

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 1-877-309-2073 Access Code: 408-844-709

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 27, 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 19, 2020
 - B. Approval of Warrant Register Dated October 27, 2020
 - C. Approval of Regular Commission Meeting Minutes October 13, 2020
- VII. EMERGENCY DELEGATION UPDATE** (TIM)
- VIII. PRESENTATION**
 - A. 2021-2022 Budget Workshop (NICK)
- IX. REPORTS, COMMENTS AND DISCUSSION ITEMS**
 - A. Vista Field
 - 1. Public Owners Association - Acceptance of Plan; Resolution 2020-22, Ben Floyd, White Bluffs Consulting and Doris Goldstein (LARRY)
 - B. Clover Island/Columbia Drive
 - 1. Kennewick Waterfront Master Plan Update (LARRY)
 - C. Oak Street – Three Rivers Acquisitions LLC; Resolution 2020-23 (AMBER)
 - D. Director Reports (TANA/NICK/LARRY/AMBER/LUCINDA/TIM)
 - E. Commissioner Meetings (formal and informal meetings with groups or individuals)
 - F. Non-Scheduled Items
- X. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- XI. ADJOURNMENT**

PLEASE SILENCE ALL NOISE MAKING DEVICES





PORT OF KENNEWICK REGULAR COMMISSION MEETING

DRAFT

OCTOBER 13, 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 Novakovich led the Pledge of Allegiance.

APPROVAL OF THE AGENDA

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

Ms. Scott stated Resolution 2020-21 for Item 12F, CEO's Performance Evaluation, was inadvertently not listed on the Agenda.

MOTION: Commissioner Novakovich moved to add Item 12F, Resolution 2020-21 to the Agenda; Commissioner Moak seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

PUBLIC COMMENT

No comments were made.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 13, 2020 MINUTES

DRAFT

CONSENT AGENDA

- A. Approval of Direct Deposit and E-Payments Dated October 2, 2020**
Direct Deposit and E-Payments totaling \$99,804.91
- B. Approval of Direct Deposit and E-Payments Dated October 13, 2020**
Expense Fund Voucher Number 102412 through 102452 for a grand total of \$137,878.59
- C. Approval of Regular Commission Meeting Minutes September 22, 2020**

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

EMERGENCY DELEGATION UPDATE

Mr. Arntzen stated there is nothing to report for Emergency Delegation.

PRESENTATIONS

A. Public Owners Association

Mr. Peterson introduced Ben Floyd of White Bluffs Consulting and Doris Goldstein, who will be outlining step three of the Vista Field Property Owners Association.

Mr. Floyd and Ms. Goldstein presented additional documents for the Vista Field Property Owners Association. (Exhibit A)

The Commission and Mr. Floyd and Ms. Goldstein discussed the various details regarding the Vista Field Property Owners Association documents.

NEW BUSINESS

A. Kiwanis' Community Playground

Mr. Arntzen outlined a potential idea for a Kennewick Kiwanis' Community Playground at Columbia Gardens. Mr. Arntzen believes this is a project that would appeal to the residents of East Kennewick and visitors of the Columbia Gardens Wine Village. Mr. Arntzen stated as outlined in The Willows Pattern Language written by Professor Gary Black, many successful developments appeal to people of all ages. With approval from the Commission, Mr. Arntzen would like to continue discussing the project with the Kiwanis' Club and the City of Kennewick. Additionally, the 2021-2022 Work Plan addresses amenities at Columbia Gardens and this could be part of those amenities.

The Commission is supportive of this project and asked Mr. Arntzen to move forward with discussions.

2021-2022 WORK PLAN

A. 2021-2022 Work Plan

Mr. Peterson outlined the proposed 2021-2022 Work Plan and identified a few areas that have been adjusted, which include:

- Vista Field Development Building A and B Remodel is \$600,000;
- Opportunity Fund increased by \$200,000.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 13, 2020 MINUTES

DRAFT

- Port stewardship role at Plymouth and Hedges Lagoon properties.

Commission discussion ensued regarding the Hedges Lagoon and Plymouth.

Commissioner Novakovich is concerned about maintaining properties and stated staff has done an amazing job on this and cutting the budget back on the Vista Field Development Buildings (VFDF) Maintenance. Commissioner Novakovich thinks deferring maintenance out into the future may cost us more money and he stated for the record, it would probably behoove the Port to make improvements that are first class that are going to last into the future, rather than doing some improvements now and then spending more money on deferred maintenance in the future. We don't know what costs will arise when we begin a construction or remodeling job on existing projects and we may end up spending more money later by cutting back right now. Commissioner Novakovich does not propose to do anything different; he is supportive of the way the work plan has come out and thinks it is a great job.

PUBLIC COMMENTS

No comments were made.

MOTION: *Commissioner Novakovich moved to approve 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; Commissioner Barnes seconded.*

Discussion:

Commissioner Moak stated a lot of work has gone into this Work Plan and he appreciates the changes and clarifications that were made for this Meeting. It would be great to spend \$800,000 on the VFDF buildings, but he does not think we can do that. Commissioner Moak appreciates the work of Ms. Hanchette and the team to try and prioritize VFDF and the work that needs to be done. Commissioner Moak believes we can continue to do good things with the Work Plan and the budget that will support that Work Plan. It was good to read about the stewardship role that the Port has related to some of these properties; however, Commissioner Moak does not think our role is stewardship in this area, our role is Economic Development and at some point, we ought to be looking at appropriate agencies whose job is stewardship, to take control of some of these properties that we really can't do anything with. Commissioner Moak recognizes that it is not costing the Port a lot to maintain the Hedges Lagoon or Plymouth, but we are maintaining them for wrong reasons. It is not a high priority on Commissioner Moak's part to see that changed, but there are opportunities and of course the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) has new political and staff leadership since we last talked to them about this item. It may be something to revisit at some point, but not something that ought to be first on anybody's Agenda. Commissioner Moak thinks the Work Plan is very ambitious work for this Commission and this Port over the next two years. He does not think anybody is going to be sitting around wondering if there is enough work to do. Commissioner Moak is very supportive of the 2021-2022 Work Plan.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 13, 2020 MINUTES

DRAFT

Commissioner Novakovich is pleased with what staff put together and with what we are going to approve. As Commissioner Moak said, it is ambitious and we have a lot of work to do and Commissioner Novakovich thinks it is a great plan. The Port is doing a lot of good for our constituents with the resources we have, so he is very appreciative of this Work Plan.

Commissioner Barnes is very supportive of this Work Plan as well and he too sees it as very ambitious and one that involves a high level of partnership as Mr. Peterson pointed out. Commissioner Barnes agrees with Commissioner Moak's remarks regarding the Port's stewardship role with the Hedges property and the Plymouth property, but that is not the highest priority for the Port right now. If the right opportunity presents itself to the Port of Kennewick, where these two properties could be transitioned to an entity whose roll is more aligned with stewardship than the Port of Kennewick's, then he would welcome that. But again, it is not a high priority and there are plenty of other things to do.

