off the electricity to the light or remove or damage the fixture or bulb.

3.5.4 Welcome Lights. To help create a sense of safety, security and neighborliness at Vista Field after dark, houses may be required to have one or more Welcome Lights on porches and in alleys as described in the Design Code. The Design Code may establish rules concerning light sensors or timers to ensure that lights operate efficiently and properly. The Owner of the house must keep the Welcome Lights in good repair and working order, subject to regulation by the Association. The Association may establish procedures to notify Owners if Welcome Lights are not working properly, and, after notice, may repair the light and charge the cost, including a reasonable management fee, to the Owner. The Association may contract to maintain the Welcome Light for the Owner for a reasonable fee.

Part IV:

Relationships between Parcels

- 4.1 Easements Between Parcels
- 4.2 Maintenance Zones
- 4.3 Dependent Attached Homes
- 4.4 Sub-Associations

4.1 Easements Between Parcels

Vista Field is a compact community, with homes close together and, in some cases, attached. The easements apply wherever the described housing type exists.

4.1.1 Structural Party Walls. Each Owner grants to the Owner of each adjacent Parcel the right and easement to maintain and to utilize any exterior or interior wall of a Building that forms a party wall between them. A wall will be considered a party wall only if it provides structural support for the Buildings, or parts of a Building, on more than one Parcel. Maintenance of the surface of the party wall shall be the sole responsibility of the Owner whose Building faces such wall. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's Parcel or the wall itself. The adjacent Owners shall share the cost of any other repairs to the party wall equally.

4.1.2 Exterior Walls along a Parcel Line. An exterior wall which supports the Building on only one Parcel, or which encloses a courtyard on one Parcel, shall not be considered a party wall. The Association may make rules and regulations concerning use and maintenance of such walls, including assigning responsibility between the adjoining owners for painting and repair and granting access over the adjoining Parcel as reasonably necessary to maintain the wall. All such maintenance and repair shall be in accordance with the Design Code.

4.1.3 Side-Yard Easements. Rather than have narrow, useless side yards on both sides, houses may be designed so that each home has an accessible yard on one side, and a "privacy side" on the other. Such easements may be designated on a Plat, the Design Code or on the deed from the Founder to the first Owner other than the Founder. Side-yard easements shall generally run the length of the lot and shall encompass the area between the home and the boundary line. The Owner of such a Parcel subject to an easement shall be the beneficiary of a similar easement along another portion of the Parcel, unless the Parcel is a corner lot, is larger than the surrounding lots or has other special conditions. Subject to regulation under the Design Code, the beneficiary of such an easement shall have the use and maintenance responsibility for the easement area and

may place air-conditioning equipment, fences, decks or patios and other fixtures (but not a primary structure) upon the easement area.

4.1.4 Roof Overhang; Footings. For certain building types that are to be built near or along a property line, the Design Code may permit roofs, gutters, soffits and downspouts to overhang this property line, and may allow footings and rain leaders to intrude below the surface of the same property line. To the extent allowed by the Design Code and local governmental regulations the adjacent property shall be subject to an easement for such intrusion, and the adjacent landowner shall not excavate or otherwise operate in such a way that would impair the structural integrity of the footing.

4.1.5 Attached Roof. If a wall or parapet is constructed along or very near the property line, the owner of a building to be constructed on the adjacent property shall have the right to flash into the existing building, in accordance with normal building practices and in order to make the new building watertight. This right shall include the right to make minor cuts on the existing building and to secure flashing or other materials to the existing building, so long as the structural integrity and water-tightness of the existing building is not impaired. The cost for flashing shall be incurred by the owner of the new building, but the maintenance of this connection shall be a shared expense between adjacent property owners.

4.1.6. Regulation. The Association may reasonably interpret these easements and make reasonable rules for maintenance and use of easement areas and shared improvements, which shall be applied uniformly to all Parcels similarly configured.

4.1.7 Additional Easements. The Founder shall have the right to establish additional easements as necessary to provide for different design conditions that may be created in the future.

4.2 Maintenance Zones

4.2.1 Purpose. Maintenance Zones are smaller areas within the Common Interest Community that share the cost of certain services. The system of Maintenance Zones is intended to permit efficient delivery of services based on property type without the formation of multiple incorporated sub-associations. Reasons for establishment of a Maintenance Zone include the following:

- (a) Parcels share Limited Common Elements such as a courtyard, alley or parking court,
- (b) Parcels within the Zone are of a type that require specialized Association maintenance of Parcels, such as front-yard maintenance or,
- (c) Dependent Attached Houses as described further in Section 4.4, require coordinated maintenance of a shared roof or other types of building maintenance.

4.2.2 Authority. Maintenance Zones are established in reliance upon the following provisions of the Act:

- (a) Section 64.90.480, which provides that certain expenses shall be assessed against Parcels on a basis other than Allocated Interests if the declaration so provides, including expenses associated with the operation, maintenance, repair, or replacement of any specified limited common element and expenses specified in the declaration as benefiting fewer than all of the units; and

- (b) Paragraph 64.90.235(4)(a) of the Act, which allows for different allocations of votes on particular matters specified in the declaration.

4.2.3 Designation. Maintenance Zones may be created by Supplemental Declaration or designated by the Board in its reasonable discretion. A Parcel may be in more than one Maintenance Zone. For instance, a Parcel could be in one Maintenance Zone for alley maintenance and another for front yard landscaping.

4.2.4 Condominiums. Property that is submitted to condominium ownership shall be maintained by the applicable condominium association and shall not be considered a Maintenance Zone. However, a condominium may be part of a larger Maintenance Zone.

4.2.5 Advisory Councils. The Board shall permit the establishment of an advisory council from each Maintenance Zone. A Maintenance Zone advisory council shall be formed when at least 90% of the Parcels anticipated for the Maintenance Zone have received certificates of occupancy and been conveyed to Owners other than the Founder or a builder. Unless the Board determines otherwise on a Maintenance Zone basis, there shall be up to five members of the advisory council. After the first such council, which shall be appointed by the Board, Owners from each Maintenance Zone shall elect subsequent councils as part of the regular Board election process. If there are no candidates for the Advisory Council, the Board may act without such input from an advisory council.

4.2.6 Budget. Each Maintenance Zone has separate maintenance requirements and a separate budget. The Maintenance Zone budget will include the following as applicable:

- (a) **Limited Common Elements.** Limited Common Element alleys, shared driveways and parking lots may be a Maintenance Zone Expense. Other Limited Common Elements such as a courtyard intended primarily for the use of the surrounding Parcels may be designated a Maintenance Zone Expense for such Parcels.
- (b) **Parcel Maintenance.** Any maintenance that this Declaration, Supplemental Declaration or Amendment to this Declaration requires to be provided to a particular Maintenance Zone shall be included in the Maintenance Zone budget.
- (c) **Landscape Maintenance.** In order to provide better service and reduce the number of landscaping vehicles on the Common Interest Community, the Board may at any time determine that the Association shall provide landscape maintenance services to some or all of the Parcels within the Common Interest Community. The cost for such maintenance shall be considered a Maintenance Zone expense, based upon the type of Parcel. If such service is provided, the Board shall make and apply policies concerning the type of maintenance to be provided and allocation of costs.
- (e) **Additional Services.** Any Maintenance Zone may, by majority vote of the Owners within that Maintenance Zone and approval of the Board, vote to assess all Owners within the Maintenance Zone for maintenance or services in addition to those normally provided by the Association, including yard maintenance (if not already provided) or other maintenance to the Parcel or Maintenance Zone Common Elements. Any service thus approved shall continue until revoked by majority vote of the Owners within that Maintenance Zone.

The advisory council for a Maintenance Zone shall review and give suggestions to the Board for the annual Maintenance Zone budget, proposed services and any modifications to the Maintenance Zone. The Board of the Association shall review each advisory council's

recommendations and adopt a proposed budget for each Maintenance Zone as part of its regular budgeting process as provided in Section 5.1.

4.2.7 Allocation of Maintenance Zone Expenses. Unless provided otherwise in the Supplemental Declaration creating the Maintenance Zone, the Maintenance Zone budget will be assessed to and allocated to all Owners within that Maintenance Zone in proportion to their Allocated Interests or such other proportion that the Board reasonably determines based on the proportionate benefits provided to the Owners within that Maintenance Zone.

4.2.8 Capital Improvements. Any Maintenance Zone may, by sixty percent (60%) vote of the Owners within that Maintenance Zone and approval of the Board, vote to assess all Owners within the Maintenance Zone for capital improvements to Common Elements (including Limited Common Elements) within that Maintenance Zone.

4.3 Dependent Attached Houses

Dependent Attached Houses are a special type of Maintenance Zone.

4.3.1 Definition. A Dependent Attached House is attached to another home on one or more sides and needs to be maintained together with the attached home because it is structurally dependent on the neighboring home, or because it is intended to have a uniform appearance with the neighboring home, or both. A Dependent Attached House is structurally dependent if it shares a roof structure, so that damage to the roof over one Dependent Attached House could cause water to travel to another Dependent Attached House, or if other damage to the structure of the Dependent Attached House could cause structural impairment to the other Dependent Attached House.

4.3.2 Maintenance Zone Designation. Each group of Dependent Attached Houses of similar design, materials and time of construction shall be considered a Maintenance Zone. A Supplemental Declaration submitting the property to this Declaration may designate such a Maintenance Zone and establish special maintenance and insurance provisions, or an instrument may be recorded by the Association. If not so designated, the Board may determine in its reasonable discretion whether a building shall be considered a Dependent Attached House that requires unified maintenance. The Board shall then designate the boundaries of the Maintenance Zone and the type of maintenance required.

4.3.3 Expenses. The budget for a Maintenance Zone for Dependent Attached Houses may include any expense reasonably necessary to ensure structural and weatherproof integrity of all houses within the group based on the construction methods used. Expenses may include but not be limited to roof maintenance and repair (including a reserve fund for roof replacement), and property insurance to ensure that funds are available for rebuilding in the event of fire or other damage. Where a uniform exterior appearance is required, expenses may include exterior repair and repainting of siding and trim.

4.3.4 Damage and Repair. An Owner shall promptly notify the Association and the appropriate Maintenance Zone Council of any damage that affects, or has the potential to affect, more than one attached house. In addition to the other remedies provided by this Declaration, the Association shall have the right to take any action reasonably necessary to ensure prompt and appropriate rebuilding to protect the structural integrity of the Dependent Attached Houses, and to assess the cost to the affected Parcels as a Specially Allocated Assessment.

4.4 Sub-Associations

In rare cases, Dependent Attached Houses or other Maintenance Zones may need more care than can be provided within the Maintenance Zone structure. This Section 4.4 is provided for those instances.

4.4.1 Formation. Owners within a Maintenance Zone may create an incorporated association to provide services to that Maintenance Zone:

- (a) **Single Entity.** During the Development Period, if all of the Allocated Interests within that Maintenance Zone are owned by a single entity, then formation of the Maintenance Zone association shall require approval of the Founder and the owner of the Allocated Interests, if different. A declaration and association documents shall be recorded and shall not require any other approvals.
- (b) **Vote of Owners.** Any Maintenance Zone may form an owners' association and adopt articles of incorporation and bylaws, if approved by written consent of at least sixty percent (60%) of the Allocated Interests within that Maintenance Zone, by the Board of the Association and, if during the Development Period, by the Founder. The documents so adopted, or a notice as to the documents, may be recorded in the public record as an amendment to this Declaration or Supplemental Declaration.

4.4.2 Operation. Upon creation, the new association shall assume the Maintenance Zone maintenance responsibilities and shall have the same rights to assess, collect and lien for assessments for Maintenance Zone expenses as provided to the Association under Section 4.2 and Paragraph 5.1.2. All Owners within that Maintenance Zone shall continue to be members of the Association, to pay Assessments for Association expenses, and to be subject to the terms of this Declaration.

4.4.3 Termination. Any association so created may be terminated, and the Maintenance Zone responsibilities resumed by the Association, by consent in writing of a majority of the Allocated Interests within that Maintenance Zone and approval of the Board of the Association and, if during the Development Period, by the Founder.

Part V:

Association Budget and Assessments

- 5.1 Association Budget
- 5.2 Services
- 5.3 Assessments
- 5.4 Effect of Nonpayment of Assessment; Remedies
- 5.5 Initial Budget and Guarantee of Assessments
- 5.6 Working Capital Contribution

5.1 Association Budget

5.1.1 Budget Items. The budget shall estimate total expenses to be incurred by the Association in carrying out its responsibilities. These expenses shall include, without limitation, the cost of professional management of the Association, insurance premiums, taxes, services, supplies, professional services (including accounting and legal counsel), and other expenses for the rendering of all services properly approved in accordance with this Declaration. The budget may also include reasonable amounts, as determined by the Board, for working capital.

5.1.2 Maintenance Zones and other Specially Allocated Expenses. The Board shall adopt a separate budget for each Maintenance Zone for Maintenance Zone expenses after consultation with the appropriate Maintenance Zone Advisory Council, as applicable, as described in Section 4.2.

- (a) **Ratification.** Each Maintenance Zone budget shall be subject to ratification in accordance with RCW 64.90.525, except that the number of votes required to reject a Maintenance Zone budget shall be those representing a majority of Allocated Interests in that Maintenance Zone.
- (b) **Assessment.** Maintenance Zone Assessments and other charges designated in this Declaration or the Act that are assessed to a particular Parcel or group of Parcels shall be considered Specially Allocated Expenses under the Act. Where such services may be reasonably estimated in advance, the Association may budget for such expenses and assess the cost in advance to the affected Parcels. All such charges shall be distributed in accordance with Allocated Interests or such other proportion that the Board reasonably determines based on the proportionate benefits provided to the Owners within that Maintenance Zone.

5.1.3 Reserves. The Association shall establish reserves as required by the Act and may establish additional reserve funds. Reserves for Maintenance Zones shall be accounted for separately but may be commingled with other Association accounts.

5.1.4 Insurance. The Association must maintain in its own name, to the extent reasonably available and subject to reasonable deductibles, the various types of insurance required by RCW 64.90.470, directors' and officers' liability insurance, and other types of insurance deemed prudent by the Board.

5.1.5 Approval. The Board shall review and approve the budget prior to the beginning of the fiscal year for which it applies in accordance with the Bylaws and the Act., subject to ratification by the Owners in accordance with RCW 64.90.525. The Board's failure or delay in preparing or adopting the annual budget for any fiscal year shall not waive or release an Owner's obligation to pay Assessments whenever the amount of such Assessments is finally determined. In the absence of an annual Association budget each Owner shall continue to pay Assessments at the rate established for the previous fiscal period until notified otherwise.

5.1.6 Contracting Parties. The Association may contract with any party, including the Founder, for the performance of all or any portion of the management of the Association and its maintenance and repair obligations. All such contracts shall be fair and reasonable. The cost of the contract shall be included within the General Assessment, Special Assessment or Individual Parcel Assessment as applicable.

5.2 Services

5.2.1 Snow Removal. The Association shall provide snow removal services to all Common Streets, including all alleys and parking areas that are part of the Common Elements, including Limited Common Elements. The Association shall establish a policy from time to time whether to assess such services to Limited Common Elements as a Maintenance Zone Expense or to include it in the budget for general Association expenses.

5.2.2 Street Sweeping. The Association may, but is not obligated to, provide street sweeping, on a regular or as-needed basis.

5.2.3 Security. The Association may, but is not obligated to, provide private security services.

5.2.4 Additional Association Services. In addition to the specific powers provided in this Declaration, and to the extent permitted by governmental authorities, the Association, by majority vote of the Board, may provide any other service allowed by law to be provided by a community association organized as a nonprofit corporation. If requested by petitions signed by at least 10% of the Owners, a membership meeting may be called and, if a quorum is present, the offering of the additional service may be repealed by majority vote of the Owners. For three years after such a repeal, the Board may not reinstitute the service unless also approved by majority vote of the Owners.

5.2.5 Parcel Services. The Association may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Association, the cost of which would be assessed to that Owner as a Specially Allocated Assessment. The terms and conditions of all such contracts shall be at the discretion of the Board.

5.2.6 Utilities. If the Association provides any utility services, the costs may be assessed on any reasonable basis determined by the Association, including actual usage, per unit, by Allocated Interest or upon the way such utility charges are made by the utility provider.

5.3 Assessments

5.3.1 Establishment of General Assessments. The budgeted amount for general expenses shall be divided among all Owners according to Allocated Interest and assessed as General Assessments. The Board shall set the date or dates such assessments become due and may provide for collection of assessments annually or in monthly, quarterly or semiannual installments.

5.3.2 Obligation for Assessments. Each Owner of any Parcel by acceptance of a deed or other transfer instrument is deemed to agree to pay to the Association the following (to be known collectively as “Assessments”):

- (a) General Assessments,
- (b) Special Assessments for the purposes provided in this Declaration, and
- (c) Maintenance Zone Assessments and other Specially Allocated Expenses for any charges particular to that Parcel.

5.3.3 Special Assessment. In addition to the General Assessment, the Board may at any time levy a Special Assessment:

- (a) **Capital Improvements.** A Special Assessment may be levied for a Capital Improvement approved in accordance with Paragraph 9.1.1.
- (b) **Emergency Assessment.** By a two-thirds (2/3) vote, the Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense that this Declaration or the law requires the Association to pay (including, after depletion of reserves, any unexpected expenditures not provided by the budget or unanticipated increases in the amounts budgeted).

Before the Special Assessment can be charged, the Act requires that the Board follow the procedures for ratification of a budget described in Paragraph 5.1.6. The Board may provide that the Special Assessment be due and payable in installments over any period it determines and may provide a discount for early payment.

5.4 Effect of Nonpayment of Assessment; Remedies

5.4.1 Late Fees. To the greatest extent permitted by the Act, each Owner also agrees to pay a reasonable late fee and interest, as established by the Board, and cost of collection when delinquent, including a reasonable attorney’s fee whether or not suit is brought. Upon default in the payment of any one or more installments, the Board may, to the extent permitted by the Act, accelerate the entire balance of such Assessment, which shall be declared due and payable in full.

5.4.2 Personal Obligation. All Assessments, together with any late fee, charges, fines, interest and cost of collection when delinquent, including a reasonable attorney’s fee whether or not suit is brought (collectively, the “Assessment Charge”) shall be the personal obligation of the person or entity who was the Owner of the Parcel at the time when the assessment was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Parcel. The Association

may bring an action at law against the Owner personally obligated to pay the Assessment Charge.

5.4.3 Statutory Lien. The Association shall have a statutory lien against the Parcel in accordance with the Act, which shall secure all Assessments, costs and attorneys' fees and other permitted charges under the Act. The statutory lien may be foreclosed as provided by the Act. RCW 64.90.485

5.4.4 Acquisition of Parcel. The Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Parcel foreclosed at foreclosure sale and to acquire, hold, lease, mortgage and convey the Parcel. The Association may take a deed in lieu of foreclosure.

5.5 Working Capital Contribution

This Section 5.5 applies only to the sale of a Parcel from the Founder to the first Owner.

5.5.1 Working Capital Contribution. At the closing and transfer of title of each Parcel to the first Owner (other than the Founder or an affiliate of the Founder), the new Owner shall contribute to the Association three months' assessments or \$250, whichever is greater, based upon the agreed upon use and anticipated Allocated Interest upon completion. If not paid at closing, the Working Capital Contribution may be collected as a Specially Allocated Expense.

5.5.2 Purpose. This contribution may be used by the Association for the purpose of initial and nonrecurring expenses of the Association, for providing initial working capital for the Association and for other expenses and shall not be considered as a pre-payment of assessments. A Working Capital Contribution may not be used to defray expenses that are the obligation of the Founder.

5.5.3 Exempt Transactions. The Working Capital Contribution is not required to be paid by an institutional first mortgagee that acquires title as the result of a foreclosure or deed in lieu but shall be paid by a third-party purchaser at foreclosure or upon the conveyance by the mortgagee to a subsequent Owner. The Founder has the right in its discretion to exempt transfers to an affiliate of Founder. If the Founder conveys a Parcel without a building to a builder, then that sale may be exempt from the Working Capital Contribution so long as the contribution is made upon conveyance from the builder to a subsequent buyer (other than re-conveyance to the Founder) or occupation of the Parcel, whichever comes first.

Notice to Purchasers concerning Unpaid Assessments

Under Section 64.90.640 of the Act, a Parcel Owner is required to provide, prior to the execution of any contract for sale, a resale certificate, signed by an officer or authorized agent of the Association. If there are any Assessments unpaid on the Parcel, you will automatically become liable for those Assessments when you accept a deed.

Part VI:

Residential Property

6.1 Covenants and Restrictions

6.2 Rule-Making and Enforcement

This Part VI applies only to residential Parcels, and to the residential portion of mixed-use Parcels. The Association shall not have any authority to regulate commercial uses.

6.1 Covenants and Restrictions

This Declaration doesn't have long lists of rules. General rules of civility shall apply, so that neighbors shall have freedom to enjoy music, entertainment and other aspects of life so long as such enjoyment does not unreasonably infringe on the enjoyment of others.

6.1.1 Generally. Each Parcel Owner is responsible for keeping that Parcel in good repair, free of debris, hazardous conditions and unpleasant odors, and for observing reasonable Association rules concerning placement of trash cans, yard maintenance and other rules for the appearance and safety of the community.

6.1.2 Renting. Parcels may be rented, subject to reasonable rules and regulations as promulgated by the Association from time to time.

6.1.3 Pets. Pets are allowed consistent with City zoning, rules and regulations. Pets shall not create unreasonable noise or odor, and Owners shall collect and dispose of animal waste. The Association may designate specific areas within the Common Elements where pets may be walked, may prohibit pets on other areas, and may require pets to be on leash.

6.2 Rule-Making and Enforcement

6.2.1 Rules and Regulations. The Board may from time to time adopt reasonable rules or amend previously adopted rules and regulations to address specific problems concerning the operation, use, maintenance and control of the Parcels, Common Elements and any facilities or services made available to the Owners. Notice shall be provided to Owners as provided in the Act. Rules and Regulations shall take effect immediately upon approval by the Board, or at a later date selected by the Board. If requested in writing by at least 10% of all Owners, a membership meeting may be called and any Rule or Regulation may be repealed by majority vote of the Owners.

6.2.2 Owner's Responsibility. Each Owner, family members of Owners and Owners' guests and tenants shall abide by the covenants contained in this Declaration and any Rules and Regulations which may be adopted from time to time by the Board. Each Owner shall be responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner.

6.2.3 Enforcement. The Association shall give notice and opportunity to be heard concerning any violation of the Declaration or its rules and regulations and shall have all rights of enforcement against the Owner or tenant, all as provided in the Act.

6.2.4 Design Review. After the Development Period, the Association may adopt rules to establish and enforce construction and design standards as provided in the Act and in Part VII of this Declaration.

Part VII:

Design Review

- 7.1 Town Architect
- 7.2 Design Code
- 7.3 Review Process
- 7.4 Basis for Decision; Variances
- 7.5 Remedies
- 7.6 Additional Terms

7.1 Town Architect

7.1.1 Role. Vista Field is to have a Town Architect, whose job it is to help realize the vision of the Master Plan and improve the quality of construction within Vista Field by working with applicants and their architects. The Town Architect shall interpret and, when necessary, propose changes to the Design Code.

7.1.2 Selection. During the Development Period, the Town Architect is appointed by the Founder and serves at its pleasure. After the Development Period, the Town Architect is appointed by the Board of the Association and serves at its pleasure.

7.1.3 Qualifications. The Town Architect must have a professional degree in architecture, landscape architecture or urban design from an accredited university or comparable qualifications. If the individual is not licensed as an architect in the state of Washington and if necessary to comply with state law concerning licensure of architects, the Town Architect may be known as the “Town Planner” or other such term but shall have the same rights and responsibilities under this Declaration.

7.1.4 Compensation. The Founder, during the Development Period, and the Association after the Development Period, shall pay the Town Architect reasonable compensation. The Town Architect may be employed on a contract basis and is not necessarily a full-time position.

7.2 Design Code

7.2.1 Establishment of Design Code. The Founder hereby establishes the Design Code for Vista Field, which shall set design criteria and aesthetic standards for the Common Elements and for all aspects of the Parcel visible from the outside. Although the Design Code does not need to be recorded to be effective, the Founder or the Association may at any time record the Design Code, or any amendment to the Design Code, in the public record as an additional exhibit to this Declaration.

7.2.2 Changes to the Design Code. The Town Architect may propose changes to any part of the Vista Field Design Code from time to time. During the Development Period, the Town Architect shall submit any Design Code modification to the Founder, who shall approve or reject the change in its reasonable discretion. After the Development Period,

the Board of the Association, after proper notice to the Owners as required by the Act, by majority vote may approve or reject the Town Architect's proposed modifications to the Design Code as it applies to Residential Parcels, and the Commercial Association shall have the same power as it applies to Commercial and Mixed-Use Parcels.

7.2.4 Repeal. If requested by petitions signed by at least 10% of the Owners, a membership meeting may be called and, if a quorum is present, the modification to the Design Code shall be repealed by majority vote of the Owners.

7.2.5 Effective Date. Applications are approved based upon compliance with the Design Code in effect at the time of the submittal. However, Parcel Owners who have not yet constructed a primary building may elect to use the version of the Design Code in effect at the time the Parcel was conveyed, provided that construction begins within two years of the date of conveyance.

7.2.6 Interpretation of Code. The Town Architect may establish, and periodically update, interpretations of the Design Code, describe techniques and configurations, and list approved doors, windows, colors, hardware, plants and other materials.

7.2.7 Designation of Uses. The Design Code may regulate the type, placement, size and number of residential or business units that may be constructed on a Parcel.

7.2.8 Governmental Codes. The Design Code is intended to be consistent with all applicable requirements of state and local law. In the event of a conflict, the Owner shall comply with the governmental code in the way most consistent with the Design Code, subject to review and approval as provided in this Part VII.

7.3 Review Process

7.3.1 Exercise of Review Rights.

- (a) **During the Development Period.** As provided in Paragraph 1.5.3, the Founder has reserved the right to review all construction and modification during the Development Period. Rights reserved under this Part VII to the Founder may be exercised directly by the Founder, by the Town Architect if the Founder so designates such authority, or by a design review committee created by the Founder to act on its behalf.
- (b) **Assignment.** At the end of the Development Period, all reserved rights for design review for residential parcels and land owned by the Association shall be automatically assigned to the Association, and all reserved design review rights for commercial parcels, Mixed-Use Parcels and land owned by the Commercial Association shall be assigned to the Commercial Association. The Founder may earlier assign its rights to the Association, Commercial Association or other entity, in whole or in part, at any time, but is not obligated to do so.
- (c) **Review Process after Assignment.** Upon termination of the Development Period or if sooner authorized by the Founder, the Association, Commercial Association and other entity if applicable shall each establish its own Architectural Review Committee ("ARC") to review construction and modifications. An ARC may include a Town Architect or other paid professionals.

7.3.2 Original Construction. No clearing or construction of any type may begin except in accordance with approved plans and specifications. Any modification to the approved plans and specification must be reviewed and approved by an amendment to the

application before the modified plans may be used. The plans to be submitted to the Founder or an ARC for approval shall include the following:

- (a) the construction plans and specifications, including all proposed clearing and landscaping,
- (b) elevations of all proposed improvements and
- (c) all other items required by the Founder or ARC.

The Founder or ARC as applicable may establish procedures for the review of applications, including review costs and fees, if any, to be paid by the applicant. For review after assignment to the Association, the Board shall set the Architectural Review Committee's review fees to cover all or part of the expected cost of its operation and shall fund any deficit. Fees shall not be intended to create a surplus, other than an ordinary operating fund for ARC to which any excess fees shall be contributed.

7.3.3 Parcel Modification Subject to Review. After the completion of original construction, all modifications (except interior alterations not affecting the external structure or appearance of any building) must be approved in advance. Improvements and modifications subject to review specifically include, but are not limited to, the following:

- (a) painting or other alteration of a building (including doors, windows and trim) other than with originally approved paint and colors, except as provided in paragraph 7.3.3;
- (b) replacement of roof or other parts of building other than with duplicates of the original material, except as provided in paragraph 7.3.3;
- (c) installation of antennas, satellite dishes or receivers, solar panels or other devices;
- (d) construction of fountains, swimming pools, whirlpools or other pools;
- (e) construction of privacy walls or other fences or gates;
- (f) addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation;
- (g) any significant modifications to the landscaping and any removal or substantial pruning of trees or plants; and
- (h) any modification affecting Allocated Interest for the Parcel.

The listing of a category does not imply that such construction is permitted.

7.3.4 Common Elements. During the Development Period, any modification of the Common Elements, including reconstruction or repair after a loss, modification of any existing structure, or any material alteration of the landscaping or topography of any Common Elements must be approved in advance by the Founder.

7.3.5 Simplified Review. The Founder or ARC may provide lists of approved materials and may allow for staff review and approval of routine or minor matters.

7.4 Basis for Decision, Variances

7.4.1 Basis for Approval. In addition to compliance with the Design Code, the Founder or ARC may also consider other factors, including compatibility with surrounding Parcels and Common Elements, overall quality of design and purely aesthetic considerations, so that it may require changes to a plan to improve its appearance even if

the design meets the technical requirements of Design Code. If the Founder or ARC rejects an application due to overall design quality, the Founder or ARC may make suggestions for improving the design.

7.4.2 Variances. Variances must be submitted by written application. The Founder or ARC may, but is not required to, grant a variance in its discretion if it finds at least one of the following:

- (a) the deviation from the Design Code is not significant,
- (b) the submission has particular architectural merit,
- (c) the variance is in response to existing landscape conditions,
- (d) the design achieves particular harmony with adjacent properties, or
- (e) the same or similar condition has been previously approved in the Common Interest Community.

In order to grant the variance, the Founder or ARC must also find that the variance results in a project that is superior to what would be built without the variance. Any variance granted by an ARC requires unanimous vote of ARC and shall be accompanied by a written statement from ARC explaining the basis for its decision. A variance applies only to the project under consideration and does not require the granting of a variance in a similar situation in the future.