With no further discussion, motion carried unanimously. All in favor 3:0.

RECESS

Commissioner Barnes called for a recess for at 3:26 p.m. until 3:32 p.m.

Commissioner Barnes reconvened the meeting at 3:32 p.m.

REPORTS, COMMENTS AND DISCUSSION ITEMS

A. Vista Field

1. Task Status Update

Mr. Peterson updated the Commission on the remaining tasks for Vista Field and suggested a sequencing to reviewing those tasks.

It is the consensus of the Commission to schedule a Special Meeting with Vista Field as the only Agenda Item.

Mr. Arntzen will work with Ms. Scott on a potential meeting date.

B. Clover Island/Columbia Drive

1. Kennewick Waterfront Master Plan Update

Mr. Peterson reported that the second public open house for the Kennewick Waterfront Master Plan is underway and continues through October 18, 2020. There are two concepts being discussed, which are a direct result of the input Makers received from the first open house and the stakeholder survey. The public has the opportunity to make comments and identify what they do and don't like about either the commercial or residential plan.

Mr. Peterson recently spoke to the Port of Vancouver, who is working with an art consultant on their Terminal #1 project along the Columbia River. The art consultant discovered the Port of Kennewick's art collection and concluded that it is some of the best public art she has been able to find at any port, worldwide.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 13, 2020 MINUTES

DRAFT

2. 1135 Update

Ms. Bader Inglima drafted a letter to the US Army Corps of Engineers (USACE) in response to a request from the USACE Walla Walla District. The Walla Walla district has been seeking additional funding for the Port's 1135 project and they have been notified by their Washington D.C. office that nationally this year there are more 1135 project requests than there is total funding available to that program. The good news is that our project is nearly ready to go out to bid and the sooner that happens, it will obligate federal funding to the project. The USACE asked that the Port send a letter to request increased federal funding and to indicate our continued commitment and our increased match. This letter will demonstrate to the USACE that the Port stands ready to support this project and will serve as the formal request for increased federal funding. Ms. Bader Inglima inquired if the Commission would like to authorize staff to move forward to help us expedite funding to the Walla Wall District so that they can get our project out to bid as soon as possible and secure our funding.

It is the consensus of the Commission to authorize Mr. Arntzen to sign and send the letter in support of the 1135 project to the USACE Walla Walla and Washington D.C.

C. Oak Street – Three Rivers Acquisition LLC

Ms. Hanchette stated in 2019, the Port sold 12 acres at the end of Oak Street to Three Rivers Acquisition, a partnership between Troy Faulkner and Brad Rogers. The purchase and sale agreement (PSA) called for construction of a light industrial business park with an 18-month buyback clause at the time the deed was recorded. Mr. Rogers, on behalf of Three Rivers Acquisition is requesting a 12-month extension, as Mr. Faulkner passed away in 2019. Mr. Rogers is regrouping and still plans to construct the industrial park.

Brad Rogers stated it has been difficult with Mr. Faulkner's passing and it has been difficult moving forward. Mr. Rogers reported that there is equipment on site and stated the biggest issue is determining where the flood level is. Mr. Rogers requested an extension for construction.

It is the consensus of Commission to grant a 12-month extension on the buyback clause to Three Rivers Acquisition.

D. Tri-Cities Legislative Council

Ms. Bader Inglima stated the Port was asked by the Tri-Cities Legislative Council to provide input on projects of importance to the Port and on state issues and policies that are important to the future success and prosperity of our Port and the community. Ms. Bader Inglima presented a draft letter that is consistent with information we have been communicating to the Tri-Cities Legislative Council and to our legislators through Washington Public Ports Association (WPPA) for many years. These include support for Community Economic Revitalization Board (CERB) funding and concerns related to use of median wages in determining eligible grant projects; as well as concerns related to Prevailing Wage issues; and support for Tax Increment Financing (TIF); and Local Revitalization Financing (LRF). The WPPA is making TIF a priority this year, and will hold a TIF 101 workshop on November 17th. Additionally, WPPA is co-hosting that workshop with WEDA, the Washington Economic Development Council.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 13, 2020 MINUTES

DRAFT

It is the consensus of Commission to move forward with the draft letter to the Tri-Cities Legislative Council.

Ms. Bader Inglima will request the final document from the Tri-Cities Legislative Council and share it with the Commission, so that we see what advances as their priorities.

E. November and December Commission Meetings

Ms. Scott reviewed the upcoming Commission Meeting Schedule:

- November 10th: Possible Budget adoption
- November 20th: Special Commission Meeting regarding appeal
- November 24th, December 8th and December 22nd: Regular Commission Meetings.

Ms. Scott stated it is possible to cancel the Commission Meeting on November 24th if the 2021-2022 Budget is adopted at the November 10th Commission Meeting. Ms. Scott inquired if the Commission would like to cancel the last meeting in December.

It is the consensus of the Commission to cancel the December 22, 2020 Commission Meeting.

Ms. Scott will work on scheduling a Special Meeting regarding Vista Field.

F. Chief Executive Officer Performance Evaluation

Ms. Luke outlined the performance evaluation process and the documents that the Commission received and compiled the Commissioner's comments for the final evaluation. Ms. Luke stated after the review of the evaluation, pursuant to the CEO's Performance Agreement, the Commission will determine whether the 2020 evaluation is deemed satisfactory, above satisfactory, or exceptional and adopt one of those categories. Ms. Luke stated Commissioner Moak provided his input as to the CEO's overall performance and determined that the CEO's performance was exceptional for 2020.

Commissioner Barnes has no further comments outside of those that were submitted in writing for the CEO's evaluation.

Commissioner Novakovich agrees with Commissioner Moak's determination of the CEO's performance as exceptional. Commissioner Novakovich asked for clarification regarding the hiring of counsel that Mr. Arntzen was downgraded on in a few instances. Commissioner Novakovich inquired if Mr. Arntzen was removed from this process very early on and did not hire counsel.

Ms. Luke stated Mr. Arntzen did recuse himself very early on in the process, pursuant to the Commission Rules of Policy and Procedure, Section Five. Mr. Arntzen did not largely participate in any of the process except for the first evaluation of the complaint that was received. Ms. Luke provided the Commission an explanation of the situation that arose and believes each Commissioner received the email. The email explained that the CEO was not involved in the decision of retaining counsel and relied upon the opinion of Port counsel in order to proceed. Ms. Luke inquired if that answered Commissioner Novakovich's question.

PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 13, 2020 MINUTES

DRAFT

Commissioner Novakovich stated yes, but inquired if Mr. Arntzen can be marked down for something he did not participate in.

Ms. Luke stated each Commissioner is allowed to provide their opinion with regard to the CEO's evaluation. As far as being marked down, that is part of the opinion process and each Commissioner entitled to their opinions about different aspects of performance over the year.

Commissioner Moak has nothing further to add to his comments but stated if Mr. Arntzen has any questions about his comments that he has written, he is prepared to respond.