7.4.3 Interpretation. The provisions of this Section 7.4 apply to review by both the Founder and ARC. However, any provision of the Act or other legal determination that limits ARC's discretionary ability shall not apply to review by the Founder.

7.5 Remedies

7.5.1 Generally. If any construction or installation is begun which has not been approved or which deviates from approved plans and specifications, the Founder, Association or Commercial Association as applicable shall be entitled to take any of the following actions, or any combination:

- (a) Require the Owner to resolve the dispute through binding arbitration,
- (b) Seek an injunction requiring the Owner to immediately stop construction and remove or correct any improvements that are not in compliance with approved plans.
- (c) Bring suit seeking other remedies, including any combination of damages, specific performance, declaratory decree, temporary or permanent injunction or other remedy at law or in equity.

If the Founder, Association or Commercial Association brings suit and the court finds that the construction was not approved or that the construction deviated from the approved plans or specifications, then the Founder, Association or Commercial Association as applicable shall also be awarded reasonable attorney's fees and costs, even if the relief requested is not granted.

7.5.2 Inspections. The Founder, Association or Commercial Association, as applicable, or their respective agents, may inspect the property during construction but has no obligation to make any such inspection. Inspectors are concerned primarily with aesthetic considerations and are not responsible for compliance with governmental requirements

or design or construction defects or use of materials affecting the safety or structural integrity of the building.

7.5.3 Deposit, Fines. The Founder, Association or Commercial Association, as applicable, may require the builder or Owner to post a deposit from which the Founder or Association, as applicable, may deduct fines for failure to comply with the approved plans and specifications, damage to the Common Elements, tree regulations and rules for builder conduct. The collection of a fine shall not in any way diminish the available remedies at law or equity.

7.5.4 Tree Protection. Improper cutting, removal or intentional damage to existing trees is subject to fines as set by the Founder, Association or Commercial Association, as applicable, plus a requirement that the tree be replaced with one or more of approved species and size.

7.5.5 Governmental Compliance. Owners are responsible for making sure that construction conforms to governmental regulations and all local building codes. All plans must comply with applicable drainage, water conservation, erosion control and storm water detention requirements. If the Founder, Association or Commercial Association or applicable ARC notes noncompliance, the Owner will be required to make the necessary changes. However, the Founder, Association or Commercial Association or ARC are not responsible for the construction's compliance with governmental requirements.

7.5.6 No Liability. Approval by Founder, Association or Commercial Association or applicable ARC, as applicable, or their respective agents, of an application, builder or architect shall not constitute a basis for any liability for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, or for the performance or quality of work of any contractor or architect approved by it, or for non-compatible or unstable soil conditions or soil erosion, or any other condition or event.

7.5.7 No Waiver. Failure to enforce any provision of this Declaration, the Design Code or construction rules shall not be deemed a waiver of the right to do so at any time thereafter.

7.6 Additional Terms

7.6.1 Builders Guild. The Founder may establish a Builders Guild and may allow only members of the Guild to construct or modify buildings in Vista Field. Membership in the Guild shall be based on understanding of the Design Code, willingness to build in accordance with approved plans and specifications, quality of past work, client satisfaction and financial history. Builders must agree to comply with construction regulations, to properly contain and dispose of construction debris, and to build in accordance with the approved plans and specifications.

7.6.2 Notification and Registry. The Founder, during the Development Period, or the Association or Commercial Association, after assignment of the review process, may notify any Owner in writing that replacement with the original colors or materials will not be permitted, in which case review will be required. The Founder, Association or Commercial Association as applicable shall maintain a registry of such notifications, indexed by address and by the name of the Owner to whom the notice was originally given, so that any purchaser of a Parcel may check to see if such notice has been given. If the registry is properly maintained, it shall serve as notice to any subsequent Owner.

7.6.3 Dependent Attached Houses. Because Dependent Attached Houses must be compatible with its companion home or homes, including uniformity of maintenance, any repair or replacement of any part of the exterior of a Dependent Attached House Parcel is subject to review, even with materials and colors identical to those originally approved. The Design Code restricts Owners' ability to enlarge or enclose space or to make any other changes in the exterior appearance of a Dependent Attached House or yard to a much greater degree than for other housing types. Review of any private antenna, satellite dish or other structure to be placed on the roof must include assurances that the roof will not be damaged.

7.6.4 Signage. All signs, advertisements or notices of any type (other than building permits) on any Parcel visible from outside the Parcel are subject to review. However, the Association is encouraged to respect polite expressions of civic interest and permit reasonable political signage supporting candidates or causes. For Sale or For Rent signs may be prohibited or limited to a uniform size and type.

7.6.5 Temporary Commercial Space. The Founder anticipates the incremental development of commercial districts using farmers' markets and other open-air markets, pushcarts, kiosks, food trucks and other nontraditional commercial space. These structures may be placed within the footprint intended for a permanent building and may be relocated to other such spaces if and when a permanent building is constructed in that location. Such structures may also be placed in parking lots. The right to create such space is limited to the Founder or its assigns and is not subject to the Design Code or design review.

7.6.6 Solar Energy Panels. As permitted under the Act, this Declaration and the Design Code encourage the use of solar energy panels but regulate them as follows:

- (a) A roof-mounted solar energy panel shall not be visible above the roof line.
- (b) A solar energy panel may be attached to the slope of a roof facing a street only if:
 - (i) The solar energy panel conforms to the slope of the roof; and
 - (ii) The top edge of the solar energy panel is parallel to the roof ridge.
- (c) A solar energy panel frame, support bracket or any visible piping or wiring shall be painted to coordinate with the roofing material.
- (d) A ground-mounted solar energy panel shall be shielded if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent.

The Design Code may include other reasonable rules regarding the placement and manner of a solar energy panel. As permitted by the Act, the Association may require Owners or residents who install solar energy panels to indemnify or reimburse the Association or its members for loss or damage caused by the installation, maintenance, or use of a solar energy panel.

7.6.7. Antennas and Satellite Dishes. The Design Code may regulate Antennas and Satellite Dishes to the greatest extent permitted by Federal law.

Part VIII:

Modification, Repair and Reconstruction

8.1 Modification of Common Elements

8.2 Repair and Reconstruction

8.1 Modification of Common Elements

8.1.1 Capital Improvements.

- (a) **Definition.** A Capital Improvement is an alteration or addition or improvement to the Common Elements, or the purchase of additional real property to be added to the Common Elements. A Capital Improvement shall be considered substantial if the cost to the Association of the alteration, addition or improvement, whether by itself or when added to other Capital Improvements for such fiscal year, totals more than ten percent (10%) of the annual budget. However, any reasonably necessary repair or replacement of existing improvements with materials of similar price and utility shall not be considered a substantial Capital Improvement and may be authorized by the Board without Owner approval.
- (b) **Authority.** The Board may authorize Capital Improvements to the Common Elements and may modify the uses of the Common Elements; provided expenses for substantial Capital Improvements must be approved by written consent representing a majority of the Allocated Interests of Parcel Owners other than the Founder, plus the consent of the Founder during the Development Period.

8.1.2 Limitation on Modification of Certain Common Elements. The Founder may, in the instrument conveying certain Common Elements to the Association, restrict or prohibit the sale or modification of the Common Elements being conveyed. In such an instance, the provisions of the instrument of conveyance will take precedence over the provisions of this Section.

8.1.3 Purchase of Additional Common Elements. The Association may acquire additional real property to be owned as Common Elements. The decision to acquire additional real property as a Common Elements (other than that added by the Founder), whether by purchase or lease or other means, shall be authorized by a two-thirds vote of the Board. If the purchase or lease is costly enough to be considered a substantial Capital Expense, it must be approved as described in Paragraph 8.1.1.

8.1.4 Mortgage. The Association may borrow money, mortgage and grant security interests in the Common Elements as permitted under the Act provided that such mortgage is required to pay for major expenses such as capital improvements, damage from a natural disaster or significant deferred maintenance. The Association must have a realistic plan for repaying the mortgage, such as the levy of a special assessment. This

provision may not be used with the intent of avoiding the restrictions on sale of the Common Elements.

8.1.5 Corrective Instruments. The Association, by approval of two-thirds vote of the Board and without a vote of the Owners, may also adopt, execute and record such corrective and other amendments to this Declaration permitted under the Act.

8.1.6 Condemnation. If all or part of the Common Elements is taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Association and, if applicable, with respect to Limited Common Elements, divided among the Owners as required under the Act. The Board shall have the right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation affecting such property.

8.1.7 Dedication to the Public. The Founder may dedicate streets and parks within the Common Interest Community to the public rather than establishing such areas as Common Elements. Any areas that are Common Elements or have been conveyed to the Association may be conveyed to the appropriate public agency or authority and dedicated to the public upon approval of a two-thirds vote of the Board and, if required under the Act, approval by Owners representing the minimum percentage of the voting interests required under the Act for the conveyance of Common Elements.

Any such dedication may include additional terms and conditions as negotiated between the Board and the public entity.

8.1.8 Sale or Lease of Common Elements. Subject to the Act, the Association may sell, donate or grant short- or long-term leases for small portions of the Common Elements or exchange parts of the Common Elements for other property inside or outside the Common Interest Community when the Board finds that it benefits the Common Interest Community in at least one of the following two ways:

- (a) The conveyance is intended to benefit the Common Interest Community in ways other than the revenue, if any, to be derived from the transaction. For instance, the Association may convey or exchange property if necessary to improve access to the Common Interest Community or to improve utility service.
- (b) The revenue to be derived is significant and the use and appearance of the Common Elements is not significantly impaired. For instance, the Association might sell or lease small amounts of space for cellular telephone transmission equipment if such equipment were not obtrusive.

Any decision to donate, sell, exchange or lease any portion of the Common Elements must be approved by two-thirds of the Board and must have the consent of the Founder if within the Development Period and, if required under the Act, must be approved by Owners representing the minimum percentage of the voting interests required under the Act for conveyance of Common Elements. A transaction for lease for a term of more than one year, including all tenant renewal options, cannot be completed until thirty days after notice to Owners. If requested by Owners representing at least 10% of the voting interests within the 30-day period, a meeting of Owners must be held following at least seven days' notice and, if a quorum is present in person or proxy, the decision to lease may be rescinded by majority vote of the Owners present. Any contract with a third party for the purchase, sell, exchange or lease of the Common Elements must comply with the Act and should be contingent upon this right of rescission, unless the Board has previously passed a resolution describing the intended transaction and given 30 days' notice.

8.1.9 Limitation. Other than dedication to the public as provided in Paragraph 8.1.7, sale or lease under the provisions of Paragraph 8.8.8 or the grant of customary easements as provided under the Act, the Common Elements may not be sold or leased.

8.2 Repair and Reconstruction

8.2.1 Common Elements. If fire or other casualty damages or destroys any of the improvements on the Common Elements, the Board shall arrange for and supervise the prompt repair of the improvements. The Board may restore the Common Elements to substantially original condition or may improve or modify the design or use subject to design review. The reconstruction may be considered a substantial Capital Improvement in accordance with Paragraph 8.1.2 only if and to the extent that it modifies the Common Elements and considering the total cost of the project, both insurance proceeds and any additional assessments.

8.2.2 Parcels. If fire, severe weather or other loss damages or destroys a building or any other improvements on a Parcel, the Owner is required to restore the property as follows:

- (a) **Clean-Up.** The Owner of the Parcel shall immediately clear and secure the Parcel. If the Owner fails to clear and secure a Parcel within 30 days after a loss, the Association shall notify the Owner. If the violation continues for ten days after notice to the Owner, the Association shall have the right without liability to enter the Parcel to remove debris, raze or remove portions of damaged structures and perform any other clean up the Association deems necessary to make the Parcel safe and attractive. The cost of such clean-up shall be assessed to the Parcel Owner as a Specially Allocated Assessment.
- (b) **Rebuilding.** Within 18 months of the loss, the Owner shall proceed to rebuild and restore the improvements and shall continue such improvement until completion without undue delay. The improvements shall be restored to the plans and specifications existing immediately prior to such damage or destruction, unless the Owner submits other plans for approval in accordance with Part VII. If an Owner fails to begin rebuilding within the time allowed or abandons reconstruction, then the Association has the right but not the obligation to purchase the Parcel at 80% of fair market value in “as is” condition. The reduction in value is intended to allow the Association to market and resell the Parcel to an Owner who will restore the property.

Part IX:

General Provisions

- 9.1 Amendment
- 9.2 Duration and Termination
- 9.3 Additional Terms

9.1 Amendment

9.1.1 Generally. Except for amendments that may be executed by the Founder or the Association as provided in the Act or elsewhere in this Declaration and except as limited by the Act, this Declaration, including vested rights, may be amended at any time by affirmative vote or written agreement signed by Parcel Owners representing at least sixty percent (60%) of the Allocated Interests in the Association except as follows:

- (a) Part VI (Residential Property) may be amended by 60% approval of residential Allocated Interests (with no approval of commercial Allocated Interests needed).
- (b) Any amendment which affects only commercial property requires approval by 60% approval of commercial Allocated Interests.
- (c) Any action described in this Declaration that requires approval of a greater percentage, amendment of that provision shall require the same percentage vote as would be required to accomplish that action directly.
- (d) Any amendment during the Development Period shall require Founder's consent. Rights reserved to the Founder may not be amended at any time without the specific consent of the Founder.

To the extent permitted by law, a meeting shall not be required to obtain such consents and the individual consents do not need to be recorded.

9.1.2 Technical Amendments. Except as limited by the Act, the Founder specifically reserves the right, at any time during the Development Period, to amend this Declaration without the consent or joinder of any Owner, the Board or any other party as follows:

- (a) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association, HUD or any other generally recognized institution involved in the guarantee or purchase and sale of home loan mortgages,
- b) to conform to the requirements of institutional mortgage lenders or title insurance companies, or
- (c) to clarify, explain or make more certain any the Declaration's provisions or to correct errors, omissions or inconsistencies.

9.1.3 Recording of Amendments. Any amendment shall be recorded and unless provided otherwise, shall take effect immediately upon recording. All amendments must

contain a cross-reference by recording number to this Declaration and to any prior amendments to the Declaration.

9.1.4 Rerecording of Declaration. Unless this Declaration is terminated, the Association shall rerecord this Declaration or other notice if necessary under Washington law to preserve its effect.

9.1.5. Incorporation of Provisions of the Act. This Declaration references provisions of the Act rather than restate the requirements of the law. The Declaration shall be deemed to automatically incorporate any changes to the law, including changes in numbering. The Association may but is not required to record an amendment showing the updated information.

9.2 Effect and Termination

9.2.1 Covenants Run with the Land. The covenants and restrictions contained in this Declaration shall run with and bind the Common Interest Community and shall inure to the benefit of and be enforceable by the Founder, the Association, and all Owners of property within the Common Interest Community, their respective legal representatives, heirs, successors or assigns.

9.2.2 Termination. This Declaration may be terminated as provided by the Act. If permitted by the Act, this Declaration may be terminated by the consent in writing of Owners representing 75% of the Allocated Interests in the Association if all of the Common Elements are accepted for dedication by the City and Limited Common Elements either accepted by the City or deeded to the benefited Owners.

9.3 Additional Terms

9.3.1 Assignment. Founder may assign all or any portion of its rights at any time for all or part of the Common Interest Community to any successor or assigns, or to the Association in accordance with the Act.

9.3.2 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of the Common Interest Community as a high-quality mixed-use community. Boxed text and italicized portions may be used as an aid to interpretation. However, if the boxed or italicized portion conflicts with the operative provision, the operative provision shall govern.

9.3.3 Enforcement of Declaration.

- (a) **Enforcement.** Suit may be brought against any person, persons or entity violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, and against his or its property to enforce any lien created by this Declaration. To enforce this Declaration or the Rules and Regulations, the Association, the Founder or any Owner may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity. The Board shall be empowered to bring suits on behalf of the Association.
- (b) **No Waiver.** Failure to enforce any provision of this Declaration or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.

Exhibit A: Legal Description, The Initial Property

REFERENCE PLAT WITH RECORDING INFO

Exhibit B: Legal Description, The Master Plan Area

DRAFT 9/30/20

VISTA FIELD DECLARATION
of
Covenants, Conditions and Restrictions
For
Commercial Property

Prepared by:

Doris S. Goldstein, Attorney
PO Box 23646
Jacksonville, FL 32241
dgoldstein@walkablemixeduse.com

Christopher S. Napier, Attorney
Foster Garvey PC
1111 Third Avenue, Suite 3000
Seattle, WA 98101
chris.napier@foster.com

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Declaration of Covenants, Conditions and Restrictions
For
Vista Field Village Center

Table of Contents

RECITALS: 1

SUBMISSION TO DECLARATION 1

Part I: Development Plan 3

 1.1 Master Plan and Phasing 3

 1.2 Design Review 4

 1.3 Founder’s Easements and Reserved Rights 4

Part II: The Commercial Association 6

 2.1 Establishment 6

 2.2 Board 6

 2.3 Assigned Value 7

Part III: Shared Spaces and Facilities 8

 3.1 Commercial Commons 8

 3.2 Relationship to Vista Field Common Elements 9

 3.3 Private Agreements 9

Part IV: Commercial Association Responsibilities 10

 4.1 Maintenance of Commercial Commons 10

 4.2 Management and Services 11

 4.3 Marketing and Special Events 12

Part V: Association Budget 13

 5.1 Association Budget 13

 5.2 Marketing and Special Events 13

 5.3 Limited Commercial Commons 14

 5.4 Additional Services 14

Part VI: Assessments 16

 6.1 Assessments 16

 6.2 Effect of Nonpayment of Assessment; Remedies 16

Part VII: Business Regulation 19

 7.1 Business Standards 19

 7.2 Enforcement 20

Part VIII: Modification, Repair and Reconstruction 21

8.1 Modification of Commercial Commons..... 21

8.2 Repair and Reconstruction..... 23

Part IX: General Provisions..... 24

9.1 Amendment..... 24

9.2 Additional Terms 25

Exhibit A: Legal Description, Master Plan Area 28

Glossary

Capitalized words are defined terms, which means they have a specific meaning as defined in this Commercial Declaration. Defined terms are usually defined the first time they are used in the text or in a portion of the text where the definition is important. Below is a table listing defined terms and where they can be found. Note that the Introduction and Vista Field Declaration are separate documents recorded immediately prior to this Commercial Declaration.

Assigned Value:	<i>Section 2.3</i>
Act:	<i>Washington Common Interest Ownership Act</i>
Articles of Incorporation:	<i>Paragraph 2.1.1</i>
Assessments:	<i>Section 7.1</i>
Board:	<i>Section 2.2</i>
Bylaws:	<i>Paragraph 2.1.1</i>
Capital Improvement:	<i>Section 8.1.1</i>
Commercial:	<i>Submission to Declaration</i>
Commercial Association:	<i>Paragraph 2.1.1</i>
Commercial Commons:	<i>Section 3.1</i>
Commercial Declaration:	<i>This instrument</i>
Commercial Parcel:	<i>Paragraph 1.1.2</i>
Commercial Private Property	<i>Submission to Declaration</i>
Design Code:	<i>As defined in the Vista Field Declaration</i>
Development Period:	<i>As defined in the Vista Field Declaration</i>
Founder:	<i>Submission to Declaration</i>
Mixed-Use Parcel:	<i>Submission to Declaration</i>
Master Plan:	<i>As defined in the Vista Field Declaration</i>
Master Plan Area:	<i>As defined in the Vista Field Declaration</i>
Owner:	<i>Submission to Declaration</i>
Parcel:	<i>Submission to Declaration</i>
Residential:	<i>Submission to Declaration</i>
Special Assessment:	<i>Paragraph 6.1.3</i>
Specially Allocated Assessment:	<i>Paragraph 6.1.2</i>
Village Center:	<i>As defined in the Introduction</i>
Vista Field:	<i>As defined in the Vista Field Declaration</i>
Vista Field Association:	<i>As defined in the Introduction; Same as Association as defined in the Vista Field Declaration</i>
Vista Field Declaration:	<i>As defined in the Introduction</i>
Vista Field Common Elements:	<i>Same as Common Elements as defined in the Vista Field Declaration</i>
Washington Uniform Common Interest Ownership Act	<i>As defined in the Introduction</i>

VISTA FIELD
Covenants, Conditions and Restrictions
For
Commercial Property

THE PORT OF KENNEWICK, to be known in this document as the “Founder,” makes this Vista Field Declaration of Covenants, Conditions and Restrictions (“Commercial Declaration”) on the _____ day of _____, year of _____.

RECITALS:

- A. The Founder is the owner of all of the property in Benton County, Washington, described on Exhibit A (the “Master Plan Area”).
- B. The unique characteristics of the mixed-use community to be known as Vista Field are as described in the Introduction to Governing Documents for Vista Field, recorded in the Official Public Records of Benton County, Washington (the “Introduction”).
- C. The Introduction is recorded immediately prior to the Declaration of Covenants, Conditions and Restrictions for Vista Field (“Vista Field Declaration”), which is followed in the public records by this Commercial Declaration. The terms of the Introduction and the Vista Field Declaration are hereby incorporated by reference.
- D. Portions of the Master Plan Area are being submitted to the Vista Field Declaration in phases. As further provided below, this Commercial Declaration applies only to commercial property subject to the Vista Field Declaration, plus the commercial portion of mixed-use parcels.

SUBMISSION TO DECLARATION

The Founder hereby submits to this Commercial Declaration all Commercial Private Property within the portion of the Master Plan Area made subject to the Vista Field Declaration, both the Initial Property as that term is defined in the Vista Field Declaration and any other property later made subject to the Vista Field Declaration (together, “Vista Field”), together with Commercial Commons as designated in this Commercial Declaration.

The word “Commercial” shall mean all non-Residential property and is intended to include but not be limited to office, retail, service establishments and restaurants.

Residential property of any kind is explicitly excluded from the property subject to this Commercial Declaration, including the following:

- *All Residential Parcels within Vista Field, including Residential condominium units.*
- *Residential apartments and apartment developments, and*
- *any portion of a Mixed-Use Parcel that is used for Residential purposes.*

The term “Residential” shall be as defined under the Washington Common Interest Ownership Act (the “Act”) as revised and interpreted from time to time. In addition, all portions of a Parcel qualified as a home occupation under the City of Kennewick Municipal Code, section 18.42.090 as revised and interpreted from time to time shall be considered Residential.

A “Parcel” is the smallest piece of land that can be owned within Vista Field; it is usually a lot but can also be a condominium unit.

A Commercial Parcel is a Parcel that is entirely non-Residential in use.

A Mixed-Use Parcel is a Parcel that includes both commercial and Residential space under single ownership. An example of a small Mixed-Use Parcel, also known as a live/work unit, may be a townhouse with an office or small shop below and a Residential unit above.

The Commercial Portion of a Mixed-Use Parcel is the Parcel less and except all Residential use. Commercial Parcels and Commercial Portions shall be known together as “Commercial Private Property.”

As a declaration limited to non-Residential property, this Commercial Declaration is not subject to the Act.

The Founder declares that all property made subject to this Commercial Declaration (“Vista Field Commercial Property”) shall be held, sold and conveyed subject to its covenants, restrictions and easements.

A person, group of people or entity that owns a Parcel is known in this Commercial Declaration as an “Owner.” The Founder may also be an Owner for so long as the Founder is record owner of any Parcel.

This Commercial Declaration shall run with the land and be binding upon each Owner of a Commercial Parcel or Commercial Portion within Vista Field, their heirs, successors and assigns, and upon all other parties, heirs, successors and assigns having any right, title or interest in all or any part of the community.

Part I:

Development Plan

- 1.1 Master Plan and Phasing
- 1.2 Design Review
- 1.3 Easements and Reserved Rights

1.1 Master Plan and Phasing

1.1.1 Master Plan. As further described in the Introduction, the Master Plan describes the mixed-use development to be known as Vista Field. The Master Plan is general in nature and subject to change. Most of the Commercial property is located in a portion of Vista Field known as Village Center, although Commercial uses may occur in other parts of Vista Field.

1.1.2 Master Plan Area. The Master Plan Area is as described on Exhibit A. The Master Plan Area may be modified as described in the Vista Field Declaration.

1.1.3 Residential Property. Owners of Residential Parcels within Vista Field are not members of the Commercial Association and, notwithstanding anything herein to the contrary, Owners of Residential Parcel and Owners of Mixed-Use Parcels (with respect to the portion used for Residential uses) do not pay any assessments or for any share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements (as defined in the Act), other units (as defined in the Act), or other real estate described in this Commercial Declaration. Assigned Values, which determine both voting rights and assessments, are based only on non-Residential uses, including the non-Residential portions of Mixed-Use Parcels. Residential Parcels and the Residential portions of Mixed-Use Parcels are not subject to, or benefitted by, this Commercial Declaration except for the following:

- (a) **Easements.** Owners of Residential property have an easement over the Commercial Commons as provided in paragraph 3.1.4.
- (b) **Design Review.** As described in Section 1.2 of this Commercial Declaration, after the Development Period, Design Review for Mixed-Use Parcels, shall be assigned to the Commercial Association.
- (c) **Repair and Reconstruction.** Mixed-Use Parcels are subject to the provisions of 8.2.2 regarding repair and reconstruction after a fire or other loss.

1.1.4 Phasing. As property is made subject to the Vista Field Declaration, Commercial Private Property within the phased addition shall automatically become subject to this Commercial Declaration unless the Supplemental Declaration or Amendment to the Declaration specifically provides otherwise. No amendment to this Commercial Declaration shall be required.

1.1.5 Withdrawal of Property. The Founder reserves the right to withdraw property from this Commercial Declaration so long as all Owners within the area to be withdrawn consent, and appropriate access to the remaining portions of Vista Field is preserved.

Withdrawal shall be accomplished by recording of an instrument in the public records executed by the Founder and the Owner of the property to be withdrawn. Such a procedure does not automatically withdraw the property from Vista Field, which can only be accomplished in accordance with the Vista Field Declaration.

1.1.6 Temporary Commercial Space. The Founder anticipates the incremental development of commercial districts using farmers' markets and other open-air markets, pushcarts, kiosks, food trucks and other nontraditional commercial space. These structures may be placed within the footprint intended for a permanent building and may be relocated to other such spaces if and when a permanent building is constructed in that location. Such structures may also be placed in parking lots, plazas and other open spaces. The right to create such space is limited to the Founder or its assigns and is not subject to the Design Code.

1.2 Design Review

1.2.1 Incorporation of Terms. Part VII of the Vista Field Declaration, which sets out provisions for design review, is hereby incorporated by reference. As provided therein, the Founder retains the right of design review during the Development Period, as defined in the Vista Field Declaration.

1.2.2 Operation After Assignment. At the end of the Development Period, the right is to be assigned to the Commercial Association for Commercial and Mixed-Use Parcels as provided in the Vista Field Declaration. After assignment of the review right, the Commercial Association may adopt rules for operation of design review. In addition, after assignment, the Commercial Association may by amendment of this Commercial Declaration modify the provisions of Part VII of the Vista Field Declaration that are incorporated herein as they apply to Commercial Parcels and Mixed-Use Parcels, provided such modifications are not unreasonable as they apply to all Commercial and Mixed-Use Parcels.

1.2.3 Mixed-Use Parcels. If the Commercial Association exercises a right to review Mixed-Use Parcels, it shall not charge any fees to the Owner in connection with the review of Residential property.

1.3 Founder's Easements and Reserved Rights

1.3.1 Reservation of Easements. The Founder hereby reserves the easements in this Section 1.3 for itself, its successors and assigns, and for the Commercial Association and its assigns, as perpetual, nonexclusive easements, which shall benefit Village Center and all other properties owned by Founder or its assigns within Vista Field.

1.3.2 Utility Easements. An easement is hereby reserved on, over, under and through the Village Center for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, gas, television, cable or communication lines and other equipment. Except where indicated on the plat or as described in specific recorded easements, such easements shall be located within the street right-of-way or other Commercial Commons, or in alley easement areas. By virtue of this easement the Founder, and its successors or assigns, may install and maintain

facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits.

1.3.3 Police Powers. A blanket easement is hereby reserved throughout the Village Center for private patrol services, and for police powers and services supplied by the local, state and federal governments.

1.3.4 Drainage. A blanket easement and right are hereby reserved on, over, under and through the ground within Village Center for drainage of surface water and other erosion controls.

1.3.5 Encroachment. An easement is hereby reserved for any improvements constructed on the Commercial Commons that encroach on any Parcel, whether due to any minor deviation from a Plat or the settling or shifting of any land or improvements.

1.3.6 Maintenance of Commercial Commons. To the extent reasonably necessary, an easement is hereby reserved over any Parcel for maintenance of the Commercial Commons or to perform any duties required or permitted to be performed by the Commercial Association, its agent or assigns.

1.3.7 Special Declarant Rights. All Special Declarant Rights reserved to the Founder under the Vista Field Declaration are hereby incorporated by reference and shall include Commercial Commons to the same extent as Common Elements under the Vista Field Declaration.

Part II:

The Commercial Association

- 2.1 Establishment
- 2.2 Board
- 2.3 Assigned Values

2.1 Establishment

2.1.1 Nonprofit Corporation. The Vista Field Village Center Commercial Association (“Commercial Association”) is established under Washington law as a nonprofit corporation comprised of Owners of Commercial Parcels and, with respect to the portions used for non-Residential uses, Owners of Mixed-Use Parcels. This Commercial Declaration, the Articles of Incorporation and the Bylaws describe its powers and duties.

2.1.2 Membership. Each Owner of property subject to this Commercial Declaration shall be a member of the Commercial Association. Assessments and voting rights are based only on non-Residential uses, including the non-Residential portion of Mixed-Use Parcels, as further provided in Section 2.3. Membership is automatically attached to ownership of the Parcel and cannot be separated from title to the Parcel. Residential Parcels and portions of Mixed-Use Parcels used for Residential uses within the Village Center do not pay assessments and do not have voting rights.

2.1.3 Relationship to Vista Field. The Commercial Association shall operate independently of the Vista Field Association but shall coordinate and cooperate, particularly in the use of Vista Field Common Elements within or adjacent to Village Center or other commercial areas.

2.1.4 Professional Management. The Commercial Association may employ a manager or other personnel, who may work on a contract basis.

2.1.5 Additional Provisions. Additional provisions concerning the operation of the Commercial Association and the Board and voting procedure are contained in its Articles of Incorporation and Bylaws. The Articles of Incorporation or Bylaws may establish provisions for classes of voting and board representation.

2.2 Board

2.2.1 Selection. The Commercial Association shall be governed by an elected Board in accordance with its Articles of Incorporation and Bylaws. The Founder shall select the Board during the first twenty years of its operation unless it waives this right.

2.2.2 Decision Making. Except for those matters described in this Commercial Declaration requiring a vote or consent of the Owners or consent of the Founder, the Board makes all decisions necessary for the operation of the property under this Commercial Declaration.

2.2.3 Voting Procedure. Wherever used in this Commercial Declaration, approval by a majority or other proportion of the Owners refers to a vote of the Owners, either at a

properly called membership meeting or through another voting procedure established under the Bylaws. However, where the Declaration specifies consent in writing, or request in writing, then the necessary proportion is based on the total voting interests within the Commercial Association or applicable group of Owners, and signatures may be collected without a membership meeting or other voting procedure. To the greatest extent permitted by law, the Commercial Association may institute voting by electronic or other means.

2.3 Assigned Value

2.3.1 Definition. The Commercial Association shall assign to each Parcel subject to this Commercial Declaration a numerical value (“Assigned Value”) based on its appraised value by the Benton County Tax Assessor as follows:

- (a) **For Commercial Parcels**, the Assigned Value shall be equal to its then-current assessed dollar value of the real property divided by 1,000 and rounded to the closest whole digit. For incubator space that has not been appraised by the tax assessor, the Commercial Association may promulgate rules and establish a reasonable value.
- (b) **For Mixed-Use Parcels**, the Assigned Value shall be calculated similarly but based only on the commercial portions of the Parcel.

The Relative Assigned Value for each Parcel shall be calculated by dividing the Assigned Value for that Parcel by the sum of the Assigned Values of all Parcels within Vista Field. The Commercial Association may express Relative Assigned Value as percentages, fractions or absolute values.

2.3.2 Purpose. Assigned Values are used for voting rights in the Commercial Association as well as for determining assessments for the Commercial Association’s general budget.

2.3.3 Adjustments. The Commercial Association shall periodically adjust Assigned Value and Relative Assigned Value to reflect assessed value as determined by the Tax Assessor and to identify Parcels that are added to or withdrawn from this Commercial Declaration.

2.3.4 Rules. The Commercial Association may from time to time make and amend rules concerning the calculation of Assigned Values and Relative Assigned Values, including methods for rounding, adjustments due to improvements or other change in the assessed value, determining whether a Parcel is Residential, commercial or mixed-use and ascertaining the value of the commercial portion of Mixed-Use Parcels, and the frequency and date or dates at which Assigned Values and Relative Assigned Values shall be calculated.

Part III:

Shared Spaces and Facilities

- 3.1 Commercial Commons
- 3.2 Relationship to Vista Field Common Elements
- 3.3 Private Agreements

3.1 Commercial Commons

3.1.1 Definition. Commercial Commons are commercially-oriented property owned by the Commercial Association or for which the Commercial Association holds use rights in the form of easements, leases or other rights. Commercial Commons are likely to include, without limitation, shared facilities and furnishings such as lighting, street furniture, signage and trash receptacles, and may include certain streets, parking, plazas, greens and other landscaping, restrooms and water fountains.

3.1.2 Establishment. Commercial Commons may be labeled as such on any plat or conveyed by deed, easement, lease, license, or other agreement to the Commercial Association. The Founder may convey to the Commercial Association additional Commercial Commons, which the Commercial Association shall accept for maintenance and management. The design, construction method and cost of each of the additional Commercial Commons shall be at the discretion of the Founder.

3.1.3 Maintenance. Commercial Commons are maintained and managed as provided in Part IV of this Commercial Declaration.

3.1.4 Owners' Easement of Enjoyment. Every Owner within Vista Field, both Residential and commercial, has, and is hereby granted, an easement for appropriate use and enjoyment of the Commercial Commons, including access to Parcels as necessary. This easement passes with title to the Parcel and is automatically extended to the commercial tenants, customers, invitees, family members, Residential tenants or guests who occupy or reside on the Parcel or are accompanied by the Owner. The easement is subject to the Commercial Association's right of regulation in accordance with this Commercial Declaration and is also subject to any limitations that may be contained in any Supplement Declaration or the conveyance of that portion of the Commercial Commons to the Commercial Association. The Owners of Residential Parcels shall not be required to pay any share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, the Commercial Commons.

3.1.5 Use by Public. At the election of the Commercial Association from time to time, passive recreational facilities such as parks, squares or plazas that are part of the Commercial Commons may be open for appropriate use by the public, subject to reasonable regulation by the Commercial Association to prevent nuisances, including without limitation the right to limit hours and days of use and the right to remove individuals who are in violation of the rules and to temporarily or permanently close any Commercial Commons to public use.

3.2 Relationship to Vista Field Common Elements

3.2.1 Definition. Vista Field Common Elements, which are owned or managed by the Vista Field Association and intended to be shared by the entire community of Vista Field, may be located within Village Center and other Commercial areas. Such Vista Field Common Elements may include streets, plazas, greens and other landscaping, water features and other open space.

3.2.2 Maintenance Responsibility. As provided in the Vista Field Declaration, the Vista Field Association shall provide maintenance, repair and replacement of all Vista Field Common Elements, including those within Village Center and other commercial districts.

3.2.3 Reservation of Use. As provided in the Vista Field Declaration, the Founder reserves for itself and for the Commercial Association an easement for use of the Vista Field Common Elements within the Village Center for special events such as concerts and festivals. After any such events, the Commercial Association, at its cost, shall provide any additional maintenance required by the event, including trash collection, clean-up and restoration as provided in the Vista Field Declaration.

3.3 Private Agreements

3.3.1 Privately-Owned Space. Certain facilities may be solely owned by the Founder or others and may be shared in accordance with agreements between the parties, including agreements between the owner and the Commercial Association. Such spaces and facilities include but are not limited to parking lots or garages, plazas, courtyards and dumpsters.

3.3.2 Use Rights. The Commercial Association may hold use rights in the form of easements, leases or other rights for property to be used and maintained in the same manner as Commercial Commons and be included in the term Commercial Commons unless otherwise specified or clear from the context.

Part IV: Commercial Association Responsibilities

- 4.1 Maintenance of Commercial Commons
- 4.2 Management and Services
- 4.3 Marketing and Special Events

The Commercial Association has three primary purposes: maintenance of Commercial Commons, management of the business use of Commercial Commons and other shared areas and services, and promotion of businesses and activity within Vista Field.

4.1 Maintenance of Commercial Commons

4.1.1 Maintenance Responsibility. The Commercial Association is responsible for managing the Commercial Commons and must keep the Commercial Commons clean and in good repair. The Commercial Association may also make capital improvements to the Commercial Commons and may modify the uses of the Commercial Commons if approved in accordance with paragraph 87.1.1.

4.1.2 Association's Easements for Maintenance. To the extent reasonably necessary, the Commercial Association has, and is hereby granted, an easement over each Parcel for maintenance of the Commercial Commons, including repair, replacement and improvement. The Commercial Association also has, and is hereby granted, an easement with respect to any improvements constructed on the Commercial Commons that encroach on a Parcel, whether due to any minor deviation from the Plat or the settling or shifting of any land or improvements.

4.1.3 Common Landscaping and Rights-of-Way. The Commercial Association shall maintain any landscaping or signage that is part of the Commercial Commons. To the extent permitted by governmental authorities, the Commercial Association may, but is not obligated to, maintain the following:

- (a) street trees and any landscaping between the sidewalk and the street as if they were part of the Commercial Commons, even if located within the public right-of-way or on a Parcel, and
- (b) public rights-of-way and other public or private properties located within reasonable proximity to Village Center or other commercial property in Vista Field if its deterioration would affect the appearance of or access to the property.

4.1.4 Surface Water Management. The Commercial Association shall have a blanket easement and right on, over, under and through the ground within Village Center to inspect, maintain and correct drainage of surface water and other erosion controls. This easement includes the right to cut or remove any vegetation, grade soil or to take any other action reasonably necessary for health or safety or to comply with governmental requirements. The Commercial Association shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practical.

4.1.5 Street Lights. The Commercial Association may purchase or lease, or lease to purchase, lighting for the streets and Commercial Commons. Alternatively, the Commercial Association may enter into such agreements with the Founder or other entity if the lighting equipment to be provided meets the requirements of the Design Code and the terms are comparable to arms' length transaction with a utility or other third party.

4.1.6 Damage or Destruction of Commercial Commons by Owner. If any Owner or any of his guests, tenants, licensees, agents, employees or members of his family damages any of the Commercial Commons as a result of negligence or misuse, the Owner hereby authorizes the Commercial Association to repair the damage. In the case of vandalism or other reckless or intentional damage, the cost of repair shall be the responsibility of that Owner. The Commercial Association may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Owner shall be jointly and severally liable. This paragraph shall not be used to reduce the obligation of any insurer to the Commercial Association for any policy held by the Commercial Association.

4.1.7 Limitation. The Commercial Association shall use reasonable judgment in maintaining and regulating the Commercial Commons, but neither the Commercial Association nor the Founder makes any representation or assumes any liability for any loss or injury.

4.2 Management and Services

4.2.1 Commercial Commons. The Commercial Association shall oversee and regulate use of Commercial Commons including uses by businesses. The cost of management shall be part of the Commercial Association's budget to be assessed in accordance with Assigned Values.

4.2.2 Sidewalks and Plazas. The Commercial Association may permit, regulate and manage sidewalks and plazas to be used for commercial and other activities including, without limitation, café seating or the sale of merchandise.

4.2.3 Parking Management.

- (a) **Design.** Parking within Vista Field is meant to be used efficiently as part of the walkable design of the community. Much of the parking is intended to be shared, so that guests can park once and walk to various businesses. Through streets have a significant amount of on-street parking, which serves both residents and the Village Center. Because on-street parking narrows the street width and slows traffic, it also serves as a traffic-calming measure. Larger parking lots or garages are intended to be shielded from view wherever possible.
- (b) **Management.** The Commercial Association shall efficiently manage parking that is either part of the Commercial Commons or that it controls with use rights or other agreements. Management may include a paid parking system or parking validation system as necessary to ensure proper turn-over of spaces and to encourage efficient shared use.
- (c) **Revenue.** Parking fees are not considered to be a revenue source for the Commercial Association but rather a tool for parking management. Revenue generated from paid parking in excess of expenses shall be used for a fund for improvement of the Village Center or for programming and activities.

- (d) **Redevelopment.** Subject to local government regulation and any private agreements, including mortgage requirements, any parking areas may be redeveloped by the owner of thereof (including the Founder) at any time without the consent of the Owners or the Commercial Association provided done in accordance with the Design Code.

4.2.4 Security. The Commercial Association may, but is not required, to provide private security services. The Founder and the Commercial Association make no representations concerning security and shall not be liable in any way for failure to provide services or quality of such services.

4.3 Marketing and Special Events

4.3.1 Generally. The Commercial Association shall promote Vista Field for the mutual benefit of all businesses. To the extent of available revenue, its responsibilities shall include advertising, special event programming, seasonal decoration and other promotional activities.

4.3.2 Special Events. The Commercial Association may use and allow others to use the Commercial Commons for special events, including but not limited to music, performance, art or craft shows and various festivals, parades, block parties or other events intended to enrich and enliven the community. Such events may be open to the public and some events may charge an entrance fee.

4.3.3 Use of Vista Field Common Elements. As provided in the Vista Field Declaration, the Commercial Association shall also have the right to use Vista Field Common Elements within the general boundaries of the Village Center. As provided in the Vista Field Declaration, the Commercial Association shall be responsible for any clean-up or wear-and-tear on the Vista Field Common Elements attributable to use for special events.

4.3.4 Outdoor Markets. The Commercial Association may also sponsor farmers' markets or other outdoor markets on an occasional or regular basis. Portions of the Vista Field Common Elements and Commercial Commons may be designated as an open-air market for the rental of space for pushcarts, kiosks, stands or similar temporary sales structures.

4.3.5 Advertising and Seasonal Decoration. The Commercial Association may install seasonal decorations and promotional signage upon the Vista Field Common Elements within the boundaries of the Village Center, and Commercial Commons, including but not limited to banners, lights and other decorations. The Commercial Association may also engage in media programming and advertising for Vista Field and for special events.

4.3.6 Costs. Costs for marketing shall be assessed as provided in Section 5.2.

Part V:

Association Budget

- 5.1 Association Budget
- 5.2 Marketing and Special Events
- 5.3 Additional Services

5.1 Association Budget

5.1.1 Budget Items. The budget shall estimate total expenses to be incurred by the Commercial Association in carrying out its responsibilities. These expenses shall include, without limitation, the cost of professional management of the Commercial Association, insurance premiums, taxes, services, supplies, professional services (including accounting and legal counsel), and other expenses for the rendering of all services properly approved in accordance with this Commercial Declaration. The budget may also include reasonable amounts, as determined by the Board, for working capital and reserves.

5.1.2 Reserves. The Commercial Association may establish reserve funds for deferred maintenance but is not required to do so.

5.1.3 Insurance. The Commercial Association may carry whatever types of insurance deemed prudent by the Board.

5.1.4 Approval. The Board shall review and approve the budget prior to the beginning of the fiscal year for which it applies in accordance with the Bylaws. The Board's failure or delay in preparing or adopting the annual budget for any fiscal year shall not waive or release an Owner's obligation to pay General Assessments whenever the amount of such assessments is finally determined. In the absence of an annual Association budget each Owner shall continue to pay the assessment at the rate established for the previous fiscal period until notified otherwise.

5.1.5 Contracting Parties. The Commercial Association may contract with any party, including the Founder, for the performance of all or any portion of the management of the Commercial Association and its maintenance and repair obligations. All such contracts shall be at arms-length market rates. The cost of the contract shall be included within the General Assessment, Special Assessment or Individual Parcel Assessment as applicable.

5.1.6 Allocation of Assessments. Except as otherwise provided in this Part V, the Commercial Association's budget shall be divided among all members in accordance with Assigned Values.

5.2 Marketing and Special Events

5.2.1 Budget. The Commercial Association shall budget separately for promotional activities. The marketing budget shall show the net expense to the Commercial Association, taking into account anticipated income, such as admission prices for concerts or the rental of farmers' market stands, and shall include the expenses of set-up, clean-up

and restoration of any damage to Vista Field Common Elements or Commercial Commons caused by events.

5.2.2 Distribution of Costs. Marketing shall be part of the Commercial Association budget. However, office space shall be excluded from that portion of the Assessments attributable to marketing expenses that exceeds ten percent (10%) of the Commercial Association budget.

5.3 Limited Commercial Commons

5.3.1 Limited Commercial Commons. Portions of the Commercial Commons that are intended for use by one or more, but not all, Owners are known as Limited Commercial Commons. An alley, shared parking area, small plaza or shared courtyard is an example of a Limited Commercial Commons. Limited Commercial Commons may be designated in a Plat, this Commercial Declaration or a Supplemental Declaration, or a deed or other document conveying the property to the Commercial Association. In addition, the Board may reasonably determine that portions of the Commercial Commons are designed for use by only certain Owners as Limited Commercial Commons.

5.3.2 Cost of Maintenance. The designation of a portion of the Commercial Commons as a Limited Commercial Commons is both to provide exclusive use rights and to distribute costs fairly. The Commercial Association shall choose on an annual basis one of the following methods of assessing the cost for each of the various Limited Commercial Commons:

- (a) **Assigned Values for Affected Parcels.** The cost shall be divided among the benefited Parcels in accordance with their relative Assigned Values.
- (b) **Usage.** If the Commercial Association determines that it is reasonable to do so, it may assess the cost based on actual usage or a reasonable estimate of such usage.
- (c) **General Budget.** The Commercial Association may reasonably determine that the benefit of separately billing and accounting for the cost of maintenance is not sufficient to justify the burden and may reasonably choose to maintain any particular Limited Common Element as part of the Commercial Commons and the cost shall be assessed to Owners of all Commercial Parcels and Mixed-Use Parcels in accordance with relative Assigned Values.

5.3.3 Relationship to Commercial Commons. Unless otherwise specified or clear from the context, the term Commercial Commons includes Limited Commercial Commons.

5.4 Additional Services

5.4.1 Additional Association Services. In addition to the specific powers provided in this Commercial Declaration, and to the extent permitted by governmental authorities, the Commercial Association, by majority vote of the Board, may provide any other service allowed by law to be provided by an association organized as a nonprofit corporation. If requested by petitions signed by at least 10% of the Owners, a membership meeting may be called and, if a quorum is present, the offering of the additional service may be repealed by majority vote of the Owners. For three years after such a repeal, the Board may not reinstitute the service unless also approved by majority vote of the Owners.

5.4.2 Parcel Services. The Commercial Association may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Commercial Association, the cost of which would be assessed to that Owner as a Specially Allocated Assessment. The terms and conditions of all such contracts shall be at the discretion of the Board.

Part VI:

Assessments

6.1 Assessments

6.2 Effect of Nonpayment of Assessment; Remedies

6.1 Assessments

6.1.1 Establishment of General Assessments. The Board shall set the date or dates assessments become due and may provide for collection of assessments annually or monthly, quarterly or in semiannual installments.

6.1.2 Obligation for Assessments. Each Owner of any Parcel by acceptance of a deed or other transfer instrument is deemed to agree to pay to the Commercial Association the following (to be known collectively as "Assessments"):

- (a) General Assessments for all budgeted expenses,
- (b) Special Assessments for the purposes provided in this Commercial Declaration,
- (c) Assessments for Limited Commercial Commons as applicable, and
- (d) other Specially Allocated Expenses for any charges particular to that Parcel.

6.1.3 Special Assessment. The Board may at any time levy a Special Assessment:

- (a) **Capital Improvements.** A Special Assessment may be levied for a Capital Improvement approved in accordance with Paragraph 6.1.1.
- (b) **Emergency Assessment.** By a two-thirds (2/3) vote, the Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense that this Commercial Declaration or the law requires the Commercial Association to pay (including, after depletion of reserves, any unexpected expenditures not provided by the budget or unanticipated increases in the amounts budgeted).

The Board may provide that the Special Assessment be due and payable in installments over any period it determines and may provide a discount for early payment.

6.1.4 Exclusion for Residential. Notwithstanding anything herein to the contrary, Owners of Residential Parcels and Owners of Mixed-Use Parcels (with respect to the portion used for Residential uses) do not pay any assessments or for any share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements (as defined in the Act), other units (as defined in the Act), or other real estate described in this Commercial Declaration.

6.2 Effect of Nonpayment of Assessment; Remedies

6.2.1 Personal Obligation. All Assessments, together with any late fee, charges, fines, interest and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought (collectively, the "Assessment Charge") shall be the personal

obligation of the person or entity who was the Owner of the Parcel at the time when the assessment was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Parcel. The Commercial Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge.

6.2.2 Lien. Each Owner of a Parcel, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to all Assessments, costs and attorneys' fees and other permitted charges under this Commercial Declaration duly levied by the Common Association as provided herein. Such Assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall also be a charge on a Parcel and shall be a continuing lien upon such Parcel against which each such Assessment is made even after such Parcel is transferred or conveyed. In the event any Assessment or installment thereof remains delinquent for more than 30 days, the Commercial Association may, upon 15 days' prior written notice to the Owner of the Parcel of the existence of the default, accelerate and demand immediate payment of all past due Assessments, interest, costs, late charges, and reasonable attorneys' fees. The amount of any Assessment assessed or charged to any Owner plus interest, costs, late charges, and reasonable attorneys' fees, shall be a lien upon the Parcel. A notice of Assessment may be recorded in the office where real estate conveyances are recorded for the Parcel. Such notice of Assessment may be filed at any time at least 15 days after notice of default has been given to the Owner. The lien for payment of such Assessment and charges shall have priority over all other liens and encumbrances, recorded or unrecorded, limited as otherwise expressly provided herein. Suit to recover a money judgment for unpaid Assessments or charges shall be maintainable without foreclosure or waiver of the lien securing the same. Said liens may be foreclosed as provided in Section 6.2.3 below.

6.2.3 Foreclosure of Assessment Lien; Attorneys' Fees and Costs. The Commercial Association (or its authorized agent) may initiate an action to foreclose the lien of, or collect any Assessment and any associated interest, costs, late charges, and reasonable attorneys' fees. In any action to foreclose the lien of, or otherwise collect delinquent Assessments, interest, costs, late charges, and reasonable attorneys' fees, any judgment rendered in favor of the Commercial Association shall include a reasonable sum for attorneys' fees and all costs and expenses reasonably incurred in preparation for or in the prosecution of said action, in addition to all costs permitted by law. Said liens may be foreclosed as a mortgage under RCW 61.12 or by nonjudicial foreclosure of a deed of trust under RCW 61.24.

6.2.4 Curing of Default. The Commercial Association (or its authorized agent) shall prepare and record a satisfaction and release of the lien for which a notice of Assessment has been filed and recorded in accordance with this Section 6.2 upon timely payment or other satisfaction of all delinquent Assessments set forth in the notice and all other Assessments which have become due and payable following the date of such recordation with respect to the Parcel to which such notice of Assessment was recorded, together with all costs, late charges and interest which have accrued thereon. A fee of one hundred dollars (\$100.00) or such other amount as may from time to time be set by the Commercial Association covering the cost of preparation and recordation shall be paid to the Commercial Association prior to such action. The satisfaction and release of the lien created by the notice of Assessment shall be executed by Commercial Association or by any authorized agent of the Commercial Association. For the purpose of this paragraph, the term "costs" shall include costs and expenses actually incurred or expended by the

Commercial Association in connection with the cost of preparation and recordation of the notice of Assessment and any efforts to collect the delinquent Assessments, including a reasonable sum for attorneys' fees and costs. Unless otherwise prohibited by law, any mortgagee holding a lien on a Parcel may pay any unpaid Assessments or charges with respect to such Parcel, and, upon such payment, shall have a lien on such Parcel for the amounts paid of the same priority as its lien.

6.2.4 Acquisition of Parcel. The Commercial Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Parcel foreclosed at foreclosure sale and to acquire, hold, lease, mortgage and convey the Parcel. The Commercial Association may take a deed in lieu of foreclosure.

Notice to Purchasers concerning Unpaid Assessments

If there are any Assessments unpaid on the Parcel, you will automatically become liable for those Assessments when you accept a deed. **You should contact the Commercial Association before purchasing a Parcel to make sure no Assessments are owed.** You should also inquire about Special Assessments which may have been assessed but which are not yet owed.

Part VII: Business Regulation

7.1 Business Standards

7.2 Enforcement

The provisions in this section are based on experience in other successful shopping and entertainment districts. They do not automatically take effect but require action by the Commercial Association to adopt specific standards for Vista Field within the areas of regulation permitted by this Part VII.

7.1 Business Standards

7.1.1 Merchant Mix.

- (a) **Generally.** To assure an appropriate mix of varied, quality establishments, the Commercial Association may establish standards for various aspects of Owner's business, including without limitation types, quality, style and prices of stock. Such standards may differ for different areas and may apply to an individual store or on a block-by-block basis, in which case standards may be different for opposite sides of the street, corner Parcels or for different sizes or types of Parcels.
- (b) **Exclusives.** The Commercial Association's efforts to assure varied, quality businesses within Vista Field may include the restriction or prohibition of types of merchandise which may be offered and the granting of exclusive rights to certain merchandise. Such exclusive rights may be granted on an individual basis at the Commercial Association's discretion, based on its own evaluation of the quality of merchandise, potential for success and other factors.
- (c) **Limitation.** The Commercial Association may change the standards from time to time; however, no business which meets existing standards may be required to conform to new standards so long as the business continues to operate under the same name and ownership.

7.1.2 Name of Business; Advertising.

- (a) **Review.** The Commercial Association shall have the right to review in advance and approve the name, logo or any identifying symbols to be used with the business.
- (b) **Approval of Advertising.** All advertising for the business to be conducted on the Parcel, whether for print, television, radio, handbills, outside sign or other media, may be subject to the Commercial Association's approval. The Commercial Association may prohibit or regulate the distribution of handbills within Vista Field.
- (c) **Signage.** The Commercial Association may promulgate signage standards and may require that those signs, advertising placards, names, insignia, trademarks, descriptive material or other identification business on the exterior of the building or upon any exterior glass surfaces be specifically approved by the Commercial Association or meet signage standards. Such signage may also be subject to the Design Code.

7.1.3 Appearance, Hours of Operation. The Commercial Association may regulate store displays and general decor, cleanliness and days and hours of operation.

7.1.4 Quality Control. The Commercial Association, its agents and employees shall have the right to inspect the business, stock and services on a monthly basis. Failure to conduct monthly inspections on a regular basis shall not waive the Commercial Association's rights to do so. The Commercial Association shall notify Owner of any deficiencies noted during such inspection. If any such deficiency is not resolved within a reasonable amount of time, the Commercial Association shall give a second notice to Owner, which shall be noted as a "second notice of deficiency." If the deficiency is not cured within 30 days of the second notice, then the Commercial Association shall have all rights of enforcement under this Commercial Declaration.

7.2 Enforcement

7.2.6 Enforcement. The Commercial Association shall have the right to promulgate and enforce any regulations adopted in accordance with Part VII.

7.2.7 Leases. Any regulations adopted in accordance with this Part II shall be deemed included in any lease of commercial space within Village Commons. The Commercial Association shall have the right to review such leases in advance and may promulgate a standard form lease to simplify its review. If any tenant is in violation of these provisions the Commercial Association may enforce these provisions against the Owner, the tenant or both, and is granted the right as Owner's agent and attorney in fact in accordance to evict any tenant in violation of these provisions.

Part VIII:

Modification, Repair and Reconstruction

8.1 Modification of Commercial Commons

8.2 Repair and Reconstruction

8.1 Modification of Commercial Commons

8.1.1 Capital Improvements.

- (a) **Definition.** A Capital Improvement is an alteration or addition or improvement to the Commercial Commons, or the purchase of additional property (by deed, easement, lease, license, or other agreement) to be added to the Commercial Commons. A Capital Improvement shall be considered substantial if, when added to other Capital Improvements for the then-current fiscal year, totals more than ten percent (10%) of the then-current annual budget. However, any reasonably necessary repair or replacement of existing improvements with materials of similar price and utility shall not be considered a Capital Improvement and may be authorized by the Board without Owner approval.
- (b) **Approval.** The Board may authorize Capital Improvements to the Commercial Commons and may modify the uses of the Commercial Commons. Expenses for substantial Capital Improvements must be approved by written consent representing a majority of the Assigned Values of Parcel Owners other than the Founder, plus the consent of the Founder during the Development Period.

8.1.2 Purchase of Additional Commercial Commons. The Commercial Association may acquire additional real property (by deed, easement, lease, license, or other agreement) to be owned as Commercial Commons. The decision to acquire additional Commercial Commons (other than that contributed by the Founder), whether by purchase or lease or other means, shall be authorized by a two-thirds vote of the Board. If the initial acquisition cost of a purchase, lease or agreement is costly enough to be considered a substantial Capital Expense, it must be approved as described in Paragraph 8.1.1.

8.1.3 Sale or Lease for Community Benefit. The Commercial Association may sell, donate or grant long-term leases for small portions of the Commercial Commons or exchange parts of the Commercial Commons for other property inside or outside Village Center when the Board finds that it benefits Village Center in at least one of the following two ways:

- (a) The conveyance is intended to benefit the Village Center in ways other than the revenue, if any, to be derived from the transaction. For instance, the Commercial Association may convey or exchange property if necessary to improve access to Village Center or to improve utility service.

- (b) The revenue to be derived is significant and the use and appearance of the Commercial Commons is not significantly impaired. For instance, the Commercial Association might sell or lease small amounts of space for cellular telephone transmission equipment if such equipment were not obtrusive.

Any decision to donate, sell, exchange or lease any portion of the Commercial Commons must be approved by two-thirds of the Board and must have the consent of the Founder if within the Development Period. A transaction for sale, exchange or lease for a term of more than one year, including all tenant renewal options, cannot be completed until thirty days after notice to Owners. If requested by Owners representing at least 10% of the voting interests within the 30-day period, a meeting of Owners must be held following at least seven days' notice and, if a quorum is present in person or proxy, the decision to purchase, sell, exchange or lease may be rescinded by majority vote of the Owners present. Any contract with a third party for the purchase, sell, exchange or lease of the Commercial Commons should be contingent upon this right of rescission, unless the Board has previously passed a resolution describing the intended transaction and giving 30 days' notice.

8.1.4 Corrective Instruments. The Commercial Association, by approval of two-thirds vote of the Board, may also execute corrective instruments, settle boundary line disputes and resolve other title matters concerning the Commercial Commons.

8.1.5 Condemnation. If all or part of the Commercial Commons is taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Commercial Association. The Board shall have the right to act on behalf of the Commercial Association with respect to the negotiation and litigation of the taking or condemnation affecting such property.

8.1.6 Mortgage. The Commercial Association may borrow money, mortgage and grant security interests in the Commercial Commons provided that such mortgage is required to pay for major expenses such as capital improvements, damage from a natural disaster or significant deferred maintenance. The Commercial Association must have a realistic plan for repaying the mortgage, such as the levy of a special assessment. This provision may not be used with the intent of avoiding the restrictions on sale of the Common Elements.