PUBLIC COMMENT

No comments were made

MOTION: *Commissioner Novakovich moved to approve Resolution 2020-21 adopting the CEO's 2020 Annual Performance Review as set forth in Exhibit A; furthermore, in accordance with the CEO's Employment Agreement, deem the CEO's performance as Exceptional; Commissioner Moak seconded. With no further discussion, motion carried. All in favor 2 Ayes (Commissioners Moak and Novakovich); 1 Nay (Commissioner Barnes).*

G. Director Reports

Ms. Bader Inglima received a request from Total Site Services (TSS), the contractor on Vista Field Phase 1. TSS submitted the Vista Field project for an Associated General Contractors of America Award in the Heavy and Utility category, which the Port contributed a letter of support for their award application. The Port received an email from project manager Shannon Toranzo, "Thank you so much for your support on this and throughout this project. The Port of Kennewick has been a great group to work with and we are very appreciative of the opportunity to bring the Vista Field vision to life. It's been an excellent team effort." Ms. Bader Inglima stated it was a great partnership and TSS did a great job on Vista Field.

Mr. Peterson thanked the Commission for their consideration on the detailed items for Vista Field.

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

Commissioners reported on their respective committee meetings.

I. Non-Scheduled Items

Mr. Kooiker reported that we had an exit conference with Clifton, Larson, Allen and received a clean audit opinion on the 2019 financial statement audit. Mr. Kooiker stated the next step is for the Washington State Auditor to review their audit for final confirmation.

Mr. Arntzen thanked the Commission for the kind words in his performance review. All great organizations have great leadership and he commends the Commission for providing this level of leadership. This leadership allows Mr. Arntzen to effectively carry out his job at the Port, a job he could not do without the highly skilled staff members to assist him. 2020 has been a very successful year at the Port, and we as a team, which includes the public, has accomplished many things, and for this, he is very grateful. As Commissioner Barnes said earlier in the meeting, 2020

PORT OF KENNEWICK REGULAR COMMISSION MEETING

OCTOBER 13, 2020 MINUTES

DRAFT

has also been a challenging year on many fronts, the most obvious is the presence of the Coronavirus. Our families, the Port, our community, and the Nation has persevered in these trying times and he hopes that 2021 is an even better year for families, the Port, our community, and the Nation. Mr. Arntzen thanked the Commission again for the review and those staff members and Ms. Luke that participated in the process.

Commissioner Barnes thanked Mr. Arntzen for his work in 2020.

No further 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 4:32 p.m.

APPROVED:

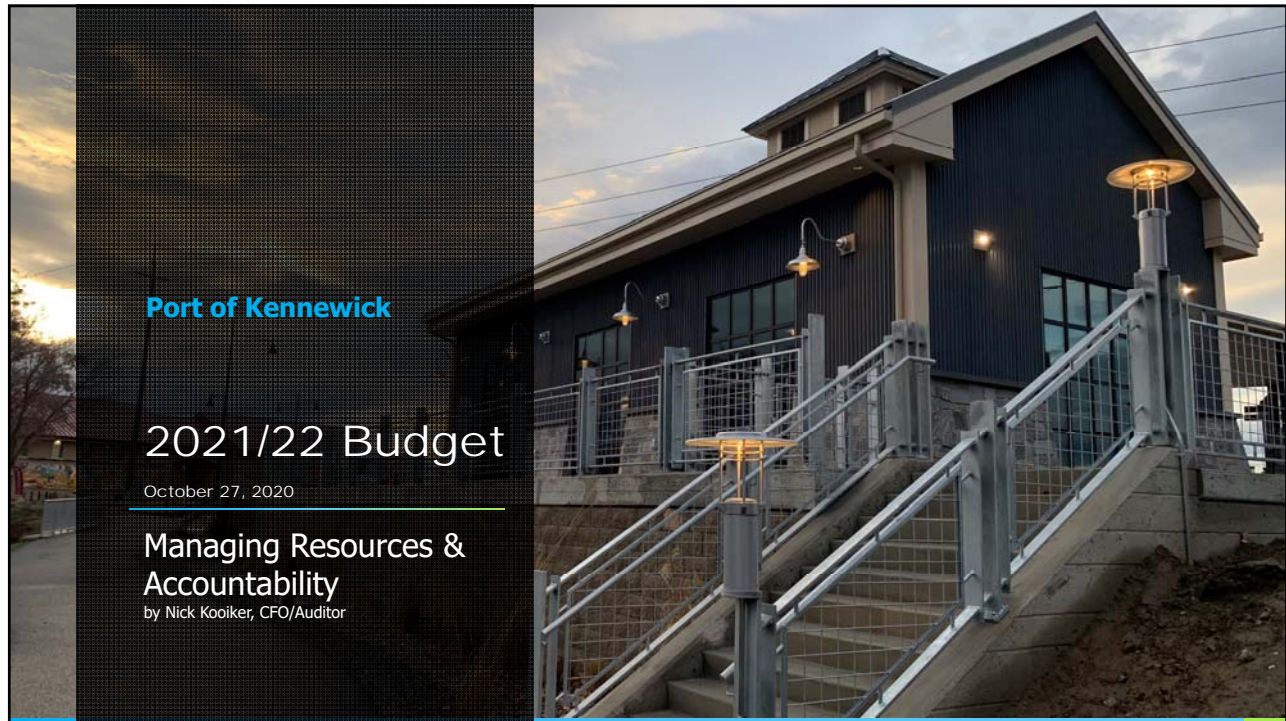
PORT of KENNEWICK

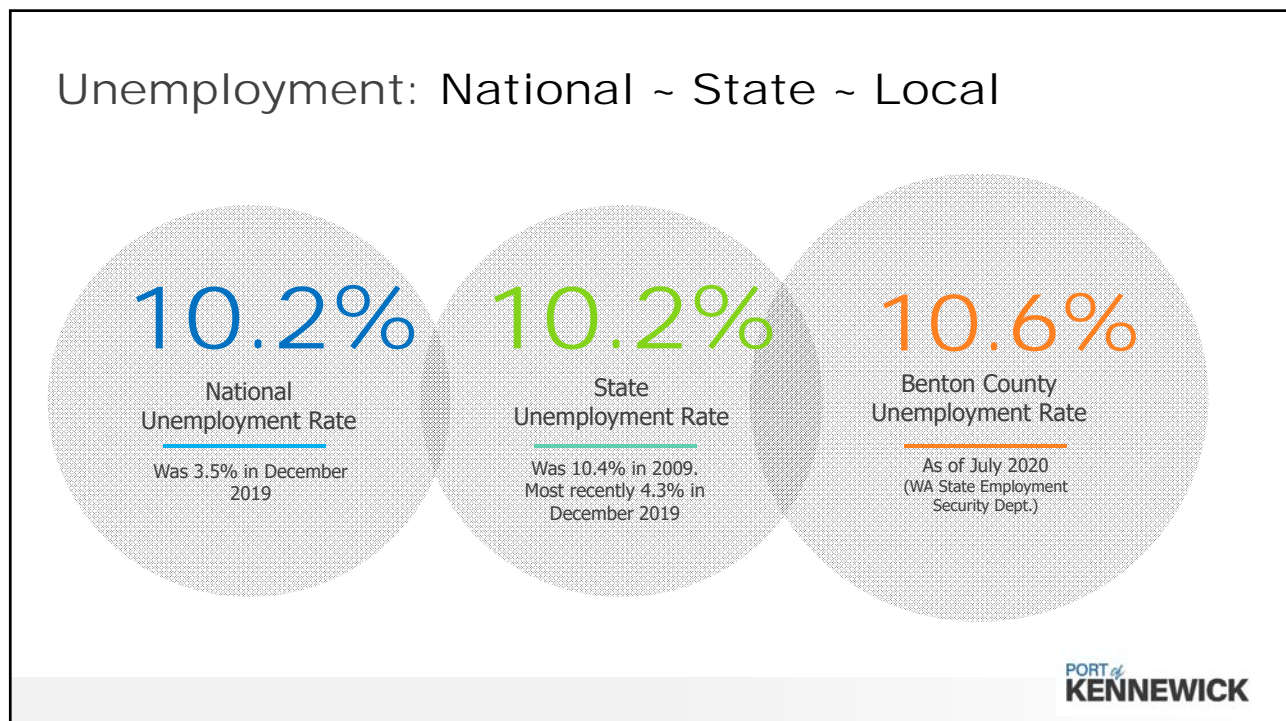
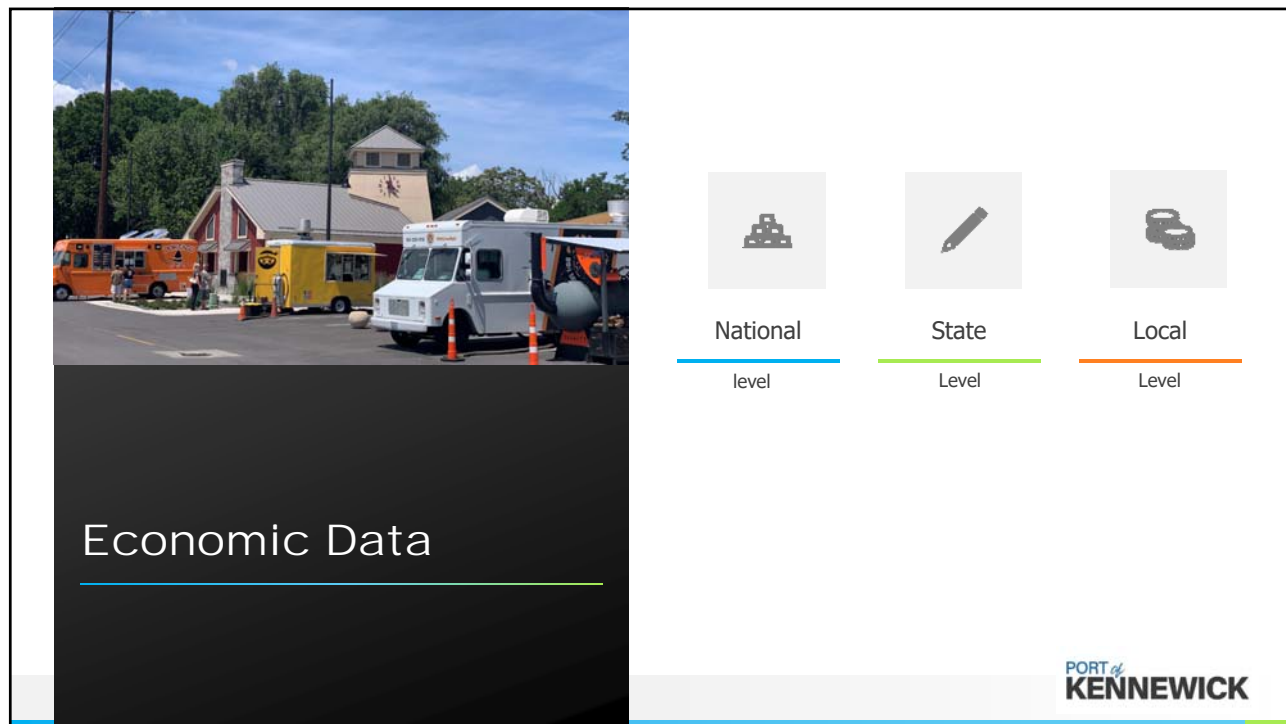
BOARD of COMMISSIONERS

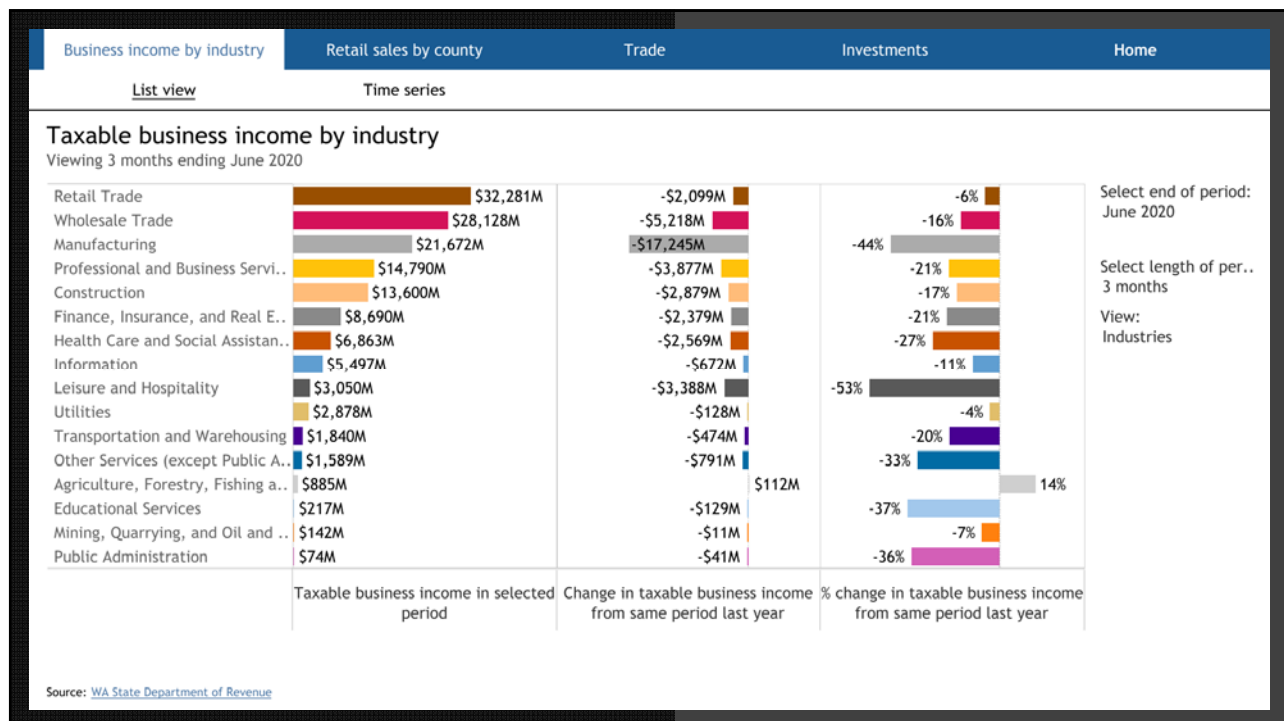
Don Barnes, President

Skip Novakovich, Vice President

Thomas Moak, Secretary









Concern among many experts about where we're headed!