8.1.7 Limitation on Modification of Certain Commercial Commons. The Founder may, in the instrument conveying certain Commercial Commons to the Commercial Association, restrict or prohibit the sale or modification of the Commercial Commons being conveyed. In such an instance, the provisions of the instrument of conveyance will take precedence over the provisions of this Commercial Declaration.

8.1.8 Dedication to the Public. The Founder may dedicate streets and parks within Village Center to the public rather than establishing such areas as Commercial Commons. Any areas that have been conveyed to the Commercial Association may be conveyed to the appropriate public agency or authority and dedicated to the public as follows:

- (a) **Streets.** For any streets that have not previously been dedicated to the public and are established as Common Streets, the Commercial Association, by approval of a two-thirds vote of the Board, shall have the right to dedicate the Common Streets to the public.
- (b) **Other Commercial Commons.** After a meeting for which Owners are given notice and an opportunity for discussion, the Commercial Association, by approval

of a two-thirds vote of the Board, may dedicate parks, other Commercial Commons or any property that it owns. No vote or approval of the Owners shall be required.

Any such dedication may include additional terms and conditions as negotiated between the Board and the public entity.

8.1.9 Limitation. Other than dedication to the public as provided in Paragraph 8.1.8, sale or lease under the provisions of Paragraph 8.1.3 or the grant of customary easements and ordinary short-term leases and use rights, the Common Elements may not be sold or leased.

8.2 Repair and Reconstruction

8.2.1 Commercial Commons. If fire or other casualty damages or destroys any of the improvements on the Commercial Commons, the Board shall arrange for and supervise the prompt repair of the improvements. The Board may restore the Commercial Commons to substantially original condition or may improve or modify the design or use, subject to design review. The reconstruction may be considered a substantial Capital Improvement in accordance with Paragraph 9.1.1 only if and to the extent that it modifies the Commercial Commons and considering the total cost of the project, both insurance proceeds and any additional assessments.

8.2.2 Parcels. If fire, severe weather or other loss damages or destroys a building or any other improvements on a Parcel, the Owner is required to restore the property as follows:

- (a) **Clean-Up.** The Owner of the Parcel shall immediately clear and secure the Parcel. If the Owner fails to clear and secure a Parcel within 30 days after a loss, the Commercial Association shall notify the Owner. If the violation continues for ten days after notice to the Owner, the Commercial Association shall have the right without liability to enter the Parcel to remove debris, raze or remove portions of damaged structures and perform any other clean up the Commercial Association deems necessary to make the Parcel safe and attractive. For non-Residential parcels, the cost of such clean-up may be assessed to the Parcel Owner as a Specially Allocated Assessment.
- (b) **Rebuilding.** Within six (6) months of the loss, the Owner shall proceed to rebuild and restore the improvements and shall continue such improvement until completion without undue delay. The improvements shall be restored to the plans and specifications existing immediately prior to such damage or destruction, unless other plans are approved through the design review process. If an Owner fails to begin rebuilding within the time allowed or abandons reconstruction, then the Commercial Association has the right but not the obligation to purchase the Parcel at 80% of fair market value in "as is" condition. The reduction in value is intended to allow the Commercial Association to market and resell the Parcel to an Owner who will restore the property.

Part IX:

General Provisions

9.1 Amendment

9.2 Additional Terms

9.1 Amendment

9.1.1 Generally. This Commercial Declaration, including vested rights, may be amended at any time by consents signed by Parcel Owners representing at least sixty percent (60%) of the Assigned Values in the Commercial Association except as follows:

- (a) Provisions affecting the rights of Residential Parcels or the Residential portions of Mixed-Use Parcels shall require, in addition, approval of owners representing 60% of the Allocated Interests of such properties within Vista Field.
- (b) If any action described in this Commercial Declaration requires approval of a greater percentage, amendment of that provision shall require the same percentage vote as would be required to accomplish that action directly.
- (c) Any amendment during the Development Period shall require Founder's consent. Rights reserved to the Founder may not be amended at any time without the specific consent of the Founder.

To the extent permitted by law, a meeting shall not be required to obtain such consents and the individual consents do not need to be recorded. Such consents shall be preserved by the Commercial Association, which shall certify as to the consents in the recorded amendment.

9.1.2 Technical Amendments. The Founder specifically reserves the right, at any time during the Development Period, to amend this Commercial Declaration without the consent or joinder of any party as follows:

- (a) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association, HUD or any other generally recognized institution involved in the guarantee or purchase and sale of home loan mortgages,
- (b) to conform to the requirements of institutional mortgage lenders or title insurance companies,
- (c) to clarify, explain or make more certain any the Declaration's provisions or to correct errors, omissions or inconsistencies, or
- (d) exercise any right of Founder under this Commercial Declaration that does not require the consent of the Board and/or any Owners.

9.1.3 Recording of Amendments. Any amendment shall be recorded and unless provided otherwise, shall take effect immediately upon recording. All amendments must contain a cross-reference by recording number to this Commercial Declaration and to any prior amendments to the Declaration.

9.1.4 Rerecording of Declaration. Unless this Commercial Declaration is terminated, the Commercial Association shall rerecord this Commercial Declaration or other notice as necessary under Washington law to preserve its effect.

9.1.5 Termination. This Commercial Declaration may be terminated in any of the following ways:

- (a) **Consent.** The Declaration may be terminated at any time by the consent in writing of Owners representing 90% of the Assigned Values in the Commercial Association, agreeing to terminate the Declaration as of a specified date.
- (b) **Dedication of Commercial Commons.** The Declaration may be terminated by Owners representing 75% of the Assigned Values, if all of the Commercial Commons have been accepted for dedication or taken by eminent domain by the appropriate unit of local government (or, if alleys or footpaths are not accepted for dedication, they have been conveyed to the adjacent Parcel Owner, reserving an easement for continued use).

9.2 Additional Terms

9.2.1 Covenants Run with the Land. The covenants and restrictions contained in this Commercial Declaration shall run with and bind, and shall inure to the benefit of and be enforceable by, the Founder, the Commercial Association, and all Owners of Commercial Private Property subject to this Commercial Declaration, their respective legal representatives, heirs, successors or assigns.

9.2.2 Assignability. Wherever used in this Commercial Declaration, the term “Founder” shall mean the Port of Kennewick, its successors and assigns, or any successor or assign of all or substantially all of its interests in the development of the Property unless the instrument conveying such interests provides otherwise. Founder may assign all or any portion of its rights at any time to any successor or assigns, or to the Commercial Association.

9.2.3 Interpretation. The provisions of this Commercial Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of Village Center and other commercial property as a high-quality mixed-use community. Boxed text and italicized portions may be used as an aid to interpretation. However, if the boxed or italicized portion conflicts with the operative provision, the operative provision shall govern.

9.2.4 Residential Property. Notwithstanding anything herein to the contrary, Owners of Residential Parcels and Owners of Mixed-Use Parcels (with respect to the portion used for Residential uses) do not pay any assessments or for any share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements (as defined in the Act), other units (as defined in the Act), or other real estate described in this Commercial Declaration.

9.2.5 Enforcement of Declaration.

- (a) **Enforcement.** Suit may be brought against any person, persons or entity violating or attempting to violate the provisions of this Commercial Declaration, either to restrain violation or to recover damages, and against his or its property to enforce any lien created by this Commercial Declaration. To enforce this

Commercial Declaration or the Rules and Regulations, the Commercial Association, the Founder or any Owner may, without limitation, bring one or more actions for damages, specific performance, declaratory decree and/or injunction, or any other remedy at law or in equity. The Board shall be empowered to cause the Commercial Association to bring suits on behalf of the Commercial Association.

- (b) **No Waiver.** Failure to enforce any provision of this Commercial Declaration or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.
- (c) **Association's Legal Fees.** To the greatest extent permitted by law, any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Commercial Association in the enforcement of any of the provisions of this Commercial Declaration, whether or not suit is brought, shall be payable by the Owner against whom such action was taken.

9.2.6 Notices. Any notice required to be sent to the Owner shall be deemed to have been properly sent when delivered in accordance with the Bylaws and applicable statute.

9.2.7 Gender and Number. The use of the masculine gender herein shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

9.2.8 Invalidity and Law to Govern. The invalidity of any part of this Commercial Declaration shall not impair or affect the validity or enforceability of the rest of the Declaration, which shall remain in full force and effect. This Commercial Declaration shall be construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the undersigned does hereby make this Commercial Declaration of Covenants, Conditions and Restrictions for Village Center and has caused this Commercial Declaration to be executed as of the day and year first above written.

WITNESSES:

PORT OF KENNEWICK

By: _____

_____ its _____ president

Exhibit A: Legal Description, Master Plan Area



AGENDA REPORT

TO: Port Commission

FROM: Larry Peterson, Director of Planning & Development

MEETING DATE: October 13, 2020

AGENDA ITEM: Resolution No. 2020-20; Work Plan 2021-2022

- I. REFERENCE(S):** 2021-2022 Work Plan & Budget Spreadsheet, Resolution 2020-20, memorandum from Director of Operations & Real Estate, Amber Hanchette regarding Vista Field Development Buildings A & B remodel costs, Emails from Deputy CEO, Tana Bader-Inglima regarding CTUIR communications about Plymouth Island & Hedges Lagoon.
- II. FISCAL IMPACT:** \$11,460,000 Capital Budget allocation (\$9,410,000 for 2021/2022 and \$2,050,000 carryover from 2019/2020)
- III. DISCUSSION:** The Port's adoption of a work plan for the next two years of 2021 and 2022 would establish and fund numerous capital projects to be undertaken. The attached version of the 2021-2022 work plan is the result of months of discussion by the Port Commission and input received on September 22, 2020 after the initial presentation and discussion of the draft document.

Potential projects and/or funding amounts were adjusted based upon input received by the Commission and further staff refinement. Those projects or amounts not discussed in detail were left unchanged. Three changes, two significant and one minor, were made to the working draft document. Those changes include reducing the allocation for rehabilitation of the Vista Field Development Buildings (VFDF) A & B by \$200,000 and adding that \$200,000 to the "Opportunity Fund" and referencing the Port's "stewardship" role of the Plymouth Island and Hedges Lagoon areas.

Included with this agenda report is a memorandum from Director of Real Estate & Operations, Amber Hanchette, discussing scaling the VFDF rehabilitation efforts to meet the funding allocated. The two buildings constructed 22 and 30 years ago which encompass more than 40,000 square feet actually require more than the proposed allocation to address all life-cycle and deferred maintenance issues. However after consultation with Meier Engineering & Architecture and informal discussions with prevailing wage contractors the revised \$600,000 amount would allow for a significant first step towards addressing the most pressing issues.

Also included with this agenda report are two emails from Deputy CEO, Tana Bader-Inglima, regarding discussions with and understanding of the Confederated Tribes of the Umatilla Indian Reservation's (CTUIR) position on the Port's ownership and uses of Plymouth Island and the Hedges Lagoon. Based upon the decade long relationship with the CTUIR and their staff the Port 'understands' the CTUIR is entrusting the Port to act as stewards of these lands, therefore reference to that stewardship role has been added to the Hedges Lagoon and Plymouth Island "suggested work and property management plan" segments of the document.

IV. MECHANICS: The Budget Workshop was held September 22, 2020 and public input was requested for the proposed 2021-2022 Work Plan. A brief staff review of the 2021-2022 document prior to Commission discussion and direction/correction, then passage of a resolution adopting the work plan would be consistent with past practices.

V. ACTION REQUESTED OF COMMISSION:

Motion: I move approval of Resolution 2020-20 adopting the Port of Kennewick 2021-2022 Work Plan; and further authorize the port Chief Executive Officer to take all actions necessary to implement this Work Plan.



2021-2022 WORK PLAN

Public Meeting
Port Commission Chambers
October 8, 2020 2:00 p.m.

Approved by Resolution 2020-20
TBD, 2020

350 Clover Island Drive, Suite 200
Kennewick, WA 99336

Tel: (509) 586-1186
Fax: (509) 582-7678

www.PortofKennewick.org

PROSPECTIVE VISION Page 2

ACHIEVEMENTS (October 1, 2018 — September 30, 2020) Page 3

WORK IN PROGRESS Page 5

DISTRICT BOUNDARY MAP..... Page 6

PROPERTY PORTFOLIO

PRIORITY PROJECTS

Vista Field Redevelopment Page 7

Kennewick Historic Waterfront District (Clover Island & Columbia Drive) Page 9

OTHER PROJECTS/PROPERTIES

Oak Street Industrial Park Page 11

Vista Field Industrial Park Page 12

Finley: Hedges / Twin Tracks Industrial Page 13

Plymouth Island Page 14

ADDITIONAL WORK PLAN PROJECTS Page 15

PROSPECTIVE VISION

- **Follow direction established by 2016 Comprehensive Scheme of Development and Harbor Improvements as amended in 2017 and 2019**
- **The Port is an economic development entity focused on redevelopment**
- **Undertake Vista Field Redevelopment**
- **Continue with Kennewick Waterfront District projects: Columbia Drive — Wine & Artisan Village and Clover Island - Shoreline Improvements "1135 Program"**
- **Pursue projects with development partners demonstrating support (match funding, political support and enthusiasm)**
- Pursue fewer projects while selecting projects with the greatest benefit to the community
- Realize & support economic development opportunities with wine, culinary & tourism industry
- Continue to pursue grant funding opportunities
- Remain focused on containing operational expenses
- A strong focus must be placed on successfully running daily Port operations
- Remain solidly focused on the Port's core business and established priorities; not swayed by the oscillating influence of external entities

ACHIEVEMENTS (Oct. 1, 2018—Sept. 30 2020)

PRIORITY PROJECTS

VISTA FIELD REDEVELOPMENT

- Secured \$5,000,000 private placement bond with favorable terms to the Port for Vista Field redevelopment
- Completed design, obtained all permits and bid and awarded Phase #1A infrastructure contract to Total Site Services (\$4,905,0560)
- Substantial completion of Phase #1A infrastructure including roads, utilities and landscaping
- Identified potential members and formalized the “Vista Field Team” and refinement of design and development
- Completed and implemented the Vista Field branding
- Requested and obtained City of Kennewick approval to utilize street names identified through the branding process
- Secured integrity of Vista Field master plan through brokered agreement with the City of Kennewick to ensure Fire Station #3 building and roadway design are complementary to new urbanism principles

KENNEWICK WATERFRONT

AREA-WIDE

- Initiated Waterfront District master planning effort with Makers Urban Design to update and consolidate vision for the Port’s Clover Island and Columbia Drive properties (30% complete)

CLOVER ISLAND

- U.S.A.C.E. 1135 Program design coordination with Corps, plans completed, bidding process schedule for fall 2020
- Negotiated new lease with Cedars to retain that iconic business and ensure vibrancy for Clover Island
- Marina at 100% occupancy

COLUMBIA DRIVE

- Phase #2A loop roadway, utilities, 30-space parking lot & food truck plaza improvements completed
- Phase #2B tasting room building and 24-space parking lot completed
- Secured leases with Gordon Estates and Cave B wineries
- Phase #2C bus shelter and “aspirations” artwork installations completed
- Internal lighting installed in “Rolling Mass” aka the bus shelter
- Orchestrated development and operation of the Columbia Gardens Food Truck cluster (currently 5-6 regular vendors) and installation of shade structure

ACHIEVEMENTS (Oct. 1, 2018—Sept. 30, 2020)

RICHLAND PROJECT

- Executed Interlocal Agreement with City of Richland for Columbia Park Trail “road diet” improvements benefiting the Port’s prior Spaulding Business Park redevelopment effort (\$800,000)

WEST RICHLAND PARK

- Closed 2.00 ac Land Sale (Benton County Fire Protection District #4) - \$10,000
- Closed 92.61 ac Land Sale (City of West Richland) - \$1,800,000

OTHER PROJECTS/PROPERTIES

SOUTHRIDGE

- Closed 8.50 ac Land Sale (Czebotar & Peterson Properties, LLC) - \$1,300,000

OAK STREET INDUSTRIAL PARK

- Closed 12.00 ac Land Sale (Three Rivers Acquisitions, LLC) - \$375,000
- Development Buildings A, B & C at 97% occupancy

FINLEY / HEDGES / TWIN TRACKS INDUSTRIAL

- Renewed lease with Greenbrier Rail Services

DISTRICT WIDE

- Pandemic response and thoughtful, strategic management during global pandemic. Unprecedented times required CEO to manage a complex situation to ensure port is following best practices to keep staff and public safe, and to demonstrate compliance, transparency, and sensitivity by the port as an institution
- Washington State Auditor issued another clean audit report with no findings for the Port of Kennewick
- Complete revision and update of the Port’s website
- Technology enhancements included Just FOIA public records tracking software; as well as new audio-visual equipment and AV Capture All digital meeting software with the renovation of the Commission chambers
- Office improvements: Coordinated a seamless and successful installation of and carpeting for the port offices and commission chambers
- Continued Energy Conservation Efforts by replacing incandescent Clover Island roadway and parking lot lights with LED components
- Asset Maintenance and Improvement efforts included replacement of five rooftop HVAC units at the Oak Street Industrial Development Building A

WORK IN PROGRESS

PRIORITY PROJECTS

- **Remaining functional and productive while protecting the public and employees during the COVID-19 Pandemic**

VISTA FIELD REDEVELOPMENT

- Phase #1A - Final Completion & Closeout Process
- Phase #1A - Coordination with Vista Field Team regarding use, design, marketing and pricing and property owners association formation issues
- Consideration of Deschutes Hanger reuse/identification of optional development

KENNEWICK HISTORIC WATERFRONT DISTRICT AREA-WIDE

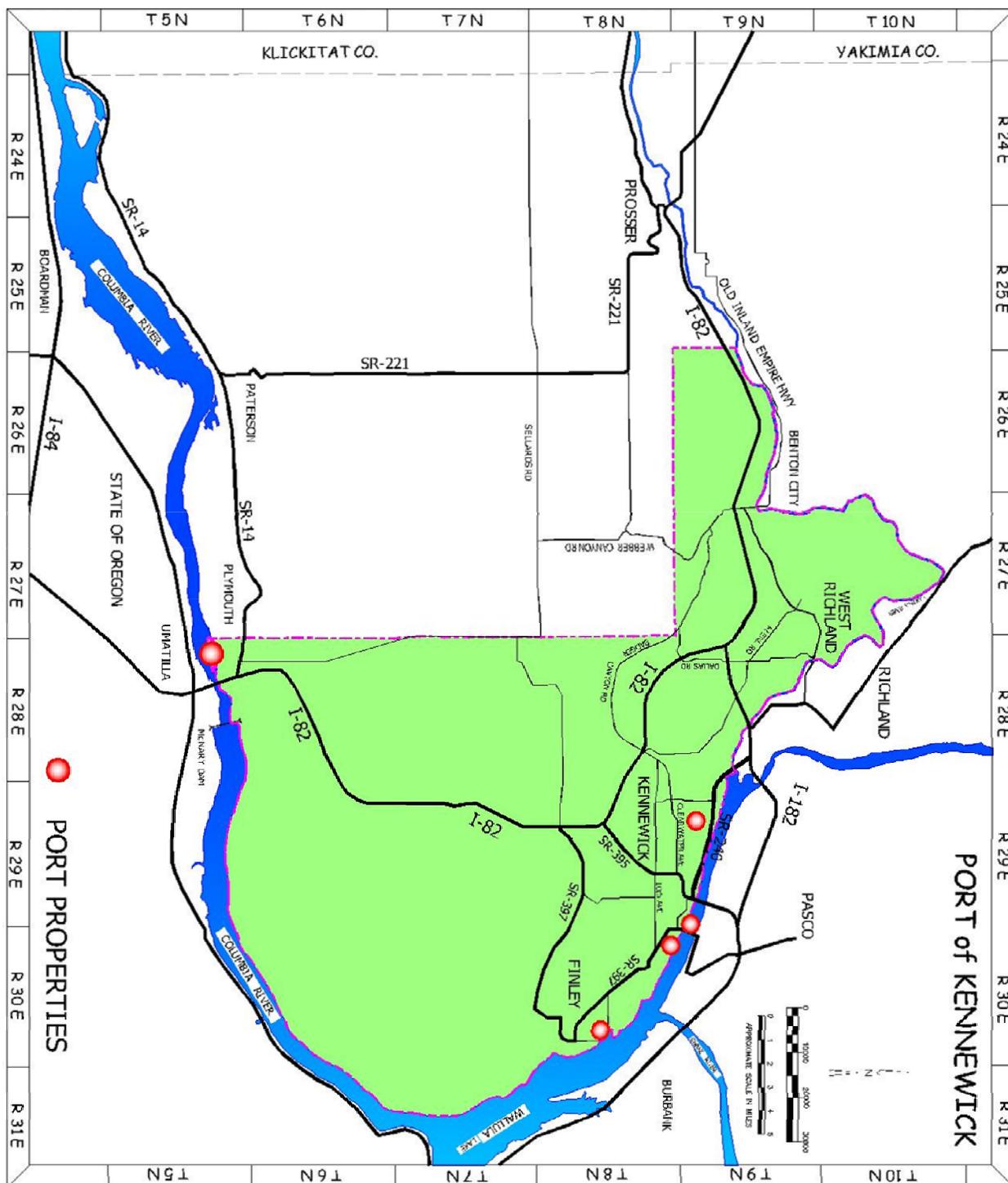
- Historic Waterfront District Master Planning process

CLOVER ISLAND

- U.S.A.C.E. 1135 Program coordination & participation
- RCO grant coordination for shoreline improvements
- Oversight of City of Kennewick RCCF for 1135 project

COLUMBIA DRIVE

- Phase #2D - Bathroom shipping container fabrication and installation
- Food Truck cluster coordination
- Duffy's Pond and tenant enhancement efforts



VISTA FIELD REDEVELOPMENT

- 103± Acres Combined
- Zoning: UMU (Urban Mixed Use)
- Municipal Services Available (Phase #1 infrastructure completed)

STRENGTHS

- Centrally located in the Tri-Cities, surrounded by vibrant commercial district (Columbia Center Mall) and adjacent to the Three Rivers Entertainment District (Toyota Center Coliseum, Three Rivers Convention Center and Tri-Cities Business & Visitor Center)
- Located within “Opportunity Zone” per 2017 Tax Cuts & Jobs Act
- Entitlement secured via 2017 City of Kennewick Development Agreement

CHALLENGES

- * Undertaking massive redevelopment effort while balancing district-wide objectives
- Limited financial resources
- Establishing a new land use and development paradigm in the community

SUGGESTED WORK & PROPERTY MANAGEMENT PLAN

- Vista Field Redevelopment-Loan Repayment - \$900,000 ®
- Identify scope and funding partners, then initiate a To Be Determined RCCF project (\$3,785,000 RCCF) ®
- Matching funds for roadway adjacent Fire Station #3 - \$125,000
- Vista Field Irrigation Well including connection to existing system - \$250,000
- Vista Field Team (supporting Commission efforts) - \$150,000 ®
- Vista Field Redevelopment-Traffic Mitigation fund - \$100,000 ®
- Vista Field Redevelopment-Property Maintenance Organization fund - \$200,000 ®
- Market properties through RFP process & review proposals through the Collaborative Design Process ®

Existing Contractual Obligation
Support Previously Expressed
 ® **Revenue Generation Potential**



KENNEWICK HISTORIC WATERFRONT DISTRICT

- Clover Island 16 Acres; Columbia Drive 15.32 acres
- Zoning: Clover Island CM (Commercial Marina); Columbia Drive UMU (Urban Mixed Use)
- Municipal Services: water, sewer, electricity, natural gas and wireless coverage

STRENGTHS

- Unique waterfront property with tourism opportunities - lighthouse, gateway, marine, public plazas, shoreline trails, public art amenities & food truck cluster with commercial & recreational opportunities
- Located within “Opportunity Zone” per 2017 Tax Cuts & Jobs Act
- City, County & Port partnership for Columbia Drive Wine & Artisan Village Development

CHALLENGES

- ✱ Balancing focus on both Kennewick waterfront and Vista Field redevelopment priority projects
- Clover Island Shoreline work must be completed before private sector development occurs
- Surrounded by blighted neighborhoods consisting of residential, low-income, commercial-general and light industrial business-use properties

SUGGESTED WORK & PROPERTY MANAGEMENT PLAN

OVERALL AREA

- Complete Historic Waterfront District Master Plan - \$50,000** (carry-over from 2019/2020 budget) ®

CLOVER ISLAND

- Shoreline Restoration design assistance & construction matching funds (USACE 1135 Program) - \$1,000,000** ® (Port funds augment \$500,000 RCO grant & \$1,000,000 City of Kennewick)
- **Hold Clover Island properties until completion of USACE shoreline restoration and of Port’s overall waterfront plan**

COLUMBIA DRIVE

- Complete in-water and upland improvements (Phase #2D shipping container bath-room, August 2020 Duffy’s Pond Plan, Kiwanis’ community playground - \$450,000**
- Support City of Kennewick Washington Street enhancements - \$500,000**
- Establish design and marketing expectations based Historic Waterfront Master Plan then market opportunities to the private sector development (sale or lease) ®**

*Existing Contractual Obligation
Support Previously Expressed
® Revenue Generation Potential*



OAK STREET INDUSTRIAL PARK

- 62+ Acres
- Zoning: City of Kennewick - IH (Industrial Heavy)
Benton County - LI (Light Industrial)
- Municipal Services: water, sewer and electricity available

STRENGTHS

- Close to SR 397; flat topography; all municipal utilities available to incorporated parcels

CHALLENGES

- ✳ Kennewick Waterfront and Vista Field redevelopment priority projects require most of Port resources
- Poor visibility; no rail access; high ground water; perceived as isolated
- Municipal utilities unavailable to land located in county

SUGGESTED WORK & PROPERTY MANAGEMENT PLAN

- Continue to actively market Development Buildings A, B, C and D as available for lease [®]
- Ordinary property maintenance activities during 2021-2022 period
- Market for sale all vacant/ag parcels [®]

Existing Contractual Obligation
Support Previously Expressed
[®] Revenue Generation Potential



VISTA FIELD DEVELOPMENT BUILDINGS

- 3.73 acres
- Zoning: City of Kennewick - IL (Industrial Light)
- All municipal services available

STRENGTHS

- Centrally located in the Tri-Cities, surrounded by vibrant commercial district
- VFDF-A Building rehabilitation/remodel work completed September 2016

CHALLENGES

- ✳ Kennewick Waterfront and Vista Field redevelopment priority projects require most of Port resources

SUGGESTED WORK & PROPERTY MANAGEMENT PLAN

- VFDF buildings A & B exterior and site improvements - **\$500,000** ®
- Continue to actively market Development Buildings A & B as available for lease ®

Existing Contractual Obligation
Support Previously Expressed
® **Revenue Generation Potential**



FINLEY (TWIN TRACKS & HEDGES LAGOON)

TWIN TRACKS:

- 113.48 acres
- Zoning: Benton County - HI (Heavy Industrial)
- Utility Services: ground well, electricity and natural gas available

HEDGES LAGOON:

STRENGTHS

- Current dual rail service (Twin Tracks)

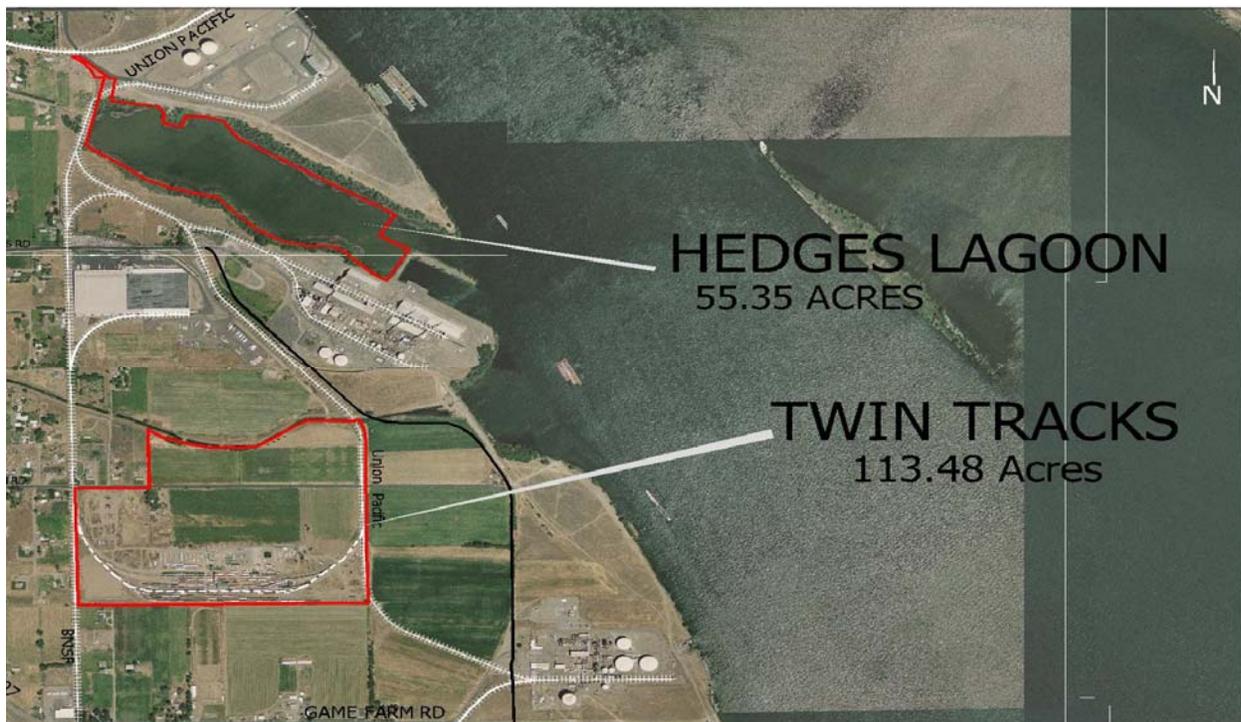
CHALLENGES

- ✱ Kennewick Waterfront and Vista Field redevelopment priority projects require most of Port resources
- No municipal utilities and adjacent to existing & expanding residential (Twin Tracks)