PORT of
KENNEWICK



General Uncertainty

- **Approximately \$12M in cash as of 9/30/20**
- **The Port owes just under \$4.8M on the Vista Field loan, and the interest rate increases in December 2023**
- **Operating revenues are approximately 10% higher than benchmark**
- **Operating expenses are just under benchmark**
- **The Port's net position is nearly \$63M**
- **The 2020 levy rate is \$.28/thousand, compared to \$.44 in 2001.**



Port's Current Financial Position

PORT of
KENNEWICK

- Reserve funds can be used for any reason “deemed necessary” by Commission. This could be essential in this budget cycle if we lose substantial operating revenues.
- Reducing costs and enhancing revenues when feasible while maintaining acceptable service levels.
- Promoting fiscal responsibility among departments.
- Acknowledging the Port’s limited staff and financial resources.



Budget Philosophy

Resolution 2018-27

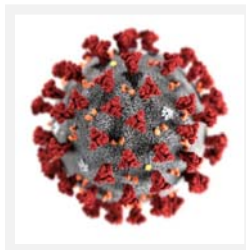
PORT of
KENNEWICK

Budget Assumptions



Fund Balance

Forecasting fund balance on 12/31/20 to be approximately \$10.2M



COVID-19

This budget is conservative, just in case our operating revenues decline



Vista Field RCCF

Commission needs to identify Vista Field RCCF project in near future



Vista Field Team

Budget reflects Vista Field “Team” approach previously discussed with Commission

PORT of
KENNEWICK

Budget Assumptions



1135 Project

Capital budget increased to reflect latest cost estimates.



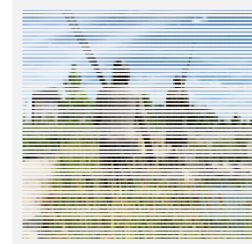
Buyback Clauses

Capital budget does **NOT** have a line item for buyback clauses. Need to use reserve fund or modify budget



Vista Field Development Buildings

Capital budget identifies funding to update these buildings and increase future rents



Maintaining Port Investments

Operating budget has funding to maintain current service levels provided to our constituents

PORT of
KENNEWICK

1135 Shoreline Project



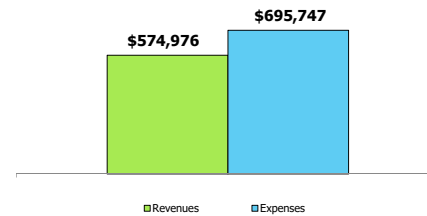
PORT of
KENNEWICK



Marine Division

Revenue & Expenses

Responsible for operations and management of marina, haul outs and boat storage.



- The marina is nearly 100% occupied, so recommending a 2% per year increase in rates.
- Expenses include estimated staffing costs
- Most expenses are indexed to a 5% inflation factor, an actual contract amount, or estimated by department manager

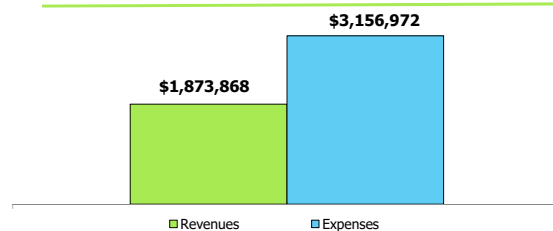
PORT of
KENNEWICK



Property Management Division

Revenue & Expenses

Responsible for management, operations, and maintenance of various Port assets (mainly Port buildings).



- Revenues are based upon leases in place through 2022, and leases that are "highly likely" to renew. Every Port lease is reviewed thoroughly to make this determination
- Need to keep a close eye on revenues in the budget cycle due to COVID-19
- Expenses include estimated staffing costs
- Most expenses are indexed to a 5% inflation factor, an actual contract amount, or estimated by department manager

PORT of
KENNEWICK



Meet Billy!

Maintenance & Operations

PORT of
KENNEWICK



Corporate Division

Revenue & Expenses

All other divisions of the Port are supported by the corporate division. This can include, among many other things: Board of Commissioners, Legal, Accounting & Finance, IT, and Contract Administration.

Corporate Cost
\$3,215,296



- Budget takes into account additional staffing resources needed, as well as the property management budget
- Laserfiche consulting agreement to assist with further paperless workflows
- Most expenses are indexed to a 5% inflation factor, an actual contract amount, or estimated by department manager

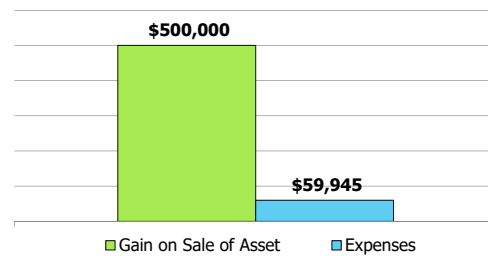
PORT of
KENNEWICK



Real Estate Division

Revenue & Expenses

This division manages the process of buying or selling property in support of the Port's overall business plans.



- Port staff have identified the potential of approximately \$500k in land sales during the budget cycle
- Expenses are primarily estimated staff time related to this division
- \$1,316,000 balance from City of West Richland already was recognized as revenue in 2019, but cash balance will increase when we receipt cash

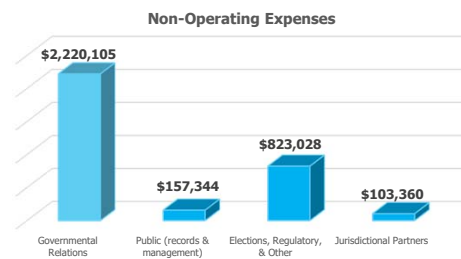
PORT of
KENNEWICK



Non Operating Division

Revenue & Expenses

This division includes various items that don't affect Port operations. This can include items such as: Election costs, third party audit expenses, marketing expenses, and membership dues.



- Expenses tied to a contract, or membership dues such as TRIDEC, WPPA, Visit Tri Cities, etc.
- Expenses include estimated staff time related to this division
- Property tax revenues are budgeted at \$8.8 million

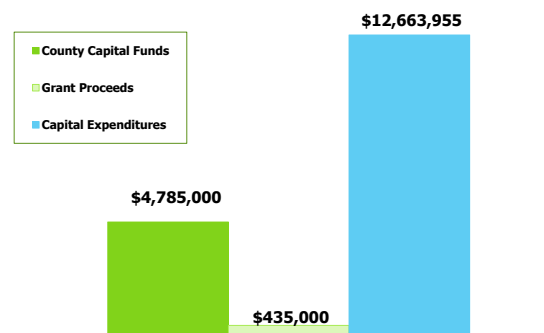
PORT of
KENNEWICK



Economic Development Division

Revenue & Expenses

This division supports all of the Port's capital assets to be planned or constructed.