SUGGESTED WORK & PROPERTY MANAGEMENT PLAN

- Ordinary property maintenance activities during 2021-2022 period
- **Hold Hedges Lagoon as stewards of this land in recognition of the Port’s MOU with the CTUIR**

Existing Contractual Obligation
Support Previously Committed
 ® *Revenue Generation Potential*



PLYMOUTH ISLAND

- 157+ Acres
- Zoning: Benton County - P (Park District) and HI (Heavy Industrial)
- Municipal Services: ground wells and power available

STRENGTHS

- Near Interstate 82 and State Route 14

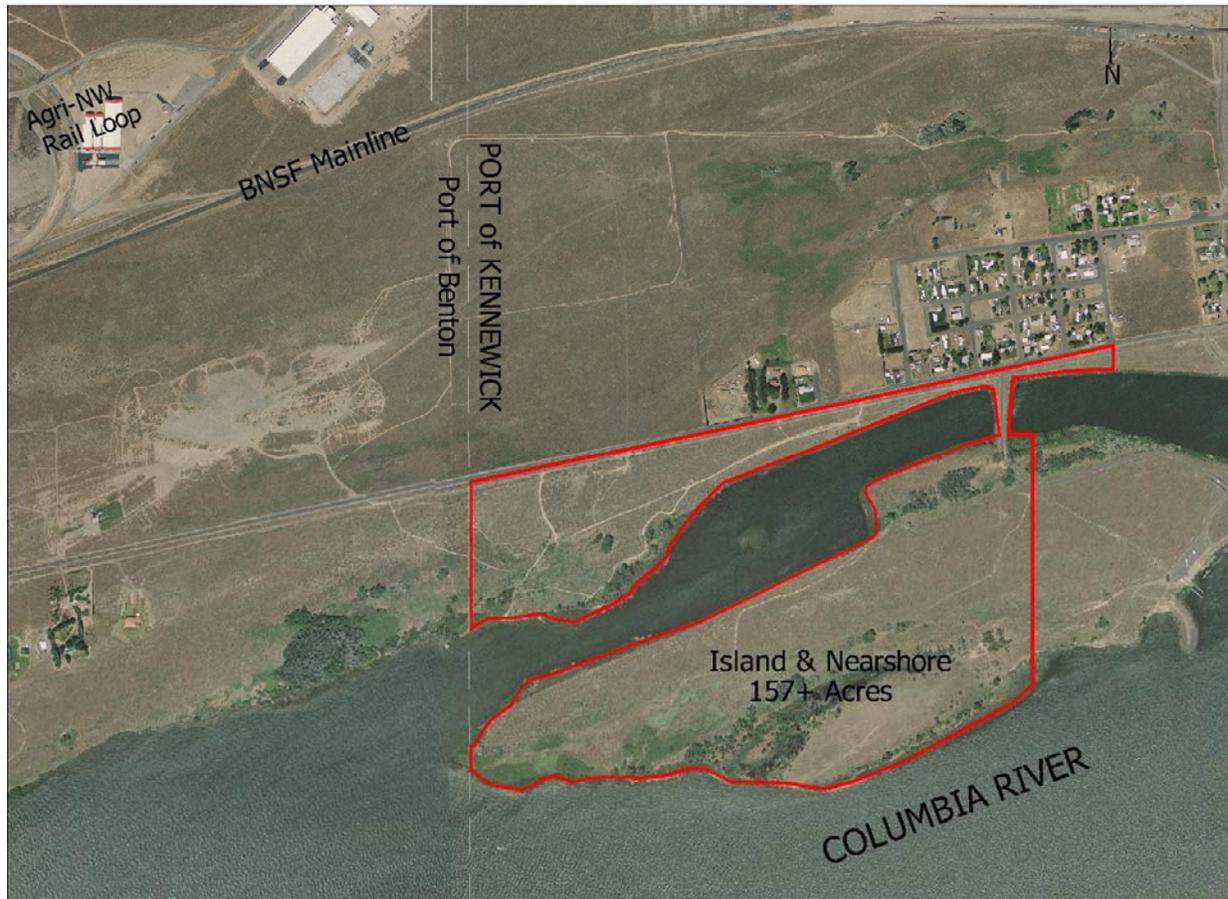
CHALLENGES

- ✳ Kennewick Waterfront and Vista Field redevelopment priority projects require most of Port resources
- Cultural resource protections on island areas and nearshore
- No Municipal Water or Sewer

SUGGESTED WORK & PROPERTY MANAGEMENT PLAN

- Ordinary property maintenance activities during 2021-2022 period
- **Hold as stewards of this land in recognition of the Port's MOU with the CTUIR**

Existing Contractual Obligation
Support Previously Expressed
® **Revenue Generation Potential**



DISTRICT - WIDE WORK PLAN PROJECTS

SUGGESTED WORK PLAN

- Remain focused on the day-to-day efforts to operate a successful Port District
- Complete projects authorized in 2019-2020 Budget
- Pursue grant funding as appropriate** ®
- Support City of Richland's Columbia Park Trail "Road Diet" project (carry-over from 2019/2020 Budget) - \$800,000
- Support City of Richland and Kennewick efforts to extend Center Parkway roadway from Gage Boulevard to Tapteal Drive via Interlocal Agreement - \$400,000
- Port asset replacement program (building upkeep & annual maintenance) - \$500,000** ®
- Opportunity fund for yet to be identified small projects (either Port or outside agency) - \$300,000** ® *[dependent upon project(s) selected]*
- Miscellaneous capital - **\$100,000**
- Pursue water rights transfer from City of West Richland to Benton County (Fairgrounds) and Port properties (Vista Field)
- Due to favorable terms given to the City of West Richland in the Tri-City Raceway land sale, involvement in West Richland will be limited to observations and non-financial support when consistent with Port's sprawl avoidance philosophy
- Continue strengthening governmental relationships with CTUIR
- Continue strengthening governmental relationships with jurisdictional partners: City of Kennewick, City of Richland, City of West Richland, City of Benton City and Benton County

Existing Contractual Obligation
Support Previously Expressed
 ® **Revenue Generation Potential**

2021/2022 Capital Projects

Location	Item	2020 "Carry-Over" Amount	2021-2022 Work Plan Amount	2021-2022 Work Plan Cumulative	TOTALS {2019-2022} by Location
Vista Field	Debt Service (\$5,000,000 construction loan)		\$900,000	\$900,000	\$5,510,000
Vista Field	RCCF Vista Field-To Be Determined Project(s)		\$3,785,000	\$4,685,000	
Vista Field	COK Fire Station #3		\$125,000	\$4,810,000	
Vista Field	Daybreak Commons Well (design & installation)		\$250,000	\$5,060,000	
Vista Field	Vista Field Team (design review assistance)		\$150,000	\$5,210,000	
Vista Field	Traffic Mitigation fund (reserve for future mitigation)		\$100,000	\$5,310,000	
Vista Field	Property Owners Maintenance funds (100% initial responsibility)		\$200,000	\$5,510,000	
Waterfront District	Clover Island Shoreline Improvement (1135 program match)	\$1,250,000	\$1,000,000	\$6,510,000	\$3,250,000
Waterfront District	Historic Waterfront District Master Plan		\$50,000	\$6,560,000	
Waterfront District	Columbia Gardens (shipping container bathroom, Duffy's Pond Plan, Kiwanis' community playground)		\$450,000	\$7,010,000	
Waterfront District	Washington Street (city led improvements)		\$500,000	\$7,510,000	
Oak Street			\$0	\$7,510,000	\$0
VDFD	Buildings A & B (exterior and site improvements)		\$600,000	\$8,110,000	\$600,000
Twin Tracks/Hedges			\$0	\$8,110,000	\$0
Plymouth			\$0	\$8,110,000	\$0
Richland	Columbia Park Trail-Road Diet (city led improvements)	\$800,000			\$1,200,000
Richland	Center Parkway-Roadway Extension (city led improvements)		\$400,000	\$8,510,000	
District-Wide	Opportunity Fund		\$300,000	\$8,810,000	\$900,000
District-Wide	Asset Replacement		\$500,000	\$9,310,000	
District-Wide	Miscellaneous Capital		\$100,000	\$9,410,000	
TOTAL		\$2,050,000	\$9,410,000		\$11,460,000

PORT OF KENNEWICK

Resolution No. 2020-20

***A RESOLUTION OF THE PORT OF KENNEWICK
BOARD OF COMMISSIONERS ADOPTING THE 2021-2022 WORK PLAN***

WHEREAS, the Port of Kennewick Commission conducted a Planning Workshop at its Regular Meeting on Tuesday, September 22, 2020, to receive public input and discuss in open session proposed plans and development policies to be undertaken and implemented in calendar years 2021-2022; and

WHEREAS, following input from the public and discussion amongst the Commission, the Commission requested additions and modifications to the Work Plan presented by staff; and

WHEREAS, the requested additions and modifications have been incorporated into the document titled "Port of Kennewick 2021-2022 Work Plan".

NOW, THEREFORE, BE IT HEREBY RESOLVED the Board of Commissioners of the Port of Kennewick hereby adopts the 2021-2022 Work Plan as attached hereto and identified as "Exhibit A"; and further authorize the port Chief Executive Officer to take all actions necessary to implement this Work Plan.

ADOPTED by the Board of Commissioners of the Port of Kennewick this 13th day of October, 2020.

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

By: _____
DON BARNES, *President*

By: _____
SKIP NOVAKOVICH, *Vice President*

By: _____
THOMAS MOAK, *Secretary*

MEMO



DATE: 10/6/2020
TO: Tim Arntzen, CEO
FROM: Amber Hanchette, Director Real Estate & Operations
RE: Work Plan/Budget Preparations
Operations & Maintenance Capital Asset Replacement

Vista Field Development Buildings A & B are located at 415 N. Quay, Kennewick and were built in 1990 and 1998 respectively.

Building A:

- 2008: new roof membrane
- 2016: Replacement and reconfiguration of certain HVAC, plumbing, mechanical and electrical systems.

Building B:

- No major repairs or maintenance performed to date.

Port staff contacted architectural, construction and HVAC firms to collect preliminary information and get a rough order of magnitude related to current renovation costs. While the total of these improvements exceeds a 2021/2022 rehabilitation budget of \$600,000 and actual bids could come in higher than expected, a significant amount of work could be accomplished to make meaningful upgrades to a valued port asset.

Building A & B Capital Maintenance Projects (estimated costs):

- VFDF-B: HVAC system replacement, beyond estimated useful life (\$75,000)
- VFDF A&B: Architect & Engineering, permits, sales tax (25% of \$500,000 = \$125,000)
- VFDF A&B: Exterior repair & paint (\$600,000 - \$125,000 = \$475,000)
- VFDF-A&B: Roof & drain inspection, repairs as needed (\$20,000)
- VFDF A&B: Window repairs & replacement (\$20,000)
- VFDF B: Plumbing upgrades, common area restrooms (\$15,000)
- VDFF-B&B: Perimeter landscape and streetscape upgrade, plantings & irrigation (\$25,000)
- VFDF A&B: seal coat & stripe (\$12,000)

Potential Capital Asset Replacement Expenditures 2021/2022 (budget \$500,000):

- Marina and other port owned dock repairs/replacement as needed
 - 1515 E. 7th Ave, Kennewick – HVAC beyond estimate useful life, plumbing upgrades
 - Miscellaneous HVAC, electrical, plumbing replacement or major repairs as needed
 - Coronavirus-related ventilation upgrades as needed
 - Roof repairs or modifications as needed
 - Interior LED lighting upgrades – 104 Clover Island Drive
-

- Space upgrades at tenant turnover (painting, replacements, etc.)
- Roll-up doors
- Tree removal as needed
- Demolition as needed
- Security lighting – port buildings, public spaces
- Security cameras – port buildings, public spaces
- Parking lots & Roadways – striping, seal coating, storm drain cleaning
- Landscape and irrigation upgrades/replacement (i.e., change west causeway from drip to pop-up)

This is not an inclusive list as other unknown repairs may be necessary throughout the budget period.

#####

Plymouth Island & Hedges Lagoon – Discussions with CTUIR 2009 through 2014

From: Tana Bader-Inglima
To: Tim Arntzen
Sent: Thursday, September 24, 2020 4:20 PM
Subject: Re: Plymouth Island and Hedges Lagoon

Hi Tim. I went back through emails and found that our discussions with the CTUIR regarding Plymouth Island/upland nearshore-portion of port ownership began as far back as 2009. Those conversations continued into 2012 whereby Audie Huber suggested perhaps the port's holdings could be transferred to the USACE for stewardship on their behalf (the CTUIR did not wish to take possession, but do want those lands protected and undeveloped).

In 2013 conversations continued with Audie to encourage him to pursue this with the USACE and I provided him with deed information and details on Plymouth Island. The topic was again addressed by you via email in both February and April 2014, and again by you during a meeting where you, Larry and Skip went to Pendleton (see my notes attached). After that I again followed up with Audie in spring 2014 to check on the USACE interest, and you once again had this topic on your agenda (see below) when you met with Dave Tovey in summer 2014. At some point in there I also talked with Audie about using Hedges lagoon as lamprey habitat and I distinctly remember Audie telling me that the lagoon is not suitable for lamprey as those eels prefer colder rushing water.

The consistent message from the CTUIR is they are happy to have the Port as their MOU partner as stewards of these sites, and the USACE had no interest in expanding their real estate holdings. So, that's where we are, We have a great relationship with the CTUIR but I believe that relationship also comes with an expectation that we will continue to steward that property on their behalf, likely in perpetuity, with all federal and cultural resource restrictions that apply. Tana

Below is an email from me to you dated 7/23/2014. The item I added is shown in yellow, and I highlighted the Plymouth and Hedges items in bold

Tim I added an item for your meeting with Dave Tovey:

1) CTUIR artwork and interpretation...who should we be relying on for guidance and if/what landmines are we needing to avoid (and any ideas on how to do so!)

1a. Do we need to take the project back to Board of Trustees or to the Cultural Resources Committee to get final approval? Would that help us alleviate heartburn? Would that be design by committee that would simply cost more and take us back to square one?

History: we met with the Board of Trustees (previous) to discuss the idea of an artwork paid for by the port to honor the tribal history in and around Clover Island; following that meeting we worked with Bobbie Conner, Randy Melton, Marjorie Waheneka, and Melissa Minthorn on the proposed art/installation concept and to

Plymouth Island & Hedges Lagoon – Discussions with CTUIR 2009 through 2014

gather input, reference materials, and to work through specific artwork details; we also took the concept to the CTUIR Cultural Resources Committee (which Marjorie was/is on) and were given feedback from that group and asked to continue working with Marjorie on the details; we have traveled to meet several times with Bobbie and others and continuing to finalize the artworks as well as the appropriate installation setting and what additional interpretation would be needed to tell the story of the tribes at Clover Island--suggested by Bobbie the storyline would perhaps be: "who we were then, who we are today; where we are going in the future...and another panel telling the relationship of Port with the CTUIR." Perhaps could show what Clover Island used to look like before dam and USACE reshaping of the river...but nothing was finalized for the "display boxes".

2) Plymouth upland land sale...??? not sure where Larry is on this item

3) Plymouth Island...any progress on Port transferring our ownership to Tribe or to USACE

4) Clover Island Boat Ramp: wanting to lift out the old concrete pads, drop new gravel and then place new concrete pads to stabilize and update the ramp for increased use and extend the useful life of that facility.

5) FCSA with USACE for Section 1135 project on Clover Island. *We want to ensure these elements are included/addressed/discussed:*

a. When is good time for the Port & USACE to travel to Pendleton to meet with CTUIR staff/board/whomever needs to be involved to invite them to be part of the project and have their input throughout the USACE-driven process

b. fishing platform/overlook

c. large boulders to armor some areas of shoreline (can provide access to physically touching the water)

d. **lamprey support--interpretation and restorative habitat if possible**

e. Reshaping shoreline to ensure debris doesn't deposit...perhaps creating a "beach" area near the levee (with support of USACE for something that would impact the levee)

f. Federal funding to provide for Phase II (Implementation and construction)

6) Next joint meeting with Board of Trustees & Port of Kennewick in Pendleton

Tana Bader Inglima, Deputy CEO
Port of Kennewick
350 Clover Island Drive, Suite 200
Kennewick, WA 99336
509-586-8140 direct
509-586-1186 office
509-948-3514 cell
Tana@PortOfKennewick.org

Please note: Port of Kennewick is open for business, but working remotely.

Memorandum

To: Tim Arntzen, Executive Director
From: Larry Peterson
Date: October 13, 2020
Re: Vista Field Project Tasks Sequencing

Background and supporting information for most of the remaining Vista Field tasks identified on the July 9, 2020 table has been received and is in various states of preparation. Specifically responses from DPZ regarding various land use, design & market approach questions as well as the draft market study & analysis report from Appraisal Group SEWA have been received. Additionally revisions to the Port's real estate commission policy are ready for presentation.

Currently the Port Commission is focusing on the 2021-2022 Work Plan and 2021-2022 Budget as well as the Vista Field property owners associations (POA) which quite honestly is consuming all 'bandwidth' at this time. From the Commission's perspective most of the current and pending items are very subjective in nature, which allows/requires far more contemplation than other objective {yes/no, low bid} type decisions.

The work plan and budget are nearly 100% subjective {exception being previous contractual commitments to partners or a lender} whereas the POA documents are largely driven by underlying State law with the major discretionary consideration being whether such an association should be created. The pending land use, design & marketing approach questions and DPZ responses are 100% subjective as is consideration to alter the policy regarding payment of real estate commissions to licensed realtors. The market study & analysis report itself is just information, but the report is intended to assist the Commission in making another predominately subjective decision on initial land pricing.

Due to the complexity of these issues and the volume of supporting information I suggest sequencing presentation of the remaining items to avoid overloading all involved. Possibly the focus remains on the refinement and adoption of the 2021-2022 Work Plan and 2021-2022 Budget and the POA documents then the land use, design, marketing approach, property value & pricing and real estate policy can be presented, either in parallel or in a yet to be determined sequence.

The land use, design and marketing questions and DPZ responses are likely not "one and done" topics and may require several meeting to discuss, obtain further information and allow for Commission contemplation between meetings. Also the property pricing issue is complex due to the basic mixed use nature of Vista Field and the complete absences of anything comparable within 150 miles. Fortunately the real estate commission policy *seems* simpler in comparison to the other pending tasks.

Strong consideration should be given to:

- #1 Sequencing delivery, discussion and decisions of the pending and remaining tasks**
- #2 Final Commission decisions made on the 2021-2022 Work Plan, Budget and POA documents before proceeding to the pending items**
- #3 Scheduling one or more Commission meeting solely focused on Vista Field matters**

DRAFT

October 13, 2020

Lieutenant Colonel Richard Childers
Commander and District Engineer
Walla Walla District/U.S. Army Corps of Engineers
201 North Third Street
Walla Walla, WA 99362

Dear Colonel Childers:

As requested, this letter is to confirm that the Clover Island 1135 Project remains a top priority for the Port of Kennewick. In fact, it is so important, that our Board of Commissioners directed staff to increase our local-sponsor funds by \$1 million to ensure a successful endeavor. And with our sponsor-match in hand, we are hereby requesting the federal government provide an additional \$3,105,000 to fully fund the project as designed. This funding will allow USACE Walla Walla to complete a transformative project that has been *12 years in the making*.

The Clover Island 1135 Shoreline Restoration project meets the federal project goals and objectives for habitat restoration and fish benefit, with some recreational benefit as well. However, final cost estimating has proven the project to be more expensive than originally anticipated. The additional federal funds will enable completion of a project that has strong support from the *Confederated Tribes of the Umatilla Indian Reservation*, City of Kennewick, Benton County, Washington State Recreation and Conservation Office, Washington State Department of Natural Resources, Washington State Department of Fish & Wildlife, The Alliance of Livable Sustainable Communities, island businesses, and regional citizenry.

We eagerly anticipate the Walla Walla District's plans to bid and construct this project during their 2020/2021 calendar.

We also wish to assure you that the Port of Kennewick is aware of the financial obligations of the Non-Federal Sponsor for the Clover Island 1135 Project. Port of Kennewick has the financial capacity to satisfy those obligations, and we stand ready to provide our local-sponsor match as soon as the federal funding is secured.

Sincerely,

Tim Arntzen
Chief Executive Officer

cc: Rebecca Kalamasz, Clover Island 1135 Project, Project Manager

Three Rivers Acquisitions, LLC
2412 Ferndale Pl. NE.
Renton, WA 98056
cascades5@gmail.com
206-767-1732

September 20, 2020

To whom it may concern,

This is a letter to inform you that my partner and friend, Troy Faulkner, passed away in June. We purchased the port property together last summer and were making good progress in the development. At the beginning of the year Troy's health took a turn for the worst and we were not able to communicate freely because of his health condition. But we were still working on the property as he was able. Then when Covid-19 hit, it slowed things down even more. We were planning on having a building up this summer but due to these circumstances it was impossible to follow through on her plans.

That being said, it is still our intention to follow through and continue to develop the site. We are working on plans now to construct a warehouse on the property. Our plans are to use that for heavy equipment repair.

At this time I will be the main contact going forward. We would like to know who our contact would be at the port going forward. Also there was an 18 month buyback clause in the purchase contract and due to the circumstances we would like to ask for a 12 month extension related to that clause. We may not need it but it will give us some breathing room. It doesn't benefit either of us to have the site vacant thereby not producing income so we will continue to push forward.

Thank you so much for your consideration in this.

Sincerely,

John B Rogers, LLC manager

Port of Kennewick 2021 Legislative Priorities

The Port of Kennewick believes there are opportunities to stimulate the economy and improve the future economic outlook and quality of life for Port District citizens by targeting investments which address priority infrastructure and environmental needs and are a catalyst for jobs, spending, and business expansion and diversification opportunities. *The Port's two priority projects and related legislative issues are addressed below.*

Economic Development Priorities:

Vista Field Redevelopment: Creating an Urban Center for the Bi-County Area.

The Port of Kennewick supports continued funding and clarification or changes to Community Economic Revitalization Board (CERB) programs; and pursuit of LRF and TIF financing as tools for economic development.

Port of Kennewick is partnering with Benton County and City of Kennewick to transform a former 103-acre general aviation airfield into an urban town center for the region. Vista Field is situated at the heart of the region's commercial core, and the investment partners are working to transform that site into a walkable, bikeable, pedestrian-friendly and transit-oriented commercial and residential hub with attractive public amenities. In fact, Vista Field redevelopment represents one of the most ambitious community-creation endeavors in Washington State in recent years—an *infill project using the principals of new-urbanism to reduce sprawl, and eventually, at full build-out creating as many as 3,380 jobs, \$460 million in private sector investment, \$51 million in new infrastructure, and \$408 million in new buildings.* Phase one infrastructure, which is nearly complete, included constructing water, sanitary sewer, and stormwater utilities; roads and sidewalks; street and pedestrian lighting; a bosque of shade trees; a village commons; and a "linear park" featuring a water channel, fountains, vehicle and pedestrian bridges, and a stream-side esplanade—all within a desert environment. The city established an all-new Urban Mixed-Use Zoning specifically for Vista Field, and the entire site is located within a federally-designated "Opportunity Zone" providing tax incentives for private investment and development. **The transformation of Vista Field into an urban town center will benefit the entire bi-county region and Port of Kennewick will continue to seek grants and other funding opportunities to complete the remaining Vista Field infrastructure in phases until full build-out occurs. However, Community Economic Revitalization Board (CERB) programs use median wages as a means of qualifying grant applications—effectively removing Port of Kennewick's projects from either CERB funding opportunities.**

Urban Renewal/Revitalization (Clover Island and Columbia Drive).

The Port of Kennewick supports continued funding for the Recreation and Conservation Office grants; continued funding and clarification or changes for Community Economic Revitalization Board (CERB) programs; and pursuit of LRF and TIF financing as tools for economic development.

Port of Kennewick's work on waterfront revitalization has been a catalyst to bringing new jobs, businesses, and new spending into an historic waterfront district and downtown neighborhoods. The Port is partnering with the US Army Corps of Engineers to stabilize the Clover Island shoreline and restore riparian habitat. The USACE is preparing to take that project out to bid this winter. The Clover Island 1135 shoreline restoration project will restore riparian habitat and add recreational pathways, interpretive elements, and public access to Clover Island which is located within the Columbia River in Kennewick, Washington. Rivershore enhancement offers the best opportunity for urban renewal of an older, economically distressed neighborhood previously designated by the City of Kennewick as a Redevelopment Strategy Area. The Port's Clover Island project was designed to allow a phased approach to restoration and development. And, during the past twelve years a variety of improvements have taken place including restoring a portion of the West Causeway shoreline; creating the Clover Island Riverwalk connecting the island with the Sacagawea Heritage Trail, Historic Downtown Kennewick, and the Columbia Gardens Wine & Artisan Village; building the Lighthouse Plaza, adding public restrooms and rebuilding the Clover Island boat launch; adding scenic viewpoints and picnic areas; and installing a series of public artworks. Funding for additional enhancements to both Clover Island and Columbia Drive continues to be a significant need. The Port and City have successfully received grants from the Recreation and Conservation Office (RCO) Aquatic Lands Enhancement Account; Boating Facilities Program; and Land and Water Conservation Fund; the Hanford Area Economic Investment Fund; and Benton County's Rural County Capital Fund. The Port and City will continue to seek grants and partnership funding to further benefit transformation of the Historic Waterfront District. ***The Port supports continued funding for the Recreation and Conservation Office which can be used to benefit the Tri-Cities waterfront. We also continue to seek clarification or changes to the Community Economic Revitalization Board (CERB) funding requirements which currently use median wages to qualify grant applications—effectively removing Port of Kennewick's projects from CERB funding opportunities.***

Continuing Legislative Interests:

CERB Clarification: The port recognizes the Community Economic Revitalization Board is a vital state economic development infrastructure program. However, in the

Quad-Cities area, Hanford-related employment skews the required wage rate for potential project applicants. *The Port of Kennewick supports increased funding for CERB and for program clarification regarding “median wage” which could extend investment opportunities for those projects occurring within specific counties (like Benton County) that exhibit unique employment considerations.*

Prevailing Wage Issues: The port is interested in protecting private sector investments and opportunities for long-term job creation. In recent years a number of proposed changes to the state’s prevailing wage laws have threatened to discourage private sector investment and would significantly impact ports’ ability to act as an economic catalyst for local communities. Such changes could divert investments and undermine local job growth. *Extreme caution and a careful, studied approach to any proposal which impacts prevailing wage laws is highly encouraged.*

Tax Increment Financing (TIF) and Local Revitalization Financing (LRF) are two closely-related public financing methods using tax revenues to fund economic development, infrastructure improvement or community improvement projects. **LRF** is an existing sales tax credit program proven to be a useful funding source. **TIF** uses tax revenues from increased property value to pay for the cost of improvements. Washington is the only state in the nation that does not use TIF to spur economic development, as state law has determined TIF is unconstitutional. *Port of Kennewick supports restoration of the Local Revitalization Financing (LRF) program, and encourages legislative changes to the State Constitution to activate Tax Increment*

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Memo

To: Port of Kennewick Commissioners Don Barnes, Skip Novakovich, and Thomas Moak

From: Lucinda J. Luke, Port Counsel

cc: Nick Kooiker, Port Auditor and CFO

Date: September 17, 2020

Re: Chief Executive Officer Tim Arntzen 2020 Performance Review

Attached are the following:

1. CEO Tim Arntzen's Summary of 2019-20 Accomplishments and Achievements.
2. CEO Tim Arntzen's 2019 Performance Review.
3. Evaluation Form (Exhibit D to CEO's November 2013 Employment Agreement).

Timeline

- September 17 – CEO Evaluation Packet delivered to Commissioners
- October 2 (Friday) – Commissioners to deliver their completed Evaluation Form to Lucy
- October 7 (Wednesday) - Evaluation Forms reviewed and compiled by Lucy into one Evaluation Form and circulated to Commissioners for review
- October 13 - (Commission Meeting) – conduct CEO performance review

Please let me know if you have any questions regarding the performance review process.

Thank you.

2020 summary of achievements for Port of Kennewick:

Vision and Purpose:

Examples of ways in which Tim works to collaborate with Commission include the recent series of Vista Field hangar discussions whereby he brought questions to the Commission, engaged them in discussion, actively listened to their input, and prepared summary memos with additional questions for their discussion and involvement which provided clarity in direction to staff. Another example is the significant and continued involvement of Commissioners with DPZ that Tim has fostered and encouraged to ensure consistency with vision and new urbanism planning. Tim also encouraged involvement by commissioners directly with the contractor for the Waterfront Master Planning effort, engaging them in the discussions, the identification of stakeholders, and in expanding the scope to include Columbia Drive properties. In addition, Tim works collaboratively to develop, and then lead his staff to embrace and support the port's vision. Examples include the development of the infectious diseases response plan, and his resulting allocation of staff and resources to protect the port. Tim counseled his staff to encourage and gain their support in working remotely (several employees did not want to do so in the beginning, and now embrace a remote work environment). Indeed, Tim's leadership is evident in his making tough decisions on the allocation of resources: examples are closing the Willows trailhead parking area, temporarily closing restrooms, and hiring temp labor to compensate for loss of coyote crews during pandemic; and also in identifying and then brokering the investment partnership for fire station #3, and clarification on the DaVista proposal in order to advance Commission's redevelopment vision for Vista Field.

Strategic Agility:

Tim actively works to scan the horizon and anticipate issues, trends, benefits, risks, and consequences. For example, Tim identified the potential for the city fire station's design disparity and he reached out to the city and arranged for an investment partnership between Commissioners, city, and fire personnel to ensure a complementary development. In addition, Tim identified potential issues related to the waterfront master planning process for Commission. And he identified issues related to the boat houses/sewer inquiry and alerted the city regarding those concerns; working to identify potential liability issue for port and a life/health/safety issue for community. He also identified the TRIDEC request for involvement with a regional water committee had the potential to include KID irrigation/condemnation issues and he brought that issue to Commissioners to address port involvement. In addition, Tim was one of the first to identify the significant issue and potential harm from Covid-19 and early on cancelled all port-related travel; he was also one of first in Benton County to close the organization's offices and cancel significant planned events to safeguard the port and public.

Operating Plans:

Tim is steadfast in his focus on the port's goals. In spite of the length of time and number of minute details involved with Vista Field planning and construction, Tim has been diligent in bringing the port's vision to life. This past year, Tim identified potential members for a strategic Vista Field team, and then he continued refinement of design and development issues related to Vista Field. He then formulated a plan and, with commission concurrence, implemented the Vista Field team to address the sales, marketing, and maintenance required for moving Vista Field into lot sales and construction by private sector. And he is working to ensure notice of substantial completion and the Vista Field Governance Structure are presented to Commissioners by the year's end.

In addition, the Corona Virus Pandemic is a perfect example of his identifying policy and procedure adjustments to allow Commission meetings to continue, staff to work from home, and port to remain in compliance with state law. He brought policy recommendations to the Commissioners which allowed the port to follow public meeting RCWs, and to defer rent payments to help mitigate economic impacts to tenant businesses. At the outset of the Corona-virus pandemic he took swift and decisive action, including his reaching out to talk with the health department, cancelling port travel, closing the port office, notifying the public, implementing procedures to ensure staff and public safety; postponing a highly-anticipated, large-scale ribbon cutting event, and monitoring and responding to rapidly evolving science and state/federal/local mandates. The remote work plan that Tim established allowed the port to maintain a healthy team which continues conducting business and keeping projects moving forward despite the pandemic. His Covid-19 response plan allowed the port to continue operating smoothly during the most significant recreational use of Clover Island and the marina in the port's history. Throughout the pandemic Tim has put great effort into maintaining contact with his staff to provide guidance and direction, and to monitor progress.

Given the magnitude of the pandemic and its impact on the community and port operations, Tim's work to ensure continued, seamless port operations while protecting the health and safety of staff, tenants, and the public served is a tremendous achievement. *Indeed, Commissioners have praised Tim's decisions regarding Covid-19 and resource allocation with Commissioner Moak thanking him for addressing the questions related to closing of The Willows, and indicating that Tim did an especially good job of addressing impacts of Covid and how we are responding to that. Commissioner Novakovich, commending Tim for wise decisions in relation to closing Willows and extending resources to a higher and best use. And Commissioner Barnes stating that it was a good decision to close the Willows to focus resources on other properties.*

Integrity:

Corporate culture and tone is set at the top and Tim demands a high level of accountability, transparency, and attention to detail from himself and his staff. Evidence of this is the port's clean audit history. Another clean, third-party Accountability Audit for 2017 and 2018; and an independent 2019 Financial Statement Audit is nearly complete (anticipate September 30, 2020) with no known issues. And while he leads the team under ever more demanding, evolving, and extremely divisive constraints on his time and attention, he has managed to build and sustain creative engagements with our cities, county, and ADO partners. His integrity is evidenced in that he doesn't take the "easy way out" –he does what is right and is always looking out for the best interest of the port; with the boat house/live aboard issue as a perfect example.

Financial Stewardship:

Tim works diligently to ensure the port's future financial stability while balancing the Commission's direction for significant construction projects. Indeed, Tim maneuvered the port through one of the most challenging and unprecedented times ever—a global pandemic which shuttered businesses and civic organizations, and brought a once-thriving economy to a screeching halt. Tim oversaw the successful construction contract close-out for the Phase 2b tasting room building at the wine village. He made strategic decisions related to maintenance labor when the very cost-effective Coyote Ridge work crews were cancelled due to Covid. And he worked with port legal counsel, Total Site Services, and Strategic Construction Management, to understand the Governor's Covid-19 quarantine requirements related to public construction;

wanting to ensure Vista Field construction could continue in compliance with state and federal mandates (and being sensitive to the optics on public works projects continuing while other construction was stopped).

He identified an opportunity and enacted a creative solution to save future tax dollars by using the excess dirt from Vista Field construction to fill existing swales now rather than having to find, buy, and haul in dirt later; compacting it as the dirt is moved so that area is ready in the future. He secured City of Kennewick fire station #3 design improvements; and insisted on an interlocal agreement for that project, as well as an interlocal agreement with City of Richland for their Island View/Columbia Park Trail improvements—those documents are not required by the cities, but by our port to ensure compliance with port policies, budget, and state law, and to ensure clean audit compliance. He also oversaw the process of closing the land sale and terminating CCRs on the Southridge parcels to ensure funds for Vista Field. He anticipated escalating costs associated with the USACE 1135 shoreline project and at Commissioners' request, worked to identify additional funding within the 2021 budget to allow commissioners flexibility to continue pursuing their stated objective of stabilizing the shoreline to allow future economic development on Clover Island.

Political and Institutional Sensitivity:

Tim's skill in identifying and navigating sensitive political situations have kept the port in good stead with its many partners. He identified an issue with using Rural County Capital Funds for Columbia Park Trail improvements, and worked with Commissioners to instead allocate capital funds to sustain the port's positive relationship with both Benton County and City of Richland. And, in order to ensure the integrity of Vista Field's new-urbanism focus, he secured changes to city fire station and roadway design at Vista Field. As referenced earlier, Tim also brought the regional water committee issue to Commissioners to address port involvement.

Tim also anticipated and identified issues related to historic waterfront district master planning; encouraged involvement of city and adjacent stakeholders; as well as Tribal outreach to help mitigate potential concerns related to the causeway, the 1135 project, or treaty interests. And his work to help resolve disparate commission perspectives related to the Vista Field hangars led him to craft several memos which helped engage commissioners in a discussion to identify a path forward. *This activity led Commissioner Barnes to indicate that he was both excited and optimistic about the direction of the hangar discussion going forward.*

In addition, more than one month before Covid was declared a pandemic, and nearly two months before local mandates, Tim contacted the local health department looking for information and guidance on infectious diseases and Covid-19. Early on he asked staff for an assessment of their departments and duties and how to keep the office operating effectively if required to work remotely. He had already identified the potential for Covid to become an issue of significance, and began immediately working to develop a solution for the port. He canceled all port-related travel, and worked with legal counsel to create an infectious diseases response plan for port staff. He stated that his perspective as a boat captain means when you see a storm looming way out on the horizon you begin adjusting your sails immediately—you do not wait until the storm is upon you to make adjustments. That is classic Tim and evidence of his exemplary approach to anticipating, predicting, and adjusting to those things which may threaten the port. Indeed, before the pandemic was declared, he required several port staff which had recently returned from vacation travel to work from home and to refrain from coming to the port office or interacting with other port personnel for two weeks; and he cancelled all port-related travel. He managed a tremendously sensitive and complex situation by being an

early leader; closing the office before it was mandated, and ensuring that staff had the tools necessary to work remotely. Throughout the pandemic, Tim has been working to ensure his team is following best practices to keep the port's employees, customer base, constituents, tenants and their families safe and healthy; as well as to demonstrate compliance, transparency, and sensitivity by the port as an institution.

Stakeholder Relations:

Tim's leadership in building effective relationships with tenants, customers and the community can be seen in his work to retain Carbitex and Greenbrier Rail as tenants; and in preparing appropriate and legally-compliant pandemic assistance for deferring rents, sharing information related to Covid-impact funding assistance, offering support letters for CARES Act grant assistance, approving patio expansions for tenants; and in responding to wine village tenant concerns regarding algae and desired upland improvements.

Other examples include: His work to ensure the engagement and involvement of the City of Kennewick, Historic Downtown Partnership, City of Pasco, Port of Pasco, and adjacent property owners in master planning for the port's waterfront properties. His work with the City of Richland staff to build a relationship in support of their economic development goals and objectives include the Interlocal Agreement for the Columbia Park Trail Improvements; and their recent presentation to commission about their desire for port involvement/support for the Center Parkway improvements. His efforts in working with the Mayor of West Richland to expedite the former raceway land sale helped resolve issues and address problems in our district; and expediting the closing of that land sale land on Dec. 31, 2019 assisted the city with locating their police station before their bond deadlines expired. His outreach to the Historic Downtown Kennewick Partnership is another example, where Tim called and talked with their executive director about the possibility of adding a produce stand to the wine village, working to ensure continued cooperative support between organizations. And in his work with City of Kennewick there are many examples: the fire station design; their presentation to commission about port involvement/support for Washington Street improvements; collectively working with city staff to promote vibrancy at the wine village; and collectively working on the Duffy's Pond algae mitigation plan.

Tim also recognized the value of the asphalt grindings from former Vista Field runway and identified that material as available to our partner entities—keeping it out of a landfill and the port from having to pay disposal costs. He worked with Benton County to assist with an inquiry from WA State Auditor's office regarding use of Benton County Rural County Capital Funds for West Richland land sale; and he has had regular meetings with Adam Fyall related to current and future use of rural county funding to ensure Port of Kennewick remains in good stead with the county and that program. He was involved with the interview process for TRIDEC's new executive director and has had several meetings with Karl and his staff to help strengthen the relationship TRIDEC has with Port of Kennewick.

Tim's efforts to cultivate strategic partnerships include scheduling a meeting with the new commander for the Walla Walla District Corp of Engineers and inviting the City of Kennewick staff to join the tour of Clover Island and Duffy's Pond; continued outreach with Ted Wright, executive director, and Chuck Sams, deputy executive director, for the Confederated Tribes of the Umatilla Indian Reservation; inviting the City of Kennewick to partner with the port at the annual Washington Wine Growers expo; and in working to provide an easement for Cascade Natural Gas to enhance the safety and protection of their natural gas piping network in the Columbia Drive and Clover Island area.

Priority Setting:

Tim is motivated by the priorities established by Commission which are reflected in his goals and he has worked diligently to accomplish those goals and objectives **as evidenced by his completing the majority of goals established for the 2019/2020 biennium** (*The Vista Field notice of substantial completion AND the Vista Field governance structure will be presented to Commission by end of year, and other items were delayed by mutual agreement via resolution 2020-04 with new goals added in their place*).

In addition to the established goals, Tim ensured timely completion of a number of other projects including re-carpeting the office without disrupting ongoing port business; implementing new public records tracking software; a new module for tracking contracts; as well as new digital meeting-recording software which was identified as a priority by Commission. Tim also excels at bringing forward unanticipated opportunities such as the partnership with Richland for Center Parkway; the value of retaining water rights from the former racetrack property to bring benefit to Vista Field and Benton County Fairgrounds; recycling asphalt grindings from Vista Field construction, and reusing excess dirt generated to fill swales. Tim also has a sensitivity to potential obstacles and continually reminds staff and commission of our approved work plan and stated objectives: examples include the All-Aboard Washington passenger rail project; and TRIDEC's recent requests for port involvement in both the regional water committee and a CERB board vacancy.

Knowledge:

Tim has a substantial knowledge of ports, and port district law and operations; as well as the Port of Kennewick's specific attributes and unique challenges. His training as a lawyer has given him unique insight and particular understanding of the RCWs related to port operations, legal requirements, and the framework for undertaking projects and partnership within those RCWs. Tim continues to work to gain knowledge of the industry and he scans the horizon with an eye to trends and regional issues which may impact Port of Kennewick. Examples are freight rail expansion, water rights, KID irrigation water, and rural county capital funds/political sensitivities regarding use of those funds. And Tim spends quite a bit of time talking and meeting with jurisdictional partners to understand their issues, and to sustain and build relationships which help him gain knowledge of and gauge perceptions about issues important to Port of Kennewick. These include Benton County, Cities of Kennewick, Richland, West Richland, Benton City, WPPA, HDKP, USACE, and CTUIR. In addition, Tim spends a great deal of time reading industry publications and completed a port-specific executive training course late last year to build upon his 18 years involvement with port district leadership. This year, Tim has participated in a number of WPPA, Department of Commerce, and industry webinars and sessions to learn more about Covid-19 and the ports role, responsibilities, impacts, and actions resulting from the pandemic. And, as a federally-licensed boat captain, Tim has a unique knowledge of the legalities, needs, and requirements related to port marina operations. Indeed, Tim is often sought after as a speaker and in an advisory role by other port districts, partner entities, and media. This past year he has been asked to offer insight about our port's involvement in marine recreation and our response to the pandemic. He participated with the TRIDEC executive search, and in a TRIDEC community webinar related to ports and economic development; he researched and discussed Washington port districts' historic use of Rural County Capital Funding to assist Benton County; and he was interviewed by numerous media, including a feature story by the Association of Washington Cities "Vision" magazine related to waterfront revitalization and Vista Field redevelopment.

Decision Quality:

Tim keenly works to analyze, understand, and fully vet issues before making a decision; he does not rush to judgment. He seeks advice and insight of staff and legal counsel, contractors and commissioners; and has an ability to evaluate and break down complex issues into manageable, defensible, transparent actions. And even though he may have delegation of authority on an issue, Tim will often bring that matter before the port commission if he feels it will benefit the port and/or provide additional understanding and transparency. An example of this is the DaVista drive-in theater proposal; whereby Tim had been given direction by Commissioners to not sell or lease land until phase one parcels were ready, and to stick with the development agreement process as established. However, Tim felt the DaVista proposal was one the Commissioners would want to understand, so he brought that forward for vetting and discussion rather than simply acting through his delegation of authority. And that discussion with commission served as confirmation that staff were following commissioners' preference and provided transparency to port district taxpayers and the development community. It has already been stated that his early leadership and strategic decisions related to Covid-19 have proven beneficial to the port.

Entrepreneurial:

Examples of Tim's entrepreneurial and creative mindset are the reuse of excess Vista Field construction dirt, and his work to ensure that the former runway asphalt grindings were recycled. Tim also proposed and undertook the discussion of a rural county capital fund project analysis to help determine best uses of the port's rural county capital funds. Tim's involvement with the West Richland sale which closed in December of 2019 was instrumental in securing future rural county capital funds for port projects, and retaining water rights for port endeavors. Tim understood the need and brought to Commission an easement for Cascade Natural Gas Corporation at The Willows. And his focus on long-term financial stability and conservative budgeting provided flexibility for our port to react to potential impacts from the global Covid-19 pandemic. Tim has also worked to bring potential public opinion concerns to the Commission including pointing out potential for concerns related to the shoreline master planning; regional water committee; fire station #3; Duffy's Pond algae; and Covid-19.

Leadership/Management:

Tim not only understands, but works diligently to move the Port toward, the Commission's vision—all while balancing limited budget and staffing resources, public perceptions, and the politics inherent in working with a multitude of jurisdictional partners. Tim's leadership led to successful completion of Phase 2b of the Wine & Artisan Village, whereby several hundred people were planning to attend a well-publicized ribbon cutting planned for late March of this year. However, it was also his insightful management and leadership which led the port to cancel that event, close the port office, and take an early and pro-active position in response to the Covid-19 pandemic. That action even elicited an email stating "*good call*" from Kennewick's Chief of Police.

Tim's management style encourages input and recommendations from staff, and regular dialogue with Commissioners. An example is the Vista Field hangars, where he crafted a memo and engaged commissioners in thoughtful discussion regarding relevant questions to help determine a path forward.

He is effective in encouraging staff to take ownership of their projects; and stays involved enough for oversight, but removed enough to encourage individual responsibility, creativity,

ownership, growth and skill development. Examples are: lighting of the iconic bus shelter, re-carpeting the office, selection and purchase of the digital meeting software, a shade covering at the Food Truck Plaza, the 1135 project and Duffy's Pond remediation and improvements plan, and Vista Field's phase one construction. Tim also has weekly standing meetings to ensure timely, focused, communications with each director.

Tim's leadership is consistent with established port policies and procedures, and within his delegation of authority. He works to refine and adapt port operations as necessary to meet future needs and challenges, but does so with respect for and within the authority Commissioners have delegated to him; and he has been effective in making decisions and in handling of legal concerns and managerial issues (responding to public records, staffing, Covid-19 compliance).

Initiative:

Tim is a self-starter who works diligently to ensure continued progress toward the Port's priorities. He is always scanning the horizon for opportunities and for more ways to bring benefit to the port and its taxpayers; he positively inspires others; is consistent in his follow-through; and is proactive in communicating with others. He is motivated by his incentivized goals and does not hesitate to complete goals and assignments when given clear and non-conflicting policy direction. ***He will have accomplished the majority of the established 2019/2020 biennium goals by year's end.***

Courage:

Tim is not afraid to be outspoken in looking out for the port's best interest. He demonstrates high levels of courage and leadership in challenging and unprecedented times, including a global pandemic which required early and decisive action that was not yet popular within the region. He holds himself to high standards and holds his staff to the same exemplary standards of transparency, honesty, and stewardship. He is frank and forthright when necessary and willing to defend the port's goals, vision, and directives without regard to his personal popularity. Examples include cancelling the well-publicized winery-building ribbon cutting to ensure public safety; managing media office closures, and rent deferrals in light of a global pandemic; his outreach to HDKP regarding the wine village farm market; and his outreach to city about both the fire station design, and the boat houses/live-aboard concerns—all were tough issues to raise, but he is forthright and courageous in working to ensure positive change.

Persuasiveness:

Tim has both outstanding writing and verbal communication skills, and his legal training has given him a unique ability for persuasive communications. He excels at making personal presentations, and is adept at creating collaborative partnerships to accomplish port goals. This is evidenced by his work to protect the integrity of Vista Field design by negotiating an agreement with the city to ensure that their fire station building and roadway are complementary to new urbanism principles.

Adaptability:

Tim easily adapts to changing work and market conditions, and he has a natural ability to anticipate and be proactive. The best example is his swift and strategic response to Covid-19. He anticipated the need, and quickly pivoted to establish all-new procedures; close port offices, and to require staff to work remotely in response to the global pandemic. And he takes on new projects and assignments when opportunities are identified beyond the established two-year

work plan; perfect examples are selling the Southridge land at auction; arranging for fire station #3 design adjustments; resolving issues related to a market stand at Columbia Gardens; and pivoting to new goals when established ones were delayed (Resolution 2020-04).

Stamina:

Tim has an ability to take negative or controversial public perceptions regarding port projects (Columbia Gardens, Southridge sale, Vista Field, elections, investigations) in stride. And he manages his time to ensure his energies remains focused on his incentivized goals, port priorities, and approved work plan. And he is careful to manage his health and encourages staff to find a work-life balance to enable continued success and endurance. However, the citizen complaint and the work environment resulting from that process coupled with the added complexities of safeguarding the port during a global pandemic, as well as Tim's unwavering efforts to ensure the health and safety of port staff, their families, and the public has added to his responsibilities and stress, and is having an impact on his health and well-being.

Ambition:

Tim is internally motivated and has a great deal of ambition and drive and is determined to accomplish the goals established by Commission. He takes pride in ensuring a top-quality job is done for the taxpayers and he wants to complete exceptional projects. His ambition is demonstrated by completing the majority of established 2019-2020 goals by year's end.

Loyalty:

Tim understands that the Commission sets policy and he works to implement that policy, and by completing most of the 2019-2020 goals established for him by Commission he has demonstrated an understanding and acceptance of those goals and the policies of the organization. His loyalty is demonstrated by his willingness to bring issues to commission (even those within his delegation of authority) in order to provide better understanding and communications and to ensure a high degree of transparency for the public. And his loyalty is demonstrated by his flexibility to adapt to new challenges and priorities set by commissioners in the middle of an established work plan. Tim works to share documentation, details, and possible alternatives for commissioners in order to support them in making decisions for the port. This is demonstrated by his bringing the commissioners into a discussion of the proposed DaVista drive in theater; and their engagement and involvement in the waterfront master planning process, and all aspects of Vista Field redevelopment.

Communications:

Tim has a standing monthly meeting with Kennewick's city manager to ensure continued collaboration and investment partnerships. Tim also holds bi-monthly meetings with his entire team and weekly director meetings to ensure effective and efficient operations and timely, focused communications. Tim has a knack for distilling complex issues into relevant facts and encouraging discussion to ensure a variety of scenarios have been analyzed and to help find a path forward. This is demonstrated by the multiple discussions regarding the DaVista drive in proposal, whereby commissioners reconfirmed their intent that staff remain focused on phase one development. It is also demonstrated by his efforts to encourage continued discussions and dialogue by commissioners with disparate perspectives related to the Vista Field hangars in order to meet legally required work plan and budget deadlines while working to find a consensus regarding the hangars. In addition, Tim contacted the HDKP to communicate regarding the farm market interested in the wine village; he has done personal outreach to the CTUIR regarding the waterfront master planning process; and he met with the new commander

of the Walla Walla District USACE to provide information and ensure continued support for the redevelopment of Clover Island and improvements at Duffy's Pond.

Listening:

Tim is a very good listener. He carefully studies, analyzes, and interprets information he receives, and he asks insightful questions to foster understanding. Tim is always willing to visit with stakeholders, the general public, and others who make inquiry of the Port. He listens for content and not just to respond; and because he really 'hears' what people are telling him, he then retains an unbelievable amount of information related to the port and the community—about people, activities, and actions with potential to impact port operations; and about past projects, and potential pitfalls. A perfect example of this is the Vista Field hangar discussions, whereby Tim listened, prepared summary memos which fostered discussion, leading to additional memos to help move the issue forward. Another example is the port's request to Benton County regarding the Columbia Park Trail improvements—Tim actively listened, understood the implications, and accurately advised Commissioners to ensure a continued positive relationship with Benton County. Another example is the TRIDEC regional water committee; whereby he reached out to Karl Dye, actively listened, and understood the need to bring that request to Commission, in spite of his personal beliefs or concerns. In addition, when Tim seeks information from Commission, he is not afraid to ask for clarification or probing questions until he has clear direction—an example is the Vista Field hangar memo, which he prepared after listening to commission discussion to help facilitate additional dialogue and seek a potential new direction for those holdings. Indeed, his training and skills as a former attorney are a true asset to the port; and he puts aside personal biases in receiving and processing information and maintains a calm demeanor during meetings which encourages interaction, engagement and understanding.

List of accomplishments & achievements since last review:

2019

- Closed the former raceway land sale with City of West Richland on December 31, 2019.
- Closed Southridge land sale on December 31, 2019 and removed CCRs related to that property.

2020

- **Managed the Port as a highly productive, successful, fiscally-sound organization while simultaneously responding to a global pandemic.** *Unprecedented times required CEO to manage an ever-evolving and extremely complex situation to ensure port is following best practices to keep staff and public safe, and to demonstrate compliance, transparency, and sensitivity by the port as an institution. Tim's additional, unanticipated and expanded responsibilities involved extensive research and time and energy spent seeking understanding, considering the "what ifs" and unknowns, anticipating and analyzing potential risks, and planning for alternative actions; creating an infectious disease response plan; closing the office; bringing policy recommendations to Commissioners to ensure legal compliance for public meetings and port operations; managing port safety; ensuring a productive remote work environment; and allocation of resources and operations to minimize exposure while ensuring safe and inviting conditions for recreation, services, and interactions at port-owned sites.*

- Provided oversight of budget, contracts, and technical upgrades to computer software including AV Capture All to make digitally recorded commission meetings available to the public; Just FOIA public records tracking software; Docusign to allow paperless processing with digital signatures; and an expanded Laserfiche component to enable contract tracking. Arranged a compromise for budget presentations which resolved disparate desires for detailed financial information. And his stringent oversight of the port budget and contracting led to yet another clean, third-party Accountability Audit for 2017 & 2018 which had *NO exit notes* (audit completed late 2019); and a 2019 Financial Statement Audit is nearly complete *with no known issues* (audit close out anticipated by end of September 2020). Having clean audits is perhaps one of the most important measures of Tim's solid management and outstanding leadership as CEO.
- Defined scope of work and contracted with Makers Architecture for the Kennewick Historic Waterfront District Master Plan. Tim's leadership on this project and his challenge to the team to find creative ways to involve the public during a pandemic-driven quarantine led to the most significant public engagement in the port's history. In fact the marketing push for involvement resulted in 432,009 ad impressions; 796 people reacting or commenting on social media; and the video being viewed 308,727 times. In addition 1,695 unique individuals interacted with Maker's online survey, idea wall and mapping tool. That's *more than 5 times* the number of those who engaged with the award-winning, in-person Vista Field redevelopment planning process.
- Presented Commissioners with A&E analysis for the Vista Field hangars, with an estimated budget and draft financing plan.
- Presented Commissioners with Rural County Capital Fund analysis for potential capital projects.
- Presented Commissioners with independent review of Opportunity Zone funding and project analysis.
- Presented Commissioners with the Duffy's Pond Remediation & Upland Improvements Plan.
- Presented Commissioners with an assessment of outstanding buy-back clauses related to previous land sales.
- Presented Commissioners with a resolution to update the buy-back policy.
- Preparing to present Commissioners with evidence of substantial completion for Vista Field phase one construction: roads, utilities, lighting, landscaping, and 850 linear-foot water feature (*anticipate determination of substantial completion by end of year*).
- Secured City approval to utilize Vista Field street names identified in branding process and a renaming of a portion of Quay Street to Roosevelt.
- Identified members and formalized the Vista Field "Team Approach" with Commissioners approval.
- Cordially worked to gain Arts Center Task's formal acknowledgment that they were looking for a significant funding partner and would no longer pursue development at Vista Field; thereby releasing that premier site for future development.
- Finalizing Vista Field Governance Structure and Declarations for Commission approval (*anticipate completion by end of year*).
- Entered into a revised Interlocal Agreement with City of Richland for port partnership of Columbia Park Trail Improvements.
- Brokered agreement with City of Kennewick and secured an interlocal agreement to ensure fire station #3 building and roadway would complement Vista Field's new urbanism-style development.

- Finalized lease with new owners of Cedars, retaining that iconic restaurant which helps ensure vibrancy at Clover Island.
- Secured lease renewals with Greenbrier Rail Service, and with Carbitex.
- Completed construction of the two-tenant building at Columbia Gardens, and secured leases with Cave B Estate Winery and Gordon Estate Winery for that space.
- Secured another season with Rollin Ice Cream at the Lighthouse Plaza, creating tremendous vibrancy for the Clover Island waterfront.
- Internal lighting installed at Rolling Mass, further enhancing that iconic bus shelter.
- Shade structure completed at the Columbia Gardens Food Truck Plaza; and secured standing leases with mobile vendors Swampy's BBQ, Ninja Bistro, Don Taco, Ann's Best Creole and Soul Food, Bobablastic, and Between the Buns; and with Haven Flower Farm, Morsel Cookies, Kona Ice, and Karma Juice as a pop-up vendors.
- Upgraded Clover Island street and parking lot lights to LED lighting resulting in reduced maintenance and utility costs to the Port.
- Completed replacement of six rooftop HVAC units at the Oak Street Industrial Park.
- Recognized ET Estate Sales as Friend of the Port.
- Authorized new signage and implemented a life jacket loaner program at the Clover Island Marina to encourage public safety.
- Worked with Cascade Natural Gas Corporation to provide easement at The Willows to enhance the safety and protection of their natural gas piping network in the Columbia Drive and Clover Island area.
- Managed the Port's brand and perceptions regarding port actions related to COVID-19 and continued construction projects to ensure compliance with state directives and transparency for the public; challenged staff to develop television and social media marketing to promote the port's Clover Island and Columbia Drive developments to create vibrancy for our tenants; and interviewed by numerous media including: a feature story by the Association of Washington Cities' "City Vision" magazine and FOCUS magazine related to waterfront revitalization and Vista Field redevelopment; and KEPR TV for Tri-Cities 2035: A glimpse into the future.
- Successfully managed numerous jurisdictional/political relationships including: the Arts Center Task Force; Walla Walla District US Army Corps of Engineers (met with and toured both Clover Island and Duffy's Pond to discuss port vision); Confederated Tribes of the Umatilla Indian Reservation (outreach regarding waterfront master planning); Benton County (Rural County Capital Funds); City of Kennewick (Fire Chief selection, standing monthly meetings, boat houses/sewer, Fire Station #3, Washington Street, etc.); City of Richland (Columbia Park Trail, Center Parkway); City of West Richland (land sale, use of Rural County Capital Funds); Port of Pasco (outreach regarding waterfront master planning); TRIPORTS (expo, advertising); Department of Corrections (labor crews, recognition for crew chiefs, future contracting); and worked to foster a renewed relationship with TRIDEC (CEO selection, Vista Field tour, personal phone calls and meetings, dues increase).

###

PORT OF KENNEWICK

Resolution No. 2019-35

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK APPROVING THE PORT CHIEF EXECUTIVE
OFFICER'S 2019 PERFORMANCE EVALUATION**

WHEREAS, the Port Commission conducts an annual evaluation of the Port's Chief Executive Officer's performance pursuant to the CEO's Employment Agreement; and

WHEREAS, on October 10, 2017, the Port Commission adopted Resolution 2017-16 establishing a Committee to draft the CEO's performance review and present to the Commission for final approval, citing a more efficient and effective process; and

WHEREAS, on November 28, 2017, the Port Commission adopted Resolution 2017-27 modifying the CEO's employment contract to adjust for changes made resulting from resolution 2017-16 establishing an evaluation committee; and

WHEREAS, on August 13, 2019, Resolution 2019-16 was presented to the Board of Commissioners to appoint a new committee member to the CEO Evaluation Committee, and said resolution was not approved; and

WHEREAS, in lieu of Resolution 2019-16, Commissioner Barnes made a motion that the CEO Annual Evaluation Process revert to the CEO's Employment Agreement original paragraph 6 language and the use of the Exhibit D format that existed prior to Resolution 2017-27, Commissioner Moak seconded and the motion passed 2-1 with Commissioners Moak and Barnes voting in favor and Commissioner Novakovich opposed; and

WHEREAS, as directed by the Port Commission, Port counsel has gathered performance evaluations from all three individual Commissioners, and compiled those preliminary drafts into the attached 2019 Annual Performance Review form (attached as Exhibit "A").