- Revenues include RCO grant for shoreline, and estimated RCCF accrual through the end of 2022. The expenses are balanced out in capital budget under "Vista Field TBD".
- Details of capital expenditures are on the next slide (except staff cost allocated to this division)

PORT of
KENNEWICK

Capital Projects

	Carried over from 2020	21 Budget	22 Budget	TOTAL 21/22
Vista Field Loan Repayments		\$ 450,000	\$ 450,000	\$ 900,000
TBD Vista Field RCCF Project		\$ 2,065,000	\$ 1,720,000	\$ 3,785,000
Vista Field Fire Station (COK)		\$ 125,000		\$ 125,000
Vista Field Well		\$ 125,000	\$ 125,000	\$ 250,000
Vista Field "Team"		\$ 75,000	\$ 75,000	\$ 150,000
VF Traffic Impact Fund/Central Park		\$ 50,000	\$ 50,000	\$ 100,000
VF Owners Association Fund		\$ 100,000	\$ 100,000	\$ 200,000
VFDF A & B Exterior Improvements		\$ 300,000	\$ 300,000	\$ 600,000
Shoreline Construction (1135)	\$ 1,250,000	\$ 500,000	\$ 500,000	\$ 2,250,000
Clover Island Master Plan		\$ 25,000	\$ 25,000	\$ 50,000
Columbia Drive & Duffy's Pond		\$ 225,000	\$ 225,000	\$ 450,000
City of Kennewick Partnership		\$ 250,000	\$ 250,000	\$ 500,000
Richland/Island View Infrastructure	\$ 800,000			\$ 800,000
City of Richland Center Pkwy Project		\$ 200,000	\$ 200,000	\$ 400,000
Opportunity Fund		\$ 150,000	\$ 150,000	\$ 300,000
Port Buildings (Asset Replacement Program)		\$ 250,000	\$ 250,000	\$ 500,000
Misc. Capital		\$ 50,000	\$ 50,000	\$ 100,000
TOTAL	\$ 2,050,000	\$ 5,554,721	\$ 5,059,234	\$ 12,663,955

*Totals include estimated staff time

PORT of
KENNEWICK

2021/22 Preliminary Budget

Total Revenues	\$16,995,567
Total Expenses (less capital and promotional hosting)	\$10,905,834
Profit (Loss)	\$ 6,089,734
Less Capital Expenses	\$12,663,955
Less Promotional Hosting	\$ 24,488
Beginning Cash on Hand	\$10,221,466
RESERVE FUNDS	\$ 2,500,000
UNRESTRICTED FUND BALANCES	\$ 1,122,756
Ending Cash on Hand	\$ 3,622,756

Thank You

Nick Kooiker, CFO/Auditor
509-586-1186
nick@portofkennewick.org





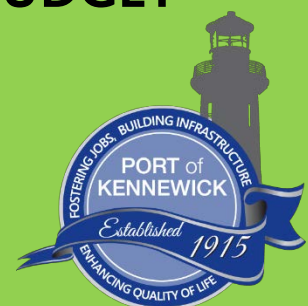
Port of Kennewick

2021 & 2022 PRELIMINARY BUDGET

Fostering Jobs

Building Infrastructure

Enhancing Quality of Life



Mission & Goals

The Port of Kennewick's mission is to provide and support sound economic growth opportunities that create jobs and/or improve the quality of life of the port district citizens.

Economic Development and Job Creation Goals:

- Provide the public with high quality projects and services within a healthy work environment.
- Evaluate economic development opportunities based on results to be derived district-wide versus project-specific or jurisdiction-specific.
- Encourage transparency, open competition and equal project consideration, fostering a reputation for fairness with the local business community.
- Seek to fund projects with available resources.
- Support intergovernmental cooperation by partnering with entities which demonstrate support.

These above goals will be accomplished through the following projects:

- Vista Field Redevelopment
- Kennewick's Historic Waterfront District
 - Columbia Drive Redevelopment
 - Clover Island 1135 Shoreline Restoration

Financial, Operational, and Budget Philosophy for 2021 & 2022:

- The Port is maintaining its goal of a balanced budget.
- The Port is fiscally sound and is ensuring its available resources do not exceed expenditures.
- The Port's budget allows funding for additional staff in order to facilitate budgeted capital projects while promoting fiscal responsibility.
- The Port will continue to report Return on Investment as appropriate and share audited financial reports with the public.

2021 & 2022 PRELIMINARY BUDGET*

PRELIMINARY	
PORT OF KENNEWICK	
<u>SUMMARY</u>	
	2021 & 2022 BUDGET
Total Revenues	\$ 16,995,567
Total Expenses (less capital and promotional hosting)	\$ 10,905,834
<i>Profit (Loss)</i>	<i>\$ 6,089,734</i>
Capital Expenses	\$ 12,663,955
Promotional Hosting Expenses	\$ 24,488
Beginning Cash on Hand	\$ 10,221,466
RESERVE FUNDS	\$ 2,500,000
UNRESTRICTED FUND BALANCES	\$ 1,122,756
<i>ENDING CASH ON HAND</i>	<i>\$ 3,622,756</i>

*The 2021 & 2022 Preliminary Budget PowerPoint Presentation is integral to the Port of Kennewick's preliminary budget document.

*For questions regarding this report, contact the Port's Chief Financial Officer, Nick Kooiker at 509-586-1186



AGENDA REPORT

TO: Port Commission

FROM: Larry Peterson, Director of Planning & Development

MEETING DATE: October 27, 2020

AGENDA ITEM: Resolution No. 2020-22; Vista Field – Declaration of Covenants, Conditions and Restrictions

- I. REFERENCE(S):** Introduction to Governing Documents, Vista Field Declaration (all properties) and Vista Field Commercial Property Declaration.
- II. FISCAL IMPACT:** None, although enactment of such documents effectively transfers maintenance funding responsibility from the Port to future property owners within the Vista Field redevelopment project.
- III. DISCUSSION:** The completed and planned future improvements within the Vista Field redevelopment project involve combinations of elements to be dedicated to and maintained by the City of Kennewick and unique elements that require perpetual maintenance by those investing in the Vista Field redevelopment project. Therefore the Port engaged experts to assist in the creation of declaration documents of covenants, conditions.

Specifically Doris S. Goldstein, an attorney (licensed in Florida and Californian) who has worked on numerous Duany Plater-Zyberk new urbanism projects over the last 30+ years, provided oversight and direction to and worked with Christopher S. Napier, attorney with Foster Garvey (Seattle based firm), to craft documents deemed legally compliant with Washington State Laws. Ben Floyd of White Bluffs Consulting coordinated these contributors and shepherded this project through the Port staff review process, always with an eye of practicality and simplicity were appropriate.