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Port of Kennewick Board of Commissioners hereby approves the 2019 Annual Performance Review of CEO attached as Exhibit "A" and directs the Commission President to present the 2019 evaluation to the CEO.

NOW, THEREFORE, BE IT HEREBY FURTHER RESOLVED that the Port of Kennewick Board of Commissioners, in accordance with the CEO's Employment Agreement, hereby deems the CEO's performance *above satisfactory* for 2019.

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

By: 
THOMAS MOAK, *President*

By: 
DON BARNES, *Vice President*

By: 
SKIP NOVAKOVICH, *Secretary*

**2019 ANNUAL PERFORMANCE REVIEW
Individual Commissioner Evaluation of
Executive Director Performance**

IMPORTANT DUTIES/EXPECTATIONS	PERFORMANCE APPRAISAL		COMMISSIONER COMMENTS
<ul style="list-style-type: none"> ➤ Attach extra papers as necessary ➤ Factors should be reviewed in terms of quality, quantity and timeliness 	Met	Not met	
<p>I. <u>Vision and Purpose</u></p> <p>Collaborates with the Commission to advance the Port’s vision and purpose. Leads senior staff to develop a concise vision. Advocates the vision by strategic resource allocation toward attainment.</p>	xx	x [DB]	<p>The Port Commission has been clear on its direction that Vista Field development and Columbia Gardens redevelopment were top priorities and Tim has delivered on those two projects. Tim more than once came back to the commission to clarify the port’s vision and identified obstacles to be overcome or decisions that needed to be made in terms of resource allocation in order to achieve the vision.[TM]</p> <p>Mr. Arntzen failed to communicate and collaborate with the Commission when Commissions raised questions regarding the Ivey land transaction. See for example POK Commission meetings of Jan. 22 and Feb. 19, 2019. [DB]</p> <p>Tim’s mind is constantly at work developing visions for future POK direction that are beneficial for our constituents. Then he will engage his senior staff and appropriate others, to vet his vision against all possible pitfalls giving careful consideration to allocation of all necessary resources before finalizing a vision and purpose that his staff can support. After careful assembly and understanding of all issues involved he will begin briefing the Commission on several occasions, each time researching answers to</p>

			Commission concerns or questions before asking for clear Commission direction on how to proceed. Yet Tim has always been willing to do whatever the Commission instructed even if his vision is not accepted or is modified by the Commission.[SN]
<p>II. <u>Strategic Agility</u></p> <p>Is proactive; anticipates future trends, benefits and consequences; has broad knowledge and perspective; can objectively state possibilities and probabilities.</p>	xxx		<p>Tim demonstrated agility with bringing the Southridge land to auction and working on various projects with the City of Kennewick, where he needed to work to meet the needs of the City and the Port in a way that could get funded through RCCF. Tim successfully led port to two land sales in West Richland that were unanticipated at the beginning of the year and served port and community interests.[TM]</p> <p>One exception here is that Mr. Arntzen failed to anticipate future benefits/consequences of his decisions and actions regarding the item in I. above. [DB]</p> <p>Before testing the merits of his ideas he carefully researches the pros and cons of implementing his visionary projects. I believe Tim deserves extreme praise for his knowledge and ability to accurately assess future trends and the effect they will have on the POK, our projects and ultimately our constituents. Tim assessment of situations and issues is something I can place complete trust in.[SN]</p>
<p>III. <u>Operating Plans</u></p> <p>A. Develops, maintains and implements strategic plans and operational goals that effectively brings the Port's vision to fruition.</p>	xxx		<p>A. Both the Vista Field and the Columbia Gardens projects have moved ahead to great acclaim and high level of public anticipation, for which Tim deserves great credit. Tim has done</p>

<p>B. Critical performance elements are monitored to help assure effective and efficient operations and to identify opportunities for policies and procedures improvement.</p>	<p>xx</p>	<p>x [DB]</p>	<p>a great job at looking for funding sources for the Vista Field hangars remodel which are an important element to the Vista Field implementation. Other items mentioned in the self-appraisal are also praiseworthy. [TM] The Port of Kennewick, through the policies established by its 3member Commission and implemented by its CEO and staff, has effectively brought its vision to fruition. It is a TEAM effort and these results are not due to the efforts of any single individual.[DB]</p> <p>B. It is not always easy to secure clean audits year after year, but Tim deserves credit for continual clean ones. [TM]</p> <p>Budget monitoring presentations to the Commission are too infrequent. Legal fees, in the opinion of some constituents, are too high. Constituents ask why attorney attends staff meetings and performs routine clerical tasks that could easily be handled by staff. [DB]</p> <p>My extensive training and experience in the US Army regarding operations and logistical management allows me to attest to Tim's steadfast, unwavering ability to carry out all duties required of him in a very strategic manner of employing necessary available resources in the most effective and efficient way possible while diligently overseeing all</p>
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			operations and exploring potential ways to create additional efficiencies in all areas of operations while operating in a hostile work environment.[SN]
<p>IV. <u>Integrity</u></p> <p>Sets the tone for the Port by exemplifying consistent values and high ethical awareness, honesty and fairness.</p>	xx	x [DB]	<p>Tim holds himself and his staff to the highest level of integrity. Corporate culture and tone is set at the top and that high level of ethical integrity, accountability, attention to detail, and transparency, is evident in the Port's clean audit history. [TM]</p> <p>In my opinion, the expectations for uniform and consistent adherence to values and principles of honesty/fairness have not been met in 2019. [DB]</p> <p>Tim has exemplified the most absolute manner of a person possessing a natural God given unwavering trait of integrity, ethical and moral value. Working in a very hostile work environment, being asked by commissioners to change his statements he has steadfastly refused to compromise his values. [SN]</p>

	Met	Not met	
V. <u>Financial Stewardship</u>			
A. Maximizes the Port's ability to serve and expand the public purpose while maintaining taxation stability.	xx	x [DB]	A. All the great projects the Port is accomplishing are done without tax increases. Tim borrowed conservatively in order to finance phase one of Vista Field and has developed a plan to pay off early, if circumstances warrant. [TM] My expectations here were not met because too many port resources are being wasted. Please see remarks in III. above. [DB]
B. Administers the Port's financial affairs consistent with state law and adopted policies, budget and financial guidelines.	xxx		B. Even with more complicated transactions, Tim has managed to secure clean audits for the port again. Tim's misunderstanding of Washington bid law almost cost the port a lawsuit over the award of a contract for Vista Field construction. To his credit, he listened to legal counsel and reversed course before the final bid award. [TM] The Port of Kennewick has a history of clean audits from the State Auditors Office. [DB] The clean financial audits, the consistent lowering of the levy rate and the 300%+ increase in constituent equity obtained under his leaders clearly substantiates the need to give Tim the highest possible marks on this subject. Tim is very well aware of his fiduciary responsibilities and takes this responsibly very seriously by insisting on only the very best

			management of POK financial affairs. I don't think anyone can boast of a better accomplishment record in this regard. [SN]
<p>VI. <u>Political and Institutional Sensitivity</u></p> <p>A. Maneuvers through complex political and institutional situations effectively; anticipates potentially negative reactions, recommends and plans a course of action accordingly; views politics as a necessary part of organizational and public sector life and works to be effective within that reality. Unless otherwise not practical, obtains commission concurrence prior to publicly stating position.</p> <p>B. Develops solutions to complex issues that challenge the Port's ability to recognize its vision and purpose. Demonstrates sensitivity to resource availability when developing solutions.</p>	<p>xxx</p> <p>xxx</p>		<p>A. This is an area where Tim has excelled. He has maneuvered the port into not taking public positions on issues that would jeopardize relationship with various partners. He strengthened partnerships with multiple jurisdictions during the year and worked to make sure that the port was aligned correctly with cities and the county. Working through the racetrack sale to try to strike a deal with West Richland that would not offend Kennewick and could pass muster with the county was a good example. Working through RCCF issues with Kennewick was another good issue where understanding the political dynamics in the city were important. [TM]</p> <p>As above, the attached letters and my personal interaction and conversations with elected officials and staff members of other jurisdictions by way of committees I serve on give me great pride and honor to be associated with someone held in such high and respected regard as Tim.[SN]</p> <p>B. Tim has been very sensitive to the understanding that the port</p>

			<p>no longer has a lot of spare cash floating around and to continue to do more means careful resource allocation and has frequently shared that with the commission. But he also has looked for opportunities to fund additional with “other people’s money”. [TM] He is extremely talented guiding the Port of Kennewick through all political situations with a superior attention to necessary and appropriate political as well as institutional sensitivity.[SN]</p> <p>A. & B. Expectations met if looking only at Port projects (with the exception of the Ivey transaction). I would have to say that expectations were not met if looking only at the communication and collaboration by the CEO with the Commission. [DB]</p>
<p>VII. <u>Stakeholder Relations</u></p> <p>A. Leads the Port in building effective relationships with tenants, customers and community.</p> <p>B. Effective relations are maintained with other governmental officials, community leaders, citizens, news media, etc., to resolve problems and complaints; to coordinate functions, to gain and provide information and to assemble outside assistance for Port activities.</p>	<p>xxx</p> <p>xxx</p>		<p>A. Tim negotiated a new lease with Cedars with the goal to allow a transfer of ownership for a key tenant on Clover Island. The Port partnered with Clover Island Inn, the Benton Franklin Fair, the Historic Downtown Partnership, and other entities in sponsoring events that help promote the port’s partnerships. [TM]</p> <p>B. Tim’s relations with government officials has been good and he has responded appropriately to citizens and the media.[TM]</p>

			<p>A. & B. Please see response above which also applies here. In the past several years, under Tim's astute leadership, the POK has become the model for other governmental organizations to follow regarding Stakeholder Relations.[SN]</p> <p>A. & B. Mr. Arntzen's abilities in this area demonstrated by letters of commendation received from jurisdictional partners, contractors, and associate entities. [DB]</p>
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	Met	Not met	
<p>VIII. <u>Priority Setting</u></p> <p>Spends time and the time of others on what is important; can quickly sense what will help or hinder accomplishing a goal; eliminates obstacles; creates focus.</p>	xx	x [DB]	<p>Tim has worked on priorities of the port and has brought back items that were not priorities to the commission to help identify where these fit in the grand scheme of things. One area where the commission consistently told Tim to follow the comp scheme on West Richland and he kept bringing back West Richland issues. Fortunately, that is in the past with the successful sale of the racetrack property. [TM]</p> <p>Mr. Arntzen has spent too much time and resources on trying to shape the outcome of this performance evaluation. [DB]</p> <p>Tim has always been committed to inform Commissioners on all potential beneficial restructuring of Commission established priorities as new possibilities present themselves. He very concisely and thoroughly explains to the Commissioners both the positive and negative effects of any change to the existing priority list. Tim is very focused on meeting the goals and objects given him as well as bringing forward appropriate, constituent benefitting, unanticipated opportunities to the Commission for their directions. If Tim is asked to incorporate new opportunities into his work he skillfully will recommend to the Commission which previously set Goals and Objectives may have to be tabled for a period of time in order to allocate necessary resources to the new opportunity. He is very adept at working with his staff and the Commission to</p>

			accomplish whatever tasks are assigned him without prejudice.[SN]
<p>IX. <u>Knowledge</u></p> <p>A. Knows how successful public ports work; knowledgeable in current and possible future practices, trends and information affecting port management, the port industry and our Port; knows the competition; is aware of how strategies and tactics work in the marketplace.</p> <p>B. Maintains a favorable presence within the region, state and industry that results in an increased knowledge of initiatives, trends, practices and legislation that may affect the Port.</p>	<p>xxx</p> <p>xxx</p>		<p>A. Tim maintains good working relationships with many other port directors in the state and is aware of what they are doing and brings back ideas as appropriate. Tim investigated the powers of Industrial Development District which is unique to ports. He sends his staff to trainings so they can perform well in a port environment. [TM] The POK is extremely fortunate to have an ED with a doctorate degree in law. Tim is very well versed and knowledgeable in all managerial and operational aspects of ports. And what he doesn't know he will devote whatever time is necessary to self-education himself and then rely on other appropriate skilled resources, including his staff, to expand his knowledge before taking action to assure only the best possible results are achieved for the POK, those we partner with and those we serve. [SN]</p> <p>B. Tim follows what happens in the WPPA legislative committee and sometimes participates with them. [TM] The POK is well respected throughout the State and</p>

			<p>certainly within the Port community due to Tim’s knowledge and ability to craft mutually beneficial relationships. [SN] A. & B. Mr. Arntzen understands Ports and how they function. [DB]</p>
<p>X. <u>Decision Quality</u></p> <p>Makes good decisions based on analysis, wisdom, experience and judgment; most solutions and suggestions turn out to be correct when judged over time.</p>	<p>xx x [DB]</p>	<p>x [DB]</p>	<p>Tim appears to make good decisions bases on analysis, wisdom, experience, and judgment. Whether they turn out to be correct over time...time will tell.[TM] Mr. Arntzen’s decisions regarding Port projects and initiatives in the community have been met and, in my opinion, will turn out favorably when judged over time. However, I believe Mr. Arntzen’s decisions regarding communication and collaboration with the Commission, and how he responds to differences of opinion between himself and members of the Commission have not been sound. [DB] The constituent benefitting quality of decisions Tim makes is exceptional. He will take whatever time is necessary to research all consequence of a decision to assure it is the right one before taking action including vetting his potential decision with appropriate staff members or outside resources if necessary and prudent. I am unaware on any decisions Tim has made since he became the ED of the POK that has resulted in a negative impact on the POK constituents or our partners.[SN]</p>
<p>XI. <u>Entrepreneurial</u></p> <p>A. Demonstrates an entrepreneurial spirit by identifying ways to generate revenue,</p>	<p>xxx</p>		<p>A. Tim has looked for ways to use “other people’s money” to further the port. Tim secured an “unnecessary” appraisal of</p>

<p>investment capital and maximizes the financial potential of existing port assets.</p> <p>B. Brings recommended opportunities to the Commission's attention. Recommendations include financial projections, as well as potential public opinion concerns (risk/reward analysis).</p>	<p>xx</p>	<p>x [DB]</p>	<p>the Tri-City Raceway that resulted in an additional \$500,000 to the port coffers. He has leveraged funds from other government entities to support port projects.[TM] Expectations met in a minimally positive way. It is important to remember that return on investment at the Port is not always measured purely in financial (\$\$) terms. [DB]</p> <p>B. When Tim brings recommended opportunities to the commission, they are well thought out and he presents good analysis that enable the commission to take appropriate action.[TM] Mr. Arntzen rarely includes financial projections or any risk/reward analysis in his recommendations to the Commission. [DB]</p> <p>A. & B. Having grown up in a family owning small businesses, and himself owning a small business Tim's entrepreneurial spirit is perhaps second to none in the Port industry or perhaps in any governmental management position. I sincerely appreciate his knowledge and ability to maintain a true entrepreneurial spirit. Tim had excelled at bringing staff carefully vetted recommendations to the Commission with detailed information including allotted allocation of resources and staff evaluation of risk/rewards. Lately the Commission has publically reprimanded Tim for doing this. As a result he has become reluctant to continue doing so. As a policy making elected official I</p>
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			find Commissioners reluctant to listen to staff's knowledge and recommendations to be a real disservice to those they represent. [SN]
	Met	Not met	
XII. Leadership/Management			
A. Rallies support behind the vision and strategic plan; can inspire and motivate staff and community.	xx x [DB]	x [DB]	A. Tim has done a very good job of rallying staff and community around the port's priorities of Vista Field and Columbia Gardens. There is much excitement about these projects and Tim's abilities to move these along have been exceptional.[TM]
B. Creates an environment where employees at all levels contribute their knowledge, skills, abilities and ideas in a way that maximizes their potential. Employee potential is not limited by divisional walls or job title. Appropriately delegates to others. Is a good judge of talent; hires the best people available inside or outside the organization.	xx x [DB]	x [DB]	B. Tim has hired excellent employees who have succeeded not only on the big projects that garner much attention, but also the details of running a marina or managing many operations or keep the port in good financial standing.[TM]
C. Creates a climate in which people want to do and can do their best; can motivate team or project members; empowers others; invites input and shares ownership and visibility. Makes each person feel his/her work is important.	xx x [DB]	x [DB]	C. Tim has been good at recognizing not only the value that staff bring to the table, but also contractors, advisors, and other government entities. He has been very willing to share credit. [TM]
D. Assists the Commission in defining its shared vision. Communicates that direction to the organization. Advises the Commission on challenges and threats to the Port's ability to be successful.	xx x [DB]	x [DB]	D. Tim has done a very good job at drawing out opinions from the commissioners on strategic issues and vision for the port. He scans the horizon and helps provide context.[TM]
E. Effectively manages staff relations consistent with port policies.	xx x [DB]	x [DB]	E. Tim effectively manages staff relations consistent with port policies. [TM]
F. Manages the administration and operations of the Port consistent with the delegation of authority as adopted and/or modified by the Board of Commissioners.	xx x [DB]	x [DB]	F. Tim understands well his delegation of authority but

		<p>is very good at bringing issues to the commission, that, while within his delegation, have political or other dimensions and wants commission guidance.[TM]</p> <p>A. – F. When the visions and ideas of individual Port Commissioners are in close alignment with Mr. Arntzen’s personal visions and ideas, his performance in the area of leadership and management is excellent. However, when the visions and ideas of Port Commissioners depart from his personal views, there is a very marked change in Mr. Arntzen’s behavior and performance. When individual Commissioners question Mr. Arntzen’s decisions and judgment regarding Port business matters, he becomes defensive, argumentative, and combative. I find this behavior/performance to be divisive and detrimental to the overall democratic process (majority rule) of the Commission. [DB]</p> <p>A. – F. Tim’s managerial style has proven to be extremely effective. On many occasion I have stated that he has assembled and empowered the finest staff I have ever had the honor of working with in ether civilian, military or volunteer roles</p> <p>Tim hires only the very best employees possible. He clearly explains the POK vision, goals, and objectives to them and then empowers them to do what they do best. Tim gives his staff the ability to do what they do best as professionals in their field of expertise for which he hired them. Once he clearly explains</p>
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		<p>Commission established goals and objectives to staff he allows for their input on how to proceed until he is assured that all staff members have taken ownership of the goal or objective and then he does not micro manage, but remains available for help while continually offering motivation but reserving the right to give final approval.</p> <p>I feel the Commission would be far better served if they would allow Tim to give his well thought out advice without reprimanding him for doing so. I have always found his ability to clearly define a shared vision and taking as much time as allowed to the Commission on challenges and threats that may affect the vision to be extremely helpful and something Tim excelled at doing.</p> <p>Even though the Commission has given Tim certain authority, if he has any question or is uncertain of potential consequence or any action he may take, he will bring that subject to the Commission for discussion and ask for their direction even though the authority to take such action had already been delegated to him. He is very cautious to only make the very best decisions for the POK, its staff and constituents. He has been very effective in his decision making decisions and the handling of managerial issues.</p>
<p><u>XIII. Initiative</u></p> <p>Self-starting ability. Promptly takes hold and follows through with minimum direction.</p>	<p>xxx</p>	<p>Tim appears to demonstrate appropriate initiative.[TM] Mr. Arntzen has good initiative. [DB] Tim will never hesitate to accept direction from the Commission if given clear and non-conflicting</p>

			direction. He is a self-starter always looking for more to accomplish.[SN]
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	Met	Not met	
<p>XIV. <u>Courage</u></p> <p>Willingness to state opinions and reasons without concern about the popularity of the views. Forthrightness in dealing with customers, suppliers, and others in the organization.</p>	xx	x [DB]	<p>Tim demonstrated his willingness to stand in support of Benton County staff regarding the county's oversight/ownership of Rural County Capital funds when other jurisdictions used other tactics. [TM]</p> <p>In my opinion, Mr. Arntzen has not been forthright with the Commission regarding the Ivey land transaction. [DB]</p> <p>Tim has always been willing to state his opinions and reasons that comply with POK goals, visions and directives to anyone, anywhere, without regard for his personal popularity. He is a fair and honest "bulldog" for the POK. I sincerely appreciate his courage to stand up for the best interests of the POK and our taxpaying public even when doing so often subjects him to personal criticism especially from two Commissioners. [SN]</p>
<p>XV. <u>Persuasiveness</u></p> <p>Ability to sell a sound course of action. Persuasive ability in oral and written presentations.</p>	xxx		<p>Tim doesn't share much in the writing with the port commission, but he does a good job in oral persuasiveness. As the commission was dealing with much decision making on its projects, Tim was generally able to bring the commission to consensus and sometimes convince the commission not to act on something that it didn't need to. [TM]</p> <p>Mr. Arntzen can be very persuasive. [DB]</p> <p>Tim has always been willing to state his opinions and reasons that comply with POK goals, visions and directives to anyone,</p>

			anywhere, without regard for his personal popularity. He is a fair and honest “bulldog” for the POK. I sincerely appreciate his courage to stand up for the best interests of the POK and our taxpaying public even when doing so often subjects him to personal criticism especially from two Commissioners.[SN]
<p>XVI. <u>Adaptability</u></p> <p>Ability to adjust to changing conditions or unusual assignments. Flexibility in undertaking a variety of assignments, acceptance of decisions which go counter to own opinion.</p>	xx	x [DB]	<p>The biggest change Tim adapted to related to the unsolicited offer for the Tri-City Raceway. Tim was able to get that turned around with enough time to get the sale approved by the commission in a time frame that met the buyer’s needs, even though the off came in almost at the “eleventh hour”. [TM]</p> <p>Mr. Arntzen is not always receptive to or accepting of Commission discussions which go counter to his own opinion. He can become very defensive and combative. [DB]</p> <p>Anyone who has been involved in POK meetings for the past year has to admire and give Tim “Gold Stars” for his ability to move forward with Commission directives which go counter to his own opinions. He is firmly dedicated to carrying out Commission directives rather than his own.[SN]</p>
<p>XVII. <u>Stamina</u></p> <p>Physical vigor. Ability to stand up under heavy requirements including foreign or domestic travel.</p>	xxx		<p>There were no known issues with stamina. Tim did no foreign travel and limited domestic travel on behalf of the port.[TM]</p> <p>Very good abilities here. [DB]</p> <p>The hostile work environment created by Commissioners Moak and Barnes has damaged Tim’s health, yet he does not miss a step</p>

			in the performance of his duties. This would be extremely admirable for anyone to do so but Tim's performance and successes exceed any possible expectations.[SN]
<p>XVIII. <u>Ambition</u></p> <p>Desire to get ahead and willingness to make sacrifices necessary for progress.</p>	xxx		<p>Tim appears to demonstrate appropriate ambition.[TM]</p> <p>Mr. Arntzen has demonstrated a willingness to make sacrifices in some situations. [DB]</p> <p>See above and realize the work Tim is doing is having a long lasting effect on his health, personal life and personal financial resources. In all the years I have known Tim as the Executive Director of the POK I have never once seen him put personal needs in front of accomplishing POK goals and objectives. From what I have observed of other Port EDs across the State Tim easily sets an example of unselfish ambition to go beyond what is expected to see that the POK not just meets, but exceeds community expectations.[SN]</p>
<p>XIX. <u>Loyalty</u></p> <p>Understanding and acceptance of goals and policies of the organization. Willingness to support organization and management.</p>	xx	x [DB]	<p>Tim understands and accepts the goals and policies of the organization.[TM]</p> <p>Mr. Arntzen understands goals and policies, but is sometimes unreceptive to discussions of policies that are not in line with his personal views. In my opinion, it's imperative that individual Commissioners be able to openly and freely discuss their views without feeling threatened or intimidated by the CEO. [DB]</p> <p>Tim and his staff have been working under adverse conditions ever since Commissioner Moak was elected. This has elevated to the substantiation of a very hostile</p>

			work environment. Yet Tim, who has been offered other employment, has stayed loyal to the Port of Kennewick.[SN]
<p>XX. <u>Communications</u></p> <p>Effectiveness of exchanging significant information throughout all levels of the organization; with clients, vendors, and the public.</p>	xx	x [DB]	<p>Tim demonstrates good internal communication with staff and external communication with port partners. [TM]</p> <p>Mr. Arntzen has not demonstrated a consistent level of effective communication. For example, he resorted to name calling just after the conclusion of the March 12, 2019 Commission meeting. [DB]</p> <p>Tim will always error on the side of over communication and explanation to assure those he engages clearly understand what he is trying to accomplish. And he is always willing to offer further explanation or answers to questions when asked. It is unfortunate as well as a disservice to the public that Commissioners Moak and Barnes choose not to meet and listen to him. Tim offers to disclose and explain extensively in order to be clearly understood and never have anyone retort – “well you never told me that”.</p> <p>When given the opportunity his communication skills excel for the mutual benefit of the POK, those we serve, and those we partner with.[SN]</p>

	Met	Not met	
<p>XXI. <u>Listening</u></p> <p>Interest in and ability to receive and process information accurately. Able to overcome personal biases or defensiveness in so doing.</p>	xx	x [DB]	<p>Tim carefully studies, analyzes, and interprets information he receives-- and asks insightful questions to foster understanding. When Tim seeks information from Commission, he is not afraid to</p>

		<p>seek clarification or ask probing questions until he has clear direction. [TM]</p> <p>On three occasions (telecon 2/18/19, telecon 2/21/19, and meeting in Mr. Arntzen's office on 2/25/19), he was combative, defensive, and confrontational when our positions differed and it was very clear to me that he was not able to overcome his personal biases. Rather than discuss the topic (port procedures and handling of a routine land sale), Mr. Arntzen almost immediately made it personal. I wanted to discuss the handling of the matter (or policy) and Mr. Arntzen wanted to talk about being personally offended, his past personal battles with other (since departed) Commissioners and staff members, and to challenge me to a battle for my position and for control of the Port. [DB]</p> <p>There never has been a doubt that Tim's ability to carefully listen, interpret, and process information he receives is anything less than remarkable. Yet he will go beyond just listening and ask appropriate clarifying questions until he has a clear understanding of what is being communicated to him.[SN]</p>
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Additional Commissioner Comments: Tim rightfully earns stellar marks for many of the activities of the port. The list of accomplishments and achievements listed in the self-appraisal are real and due in no small part to Tim's leadership. Everyone at the port should feel very proud of the achievements that have happened in the past year. Tim should complete the work on updating the Port Commission Rules of Policy and Procedure which was stopped. Events of the year demonstrated the need for this update. [TM]

On or about March 21, 2019, I called Lucinda Luke and pointed out that we (Lucinda and I) are members of the CEO evaluation committee and that I wanted to discuss Tim's recent behavior/performance regarding the Ivey land transaction. I explained to Ms. Luke that I did not understand why Mr. Arntzen becomes so emotionally charged any time the Ivey file is brought up. I said that I'm concerned about the working relationship with Mr. Arntzen. I further explained that it is my understanding that the CEO evaluation committee is to let Mr. Arntzen know that his performance is unsatisfactory at the time it takes place (rather than holding it until the end of the year evaluation process). I asked Ms. Luke to schedule an appointment with Mr. Arntzen to address performance, working relations, and to clear the air. Ms. Luke set the appointment with Bridgette Scott and I received the calendar invite and accepted. I received notice the next day (from Ms. Scott) that Mr. Arntzen had cancelled the meeting. Later, Ms. Luke told me that she did not feel that she could force a meeting with Mr. Arntzen. She said she talked to Mr. Arntzen and he said that he did not see any problems with our working relationship. [DB]

Tim has done a remarkable job of accomplishing the goals given him by the Commission in spite of ever changing, sometimes unclear, Commission direction while working in a hostile work environment affecting his health. Even though he has done the very best he possibly can to educate and inform the Commission on various issues Commissioners Moak and Barnes have stated they do not trust his judgment, managerial or leadership skills. This perception has caused him to divert attention from established Commission approved goals and objectives to spending time on individual Commissioner requests (some of which are not in compliance with the "Port Commission Rules of Policy and Procedure" document, adopted February 22, 2011) and maintaining staff morale. Yet in spite of this he has managed to accomplish the goals given him by the Commission. This is nothing short of remarkable, only to be successfully accomplished by a very dedicated, loyal, hardworking, and flexible individual willing to do everything and anything expected of him by his Commissioners. The POK is very fortunate to have this rare combination of qualities in our Executive Director, Tim Arntzen. [SN]

I have been very discouraged and upset by what I have observed happening at the Port of Kennewick over the past several years since Commissioner Moak was elected. What I have heard, seen, and watched, especially in the past few months, have made me very concerned about the Port of Kennewick's ability to develop the projects we have pledged to our constituents and the entire Mid-Columbia region. [SN]

I have served on this Commission for over 10 years and in that time I have witnessed the Port of Kennewick (POK) under the skilled leadership of CEO Tim Arntzen and his assembly of a highly qualified, professional, motivated and loyal staff accomplishing great things for this region. The POK has developed a sterling reputation for the highest degree of integrity, open and transparent conduct of business, and an ability to develop and nurture mutually beneficial strategic partnerships through trusting relationships. This has allowed the establishment of many very successful quality of life and economically beneficial projects that are equal to or greater than those anyone else has done anywhere. AND this has been accomplished with very limited resources and without burdening our constituents with an increase in taxes. However, I now see two Commissioners jeopardizing future successes by violating our own adopted rules of policy and procedure. [SN]

I now see a CEO with noticeable health issues, worn down, tired, and rendered ineffective by being ridiculed in public meetings particularly by Commissioner Moak but also by Commissioner Barnes and being instructed to work on frivolous if not libelous matters rather than continuing to focus his efforts on the already planned good work of the POK as set forth in Commission approved documents. I see a once bright, energetic staff now fearful, discouraged, some ready to seek employment elsewhere in order to escape the continued abuse and criticism of Commissioners Moak and Barnes. I see the actions of Commissioner Moak and Barnes tearing apart a once effective, award winning, loyal team and frankly this breaks my heart. Yet Tim Arntzen continues to do everything within his power and available resources to maintain the high standards the Port of Kennewick is known for. [SN]

 12-10-19

2020 ANNUAL PERFORMANCE REVIEW
Individual Commissioner Evaluation of
Chief Executive Officer Performance

IMPORTANT DUTIES/EXPECTATIONS	PERFORMANCE APPRAISAL		COMMISSIONER COMMENTS
<ul style="list-style-type: none"> ➤ Attach extra papers as necessary ➤ Factors should be reviewed in terms of quality, quantity and timeliness 	Met	Not met	
<p>I. <u>Vision and Purpose</u></p> <p>Collaborates with the Commission to advance the Port’s vision and purpose. Leads senior staff to develop a concise vision. Advocates the vision by strategic resource allocation toward attainment.</p>			
<p>II. <u>Strategic Agility</u></p> <p>Is proactive; anticipates future trends, benefits and consequences; has broad knowledge and perspective; can objectively state possibilities and probabilities.</p>			
<p>III. <u>Operating Plans</u></p> <p>A. Develops, maintains and implements strategic plans and operational goals that effectively brings the Port’s vision to fruition.</p> <p>B. Critical performance elements are monitored to help assure effective and efficient operations and to identify opportunities for policies and procedures improvement.</p>			
<p>IV. <u>Integrity</u></p> <p>Sets the tone for the Port by exemplifying consistent values and high ethical awareness, honesty and fairness.</p>			

	Met	Not met	
<p>V. <u>Financial Stewardship</u></p> <p>A. Maximizes the Port’s ability to serve and expand the public purpose while maintaining taxation stability.</p> <p>B. Administers the Port’s financial affairs consistent with state law and adopted policies, budget and financial guidelines.</p>			
<p>VI. <u>Political and Institutional Sensitivity</u></p> <p>A. Maneuvers through complex political and institutional situations effectively; anticipates potentially negative reactions, recommends and plans a course of action accordingly; views politics as a necessary part of organizational and public sector life and works to be effective within that reality. Unless otherwise not practical, obtains commission concurrence prior to publicly stating position.</p> <p>B. Develops solutions to complex issues that challenge the Port’s ability to recognize its vision and purpose. Demonstrates sensitivity to resource availability when developing solutions.</p>			
<p>VII. <u>Stakeholder Relations</u></p> <p>A. Leads the Port in building effective relationships with tenants, customers and community.</p> <p>B. Effective relations are maintained with other governmental officials, community leaders, citizens, news media, etc., to resolve problems and complaints; to coordinate functions, to gain and provide information and to assemble outside assistance for Port activities.</p>			

	Met	Not met	
<p>VIII. <u>Priority Setting</u></p> <p>Spends time and the time of others on what is important; can quickly sense what will help or hinder accomplishing a goal; eliminates obstacles; creates focus.</p>			
<p>IX. <u>Knowledge</u></p> <p>A. Knows how successful public ports work; knowledgeable in current and possible future practices, trends and information affecting port management, the port industry and our Port; knows the competition; is aware of how strategies and tactics work in the marketplace.</p> <p>B. Maintains a favorable presence within the region, state and industry that results in an increased knowledge of initiatives, trends, practices and legislation that may affect the Port.</p>			
<p>X. <u>Decision Quality</u></p> <p>Makes good decisions based on analysis, wisdom, experience and judgment; most solutions and suggestions turn out to be correct when judged over time.</p>			
<p>XI. <u>Entrepreneurial</u></p> <p>A. Demonstrates an entrepreneurial spirit by identifying ways to generate revenue, investment capital and maximizes the financial potential of existing port assets.</p> <p>B. Brings recommended opportunities to the Commission's attention. Recommendations include financial projections, as well as potential public opinion concerns (risk/reward analysis).</p>			

	Met	Not met	
<p>XII. <u>Leadership/Management</u></p> <p>A. Rallies support behind the vision and strategic plan; can inspire and motivate staff and community.</p> <p>B. Creates an environment where employees at all levels contribute their knowledge, skills, abilities and ideas in a way that maximizes their potential. Employee potential is not limited by divisional walls or job title. Appropriately delegates to others. Is a good judge of talent; hires the best people available inside or outside the organization.</p> <p>C. Creates a climate in which people want to do and can do their best; can motivate team or project members; empowers others; invites input and shares ownership and visibility. Makes each person feel his/her work is important.</p> <p>D. Assists the Commission in defining its shared vision. Communicates that direction to the organization. Advises the Commission on challenges and threats to the Port's ability to be successful.</p> <p>E. Effectively manages staff relations consistent with port policies.</p> <p>F. Manages the administration and operations of the Port consistent with the delegation of authority as adopted and/or modified by the Board of Commissioners.</p>			
<p>XIII. <u>Initiative</u></p> <p>Self-starting ability. Promptly takes hold and follows through with minimum direction.</p>			

	Met	Not met	
<p>XIV. <u>Courage</u></p> <p>Willingness to state opinions and reasons without concern about the popularity of the views. Fortrightness in dealing with customers, suppliers, and others in the organization.</p>			
<p>XV. <u>Persuasiveness</u></p> <p>Ability to sell a sound course of action. Persuasive ability in oral and written presentations.</p>			
<p>XVI. <u>Adaptability</u></p> <p>Ability to adjust to changing conditions or unusual assignments. Flexibility in undertaking a variety of assignments, acceptance of decisions which go counter to own opinion.</p>			
<p>XVII. <u>Stamina</u></p> <p>Physical vigor. Ability to stand up under heavy requirements including foreign or domestic travel.</p>			
<p>XVIII. <u>Ambition</u></p> <p>Desire to get ahead and willingness to make sacrifices necessary for progress.</p>			
<p>XIX. <u>Loyalty</u></p> <p>Understanding and acceptance of goals and policies of the organization. Willingness to support organization and management.</p>			
<p>XX. <u>Communications</u></p> <p>Effectiveness of exchanging significant information throughout all levels of the organization; with clients, vendors, and the</p>			

public.			
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	Met	Not met	
XXI. <u>Listening</u> Interest in and ability to receive and process information accurately. Able to overcome personal biases or defensiveness in so doing.			

Additional Commissioner Comments:

AGENDA REPORT

TO: Port Commission

FROM: Lucinda Luke, Port Legal Counsel

MEETING DATE: October 13, 2020

AGENDA ITEM: Resolution 2020-21; 2020 CEO Performance Evaluation

I. REFERENCE(S): Exhibit "A" - compiled CEO Performance Evaluation
Exhibit "B" - 2020 CEO Performance Evaluation Packet
submitted to Port Commissioners

II. FISCAL IMPACT: Contractual adjustment to CEO's compensation package per CEO's Employment Agreement.

III. DISCUSSION:

The Port Commission conducts an annual evaluation of the Port's Chief Executive Officer's performance pursuant to the CEO's Employment Agreement. On September 17, 2020, the Port Commissioners were provided with the 2020 CEO Performance Evaluation Packet.

As directed by the Port Commission, Port Counsel has gathered preliminary drafts of performance evaluations from all three individual Commissioners. Exhibit A is a compiled version of the CEO's performance evaluation including all three Commissioners' comments and appraisals.

The CEO has made a written request that all aspects of his 2020 performance review be conducted in open session.

IV. COUNSEL RECOMMENDATION:

I recommend that the Commissioner take action to complete the CEO 2020 evaluation process in accordance with the CEO Employment Agreement and do so in accordance with the current November 15, 2020 deadline.

V. ACTION REQUESTED OF COMMISSION:

Motion: I move approval of Resolution 2020-21 adopting the CEO's 2020 Annual Performance Review [as set forth in Exhibit A or _____ alternative].

Furthermore, in accordance with the CEO's Employment Agreement, I deem the CEO's performance as _____. [SATISFACTORY, ABOVE SATISFACTORY OR EXCEPTIONAL]

2020 ANNUAL PERFORMANCE REVIEW
Individual Commissioner Evaluation of
Chief Executive Officer Performance

IMPORTANT DUTIES/EXPECTATIONS	PERFORMANCE APPRAISAL		COMMISSIONER COMMENTS
<ul style="list-style-type: none"> ➤ Attach extra papers as necessary ➤ Factors should be reviewed in terms of quality, quantity and timeliness 	Met	Not met	
<p>I. <u>Vision and Purpose</u></p> <p>Collaborates with the Commission to advance the Port’s vision and purpose. Leads senior staff to develop a concise vision. Advocates the vision by strategic resource allocation toward attainment.</p>	XXX		<p>Tim’s work in helping guide the policy making by the Commission was very good. He provided great background to allow the Commission to have some very meaty policy discussions. He then was able to take the work of the Commission and move forward. In a COVID environment, he was able to keep major projects moving with sufficient resources. (TM)</p> <p>Tim is a visionary who has a keen knack of being able to successfully adapt his visions within the resources available to him. His communication with staff and the commission regarding his visions are detailed even when dealing with very complex situations. (SN)</p> <p>Mr. Arntzen’s performance in this category improved over the last twelve months and I really appreciate it. (DB)</p>
<p>II. <u>Strategic Agility</u></p> <p>Is proactive; anticipates future trends, benefits and consequences; has broad knowledge and perspective; can objectively state possibilities and probabilities.</p>	XXX		<p>I have nothing to add to the information in the self-appraisal. (TM)</p> <p>I believe Tim’s foresight and extremely protective management of all aspects of the COVID19 ramifications speaks for itself. (SN)</p> <p>The efforts and accomplishments by Mr. Arntzen in this performance category have served</p>

			the Port well this year. (DB)
<p>III. <u>Operating Plans</u></p> <p>A. Develops, maintains and implements strategic plans and operational goals that effectively brings the Port’s vision to fruition.</p> <p>B. Critical performance elements are monitored to help assure effective and efficient operations and to identify opportunities for policies and procedures improvement.</p>	<p>XXX</p> <p>XXX</p>		<p>A. Tim very much was looking at his goals and the port’s goals and worked to effectively meet them.</p> <p>B. There were regular reports made on timelines and Tim kept the Commission informed of any delays. (TM)</p> <p>I can’t find better words to write so can only support and agree with what is already shown in the “2020 summary of achievements for Port of Kennewick” document which I assume will be attached to his final 2020 Annual Performance review. (SN)</p> <p>A. Projects at Columbia Gardens and Vista Field progressed very favorably this year and reflect positively on Mr. Arntzen’s performance.</p> <p>B. The more frequent budget updates are an improvement and very much appreciated by this evaluator. (DB)</p>
<p>IV. <u>Integrity</u></p> <p>Sets the tone for the Port by exemplifying consistent values and high ethical awareness, honesty and fairness.</p>	XX	X (DB)	<p>I have nothing to add to the information in the self-appraisal. (TM)</p> <p>Tim’s integrity is unmatched and serves as an example for others to live by. (SN)</p> <p>In my opinion, Mr. Arntzen’s decision to retain independent outside legal counsel for the</p>

			anonymous citizen complainant, and then submit the legal fees to the Commission for approval at the February 11, 2020 meeting, was a violation of the Rules of Policy and Procedure and did not exemplify consistent values for fairness. (DB)
<p>V. <u>Financial Stewardship</u></p> <p>A. Maximizes the Port’s ability to serve and expand the public purpose while maintaining taxation stability.</p> <p>B. Administers the Port’s financial affairs consistent with state law and adopted policies, budget and financial guidelines.</p>	<p>XXX</p> <p>XX</p>	<p>X (DB)</p>	<p>The port continues to pass all audits cleanly, which is a credit to Tim and the staff he has hired. Despite the impact of COVID, Tim was able to keep the port on sound financial footing, even as he had to institute rent relief for some port tenants. Tim kept the Commission apprised of port finances and successfully “negotiated” with the Commission to provide more frequent financial updates. (TM)</p> <p>The years of Clean Audits and complements received from the SAO support my “met” score And, again, I can’t find better words to write so can only support and agree with what is already shown in the “2020 summary of achievements for Port of Kennewick” document which I assume will be attached to his final 2020 Annual Performance review. (SN)</p> <p>A. The conservative budgeting philosophy enabled the Port to undertake large projects while maintaining taxation stability and flexibility needed to endure the COVID pandemic. (DB)</p> <p>B. It’s my opinion that the decision to retain outside legal counsel for the</p>

			anonymous citizen complainant was not supported by the Port's adopted Rules of Policy and Procedure. (DB)
<p>VI. <u>Political and Institutional Sensitivity</u></p> <p>A. Maneuvers through complex political and institutional situations effectively; anticipates potentially negative reactions, recommends and plans a course of action accordingly; views politics as a necessary part of organizational and public sector life and works to be effective within that reality. Unless otherwise not practical, obtains commission concurrence prior to publicly stating position.</p> <p>B. Develops solutions to complex issues that challenge the Port's ability to recognize its vision and purpose. Demonstrates sensitivity to resource availability when developing solutions.</p>	<p>XXX</p> <p>XXX</p>	<p>Tim continues to maintain and sustain good working relationships with port partners, especially, with the City of Kennewick, Benton County, USACE, and the CTUIR. He works well to advance port goals through collaboration. On sensitive issues, he has kept the Commission informed and when the issues are policy-related, obtains concurrence from the Commission. (TM)</p> <p>The hangar issue was a good one where Tim showed his ability to try to take three Commissioners' disparate views on a difficult situation and work to achieve consensus going forward, understanding the resources needed for the hangars, available resources, and strategic timing. (TM)</p> <p>I have worked with Tim in many capacities since 1996. During that time I have been able to learn invaluable lessons by observing his abilities to be sensitive to both public and private sector issues of a political nature and quickly develop positive actions to successfully navigate through these for the benefit of those he works for. (SN)</p> <p>A. The Port of Kennewick exists in a very complex multi-layered political/institutional environment. The POK</p>	

			<p>works with a wide range of partners and Mr. Arntzen's performance this year has been excellent. (DB)</p> <p>B. Mr. Arntzen's work to marshal political/institutional support and resources from various partners this year is deserving of high praise. (DB)</p>
<p>VII. <u>Stakeholder Relations</u></p> <p>A. Leads the Port in building effective relationships with tenants, customers and community.</p> <p>B. Effective relations are maintained with other governmental officials, community leaders, citizens, news media, etc., to resolve problems and complaints; to coordinate functions, to gain and provide information and to assemble outside assistance for Port activities.</p>	<p>XXX</p> <p>XXX</p>		<p>Tim worked on assisting some of port tenants deal with COVID, dealt successfully through concerns with Carbitex, negotiated a change in ownership at Cedars, successfully maintained a full marina, and continued to see the port generate good will in the community. (TM)</p> <p>While coverage of the port by the local newspaper is minimal, the port is seen generally very positively by the public. Tim acts to deal with any disgruntled members of the public such that issues do not reach the news media. (TM)</p> <p>The Port's extraordinary example of how to be successful regarding stakeholder relationships is clearly attributable to Tim's ability, willingness, and courage to establish very successful relationships for the benefit of Port of Kennewick constituents. These relationships did not exist prior to Tim's assumption of leadership. (SN)</p> <p>A. The achievements this year by Mr. Arntzen on behalf of the Port in this complex area have been excellent. (DB)</p>

			<p>B. For many years, discussions have centered on how important it is for the Port to be a strong, dependable, and reliable partner. Mr. Arntzen's efforts in this regard have been excellent. (DB)</p>
<p>VIII. <u>Priority Setting</u></p> <p>Spends time and the time of others on what is important; can quickly sense what will help or hinder accomplishing a goal; eliminates obstacles; creates focus.</p>	<p>XXX</p>		<p>Tim worked to keep the port working on high priority items, understood the commission's priorities, and accomplished goals that furthered those priorities. Tim was laser-focused on Vista Field and the Historic Waterfront and regularly reminded the Commission of those priorities. (TM)</p> <p>Tim carefully listens to priorities established by the Commission. And although he may not agree with them all the time, as neither do I, he dedicates his work to successfully achieving those priorities. (SN)</p> <p>Mr. Arntzen has completed the majority of goals established for the 2019/2020 biennium and performed excellent work leading the Port during the COVID pandemic. (DB)</p>
<p>IX. <u>Knowledge</u></p> <p>A. Knows how successful public ports work; knowledgeable in current and possible future practices, trends and information affecting port management, the port industry and our Port; knows the competition; is aware of how strategies and tactics work in the marketplace.</p> <p>B. Maintains a favorable presence within the</p>	<p>XXX</p> <p>XXX</p>		<p>I have nothing to add to the information in the self-appraisal. (TM)</p> <p>Tim's education as a lawyer and his extensive experience as a Port CEO has placed him in a position as a person looked upon to provide his knowledge to the benefit of others. He is well respected within the region, industry and state. (SN)</p> <p>Mr. Arntzen has developed a broad</p>

<p>region, state and industry that results in an increased knowledge of initiatives, trends, practices and legislation that may affect the Port.</p>			<p>base of knowledge and expertise concerning the port industry and does a very good job keeping abreast of new developments, trends, and practices. (DB)</p>
<p>X. <u>Decision Quality</u></p> <p>Makes good decisions based on analysis, wisdom, experience and judgment; most solutions and suggestions turn out to be correct when judged over time.</p>	<p>XXX</p>		<p>Tim uses many consultants to help make critical decisions. Are there too many? Hard to say. If that it what it takes to make good decisions, then Tim needs to continue doing it. It is important that correct decisions are made by Tim and the Commission, and to date, most of the decisions appear to be correct. Judged over time, closure of the Vista Field airport and moving towards New Urbanism, was a correct decision. (TM)</p> <p>I have found that often Tim’s suggestions to the Commission on sensitive issues turn out to be the best course of action. (SN)</p> <p>The quality of Mr. Arntzen’s decisions at the Port this year has been very good. His performance met my expectations and I believe his decisions will be favorable when judged over time. (DB)</p>
<p>XI. <u>Entrepreneurial</u></p> <p>A. Demonstrates an entrepreneurial spirit by identifying ways to generate revenue, investment capital and maximizes the financial potential of existing port assets.</p> <p>B. Brings recommended opportunities to the Commission’s attention. Recommendations include financial projections, as well as potential public opinion concerns (risk/reward analysis).</p>	<p>XXX</p> <p>XXX</p>		<p>I have nothing to add to the information in the self-appraisal. (TM)</p> <p>His experience as a small business owner and background of being raised in a family business prove to be invaluable when dealing with allocation of available port resources. (SN)</p> <p>A. Mr. Arntzen’s entrepreneurial efforts were, by and large, favorable to Port projects. There was improvement in the area of financial</p>

			<p>projections with the evaluation of opportunities/scenarios. (DB)</p> <p>B. I would have liked to see more information for alternate hangar remodel scenarios but recognize that I'm presently in the minority in that regard. (DB)</p>
<p>XII. <u>Leadership/Management</u></p> <p>A. Rallies support behind the vision and strategic plan; can inspire and motivate staff and community.</p> <p>B. Creates an environment where employees at all levels contribute their knowledge, skills, abilities and ideas in a way that maximizes their potential. Employee potential is not limited by divisional walls or job title. Appropriately delegates to others. Is a good judge of talent; hires the best people available inside or outside the organization.</p> <p>C. Creates a climate in which people want to do and can do their best; can motivate team or project members; empowers others; invites input and shares ownership and visibility. Makes each person feel his/her work is important.</p> <p>D. Assists the Commission in defining its shared vision. Communicates that direction to the organization. Advises the Commission on challenges and threats to the Port's ability to be successful.</p> <p>E. Effectively manages staff relations consistent with port policies.</p> <p>F. Manages the administration and operations</p>	<p>A – F:</p> <p>XXX</p>		<p>The community is still excited about the activities and direction of the port, whether at Vista Field or along the Waterfront. As a result, a significant number of community members contributed to the Waterfront visioning. Despite any perceived conflict, Tim continues to keep the great port visions alive. (TM)</p> <p>Staff continue to do great things at the port, so Tim can continue to take considerable credit for the way he utilizes staff and the opportunities he gives them. In the last seven years, the port has not lost a single staff member who left the port for other opportunities. Tim allows various staff members at all levels to shine. (TM)</p> <p>Tim did a very good job in working through difficult policy issues with the Commission. Because the three Commissioners can have very independent streaks, Tim effectively works with them to identify the shared vision, even as there may be differences in how to achieve. Tim informs the Commission on external concerns and threats. (TM)</p>

<p>of the Port consistent with the delegation of authority as adopted and/or modified by the Board of Commissioners.</p>			<p>I can't find better words to write so can only support and agree with what is already shown in the "2020 summary of achievements for Port of Kennewick" document which I assume will be attached to his final 2020 Annual Performance review. (SN)</p> <p>A-F: The staff at the Port of Kennewick is very competent, capable, hard-working and loyal to their CEO. 2020 has been a very challenging and rewarding year at the port – simultaneous projects at Columbia Drive and Vista Field made significant progress while staff dealt with the unforeseen circumstances brought on by the pandemic. Mr. Arntzen's leadership and management this year has been highly commendable. (DB)</p>
<p><u>XIII. Initiative</u></p> <p>Self-starting ability. Promptly takes hold and follows through with minimum direction.</p>	<p>XXX</p>		<p>I have nothing to add to the information in the self-appraisal. (TM)</p> <p>Tim has always been a self starter. From his experience working in a family small business to his own small business Tim has had to employ the resources he had in a manner that benefits those who depend on him to provide for their needs. He does not need to be told how to accomplish what he is responsible for nor does he wait for someone else to do this for him. He has a very high degree of initiative that is self-imposed. (SN)</p> <p>The initiative traits displayed by Mr. Arntzen during the past year were appropriate for his duties at the Port. (DB)</p>

<p>XIV. <u>Courage</u></p> <p>Willingness to state opinions and reasons without concern about the popularity of the views. Forthrightness in dealing with customers, suppliers, and others in the organization.</p>	<p>XXX</p>		<p>Tim has been the Port's point person in not getting the Port entangled in certain issues, some of them brought on by partner organizations. It has been Tim who has had to finesse why the port would not take positions unrelated to the Port's goals and still maintain good relationships with those entities. Tim does not take these positions on his own. He brings them to the Commission for discussion, clarification, and consent. But he ends up being the one who must deliver the message. (TM)</p> <p>Tim will never let his own feelings interfere with what he feels he needs to say or propose that will be of benefit to the Port. (SN)</p> <p>Mr. Arntzen's performance in terms of courage showed good improvement over the prior year. (DB)</p>
<p>XV. <u>Persuasiveness</u></p> <p>Ability to sell a sound course of action. Persuasive ability in oral and written presentations.</p>	<p>XXX</p>		<p>The way the Commission mostly worked with a unity of purpose under some trying circumstance is due, to a large extent, to Tim's ability to develop sound arguments and his ability to synthesize the opinions of the three Commissioners into manageable direction. Tim presented more policy and position papers to the Commission this year and they were helpful in setting the course of discussion and action. (TM)</p> <p>Tim has a very canny ability to convince and encourage in written means or through an oral presentation. In either way his presentations are smooth, to the point and very convincing. (SN)</p> <p>Mr. Arntzen's persuasiveness</p>

			skills are appropriate for the Port. (DB)
<p>XVI. <u>Adaptability</u></p> <p>Ability to adjust to changing conditions or unusual assignments. Flexibility in undertaking a variety of assignments, acceptance of decisions which go counter to own opinion.</p>	XXX		<p>Adaption to COVID issues was a big one for Tim and staff, and it appears that the staff has successfully adapted. Tim’s leadership in working out the various issues has made the port continue to do good things identified in the work plan. Tim worked to adapt well to policy direction of recorded meetings placed on the port website and enhanced financial reporting to the Commission. (TM)</p> <p>Tim has had to make very serious philosophical and managerial adjustments to conform to the direction and composure of the current commission. Although not aligned with his believes he has made those adjustments to comply with Commission directives. (SN)</p> <p>The adaptability traits shown by Mr. Arntzen in 2020 were a marked improvement over those displayed in the prior year. (DB)</p>
<p>XVII. <u>Stamina</u></p> <p>Physical vigor. Ability to stand up under heavy requirements including foreign or domestic travel.</p>	XXX		<p>Tim never missed a Commission meeting nor indicated to the Commission any stamina issues. Travel was mostly curtailed the entire year for Tim, his staff, and the Commission. (TM)</p> <p>Tim is still at the port in the role he has had for a time longer than most CEO’s. I see where having to work under the direction of the current Commission composure has had a negative affect on his health. (SN)</p> <p>Mr. Arntzen appears to have very good stamina though travel requirements were significantly curtailed in 2020. (DB)</p>

<p>XVIII. <u>Ambition</u></p> <p>Desire to get ahead and willingness to make sacrifices necessary for progress.</p>	<p>XXX</p>		<p>I have nothing to add to the information in the self-appraisal. (TM) Although not in lock step with the Commission personally he has demonstrated the ambition to work at and meet the goals set for him by the Commission. (SN) Mr. Arntzen has exhibited suitable levels of ambition on behalf of the Port. (DB)</p>
<p>XIX. <u>Loyalty</u></p> <p>Understanding and acceptance of goals and policies of the organization. Willingness to support organization and management.</p>	<p>XX</p>	<p>X (DB)</p>	<p>Tim understands that it is the Commission that sets policy and brings policy issues to the Commission for discussion and action. Tim is very loyal to the staff who work for him. (TM) I do not know of anyone who is more loyal to an organization while working in a stressful work environment. (SN) Mr. Arntzen failed to understand and accept the Port's Rules of Policy and Procedure when he made the decision to retain outside legal counsel to represent the anonymous citizen complainant (Commissioner Novakovich) and then submit legal fees for approval to the Commission at the February 11, 2020 meeting. In my opinion, Mr. Arntzen's actions were not supported or justified by the Rules of Policy and Procedure. (DB)</p>
<p>XX. <u>Communications</u></p> <p>Effectiveness of exchanging significant information throughout all levels of the organization; with clients, vendors, and the public.</p>	<p>XXX</p>		<p>Given that the Commission would probably have heard if Tim were not communicating appropriate information, it is reasonable to assume he has been effective in this way. I felt that Tim effectively shared information with the Commission, even information that was within his delegation authority. (TM)</p>

			<p>Tim does an excellent job of communication at all levels and offers to communicate with anyone wanting to and/or willing to speak with him. (SN)</p> <p>Mr. Arntzen exhibited good communication skills. This is a significant improvement over what I witnessed and experienced in 2019. (DB)</p>
<p><u>XXI. Listening</u></p> <p>Interest in and ability to receive and process information accurately. Able to overcome personal biases or defensiveness in so doing.</p>	XXX		<p>Tim does a good at listening to Commissioners and checks back regularly to make sure he understood what each Commissioner expressed. He looks for consensus. Tim pushed back at the Commission on occasion, generally appropriately as the person who is responsible for the fiscal health of the organization. Tim was less defensive in doing so than in the previous year and in pushing back, promoted acceptable compromises. (TM)</p> <p>Again, I couldn't write any words better than those shown in the "2020 Summary of achievements for Port of Kennewick". (SN)</p> <p>Mr. Arntzen's 2020 performance in this area is a noteworthy and welcome improvement over 2019. (DB)</p>

Additional Commissioner Comments: A year ago, I had specific concerns about several aspects of Tim's performance during the year, while overall giving him good marks. While I do not believe the underlying problems have been addressed during this year, I make this year's evaluation based on Tim's performance this year. I am pleased with that performance, especially given the circumstances. Tim was especially good at teeing up policy discussions by

the Commission, listening to those discussions, and moving the port forward based on port policy. Tim's self-appraisal, while a bit hyperbolic, nonetheless conveys the breadth of Tim's actions and successes during the year. The Port of Kennewick continues to be successful under Tim's leadership. (TM)

Tim Arntzen is a one-of-a-kind individual who has proven to be an irreplaceable asset to the Port of Kennewick. I have personally witnessed Tim standing strong in the face of adversity both from external as well as internal forces. A few external examples are the City of Kennewick under a former City Manager, then the City of West Richland under previous leadership, and now in recent years internally with the current Commission he serves where two of the three Commissioners have been accused of creating a hostile work environment which has had an effect on him emotionally and physically. I honestly believe someone who did not possess Tim's loyalty to the Port of Kennewick would have left his position to seek a more favorable working environment. One where he and his talents were understood and appreciated. A place where those he worked for understood they employ people specifically for their expertise, knowledge and talents because they do not possess the same expertise, knowledge and talents and realize it is to their benefit to believe in, respect, and listen to those they hire to help them succeed. (SN)

Mr. Arntzen's overall performance in 2020 is worthy of high praise. Achievements at Vista Field and Columbia Gardens were highly successful and were accomplished with a keen eye toward fiscally-sound financial management while simultaneously responding to the unforeseen

challenges brought on by the global pandemic. Aside from the one exception that I've noted above, Mr. Arntzen's performance this year has been very solid and highly commendable. (DB)

PORT OF KENNEWICK

Resolution No. 2020-21

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE PORT OF KENNEWICK APPROVING THE PORT CHIEF EXECUTIVE
OFFICER'S 2020 PERFORMANCE EVALUATION**

WHEREAS, the Port Commission conducts an annual evaluation of the Port's Chief Executive Officer's performance pursuant to the CEO's Employment Agreement.

WHEREAS, on September 17, 2020, the Port Commissioners were provided with the 2020 CEO Performance Evaluation Packet.

WHEREAS, as directed by the Port Commission, Port Counsel gathered preliminary drafts of performance evaluations from all three individual Commissioners and attached is a compiled version of the CEO's performance evaluation including all three Commissioners' comments and appraisals.

WHEREAS, the CEO has made a written request that all aspects of his 2020 performance review be conducted in open session.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Port of Kennewick Board of Commissioners hereby approves the CEO's performance evaluation attached as Exhibit "A".

NOW, THEREFORE, BE IT HEREBY FURTHER RESOLVED that the Port of Kennewick Board of Commissioners, in accordance with the CEO's contract, hereby deems the CEO's performance _____ for 2020.

ADOPTED by the Board of Commissioners of Port of Kennewick on the 13th day of October, 2020.

By: _____
DON BARNES
President

By: _____
SKIP NOVAKOVICH
Vice President

By: _____
THOMAS MOAK
Secretary