Three documents are included in the ‘package’ of declarations for the Vista Field redevelopment project which create the mechanisms for those investing in the Vista Field

redevelopment project to both assure the perpetual maintenance and funding of improvements not dedicated to the City of Kennewick. The documents are:

Introduction to Governing Documents

This introduction document was crafted to aid all involved with the Vista Field redevelopment project to easily understand the intent, overlap and exclusions contained in these documents. Ms. Goldstein indicated this was the first time she was involved with creating such a document and stated this should assist all involved with the Vista Field project at both present and future, whether they be Port staff, Commissioners, legal counsel, developers, property owners, home owners, realtors, etc.

Vista Field Declaration (all properties)

This document applies to all properties in the Vista Field redevelopment project, regardless of land or building use. The general intent of this document is the maintenance of non-City dedicated improvements such as the woonerfs {shared residential streets}, alleys, water features, parks and open space areas. Due to this declaration encompassing residential properties, compliance with the Washington Uniform Common Interest Ownership Act is required. This declaration establishes an “Allocated Interest” based upon size of the building use, which correlates to voting interests and assessments of each property.

Vista Field Declaration for Commercial Property (all Commercial properties)

This document applies to all commercial properties in the Vista Field redevelopment project. The general intent of this document is the maintenance of elements specific to the commercial businesses and the cohesive marketing of these business and special event and promotional activities. Since this declaration does not encompass residential properties, greater flexibility exists to undertake the allowed activities. This declaration establishes an “Assigned Value” based upon values established by the Benton County Tax Assessor, which correlates to voting interests and assessments of each property.

- IV. **MECHANICS:** Passage of the attached resolution would result in the recording of the document “package” prior to the initial marketing of the first phase of the project and allow for the creation of the By-Laws and initial budgets to complement these declarations. Many elements of these declaration may lay “dormant” for 2, 3 or 5 years; until such times as they are needed.

V. **ACTION REQUESTED OF COMMISSION:**

Motion: I move approval of Resolution 2020-22 adopting the Vista Field Declarations of Covenants, Conditions and Restrictions for Vista Field as attached hereto and identified as “Exhibit A”; and further authorize the port Chief Executive Officer to take all actions necessary to implement these Declarations.

PORT OF KENNEWICK

Resolution No. 2020-22

***A RESOLUTION OF THE PORT OF KENNEWICK
BOARD OF COMMISSIONERS ADOPTING THE
VISTA FIELD PROPERTY OWNER ASSOCIATIONS
DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS***

WHEREAS, the Port of Kennewick Commission has undertaken master planning and infrastructure improvements to create a new urbanism oriented mixed use redevelopment in the western core of the City of Kennewick; and

WHEREAS, the completed and planned improvements involve combinations of elements to be dedicated to and maintained by the City of Kennewick and unique elements that require perpetual maintenance by those investing in the Vista Field project; and

WHEREAS, the Port coordinated with specialized legal counsel and development experts to craft a package of declarations containing covenants, conditions and restrictions to create the mechanisms for those investing in the Vista Field project to both assure the perpetual maintenance and funding of improvements not dedicated to the City of Kennewick; and

WHEREAS, the Commission has reviewed these documents and deemed the establishment of property owners associations for the Vista Field redevelopment project is warranted; and

WHEREAS, the Commission understands these documents contain the flexibility to be amended as deemed necessary as the Vista Field redevelopment project evolves.

NOW, THEREFORE, BE IT HEREBY RESOLVED the Board of Commissioners of the Port of Kennewick hereby adopts Vista Field Declarations of Covenants, Conditions and Restrictions for Vista Field as attached hereto and identified as “Exhibit A”; and further authorizes the Port’s Chief Executive Officer to take all actions necessary to implement the Declarations.

ADOPTED by the Board of Commissioners of the Port of Kennewick this 27th day of October, 2020.

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

By: _____
DON BARNES, *President*

By: _____
SKIP NOVAKOVICH, *Vice President*

By: _____

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. The Master Plan lays out the overall design and development concept for Vista Field. It is subject to change and refinement during development. A legal description of the 103 acres of land, known as the Master Plan Area, is attached as an exhibit to this Introduction.

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, sometimes known 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. The governance structure was developed after thorough 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, and resulted in the preparation of 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 (with each individually owned piece of land known as a “Parcel”), and
2. The **Vista Field Declaration of Covenants, Conditions and Restrictions for Commercial Property** (the “Commercial Declaration”), which applies only to commercial Parcels and the commercial portions of mixed-use Parcels 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 Master Plan Area and its long-term operation as a vibrant mixed-use area in the City.

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 establishes a property owners’ association (the Vista Field Association) to manage and maintain those parts of Vista Field that are used by the entire community. Known as Common Elements, these are owned by the Vista Field Association and include certain streets, open space, water features and other facilities and grounds. Some streets will be dedicated to the public and are not part of the Common Elements. Limited Common Elements are owned by the Association but serve only certain Parcels, such as an alley.

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 common interest communities that include residential property.

Vista Field Association Membership. Members of the Vista Field Association include all Parcel 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 residential Parcels are assigned the same assessment per dwelling 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. Parcels that include both residential and commercial space combine the formulas to determine the Parcel's Allocated Interest.

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 establishes a Commercial Association, which has three primary purposes:

- *Maintenance:* The Commercial Association will be responsible for maintenance of the commercial common areas, such as plazas, landscaping and street furniture.
- *Management:* The Commercial Association 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 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 will no longer be subject to the Commercial Declaration.

Commercial Association. All commercial property owners within Vista Field will be members of the Commercial 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.

The Commercial Declaration is not subject to the Washington Uniform Common Interest Ownership Act. The documents allow the Founder to choose how long it operates and controls the Commercial Association.

Implementation and Phasing. The Commercial Declaration is recorded at the same time as the Vista Field Declaration and becomes effective at the same time. As phases are added to the Vista Field Declaration, commercial Parcels and the commercial portions of mixed-use Parcels within the additional property will automatically become subject to the Commercial Declaration.

Further information about specific terms is contained in the Declarations. In the event of a conflict between this Introduction and the Declarations, the Declarations shall control.

The Port has executed this summary of the Vista Field Declaration and Commercial Declaration and caused it to be recorded in the public records.

WITNESSES:

PORT OF KENNEWICK

By: _____

_____ its _____ president

ACKNOWLEDGEMENT

STATE OF _____)

) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as _____ of PORT OF KENNEWICK, to be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

DATED: _____.

(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

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	40
Exhibit B: Legal Description, The Master Plan Area	41

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>
Additional Property:	<i>Paragraph 1.3.1</i>
Allocated Interests:	<i>Section 2.2 and the Act</i>
Architectural Review Committee:	<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 8.1</i>
Commercial:	<i>Paragraph 1.2.2</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>First paragraph in Declaration</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>
Net Usable Square Footage	<i>Paragraph 2.2.7</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>
Residential:	<i>Paragraph 1.2.2</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>
Woonerf:	<i>Paragraph 3.3.1</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.

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.

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.

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 mixed-use area known as the Village Center, there is no physical division between Village Center 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) **Definitions of Residential and Commercial.** This Declaration uses the words “residential” and “commercial” in their common sense. The capitalized term “Residential” shall be as defined under the Act and shall also include residential apartments and apartment developments (but not hotels), plus 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. The capitalized term “Commercial” shall mean every use that is not Residential.

(c) **Mixed-Use 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 Parcels 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 40 Parcels. The maximum number of Parcels that may be created is 2,000.

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. Such 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 other than the owner of the Additional Property if different from the Founder.
- (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 and the Owner of the Additional Property if different.

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.

- (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 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, the Declaration or Supplemental Declaration, 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. Such practice shall not preclude the Association

from assessing the Owners for more significant expenses relating to the Limited 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) **Ratiofication.** Each Maintenance Zone budget shall be subject to ratiofication 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 may be required to 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 Commercial 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% 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.

- (c) **Association's Legal Fees.** To the greatest extent permitted by the Act, any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Association in the enforcement of any of the provisions of this Declaration, whether or not suit is brought, may be assessed as a Specially Allocated Assessment to the Owner against whom such action was taken.

9.3.4 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 Act.

9.3.5 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.

9.3.6 Invalidity and Law to Govern. The invalidity of any part of this 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 Declaration shall be construed in accordance with the Act and other laws of the State of Washington.

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

WITNESSES:

PORT OF KENNEWICK

By: _____

_____ its _____ president

ACKNOWLEDGEMENT

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as _____ of PORT OF KENNEWICK, to be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

DATED: _____.

(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: Legal Description, The Initial Property

REFERENCE PLAT WITH RECORDING INFO

Exhibit B: Legal Description, The Master Plan Area

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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Vista Field Declaration of Covenants, Conditions and Restrictions
For
Commercial Property

Table of Contents

RECITALS:	1
SUBMISSION TO DECLARATION	1
Part I: Development Plan	3
1.1 Master Plan and Phasing	3
1.2 Relationship to Residential Property	3
1.3 Design Review	4
Part II: The Commercial Association	5
2.1 Establishment	5
2.2 Board	5
2.3 Assigned Value	6
Part III: Shared Spaces and Facilities	7
3.1 Commercial Commons	7
3.2 Relationship to Vista Field Common Elements	8
3.3 Private Agreements	8
Part IV: Commercial Association Responsibilities	9
4.1 Maintenance of Commercial Commons	9
4.2 Management and Services	10
4.3 Marketing and Special Events	11
Part V: Association Budget	12
5.1 Association Budget	12
5.2 Marketing and Special Events	12
5.3 Limited Commercial Commons	13
5.4 Additional Services	13
Part VI: Assessments	15
6.1 Assessments	15
6.2 Effect of Nonpayment of Assessment; Remedies	15
Part VII: Business Regulation	18
7.1 Business Standards	18
7.2 Enforcement	19

Part VIII: Modification, Repair and Reconstruction20

 8.1 *Modification of Commercial Commons*20

 8.2 *Repair and Reconstruction*22

Part IX: General Provisions..... 23

 9.1 *Amendment*.....23

 9.2 *Additional Terms*24

Exhibit A: Legal Description, Master Plan Area 27

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 6.1</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 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>Paragraph 1.1.1</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 every use that is not Residential.

The term “Residential” shall be as defined under the Washington Common Interest Ownership Act (the “Act”) as revised and interpreted from time to time and shall also include residential apartments and apartment developments (but not hotels), plus 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.

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."

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.

The Founder declares that all property made subject to this Commercial Declaration shall be held, sold and conveyed subject to its covenants, restrictions and easements.

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

This Commercial Declaration shall run with the land and be binding upon each Owner of Commercial Private Property within Vista Field, their heirs, successors and assigns, and to the extent described in Paragraph 1.1.3, 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 Relationship to Residential Property
- 1.3 Design Review

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.

1.1.4 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 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 Relationship to Residential Property

1.2.1 Exclusion. Owners of Residential Parcels within Vista Field are not members of the Commercial Association. 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.

1.2.2 Assigned Values. Assigned Values, which determine both voting rights and Assessments for the Commercial Association as provided in Section 2.3, are based only on non-Residential uses, including the non-Residential portions of Mixed-Use Parcels.

1.2.3 Applicable Provisions. 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.

1.3 Design Review

1.3.1 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.

1.3.2 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.

1.3.3 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.

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 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 Commercial 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 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. 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.

3.3.3 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 8.1.1.

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 Commercial Private Property 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.

6.2 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 Vista Field when the Board finds that it benefits Vista Field in at least one of the following two ways:

- (a) The conveyance is intended to benefit Vista Field 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 Vista Field or its Village Center or other Commercial areas 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.

- (a) **Generally.** 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.
- (b) **Boxed or Italicized Text.** 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.
- (c) **Applicability of Act.** It is intended that this Commercial Declaration not be subject to the Act. If the assignment of Design Review for Mixed-Use Parcels to the Commercial Association after the Development Period, as described in Section 1.2, or the applicability of the repair and reconstruction provisions of 8.2.2 to Mixed-Use Parcels regarding, is held to cause this Commercial Declaration to be subject to the Act, then those provisions shall be reformed or deleted to cause this Commercial Declaration to be exempt from the Act.

9.2.4 Exclusion of 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 Vista Field Declaration of Covenants, Conditions and Restrictions for Commercial Property 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

ACKNOWLEDGEMENT

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as _____ of PORT OF KENNEWICK, to be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

DATED: _____.

(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: Legal Description, Master Plan Area

PORT OF KENNEWICK

RESOLUTION No. 2020-23

***A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF
KENNEWICK AUTHORIZING A 12 MONTH ‘OBLIGATION TO CONSTRUCT’
EXTENSION WITH THREE RIVERS ACQUISITIONS LLC***

WHEREAS, the Port commission sold approximately 12.33 acres of the area graphically depicted on “*Exhibit A*” at the Port of Kennewick’s Oak Street Industrial Park, in Kennewick, Washington to Three Rivers Acquisitions LLC (Purchaser) April 24, 2018; and

WHEREAS, Purchaser requests a 12 month extension on their obligation to construct a light industrial business park per section 10.1 of the purchase and sale agreement due to a tragic loss and resulting restructuring of the business; and

WHEREAS, the Port Commission gave approval of the Purchaser’s request for up to a 12 month extension ending December 31, 2021 by consensus during the October 13, 2020 Commission Meeting; and

WHEREAS, Port staff and the Port attorney have reviewed the extension request and find it is in proper form.

NOW, THEREFORE, BE IT RESOLVED, the Port Commission approves the Purchaser’s request for up to a 12 month extension ending December 31, 2021 on said obligation to construction provision. All other terms and conditions remain in effect.

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

ADOPTED by the Board of Commissioners of the Port of Kennewick on the 27th day of October 2020.

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

By: _____
DON BARNES, President

By: _____
SKIP NOVAKOVICH, Vice President

By: _____
THOMAS MOAK, Secretary